115th Session **Judgment No. 3235**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr R.G.M. V. against the Organisation for the Prohibition of Chemical Weapons (OPCW) on 2 February 2011 and corrected on 19 April, the OPCW's reply of 18 August, the complainant's rejoinder of 22 November 2011, the Organisation's surrejoinder of 24 February 2012, the complainant's additional submissions of 22 November 2012 and the OPCW's final comments thereon of 22 March 2013;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a Dutch national born in 1954, is a former official of the OPCW who separated from service on 18 November 2009. He joined the Organisation in January 1996 and worked initially under a series of short-term contracts. On 5 August 1996 he was granted a two-year fixed-term contract and with effect from 14 December 1998 he was appointed to the post of Conference Services Clerk at grade GS-4 under a three-year fixed-term contract.

On 12 March 2007 the complainant went on certified sick leave. His leave was monitored by Dr R., the Senior Medical Officer of the Health and Safety Branch, who also advised him with respect to his course of treatment. By a letter of 11 October Dr R. informed the insurance broker responsible for the day-to-day administration of the OPCW's Group Insurance Contract, which included a policy covering service-incurred death and disability and a policy covering non service-incurred death and disability, that he had recommended that the complainant seek additional treatment in order to assist him with his return to work. On 13 December 2007 the complainant exhausted his entitlement to sick leave with full pay and was placed on sick leave with half pay.

In a letter of 18 February 2008 to the Director of Administration, who was also Chairperson of the Advisory Board on Compensation Claims (ABCC), the complainant stated that he and his treatment providers were of the opinion that he was totally and permanently incapacitated for further work at the OPCW, and he requested benefits under the Organisation's non service-incurred death and disability insurance policy. Two days later, Dr R. wrote to the insurance broker expressing the same opinion and recommending that the complainant be assessed according to the aforementioned policy.

At the insurance broker's request, on 4 June 2008 the complainant underwent a medical examination conducted by the insurance broker's own expert, Dr V.d.B. In his report Dr V.d.B. concluded inter alia that the complainant was not 100 per cent disabled but that "he would be for less than 33 %". By a letter of 4 July the insurance broker informed the Administration that Dr V.d.B. had determined that the complainant was temporarily incapacitated for work and that the origin of the incapacity was mainly of a non-medical nature. In addition, he would be able to perform duties within the OPCW that were reasonably compatible with his abilities, education and experience. On 5 August 2008 the complainant exhausted his sick leave entitlements.

In a letter of 12 September 2008, appended to which was a medical report from Dr R. regarding the complainant's condition, the Director of Administration informed the insurance broker that the

OPCW was of the view, based on medical information, that the complainant satisfied the criteria for non service-incurred total permanent disability as defined in the Group Insurance Contract. The Director requested that the matter be reviewed by the insurance broker's Medical Adviser with a view to adopting the Organisation's conclusions. The insurance broker replied on 17 October that a review had been undertaken, but it had been concluded that the complainant was not suffering from a permanent total disability and, consequently, he was not entitled to any benefits under the applicable insurance policy. Later that month, pending the outcome of the dispute, the complainant was placed on special leave with full pay on humanitarian grounds, with retroactive effect from 6 August 2008.

In November 2008 the Director of Administration invoked the dispute procedure contained in Article 10, paragraph 2, of the non service-incurred death and disability policy, which provided for the designation of a medical arbitrator in the event of a failure to settle a dispute related to medical questions. The complainant subsequently signed a submission agreement – the "Arbitration Compromise" – setting out the terms for the arbitration. In his report of 14 April 2009 the arbitrator concluded inter alia that the complainant was not suffering from a permanent total disability.

Having been notified of the arbitrator's findings, the complainant met with Dr R. on 11 May 2009 to discuss the arbitration. That same day he sent a letter to the Administration requesting information about his situation, given that Dr R. had asked him to decide, on the following day, whether he wanted to resume his duties or, alternatively, agree to the termination of his contract. By a letter of 22 May the Head of the Human Resources Branch explained that, as a result of the arbitration, it had been decided that he did not satisfy the criteria to be considered totally and permanently disabled under the Organisation's insurance policy and his claim was therefore not receivable by the insurers. Furthermore, the Director-General had decided to discontinue the complainant's special leave with full pay effective one week from the date of his receipt of the letter, that is, 2 June. He was expected to return to his post as from that date, at which point he would be placed

on a structured return-to-work programme under the guidance of the Health and Safety Branch. In the event that he failed to return to work, the Director-General would initiate a termination process under Staff Regulation 9.1(a) and the relevant Interim Staff Rules and Administrative Directives.

