Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

G.

v.

ICC

125th Session **Judgment No. 3904**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr I. G. against the International Criminal Court (ICC) on 20 June 2016 and corrected on 29 July, the ICC's reply of 14 November, the complainant's rejoinder of 19 December 2016 and the ICC's surrejoinder of 27 March 2017;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the termination of his fixed-term appointment.

At the material time the complainant was employed with the ICC as a Security Support Assistant at grade G-2 in the Security and Safety Section of the Registry under a fixed-term appointment which was due to expire on 31 December 2016.

In 2013 the Assembly of States Parties to the Rome Statute of the International Criminal Court authorized the Registrar of the Court to reorganise the Registry. This reorganisation became known as the *Re*Vision Project. In January 2014 the Registrar formed a *Re*Vision team to review the Registry's organizational structure and functioning and to make recommendations. He also established a Project Board to

oversee the implementation of the *Re*Vision Project. In August 2014 the Registrar issued Information Circular ICC/INF/2014/011 entitled "Principles and Procedures Applicable to Decisions Arising from the *Re*Vision Project" (Principles and Procedures). On 13 June 2015 Information Circular ICC/INF/2014/011 Rev.1 was issued, which revised the Principles and Procedures; the revised version was in force at the material time.

By a letter of 16 June 2015 from the Registrar of the Court the complainant was notified of the decision to abolish his post and he was informed that his fixed-term appointment would terminate as of 14 October 2015. It was explained that the Registry needed a pool of security officers at the G-3 level who could carry out a broader range of functions and who, among other things, would be able to carry a firearm. He was informed that two options were open to him. The first option was to accept an "enhanced agreed separation package", in which case his departure from the ICC would take the form of a separation by mutual agreement with enhanced separation entitlements. Alternatively, he could avail himself of the opportunity to apply as an internal candidate for newly created positions arising as a result of the *Re*Vision Project, in which case his applications would receive priority consideration as provided for in the Principles and Procedures. In addition, a training program had been devised to assist staff members to meet the requirements of the new G-3 level positions. In the event that his applications for the new positions proved unsuccessful, his separation from service would take the form of a termination of contract and he would receive the standard termination indemnity.

The complainant attended the aforementioned training but he did not pass the required firearms test. In an email of 26 August 2015 he was informed by the Chief of the Human Resources Section (HRS) that as he had not passed the required training modules, he did not meet the requirements for the position of Security Officer at the G-3 level and that the deadline for accepting the enhanced agreed separation package had been changed to 28 August.

On 7 September 2015 the complainant requested a review of the decision of 26 August and he also requested a suspension of action regarding the decision to terminate his appointment. On 9 October the Registrar maintained the decision of 26 August. He stated that the complainant's request, insofar as it challenged the termination of his appointment, was irreceivable *ratione temporis*.

In a report of 14 October 2015 a majority of the members of the Appeals Board considered that although the appealable decision had been notified to the complainant on 16 June 2015, there were exceptional circumstances, within the meaning of Staff Rule 111.3(b), warranting a waiver of the time limit within which he had to request a review of that decision and thus the request for suspension of action and the appeal were receivable. On the merits, the Appeals Board considered that the complainant had established that he had suffered irreparable injury to his future career prospects. The Appeals Board recommended that the decision to terminate the complainant's appointment be suspended. On 15 October the Registrar denied the complainant's request for suspension of action.

