W.

v.

FAO

131st Session **Judgment No. 4381**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs M. W. against the Food and Agriculture Organization of the United Nations (FAO) on 9 November 2018 and corrected on 23 November 2018, the FAO's reply of 11 March 2019, the complainant's rejoinder of 26 June and the FAO's surrejoinder of 6 September 2019;

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 changes made with respect to her salary.

The complainant joined the World Food Programme (WFP), an autonomous joint subsidiary programme of the United Nations (UN) and the FAO, in 1996. She was granted an indefinite appointment as an international professional staff member in 2001, and served in several countries.

In June 2016, December 2016, August 2017 and September 2017 staff members of the WFP were informed of the changes that would be made to the benefits and entitlements of internationally-recruited staff members as approved by the UN General Assembly in 2013 following a proposal of the International Civil Service Commission (ICSC). The changes were to be implemented in three phases. Phase I dealt with

field-related allowances from 1 July 2016, phase II would introduce the unified salary scale and dependency-related allowances in 2017 and phase III would concern education grant for the scholastic year in progress on 1 January 2018. Staff members were reminded that they had been advised in March 2016 of the final phase out of the Special Operations Approach (SOA) – including the abolition of the Administrative Place of Assignment.

In January 2017 the complainant received her January payslip. At that time she was assigned to Rome, Italy.

In April 2017 she filed an appeal with the WFP Executive Director contesting the changes in some elements of her remuneration and the introduction of a new transitional allowance. These changes considered together with "other erosions in [her] entitlements" were heavily affecting her conditions of employment. She argued that when the transitional allowance would be discontinued she would suffer an annual loss of approximately 1,463 United States dollars. In the future, she would also suffer loss with respect to education grant, separation entitlements, and hardship benefits – should she be reassigned to a hardship duty station. She alleged that her salary and benefits/allowances were fundamental conditions of employment which gave rise to acquired rights. She stressed that the compensation package was granted to make sure that staff would accept certain conditions of employment with respect to mobility and assignments in hardship duty stations. She added that the sum of changes were substantial and had upset the balance of contractual obligations. She therefore requested that the administrative decisions taken to implement the changes to the compensation package be reversed and that the previous salary and benefits be restored.

On 22 June 2017 she amended her appeal to request that the Director-General of the FAO render a final decision. In August 2017 the Director-General agreed to that request. On 18 September she further amended her appeal in a letter to the Executive Director of the WFP. She referred to the third phase, that is to say the implementation of the changes to the education grant scheme. She explained that she had applied for the advance payment of part of the education grant with respect to two of her three children and that the amount received was well below what she had expected. She provided details of the loss incurred together with a copy of her June 2017 payslip. She requested that the administrative decisions implementing the changes to the salary and benefits be reversed

and that the previous salary and benefits be restored. She asked that her letter be considered as "an integration of [her] previous appeal already filed on date 18 April 2017". On 28 March 2018 she wrote again to the Executive Director presenting further information concerning her alleged financial losses in connection with the change to the unified salary scale. She referred to her January 2018 payslip. In June 2018 she was reassigned to Iraq.

By a letter of 27 August 2018, the Director-General of the FAO informed the complainant that her appeal was rejected. He noted that in her appeal, as amended, she challenged the decision to implement changes to the compensation package as reflected in her payslips of January and June 2017, and January 2018. However, her appeal purported to challenge the WFP's decisions to implement the three phases of the changes to the compensation package. He noted that she had received an individual decision only with respect to the unified salary scale (phase II) and the relocation-related payments (phase I), in particular the non-removal allowance. He therefore considered that her appeal was receivable only with respect to these issues. The Director-General stressed that, according to the Tribunal's case law, there was no acquired right to particular details of the conditions of service such as eligibility requirements, calculation methods or the actual amount of monetary entitlements. Neither phase I nor phase II abolished any established categories of entitlements; they rather refined the eligibility requirements and basis for calculating the payments in order to more closely align the payments with their intended purposes. The Director-General added that there were legitimate organisational reasons for those changes. That is the decision the complainant impugns before the Tribunal.