During the following weeks the complainant made numerous enquiries with the insurance broker and the Administration which variously related to the arbitration, and his concerns with respect to his return to work and the possible termination of his contract. By a letter of 15 June 2009 the complainant's lawyer asked the Administration to provide detailed information about the proposed return-to-work programme and the complainant's entitlement to an indemnity under Article 19 of the OPCW's death and disability insurance policy, inter alia.

On 29 June 2009 the Head of the Human Resources Branch notified the complainant that, as he had not returned to work as requested, the Director-General had convened a special advisory board (SAB) to consider the proposed termination of his appointment. In a memorandum of 28 September the SAB unanimously advised against termination of the complainant's contract on the basis of his being "incapacitated for further service due to reasons of health", but it further advised that his contract could possibly be terminated in accordance with one or more of the remaining conditions set out in Staff Regulation 9.1(a). In a memorandum of 29 September to the Director-General, the Joint Advisory Board (JAB) indicated that the SAB had submitted its recommendations and that the JAB concurred with the SAB's conclusion and had taken note of its recommendations. By a letter of 20 October the complainant was notified of the Director-General's decision to terminate his contract, with effect from 18 November 2009, in accordance with Staff Regulation 9.1 on the grounds that his services had proved unsatisfactory.

The complainant requested a review of that decision on 13 November 2009, but he was informed by a letter of 1 December

that the Director-General had decided to maintain it. On 23 December he lodged an appeal with the Appeals Council challenging the arbitration process which led to a denial of his request for disability benefits and the decision to terminate his contract. In its report of 21 October 2010 the Council recommended that the Director-General set aside the decision to terminate the complainant's contract, reinstate him in his former post, and reconsider the grounds of the termination decision in light of Dr R.'s medical opinion – provided on 15 October – that the complainant could not return to work. By a letter of 19 November 2010 the complainant was informed that the Director-General reconfirmed his decision to terminate the complainant's contract on the basis of unsatisfactory service and that he would not reconsider the basis for that decision. That is the impugned decision.

B. The complainant submits that the decision to terminate his appointment was tainted by breaches of procedure and due process and by errors of fact and law. He asserts that the Administration provided the SAB with inaccurate information and did not inform the SAB of its failure to respond to his requests for information. In addition, the SAB considered his termination on the grounds of incapacity and not, as the Administration advanced, on the grounds of unsatisfactory service. Furthermore, as he was not informed of the composition of the SAB or the JAB and was given no opportunity to respond to the Administration's submissions to the SAB, his due process rights were violated.

Referring to Staff Regulation 10.2, the complainant states that the Director-General may impose disciplinary measures on staff whose conduct is unsatisfactory and he acknowledges that it is well settled that a failure to report to work without authorisation or good reason amounts to misconduct. In his view, the Administration's allegations in this respect are equivalent to an accusation of misconduct, and it was therefore required to pursue the related disciplinary procedures set out in the Staff Regulations and Staff Rules. The termination decision is consequently vitiated by the OPCW's failure to apply those provisions.

The complainant contends that the Organisation failed to provide a safe and healthy working environment. He argues that it demonstrated a lack of good faith by demanding that he participate in the arbitration process and by requesting his signature on the Arbitration Compromise, despite the fact that he was not a party to the Group Insurance Contract. In addition, after the arbitration, the defendant did not reply to his requests for information regarding the proposed return-to-work programme, and it failed to consider other options to facilitate his return.

He submits that his claims regarding the decision to deny his request for disability benefits are receivable, because the Tribunal has previously ruled that time limits do not apply in cases where the Administration has misled a staff member with respect to her or his appeal rights. On the merits, he argues that that decision was unlawful. Indeed, the Administration misinterpreted its rules on compensation claims and failed to submit his request to the ABCC in order to determine whether his illness was service-incurred. In his view, this error tainted all of the subsequent actions of the Administration, including the arbitration process, and renders the impugned decision unlawful *ab initio*.