On 6 November 2015 the complainant filed an appeal with the Appeals Board in which he challenged the decision of 26 August 2015. In its report of 7 March 2016 the Appeals Board concluded that the appealable administrative decision had been notified to the complainant by the letter of 16 June 2015. However, referring to Staff Rule 111.3(b), a majority of the Appeals Board Panel considered that there were exceptional circumstances that warranted a waiver of the applicable time limit for requesting a review of that decision and it found the appeal receivable. On the merits, it found that there was no basis upon which to grant the appeal and it held that the complainant had failed to provide evidence to substantiate his request for compensation. By a letter of 23 March 2016 the Registrar informed the complainant that, without prejudice to his position that the appeal was irreceivable, he accepted the Appeals Board's conclusion that there was no basis upon which to allow the appeal. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision. He seeks reinstatement in his former post for a period of 14 and one half months, representing the period of time that remained under his contract at the time of his separation from service. He requests that during the period of reinstatement the ICC provide him with continuous firearms training under specified conditions and the opportunity to take additional attempts at the firearms test. In the event that he passes the firearms test, he seeks promotion to the position of Security Officer at grade G-3 and the renewal of his appointment for three years. In the alternative, he claims damages for economic loss, including the loss of salary (with post adjustment), medical insurance subsidy and long-term care subsidy, for the period from 16 October 2015 to 31 December 2016, with interest. In addition to the above claims, he seeks moral and exemplary damages, and costs.

The ICC asks the Tribunal to dismiss the complaint as irreceivable. If the Tribunal finds the complaint receivable, the ICC asks the Tribunal to find that it is without merit and to deny the complainant's requests for relief. In the event that the Tribunal awards compensation for economic loss, the ICC asks that the sum of the termination indemnity paid to the complainant, together with any occupational earnings by the complainant for the period from 16 October 2015 to 31 December 2016, be deducted from such compensation.

CONSIDERATIONS

1. The present complaint is one of four complaints currently before the Tribunal (the other complaints were filed by Mr A., Mr B. and Ms S.A., respectively) where there is a request for joinder of the complaints and where the complainants each challenge the ICC's decision to terminate her or his appointment. These decisions all stem from the restructuring of the ICC's Registry. On the basis that the material facts and the issues raised in the complaints are essentially the same, the complainant requests and the ICC agrees that the complaints should be joined. It is noted that the internal appeals (challenging the termination decisions) in these cases were considered by four differently constituted

Appeals Board Panels and resulted in four final decisions. As it is preferable in the circumstances to deal with the complaints individually, the request for joinder is not granted.

2. On 16 June 2015 the Registrar informed the complainant of the decision to abolish his position. In the same letter the complainant was also notified of the decision to terminate his appointment. The notification of the decision to terminate the complainant's appointment in the letter of 16 June is central to the issue of the receivability of the complaint raised by the ICC before the Tribunal. However, at this point, it is only necessary to add that the letter described the options available to the complainant including the offer of a training program to assist the complainant in meeting the requirements of the G-3 level Security Officer positions. The complainant attended the training offered in the letter. In an email of 26 August 2015 the Chief of HRS informed the complainant that he had not passed the training modules and, therefore, he did not meet the requirements of a G-3 level Security Officer position.

3. On 7 September 2015 the complainant filed a request for review of the decision of 26 August 2015 to terminate his appointment and he sought a suspension of action with respect to the termination of his appointment. The Registrar rejected the request for review as irreceivable for failure to file the request within thirty days of the 16 June 2015 notification of the decision to terminate his appointment and dismissed the suspension of action request. The complainant filed an internal appeal in which he maintained that the challenge to the termination of his appointment was receivable and the decision to terminate his appointment was unlawful. In the internal appeal, on the question of receivability, the complainant took the position, among other things, that having regard to the conditional language in the letter of 16 June together with the offer of the training and the fact that the only notification he received was in the email of 26 August, the email therefore confirmed the termination of his appointment and the time limit started to run from that date.

4. In accordance with Staff Rule 111.3(a), the Appeals Board must first determine whether it is competent to hear the appeal. Staff Rule 111.3(b) provides that "[a]n appeal may not be heard by the Appeals Board until all of the time limits established by staff rule 111.1 have been met or have been waived by the Appeals Board by reason of exceptional circumstances beyond the control of the staff member". In its report of 7 March 2016 the Appeals Board found that the complainant had not filed a request for review within thirty days of the 16 June 2015 notification of the decision as required in Staff Rule 111.1(b). However, having regard to the surrounding circumstances, a majority of the Appeals Board Panel found that there were exceptional circumstances as contemplated in Staff Rule 111.3(b) and, therefore, the appeal was receivable. The Appeals Board then considered the merits of the appeal and concluded that there was no basis for granting the appeal.