The complainant asks the Tribunal to set aside the impugned decision and to award her costs.

The FAO asks the Tribunal to dismiss the complaint as partially irreceivable, insofar as the complainant had not received an individual decision concerning some of the contested changes, and otherwise unfounded.

CONSIDERATIONS

1. The complainant is employed by the WFP. She has filed a complaint with the Tribunal challenging her January and June 2017 and her January 2018 payslips and indirectly challenging general decisions actually or potentially changing her salary and various benefits payable to her. This broad observation will need to be qualified, as it is shortly.

2. The complainant seeks the joinder of her complaint with a complaint filed by another WFP staff member. This is not opposed by the FAO. However, as will emerge from this judgment and the judgment concerning the other staff member, different aspects of salary and different specific benefits need to be considered in both instances with potentially distinct factual and legal analyses. This results, in part, from the FAO's pleas concerning the receivability of all aspects of the broadly framed complaint of the complainant and also that of the other staff member. Joinder is likely to confuse and obscure the real issues. The complainant appears to assume, as does the other staff member, that she can challenge in her complaint in these proceedings the cumulative effect of all the changes to salary and benefits as can the other staff member in his. This, as discussed later, is not correct. Accordingly the complaints are not joined though much of the discussion in this judgment repeats what is said in the other.

3. It is convenient, at this point, to summarise in a simplified way the changes to salary and benefits of Professional and higher categories of staff engaged on the WFP (and in the UN common system more generally) that have given rise to these proceedings. The impugned changes mostly arose from a proposal of the ICSC in 2012 to undertake a review of the compensation package of the staff in the UN common system in the Professional and higher categories, a decision of the UN General Assembly in 2013 requesting that the review be undertaken and the 2015 ICSC Annual Report containing a detailed discussion of what emerged from that review and proposals for the future involving changes to salary structures and benefits payable to staff in the UN common system. These proposals were adopted and implemented by the WFP gradually as from 1 July 2016. The following are those changes potentially relevant to these proceedings.

4. Firstly, a unified salary scale was introduced eliminating the distinction between staff who were single and those with dependents. For those staff with dependents that would suffer significant reductions in their salary as a result of the introduction of the unified salary scale, transitional allowances were introduced. Secondly, the frequency of salary steps was changed from annually for all to annually for some and biennially for others. Thirdly, the basis on which a mobility allowance (renamed mobility incentive) was paid was altered as were the grounds for eligibility. It was no longer to be calculated having regard to the past number of geographical moves but was payable as a flat amount according to grade. Service in some duty stations no longer attracted the incentive.

5. Fourthly, relocation entitlements were altered. The possibility of payment for household goods left behind was eliminated (the non-removal allowance). Payment was to be made for the real cost of removal of household goods (with a possibility of a lump sum payment). The former assignment grant, potentially payable in two instalments (after two years of service in a hardship duty station) was replaced with a one-off settling-in grant. Fifthly, the education grant was streamlined and payment ceased for some non-tuition costs (concerning, relevantly, transportation, lunches and boarding). Sixthly, the basis on which a staff member could access home leave travel entitlements was altered. Also, and seventhly, the basis on which compensatory payments were paid for staff at non-family duty stations was altered and the method of calculating the payments by reference to grade was abandoned. Eighthly, the method of calculating a hardship allowance was altered focusing only on the hardship of the station as an effect on the staff member but not her or his dependents.

6. It is appropriate first to consider the issue of receivability. In January 2017 the complainant was stationed in Rome, Italy. On 18 January 2017 the complainant received her January payslip. On 18 April 2017 she lodged an appeal to the WFP Executive Director against this payslip. She amended her appeal several times, by email of 22 June 2017, by letter dated 18 September 2017 and again by letter dated 28 March 2018. The Organization does not contest her ability to do so.

7. In her letter of appeal of 18 April 2017 based on her January 2017 payslip, the complainant identifies an annual loss, in prospect, of 1,463 dollars when the transitional allowance "elapses". She also identifies the future negative impact of changes to the education grant scheme, separation benefits and hardship benefits together with, more generally, the deleterious effect of the entire package of changes she believed would adversely affect her. But this letter provides no specifics of any then applicable prejudicial effect on her of the contested changes.