By way of relief, in the complaint form the complainant asks the Tribunal to set aside the impugned decision, order his reinstatement and order the payment of all salaries, benefits and emoluments due to him from the date of his separation from service to the date of his reinstatement, with interest from due dates. In the alternative, he asks the Tribunal to find that he was and continues to be permanently disabled and is entitled to the payment of past and future disability benefits provided for under the Staff Regulations and Staff Rules, with interest from due dates. He seeks material damages, moral damages in the amount of 30,000 euros, exemplary damages, costs, and any other relief the Tribunal deems just and proper. In his brief he also asks the Tribunal to “take complete jurisdiction” of his case and to find that he suffers from a service-incurred illness and is permanently disabled. He seeks retroactive payment by the Organisation of the related benefits to which he is entitled under the service-incurred death and disability

insurance policy, with interest from the date when those benefits should have been paid to him.

C. In its reply the OPCW contends that the complaint is receivable only insofar as it relates to the decision to terminate the complainant's appointment. His claims with respect to the denial of benefits under the non service-incurred and service-incurred death and disability insurance policies are irreceivable for failure to exhaust the internal means of redress. The Organisation points out that on 8 October 2010 he has also lodged an internal appeal challenging a decision of 22 September by the Director-General to reject his claim of 3 September 2010 for service-incurred disability benefits and that appeal is still pending.

On the merits, it submits that the termination decision was lawful and was taken in accordance with the relevant Staff Regulations, Interim Staff Rules and administrative directives. There is no relationship between that decision and the complainant's claim for disability benefits. His appointment was terminated on the basis of unsatisfactory service, and he has failed to prove that the decision was tainted by any of the flaws which, according to the Tribunal's case law, would justify setting it aside. It was not required to initiate disciplinary proceedings for unsatisfactory service in order to take the decision to terminate his appointment. In its view, the complainant did not have reasonable grounds for not returning to work.

The Organisation asserts that the SAB and JAB procedures were conducted properly, and it explains that those procedures are not adversarial. Indeed, the SAB and JAB are not appellate bodies. Their role is to provide advice to the Director-General. Furthermore, the complainant never asked to provide comments to the SAB.

The OPCW contends that there is no evidence that the complainant suffered or suffers from a service-incurred disability or a total or permanent disability. It denies that he was misled as to whether he should pursue a claim on that basis. Furthermore, he received sufficient information regarding his return-to-work programme and could not make the provision of a detailed plan a

precondition to his resuming his duties. Lastly, it submits that it acted in good faith towards the complainant at all times and made every effort to assist him over a period exceeding two years.

D. In his rejoinder the complainant develops his pleas. He appends new documents, including a recent medical report which, in his view, supports his argument that his initial request for benefits should have been submitted to the ABCC. In addition to his previous claims for relief, he seeks further compensation for himself and his three dependent children, costs for a medical consultation and related travel expenses, moral and exemplary damages in the sum of 150,000 euros, and legal costs in the sum of 30,000 euros.

E. In it surrejoinder the Organisation maintains its position in full. It submits that the complainant has failed to respond adequately to its arguments related to the receivability of the complaint. It contends that the new medical report is inadmissible and that, in any event, the Tribunal is not competent to make its own medical assessment relying on that report.

F. In his additional submissions the complainant appends a copy of Dr R.'s medical notes dated 13 February 2008 and argues that this document proves that his claim should have been submitted to the ABCC for consideration.

G. In its final comments the OPCW challenges the receivability of the complainant's additional submissions and asserts that they have no probative value.

CONSIDERATIONS

1. The complainant commenced employment with the OPCW in January 1996. His appointment was terminated with effect from 18 November 2009. The decision impugned in these proceedings is the decision of the Director-General of 19 November 2010 in which

he reaffirmed his earlier decision of 20 October 2009 to terminate the complainant's contract on the ground of unsatisfactory service. As discussed later, the complainant argues that this decision is broader than this in its scope.

2. The events leading directly to the impugned decision began with the complainant commencing a lengthy period of sick leave on 12 March 2007. He was then mentally unwell. The OPCW has not contested at any point the complainant's right to take sick leave at the time. Indeed Dr R., the Senior Medical Officer of the OPCW's Health and the Safety Branch, actively supported the complainant being provided psychological and psychiatric support while on this leave. Dr R. was one of the complainant's treating doctors and had at least eight lengthy consultations with the complainant between March 2007 and February 2008. By 13 December 2007 the complainant had exhausted his entitlement to sick leave on full pay and by 5 August 2008 had exhausted all entitlements to sick leave. However as a humanitarian gesture, the OPCW placed him on special leave with full pay with retroactive effect from 6 August 2008 pending the outcome of the arbitration of an issue that had earlier risen between the Organisation and the insurance broker responsible for the day-to-day administration of its Group Insurance Contract.