5. In the impugned decision of 23 March 2016 the Registrar reviewed the Appeals Board's findings and conclusions and stated that "[w]ithout prejudice to the position in the Reply that your Appeal is irreceivable, I accept the [Appeals Board's] conclusion that there is no basis for granting your Appeal". This statement can only be construed as an endorsement of the position taken in the Reply (to the internal appeal), that is, that the appeal was irreceivable for failure to comply with the relevant time limits. It also reflects the Registrar's disagreement with the Appeals Board's conclusion that the appeal was receivable.

6. Pursuant to Article VII, paragraph 1, of the Tribunal's Statute, a complaint is not receivable unless the complainant has exhausted the internal means of redress. This means that a complaint will not be receivable if the underlying internal appeal was irreceivable (see Judgment 3758, consideration 10). As noted above, in the circumstances as the complainant understood them to be, he did not request a review of the decision of 16 June to terminate his appointment within the thirty-day time limit. Although the Tribunal has consistently stressed the requirement of strict adherence to the time limits with respect to the filing of an internal appeal, there are exceptions to this requirement. In Judgment 3687, consideration 10, the Tribunal stated:

"The case law also recognizes that in very limited circumstances an exception may be made to the rule of strict adherence to the relevant time limit. The circumstances identified in the case law are: 'where the complainant has been prevented by *vis major* from learning of the impugned decision in good time or where the organisation, by misleading the complainant or concealing some paper from him or her so as to do him or her harm, has deprived that person of the possibility of exercising his or her right of appeal, in breach of the principle of good faith' (see Judgment 3405, under 17; citations omitted); and 'where some new and unforeseeable fact of decisive importance has occurred since the decision was taken, or where [the staff member concerned by that decision] is relying on facts or evidence of decisive importance of which he or she was not and could not have been aware before the decision was taken' (see Judgment 3140, under 4; citations omitted)."

7. As the content of the Registrar's letter of 16 June is central to the question of the receivability of the complaint, it is useful to set out its contents in some detail. In relevant part, it states:

"Pursuant to Staff Regulation 9.1(b)(i), Staff Rule 109.2 relating to abolition of post, and paragraph 9 of the Principles and Procedures Applicable to Decisions Arising from the *Re*Vision Project ICC/INF/2014/001 [sic] ('Principles'), I hereby notify you of my decision as Registrar to abolish your position as Security Support Assistant with the Court. In accordance with paragraph 13 of the Principles a notice period of 120 days is applicable. As such your post will be abolished and your appointment would terminate as of **14 October 2015**." (Original emphasis.)

8. The second paragraph of the letter sets out the reasons for the abolition of the G-2 positions stemming from the restructuring of the Registry. In particular, the letter notes that the existing G-2 role did not have a sufficiently broad range of functions and that a pool of G-3 security officers able to carry out each other's functions was required. This, in turn, required these officers to have a broader range of functions and, in particular, the ability to carry a firearm. At the end of the same paragraph, the letter states:

"As a result of these considerations my decision is that the G-2 role is no longer required, but what is required is a greater number of G-3 positions. As your functions are no longer required, and taking into account the provisions of paragraph 30 of the Principles, your position is abolished. **Please read the passages below carefully so that you are fully aware of your options. If you have any doubts please consult with a member of the HRS taskforce."** (Original emphasis.)