8. In her letter of 18 September 2017 amending her appeal and based on her June 2017 payslip, the complainant does identify three aspects of one specific change, namely the change to the education grant. She said the grant no longer covered the cost of transportation and lunch for her child in high school nor did it cover boarding expenses for her child about to enter university. She claimed she received less as an advance on the education grant scheme than she would have under the pre-existing grant scheme and she had to borrow funds to cover the costs of her children's education expenses.

9. In her letter of 28 March 2018 again amending her appeal and based on her January 2018 payslip, the complainant referred, specifically, to the reduction of the transitional allowance by 1 per cent resulting in a monthly loss of 112 dollars in that payslip, annually a loss of 1,345 dollars. She repeated her grievance, more generally, concerning the deleterious effect of the entire package of changes which she believed would adversely affect her.

10. The FAO accepts that the complainant can lawfully challenge, in these proceedings in the Tribunal, the discontinuance of the non-removal allowance as well as the new salary scale as it affected her reflected in her payslips. The rationale for the concession in relation to the non-removal allowance is not entirely clear as it is not specifically adverted to in her appeal, but the concession is noted. The FAO disputes that the complainant can challenge other aspects of the changes described in considerations 3 and 4 in these proceedings having regard to the scope of her internal appeal.

11. The FAO's argument on receivability attracts two principles. The first is that a complainant cannot challenge a rule of general application unless and until it is applied in a manner prejudicial to her or him (see, for example, Judgment 4075, consideration 4). The second is that a complainant must have exhausted internal means of redress to render a complaint receivable in the Tribunal (as required by Article VII, paragraph 1, of the Tribunal's Statute). The Tribunal accepts that the general claims of the complainant, beyond the matters conceded to be receivable by the FAO, are irreceivable save for her grievance about the education grant. Nor had there been, at the time of that appeal, a prejudicial administrative decision applying the new regime concerning the education grant for the complainant's children for education in Rome. However the complainant did receive in advance of an amount less than she would have received under the previous regime. This was not, as a matter of fact, challenged by the FAO.

12. Returning to the merits of the complainant's complaint, there is one central issue. It is whether the changes the complainant can lawfully impugn in these proceedings involved a breach of acquired rights.

13. The concept of breach of acquired rights has its genesis in the first decision given on 15 January 1929 of this Tribunal then called the Administrative Tribunal of the League of Nations. *In re di Palma Castiglione v. International Labour Office*, the Tribunal held: "The Administration is at liberty to establish for its staff such regulations as it may see fit, provided that it does not in any way infringe the acquired rights of any staff member." Over the decades since, the basis for recognising and protecting acquired rights has evolved and, in particular, principles developed for demarking what are and are not such rights[*].

[*] See Dr Eva-Maria Gröniger-Voss, A. Kirsten Baxter, Arthur Nguyen dao: "The principle of acquired rights with particular focus on the jurisprudence of the Administrative Tribunal of the International Labour Organization" in *90 years of contribution of the Administrative Tribunal of the International Labour Organization to the creation of international civil service law*, edited by Dražen Petrović (Geneva, 2017), pp. 109-128.

14. The applicable legal principles were recently summarised by the Tribunal in Judgment 4195, consideration 7:

> "According to the case law, '[i]n Judgment 61 [...] the Tribunal held that the amendment of a rule to an official's detriment and without his consent amounts to breach of an acquired right when the structure of the contract of appointment is disturbed or there is impairment of any fundamental term of appointment in consideration of which the official accepted appointment' (see Judgment 832, under 13). Judgment 832, under 14 (cited in part, below), poses a three-part test for determining whether the altered term is fundamental and essential. The test is as follows:
>
> (1) What is the nature of the altered term? 'It may be in the contract or in the Staff Regulations or Staff Rules or in a decision, and whereas the contract or a decision may give rise to acquired rights the regulations and rules do not necessarily do so.'
>
> (2) What is the reason for the change? 'It is material that the terms of appointment may often have to be adapted to circumstances, and there will ordinarily be no acquired right when a rule or a clause depends on variables such as the cost-of-living index or the value of the currency. Nor can the finances of the body that applies the terms of appointment be discounted.'
>
> (3) What is the consequence of allowing or disallowing an acquired right and the effect it will have on staff pay and benefits, and how do those who plead an acquired right fare as against others?"