3. The OPCW had taken out two insurance policies for the benefit of its staff which provided benefits to insured persons in the case of, inter alia, non service-incurred disability or service-incurred disability respectively. The issue with the insurance broker arose as a result of the complainant's request of 18 February 2008 that the provision of one of the insurance policies be invoked on the basis that his illness be recognised as a non service-incurred permanent total disability, which could have led to the payment of a permanent disability benefit of three times the complainant's annual pensionable salary. The applicable policy provided benefits in the case of the death, permanent physical disability resulting from an accident, temporary incapacity or permanent total disability of an insured staff

member of the OPCW insofar as the death or permanent physical disability was not covered by the OPCW's Rules and Regulations with respect to service-incurred risks.

4. The service-incurred policy provided benefits in case of death, permanent disability and temporary incapacity of an insured OPCW staff member attributable to the performance of official duties. These benefits aligned with the right of staff members under Staff Rule 6.2.03 to compensation in any of these last-mentioned circumstances.

5. The complainant's request was supported by Dr R. who wrote to the insurance broker on 20 February 2008 expressing the conclusion that the complainant was "totally and permanently incapacitated for further work with OPCW". The complainant was subsequently examined on 4 June 2008 by Dr V.d.B., at the request of the insurance broker, but Dr V.d.B. did not share Dr R.'s opinion about the complainant's incapacity. In his report Dr V.d.B. concluded the complainant was "not 100% disabled (he would be for less than 33% though)" and also expressed the opinion that the complainant "would be able to perform his own or other duties within the OPCW or with another employer if the recommendations made in Conclusion 1 are followed up". After noting that the complainant's recovery was held back by social interaction problems with some staff at work, Dr V.d.B. had recommended in Conclusion 1 that "arrangements [should be] made about internal communication and social interaction (rules of conduct). A counselling session (mediation) [could] also make a positive contribution in this respect."

6. This conclusion was not accepted by the Organisation. On 12 September 2008 the Director of Administration wrote to the insurance broker reiterating the view that the complainant was totally and permanently disabled (for the purposes of the policy). This letter appended a letter of the same date from Dr R. who challenged, in detail, a number of Dr V.d.B.'s conclusions.

7. This ongoing disagreement between the OPCW and the insurance broker led to the appointment of an arbitrator pursuant to the insurance policy. The agreement to appoint the arbitrator, the Arbitration Compromise dated 20 February 2009, was expressed to be between the complainant and the OPCW of the one part and the insurance broker of the other part and it was intended that the decision of the arbitrator would be accepted as final.

8. The arbitrator reported on 14 April 2009. While he accepted that the complainant suffered from several psychological disorders, he concluded the disability was "of a temporary nature". Two of the disorders were said to be "in principle reversible, if treated adequately".

9. On 22 May 2009 the complainant was informed that, as a result of the arbitrator's findings, he would be expected to return to work on the basis of a structured return-to-work programme. He was also advised that if he did not report for work, the Director-General would initiate termination procedures as provided in Staff Regulation 9.1(a). Regulation 9.1 provides:

> "(a) The Director-General may terminate the appointment of a staff member prior to the expiration date of his or her contract if the necessities for the service require abolition of the post or reduction of the staff; if the services of the individual concerned prove unsatisfactory; if the conduct of a staff member indicates that he/she does not meet the highest standards of integrity required by the Organisation; **if the staff member is, for reasons of health, incapacitated for further service**, or if facts anterior to the appointment of the staff member and relevant to his or her suitability come to light that, if they had been known at the time of appointment, should, under the standards established under these Staff Regulations, have precluded his or her appointment.
>
> (b) No termination under subparagraph (a) shall take place until the matter has been considered and reported on by a special advisory board appointed for that purpose by the Director-General.
>
> (c) The Director-General shall terminate the appointment of a staff member in case the State Party of which the staff member is a citizen ceases to be a member of the Organisation." (Emphasis added.)