9. The letter describes the two options available to the complainant: an “enhanced agreed separation package” or priority consideration as an internal candidate for newly created positions arising directly from the *Re*Vision Project. The letter also informed the complainant about a training program aimed at assisting the complainant in meeting the requirements of the G-3 level positions. The letter sets out the deadline to take the package; the details of the package itself; and states that should the staff member opt to take the package, the notice period of 120 days would be waived and the separation would be by way of mutual agreement pursuant to Staff Rule 109.1(b)(iii) and paragraph 19 of the Principles and Procedures, as opposed to a termination of contract. The letter explains the process surrounding the application for a position as an internal candidate with priority consideration and the duration of this option and potential consequences. The letter lists the available administrative support including advice on counselling services, visa issues, CV writing and career transition workshops. Lastly, the letter also invited the complainant to arrange a meeting with a representative of HRS to further discuss his options.

10. The complainant submits that the complaint is receivable. He reiterates the position he adopted in the internal appeal regarding the conditional nature of the notification of the termination of his appointment in the letter of 16 June. He argues that, according to the case law, it is only the acts by officers of an organisation having a legal effect on a staff member’s rights and conditions of employment that are challengeable decisions. That is, the legal effect must be actual and not conditional.

11. The complainant also points to the Appeals Board’s rejection of the ICC’s submission that his appeal was irreceivable and relies on the reasons given for the rejection of the submission. In particular, the Appeals Board found that the failure to inform the complainant in the letter of 16 June of his right to challenge the termination of his appointment and the lack of clarity in the letter regarding the termination of the appointment constituted exceptional circumstances beyond the

control of the staff member contemplated in Staff Rule 111.3(b) warranting a waiver of the time limit.

12. Referring, for example, to Judgment 1393, under 6, the complainant submits that, as the Tribunal has repeatedly confirmed, the rules of internal appeals "are not supposed to be a trap or a means of catching out a staff member who acts in good faith". He also contends that the 16 June letter was intentionally vague and incomplete to prevent him from exercising his rights. He claims that the Registrar's failure to provide him with clear, unambiguous and complete notification of the termination of his appointment and of his right to challenge it coupled with the Registrar's submission that his internal appeal was time-barred, evidences bad faith on the part of the ICC and constitutes a valid ground for making an exception to the strict application of the time limit. Additionally, in circumstances where a staff member is not given sufficient guidance by the organisation regarding his appeal rights and the staff member then fails to act in a timely manner, a ruling that the appeal is irreceivable is incompatible with the ICC's duty to act in good faith. Lastly, the complainant submits that the ICC's submissions on receivability confuse the decision to abolish his position, which he did not challenge, with the decision to terminate his appointment.

13. The ICC submits that the Registrar exercised his authority to terminate the complainant's appointment and notified the complainant of this decision in his letter of 16 June 2015, at which time the internal appeal process time limits were triggered. As the complainant submitted his request for review of the decision to terminate his appointment 53 days beyond the time limit stipulated in Staff Rule 111.1(b), he did not exhaust the internal means of redress and his complaint is irreceivable. The ICC disputes the complainant's assertion that the actual termination of his appointment was notified in the email of 26 August and argues that this is a mischaracterization of that email. The ICC maintains that the decision to terminate his appointment was not conditional on his failure to pass the firearms test. Rather, his appointment as a Security Support Assistant was terminated as a result of the restructuring of the Registry. The ICC also submits that the email of 26 August from

the Chief of HRS was not an administrative decision affecting the complainant's rights. Further, the authority to terminate a staff member's appointment due to the abolition of her or his position under Staff Regulation 9.1(b)(i) relevantly rests with the Registrar. Therefore, it cannot be said that the email of 26 August from the Chief of HRS was an administrative decision. In the ICC's view, a reading of the letter of 16 June and the email of 26 August clearly shows that the complainant was informed of the administrative decision to terminate his appointment in the 16 June letter.