15. Also, as the Tribunal recently discussed in Judgment 4028, consideration 13, international civil servants are not entitled to have all the conditions of employment or retirement laid down in the provisions of the staff rules and regulations in force at the time of their recruitment applied to them throughout their career and retirement. Most of those conditions can be altered though, depending on the nature and importance of the provision in question, staff may have an acquired right to its continued application.

16. In the material before the Tribunal is a document entitled "Terms of Employment" signed by the complainant on 30 March 2001 and on behalf of the WFP Executive Director on 16 February 2001. It specified and quantified the salary (at the dependent rate), post adjustment and dependency allowance but also referred to the provisions of the Staff Regulations/Staff Rules upon which those payments were based. Also specified in the document were a range of benefits (including the assignment grant) and the applicable provision in the Staff Regulations/ Staff Rules (and, it appears, Manual Sections) conferring the benefit.

Mostly, there is no reference to amounts. It is tolerably clear that generally the terms of the complainant's employment were to be derived from and based upon the provisions of the Staff Regulations/Staff Rules.

17. As noted earlier, the contested changes arose from a review by the ICSC of the compensation package of the staff in the UN common system in the Professional and higher categories, the 2015 ICSC Annual Report containing a detailed discussion of what emerged from that review and proposals for the future. Importantly, the reasons for the proposed alteration to salaries and benefits impugned in these proceedings were rational, logical and credible even if minds could reasonably differ about whether any particular change should occur and, if so, what form the change should take.

18. Before the changes arising from the ICSC review, there were two salary rates, one for staff with dependents and another for staff with no dependents. The dependent rate was paid in respect of the spouse with earnings less than a threshold amount and also in respect of the first dependent child for staff without a dependent spouse. In the 2015 Annual Report, the ICSC explained in relation to the unified salary scale:

> "99. One net salary scale would be introduced for all staff in the Professional and higher categories without regard to family status (the proposed scale is included in annex II, section A, to the present report, which reflects the proposed consolidation from post adjustments of the factor 1.08 for January 2016). It would simplify the existing salary system and reinforce the notion of payment of salary for work done rather than the recognition of individual circumstances of staff members. Table 1 shows a summary comparison of the current and proposed systems in terms of salary and related recognition of dependants. It is also proposed that the unified salary scale be updated to reflect any further increases in base/floor salaries that may be approved prior to its implementation.
>
> 100. Support provided for dependent family members would be separated from salary. In order to ensure that the support of the organization in relation to dependants is better targeted, some changes to the eligibility criteria for such assistance are also put forward. Under the proposals, dependent spouses would be recognized through a spouse allowance at the level of 6 per cent of net remuneration. That proportion was based on the difference in net pay as a result of taxes between a single and a married taxpayer in the United States. Staff with non-dependent spouses currently in receipt of the dependency rate salary by virtue of a first dependent child would instead receive the child allowance."

19. In the 2015 Annual Report, the ICSC explained in relation to the proposed settling-in grant (and the discontinuance of the non-removal grant):