10. The complainant stated at a meeting on 27 May 2009 that he did not intend to return to work. He failed to do so on 2 June, the return date nominated by the OPCW. By letter dated 29 June 2009 the complainant was informed by the Head of the Human Resources Branch that, as he had not returned to work as requested, the Director-General had decided to propose the termination of the complainant's employment. To this end, the letter indicated that the Director-General proposed to convene a special advisory board (SAB). This was required by Staff Regulation 9.1(b) as supplemented by an Administrative Directive of 22 July 1997 (AD/ADM/5).

11. The SAB advised against terminating the complainant's contract on the grounds of his being incapacitated for further service due to reasons of health. This was the ground originally proposed to the SAB by the Head of the Human Resources Branch in a memorandum of 17 June 2009 to the members of the SAB. In a memorandum of 24 June 2009 he requested that the information provided to the SAB be corrected so that it would consider the termination of the complainant's appointment on the ground that he did not return to work. However, the SAB did advise that the complainant "could be terminated in accordance with staff rule 9.1(a), not limited to the conditions stated in [the memorandum of 17 June 2009]".

12. In a letter dated 20 October 2009 the complainant was informed that the Director-General had decided to terminate his employment because his services had proved to be unsatisfactory. The complainant sought review of this decision, a request which was rejected by the Director-General. On 23 December 2009 the complainant appealed against this decision to the OPCW Appeals Council.

13. The Appeals Council provided its recommendations to the Director-General on 21 October 2010. Its ultimate conclusion had two elements. The first was that the decision to terminate the complainant's contract on the basis of unsatisfactory service was

appropriate on the facts available to the Administration at the time. The second element was a recommendation that the Director-General re-examine the grounds of termination in the light of the information provided by Dr R. in an e-mail of 15 October 2010. In that e-mail, Dr R. appears to repeat his opinion that the complainant could not return to work. As noted earlier, on 19 November 2010 the Director-General reconfirmed his earlier decision to terminate the complainant's contract.

14. The complainant's claims and submissions focus on two matters. The first is the impugned decision. The second is "the decision to deny benefits", namely disability benefits. A subsidiary or related issue flows from the complainant's apparent contention that his request of 18 February 2008 should have been viewed as raising the possibility that the claimed disability was attributable to the performance of official duties (thus potentially invoking rights conferred by Staff Rule 6.2.03).

15. It is convenient to consider first the OPCW's challenge to the receivability of the claim concerning "the decision to deny benefits". This issue arises in circumstances where the complainant identified in his complaint form in this Tribunal the impugned decision as the decision of the Director-General of 19 November 2010 which, in terms, was only a decision to reconfirm the earlier decision, of 20 October 2009, to terminate the complainant's contract on the grounds of unsatisfactory service. The complainant's internal appeal to the Appeals Council was, at least initially, expressed to be against the decision of 20 October 2009.

16. It should be noted again, at this point, that the complainant's request of 18 February 2008 was that his illness be recognised as a non service-incurred permanent total disability. However, since then and in May 2010, the complainant sought the payment of service-incurred disability benefits. That is, he made a claim against the OPCW on the ground that his illness was attributable to the performance of his duties. This claim was rejected in a decision

contained in a letter to the complainant dated 22 September 2010. That decision is the subject of an internal appeal which has not yet been resolved.

17. The OPCW argues that insofar as the complainant now seeks to pursue a complaint before this Tribunal challenging a "decision to deny benefits", that complaint is irreceivable because the complainant has not exhausted internal remedies. To the extent that the "denial of benefits" concerned illness attributable to the performance of duties, that was not the subject matter of the request of 18 February 2008 and is now only the subject matter of a claim which was made in September 2010 and which is the subject of internal review, not yet resolved. Accordingly, and having regard to Article VII, paragraph 1, of the Tribunal's Statute, the Tribunal concludes the complaint is, in this respect, irreceivable.