14. The ICC acknowledges that the letter of 16 June did not inform the complainant of the right to challenge the decision to terminate his appointment but points out that the letter referred the complainant to the Principles and Procedures, paragraph 16 of which deals with the appeal procedure, and an updated online set of FAQs also dealing with the appeal procedure. The letter of 16 June invited the complainant to meet with HRS to address any additional questions. The ICC maintains that it made reasonable efforts to inform the complainant of his right of appeal and met its duty of care. It is convenient to deal with this observation here. The reliance on paragraph 16 is misplaced as it only deals with the internal appeal of a decision to abolish a post. As well, as a copy of the FAQs was not submitted with the ICC's Reply in these proceedings, references to this document amount to no more than an assertion and will be disregarded.

15. It is observed that the letter of 16 June expressly notified the complainant of the decision to abolish his position, gave reasons for the same decision and set out the available options and assistance arising from the abolition of his position. At this point, it is convenient to note that it cannot be inferred from the offer of training that the decision to terminate the complainant's appointment was conditional on the complainant's failure to pass the training modules. According to the letter of 16 June, the offer of the training was to assist the complainant in meeting the requirements of the new G-3 level Security Officer positions in the event he decided to apply for one of them as a priority candidate. It is also convenient to add that the email of 26 August cannot

be construed as communicating anything regarding the termination of the complainant's appointment. The email simply communicated the result of the testing and that, consequently, the complainant did not meet the requirements of a G-3 level Security Officer position. However, the words "would terminate" in the letter of 16 June cannot be viewed in isolation. The key question is how the letter of 16 June, construed objectively, could be understood.

16. In the letter of 16 June the decision to abolish the complainant's position was stated definitively, in clear and unambiguous language. As stated in the first sentence, the purpose of the letter was to notify the complainant of the decision to abolish his position. The statement in the antepenultimate sentence of the second paragraph that "your position is abolished" is equally clear. Given this, together with an organisation's obligation to communicate an administrative decision in clear and unambiguous language, it would be expected that the communication of the decision to terminate the complainant's appointment in the same letter would be expressed in similarly definitive, clear and unambiguous language. Instead, there is only one statement in the letter concerning the termination of the appointment. After setting out the notice period of 120 days applicable to the abolition of a staff member's position as provided in paragraph 13 of the Principles and Procedures, the letter states: "[a]s such your post will be abolished and your appointment would terminate as of 14 October 2015". Grammatically, the language "would terminate" could be understood as expressing an action that is conditional upon the occurrence of an event in the future. Read in the context of the entire letter and, in particular, the definitive language used to communicate the abolition of the position, the statement that the "appointment would terminate" could have been understood by the complainant as being conditional in nature. Regardless, at best, the communication of the decision to terminate the complainant's appointment was vague and confusing.

17. The Tribunal observes that although the 16 June letter purported to communicate the decision to terminate the complainant's appointment, in contrast to the information provided in relation to the

abolition of the post, the letter does not give any information about the termination of the appointment, let alone, any information corresponding to the type of information provided about the abolition of the position. The information provided in the letter created the erroneous assumption that the decision to terminate the complainant's appointment was based on the Principles and Procedures when in fact the termination of an appointment is governed by the Staff Regulations and Staff Rules as will be discussed below. The way in which the decision to terminate the complainant's appointment was, in the letter, merged with the decision to abolish his position, the misleading content of the letter coupled with the vague and confusing language of the notification of the termination of the appointment was a breach of the ICC's duty to act in good faith. In these circumstances, an exception to the rule of the strict adherence to the time limit for bringing an internal appeal challenging the decision provided for in Staff Rule 111.1(b) was correctly made by the Appeals Board. It follows that the complaint is receivable before the Tribunal.