> "The Commission considered payments for relocation under the current system. It noted that such payments included both cost-recovery measures and incentives linked to removal entitlements (for 'full removal' and 'non-removal' of household goods) and type of duty station (headquarters and field locations). The Commission concluded that there were too many layers of payments and decided:
>
> (a) To discontinue the additional payment of the equivalent of one month of salary currently paid at the beginning of the third year in field duty stations when staff opted for 'non-removal' (that is, partial removal) under the assignment grant provisions for household goods;
>
> (b) To group the non-removal allowance with relocation-related payments instead of putting the allowance under the mobility and hardship scheme.
>
> [...] Based on the above, the Commission considered an approach in which the new package for relocation for internationally recruited staff would include relocation travel, relocation shipment with a lump-sum optional removal grant, and a settling-in grant. Under the approach, all current payments relating to relocation would be streamlined in order to eliminate overlaps and provide a consolidated payment system reflecting real costs.
>
> [...]
>
> [...] Under the proposed package, a settling-in grant would be provided to staff to assist with the expenses for temporary accommodation and other incidental settling-in expenses associated with the relocation of staff and accompanying family members at the beginning of an assignment. The proposed settling-in grant would consist of two portions: (a) a daily subsistence allowance portion to assist with the expenses for temporary accommodation and other incidentals associated with the move, through 30 days of the allowance at the new duty station for the staff member and 30 days of the allowance at 50 per cent for each eligible family member; and (b) a global lump-sum portion to cover direct and indirect miscellaneous expenses associated with the move, including departure and arrival expenses, through a payment equivalent to $6,500 for all staff. The accommodation portion of the allowance would not be granted when accommodation was provided by the organization. Further, in cases in which eligible family members arrived after the staff member had settled into permanent accommodation at the new duty station, the daily subsistence allowance portion for the family members would not be granted.
>
> [...]
>
> [...] The Commission recognized that the purpose of all payments related to relocation, such as the assignment grant, relocation grant, shipment entitlement and non-removal allowance, was to cover the costs borne by

> staff members when moving to a new duty station. It noted that the current relocation grant (non-removal lump sum of $10,000 for single staff and $15,000 for staff with eligible family members) had not been established by the Commission, but by certain organizations. The Commission wished to differentiate between measures and allowances aimed at cost recovery, and monetary incentives, which already existed in the hardship allowance through both hardship and mobility incentives. The Commission further noted that the current system was overly complicated, with too many layers of payments for the same purpose, and the conditions and criteria further complicated the system.
>
> [...] The Commission concurred with the pure cost recovery approach, which in its view was a sound concept, and with the proposed ceilings for the optional removal grant based on actual shipment cost data. It considered that the proposed relocation package covered all aspects of relocation and provided an appropriate rationale for each element. Under the proposal, all payments related to relocation would be streamlined in order to eliminate overlaps and provide a consolidated payment system."

20. In the 2015 Annual Report, the ICSC explained in relation to the proposed scheme concerning, relevantly, an aspect of the education grant which was potentially material to the complainant, namely boarding expenses:

> "The Commission recalled the proposal to limit the provision of assistance with boarding expenses. For staff serving at headquarters duty stations in particular, where adequate schools within commuting distance existed, the provision of assistance with boarding expenses was difficult to justify. Against that background, it was recalled that the option to completely exclude boarding assistance from the scheme had been considered but subsequently rejected. Since staff in the field often did not have access to an adequate local school, there was a strong case for granting support in such situations."

21. Importantly, the complainant does not directly challenge the expressed rationale for the benefits and the changes impugned in these proceedings but rather their effect, particularly the cumulative effect of all the changes referred to in considerations 3 and 4, especially viewed in the context of the regular transfer of WFP staff to varying duty stations flowing from the terms of their employment. The document referred to in consideration 16 contained a provision entitled "Mobility Clause" declaring that a staff member is required to serve wherever assigned by the Executive Director. The complainant contends in her pleas that staff in the WFP are regularly required to serve at various duty stations and this is not contested by the Organization. Indeed it is manifest by the fact that the complainant, in the course of her career on

the WFP, served in a number of duty stations including Rome (Italy), Nairobi (Kenya), South Sudan, Libya, Pakistan, Tajikistan and Iraq.

22. It is appropriate to say something about two judgments in the UN Tribunal system although this Tribunal is not bound by them (see, for example, Judgment 3138, consideration 7). The first is a Judgment of the United Nations Dispute Tribunal (UNDT): UNDT/2017/097. The second is a Judgment of the United Nations Appeals Tribunal (UNAT) (Judgment 2018-UNAT-840) upholding an appeal against the first mentioned decision. The proceedings concerned a challenge to the unified salary scale arising from the 2015 ICSC Annual Report, that is to say, the same scale impugned in these proceedings. A central issue was whether the removal of the dependency element and the effect of its removal involved a breach of an acquired right. The UNDT's approach led to the conclusion there had been such a breach. Generally, the UNDT's consideration of the issue involved an orthodox application of principles accepted and applied by a multitude of international administrative tribunals including this Tribunal. The approach of the UNAT was different.