18. To the extent that the denial of benefits concerned non service-related illness, alleged consequential disability and an entitlement to benefits, the complainant confronts a slightly different but fundamental difficulty at the threshold. His request of 18 February 2008 was to invoke the provisions of the insurance policy. He did not point then (or since) to any instrument or law conferring a right to the provision of such a benefit by his employer and any corresponding legal obligation of the OPCW to provide the benefit. All that followed after his request of 18 February 2008 was the determination of the question of whether, under the policy and as a matter of contract or insurance law, the insurance broker was obliged to make a payment to the complainant. That issue was finally determined, under the policy, by the decision of the arbitrator. No administrative decision, either express or implied, was made by the OPCW to refuse to provide a benefit it may have been obliged to provide in contradistinction to a benefit or payment the insurance broker was obliged to provide or pay under the policy. Of course, had the complainant sought a decision from the OPCW that it provide a benefit, an issue would most likely have arisen about whether the OPCW was under any obligation to

provide such a benefit (benefits for a non service-incurred disability) under the Staff Rules or any other instrument or law. However, having regard to the nature of the request made on 18 February 2008, that issue has not arisen. Article II, paragraph 2, of the Statute of the Tribunal, which the complainant relies on, has no application in this regard given that it is restricted to invalidity, injury or disease incurred by an official in the course of his employment. This aspect of the complainant's complaint is therefore also irreceivable.

19. This leads to a consideration of that aspect of the complainant's complaint which is receivable, namely his challenge to the impugned decision to terminate his employment.

20. As noted earlier, the complainant appealed to the Appeals Council. It is of some importance that, while the Appeals Council was satisfied that the decision to terminate the complainant's contract for reasons of unsatisfactory service was appropriate at the time on the facts then known by the Administration, it nonetheless recommended that the Director-General re-examine the grounds of the termination in the light of the information provided by Dr R. on 15 October 2010. This was a reference to the opinion of the Head of the OPCW's Health and Safety Branch, Dr R., who was also treating the complainant, that the complainant could not return to work and, in effect, the attempts to provide the complainant with a work programme had been a flawed process.

21. While the Appeals Council did not express this view in any concluded way, it was clearly alluding to the possibility in its recommendation that the appropriate ground was that "the staff member [was], for reasons of health, incapacitated for further service" as provided for by Regulation 9.1(a). In the impugned decision there is nothing to indicate that this recommendation was considered and acted on, it is simply asserted that "it [was] not legally based". That is, the decision does not indicate whether the Director-General confronted the issue raised by the recommendation that, in substance, may have

involved him deciding either to act on or to reject the opinion of Dr R., the Head of the Health and Safety Branch. No explanation was given as to why the recommendation was not legally based. As the Tribunal noted in Judgment 2347, to say a recommendation "is wrong in law, without saying why, is not only uninformative, it can be entirely misleading as to the real grounds for the decision". In the present case, one cannot discount the possibility that the decision was taken to adhere to the original ground of unsatisfactory service because the ground of incapacity for reasons of health would have raised the spectre of the OPCW being liable to pay compensation under Staff Rule 6.2.03. However, whatever the basis for the Director-General adhering to the original ground, the complainant was entitled to know why either the recommendation to consider another ground was rejected, or that it was considered and the other ground was not considered appropriate. While the ultimate decision of the Appeals Council was not favourable to the complainant, its recommendation potentially was favourable in a material way. The Director-General should have explained whether he followed the recommendation and if he did, why he adhered to the original ground. He did not. For this reason alone, his decision should be set aside and the complainant is entitled to moral damages.

22. The Tribunal appreciates that this conclusion does not deal with many aspects of the complainant's arguments otherwise challenging the impugned decision to terminate nor addresses the relief sought. It is open to the Director-General's discretion, when reviewing his reasons, to consider resolving the matter on a final and agreed basis and also reconsider whether, in all the circumstances, it is appropriate to reject the opinion of the Senior Medical Officer of the OPCW's Health and Safety Branch, who was also treating the complainant and, in so doing, prefer the opinion of a medical practitioner retained for a different purpose.

DECISION

For the above reasons,

1. The decision of the Director-General of 19 November 2010 is set aside.
2. The matter is remitted to the OPCW for further consideration.
3. The OPCW shall pay the complainant moral damages in the amount of 8,000 euros.
4. It shall also pay him costs in the amount of 3,500 euros.
5. All other claims are dismissed.

In witness of this judgment, adopted on 8 May 2013, Mr Giuseppe Barbagallo, Presiding Judge of the Tribunal for this case, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 July 2013.

Giuseppe Barbagallo
Michael F. Moore
Hugh A. Rawlins
Catherine Comtet