18. In his brief, the complainant prefaced his submissions on the lawfulness of the decision to terminate his appointment with the observation that having regard to the information provided in the Registrar's letter of 16 June, it was assumed that the decision to terminate his appointment was based on the Principles and Procedures promulgated by way of the Information Circular. The ICC acknowledges that this is a correct assumption. It notes that the *Re*Vision Project identified several concerns with the Security and Safety Section. To address the concerns, the *Re*Vision Project team proposed changes to the Security and Safety Section's structure that included the abolition of the Security Support Assistant positions and the creation of a greater pool of G-3 level Security Officers. The ICC takes the position that the restructuring of the Registry formed the objective grounds for the abolition of the positions implemented in accordance with the Principles and Procedures. This, in turn, led to the termination of the complainant's appointment as contemplated in Staff Regulation 9.1(b)(i), which provides that the Registrar may "terminate the appointment of a staff member prior to the expiration date of his or her contract [...] [i]f the necessities for the service require the abolition of the post or

reduction of the staff". The ICC maintains that the abolition of the position and the termination of the complainant's fixed-term appointment were fully in compliance with the ICC's human resources framework, including the Principles and Procedures of the *Re*Vision Project, and with the Tribunal's case law. The ICC adds that "the lawful decision to abolish the [p]osition that the [c]omplainant was encumbering satisfied [the] standard" in Staff Regulation 9.1(b)(i).

19. Some preliminary observations concerning the ICC's position in relation to the termination of an appointment as a result of the restructuring of the Registry are necessary. It is evident in the pleadings that from the outset the ICC acted on the premise that as the abolition of a position was a lawful action stemming from the restructuring of the Registry, the Registrar had the discretionary authority to terminate the appointment of the staff member encumbering that position pursuant to Staff Regulation 9.1(b)(i). This position is fundamentally flawed as it disregards the regulatory framework governing the termination of an appointment and the case law applicable to such a decision. Staff Regulation 9.1 is the source of the Registrar's discretionary authority to terminate a staff member's appointment prior to the expiration of the staff member's contract. The Regulation lists the grounds on which an appointment may be terminated and relevantly includes, under paragraph 9.1(b)(i), "[i]f the necessities for the service require the abolition of the post or reduction of the staff". Staff Regulation 9.1(a) also requires the Registrar to give reasons for the termination of the appointment. Staff Regulation 9.2 provides that if the Registrar terminates an appointment, the staff member must be given the applicable notice and indemnity payment provided for in the Staff Regulations and Staff Rules.

20. In the Staff Rules, the termination of an appointment is dealt with in Chapter IX, regarding separation from service. Staff Rule 109.1(b) states that a staff member's appointment may be ended prior to the date of its expiration if it is as a result of any of the listed circumstances. The list relevantly includes at paragraph 109.1(b)(i) "[t]ermination, in accordance with staff regulation 9.1(b)". Staff Rule 109.2 has a number

of provisions dealing with various aspects of the termination of an appointment. Relevantly, Staff Rule 109.2(a) provides that the termination of a staff member's appointment shall take place in accordance with Staff Regulation 9.1(b) and the reasons for the termination must be given in writing. In contrast, it is observed, however, that there are no Staff Regulations or Staff Rules governing the abolition of a post. The only references in the Staff Regulations and Staff Rules to the abolition of a position are as a ground for the termination of appointment and entitlement to special leave without pay. At this point, it is observed that in Judgment 3907, also delivered in public this day, the Tribunal concluded that the Principles and Procedures were without legal foundation and, therefore, unlawful. As will become evident, for the purpose of the present case, a consideration of the lawfulness of the Principles and Procedures is unnecessary, as the lawfulness of the abolition of the complainant's position is not properly in issue in these proceedings. Suffice it to say that at the material time a decision to abolish a position arising from the *Re*Vision Project was taken and was implemented pursuant to the Principles and Procedures.

21. In the exercise of the discretionary authority pursuant to Staff Regulation 9.1(b), the Registrar must comply with the relevant statutory provisions and the case law. In the present case, the Registrar failed to give reasons for the termination of the complainant's appointment as required by Staff Regulation 9.1(a) and Staff Rule 109.2(a). It is also well settled in the case law that reasons must be given for every administrative decision affecting a staff member's rights (see, for example, Judgments 2124, under 3, 3041, under 9, and 3617, under 5). As the underlying rationale for the requirement to give reasons is to safeguard the staff member's rights, the obligation to give reasons is not satisfied by simply stating the statutory ground upon which the decision is taken. The reasons must give an explanation for the decision itself. A staff member needs to know the reasons for a decision so that the staff member can evaluate whether it should be challenged. As well, an internal appeal body must also know the reasons to determine whether the decision is lawful, as must the Tribunal in order to exercise its power of review (Judgment 3617, under 5).

22. In the present case, the failure to give reasons led to confusion and misunderstanding surrounding the nature of the decision. Further, the absence of reasons for the decision to terminate the complainant’s appointment left the complainant guessing about the reasons for the decision and impeded his ability to challenge it. Alone, this violation of the Staff Regulations and Staff Rules warrants that the impugned decision be set aside. However, this does not end the matter.

23. The complainant submits that the ICC failed to explore other possible employment options within the Court prior to terminating his appointment. The ICC does not dispute that it had a duty to explore with the complainant possible options prior to his separation. It contends that the Court exerted great efforts to explore with him alternative opportunities before separating him from service. This included an intensive, dedicated training programme on firearms handling and security procedures devised and provided to the complainant and other G-2 level Security Support Assistants whose posts were abolished to give them an adequate opportunity to secure the newly-created G-3 level positions. Furthermore, the requirement for two years of police or military experience to be eligible for the G-3 level positions was broadened to include security experience in other settings. Despite the above efforts, however, the complainant failed to pass the firearms evaluation to become eligible for the newly created positions. As well, he was not found eligible for other newly created positions to which he may have applied as a candidate with priority consideration.

24. Leaving aside the complainant’s allegations regarding the deficiencies in the training, it is true that the training was aimed at giving the complainant the required skills to apply for a G-3 level position. However, other than the assertion that the complainant was not found to be eligible for other newly created positions, there is no evidence in the record to support the assertion that a review of the requirements of newly created positions was undertaken to ascertain whether the complainant had the necessary qualifications for any of those positions. It would be expected that the complainant would have at least been informed that other options had been considered. More importantly, it is also noted that the possible options considered were

limited to the newly created positions as a result of the restructuring. The duty contemplated in the case law is aimed at finding other employment within the broader organisation and is not limited to newly created positions as a result of restructuring. As stated in the case law, the failure to explore with the complainant other possible options within the Court was a breach of the ICC's duty to treat the complainant with dignity and respect (see, for example, Judgment 2902, under 14).

25. In view of the above findings and conclusions, a consideration of the complainant's allegation that the ICC failed to show that the necessities of the service required the abolition of his position under Staff Regulation 9.1(b)(i); and his submissions concerning the alleged deficiencies in the firearms training and testing is unnecessary.

26. Having regard to the ICC's breach of its duty to act in good faith and to treat the complainant with dignity and respect; the failure to provide reasons for the termination of the complainant's appointment; the failure to meet its obligation to explore other employment options with the complainant; and the complainant's written statement regarding the anxiety and stress together with the negative effects on his physical health the complainant suffered due to the unlawful termination of his appointment, the complainant will be awarded moral damages in the amount of 20,000 euros. In the circumstances, it is not an appropriate case in which to order reinstatement. However, the complainant is entitled to an award of material damages in the amount of 37,000 euros for the loss of the opportunity for further and future employment with the ICC. For the sake of clarity, there shall be no deduction of the termination indemnity paid to the complainant. He is also entitled to an award of costs in the amount of 4,000 euros.

DECISION

For the above reasons,

1. The Registrar's decision of 23 March 2016 is set aside, as is his earlier decision of 16 June 2015 with respect to the termination of the complainant's appointment.

2. The ICC shall pay the complainant material damages in the amount of 37,000 euros.

3. The ICC shall pay the complainant moral damages in the amount of 20,000 euros.

4. The ICC shall pay the complainant costs in the amount of 4,000 euros.

5. All other claims are dismissed.

In witness of this judgment, adopted on 1 November 2017, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 24 January 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