23. After a lengthy and detailed discussion of the facts and the authorities, the UNDT addressed the question of whether there have been breaches of an acquired right. The UNDT's reasoning included the following elements. The salary of the affected staff was a fundamental element in the contract of employment of each. The staff had a legitimate expectation that such a fundamental element could not be changed without their consent. The right to salary necessarily extends to its quantum. The balance between the rights and obligations of the parties would be broken if an organisation was allowed to unilaterally modify the level of salary. As salaries increased over time, staff have an accrued right to be paid the newly determined salaries. The quantum of the newly determined salaries enjoys the same protection as the initial ones.

24. In relation to the specific position being addressed, namely the elimination of a salary with a dependency element and the creation of a unified salary scale, the UNDT reasoned as follows. The additional payment made on account of dependence was initially embedded in staff salaries which is a fundamental and essential term of employment. Accordingly it could not be unilaterally reduced or discontinued

irrespective of the reason for the change or its impact. The UNDT went on to conclude that the introduction of the transitional allowance was insufficient to safeguard the acquired rights of the applicants.

25. The difficulty with the UNDT's analysis is that it did not sufficiently recognise that a methodology for the calculation of payment for work done, which depends on a factor not referable to that work done, is readily amenable to change. It is to be recalled that one of the relevant considerations in assessing whether there has been a breach of an acquired right is the reason for the change.

26. The UNAT plainly did not accept the reasoning or conclusion of the UNDT when upholding an appeal from its decision. Much of the UNAT's reasoning central to its decision focused on the meaning of the expression "acquired rights" in Staff Regulation 12.1 which provided that the regulations could be supplemented or amended "without prejudice to the acquired rights of members of the staff".

27. A central part of the complainant's arguments is the adverse cumulative financial effect of all the changes to the "package" of salary and benefits agreed to at the time of her initial engagement. She cites Judgment 986 and particularly the observations of the Tribunal in consideration 16 about the effect of "[a] run of small amendments" and the materiality of a "full set of decisions". But this case concerned only one matter, namely pensionable remuneration, and the Tribunal was discussing amendments to that which had earlier been considered by the Tribunal in judgments already given.

28. This argument just referred to confronts several difficulties. The first is the scope of this complaint as discussed earlier when considering receivability. But importantly the Tribunal's case law does not support an abstract approach to determining whether an acquired right has been breached which entails the examination of an altered "package" of salary and benefits to justify a conclusion that the alteration of any given element of the package, which is not directly raised for consideration by the challenge to the payslip, involved a violation or breach of an acquired right. The logical consequences of this approach would be that even though such an alteration to a given element may be minimal or entirely justified or both, because other changes are made to other

elements of the "package", the minimal or justified alteration can be characterised as a breach of an acquired right. There is no principled basis for taking this approach though the Tribunal cannot discount the possibility that situations may arise where the effect of the alteration of a limited number of related benefits might be viewed as relevant to the characterisation of one alteration as being a breach of an acquired right.

29. As the Tribunal noted earlier, the ICSC's reasons for the proposed changes to salaries and benefits impugned in these proceedings were rational, logical and credible. They did not involve an elimination of the benefit but its recasting with modifications of how, when and why the benefit would be paid. The adoption of the proposed changes by the WFP (notwithstanding opposition when being originally proposed) was in conformity with obligations arising from membership of the UN common system. This is a valid reason for change (see Judgment 1446, consideration 14), at least in the absence of any apparent unlawfulness attending the change either procedurally or substantively.

30. The Tribunal's case law recognises that the alteration of a benefit can operate to the detriment of staff and this, of itself, does not constitute the breach of an acquired right. A further element was needed, as discussed in the opening paragraph of the quotation in consideration 14: the complainant should have demonstrated that the structure of the employment contract was disturbed and that the modifications impaired a fundamental term of appointment in consideration of which she accepted employment. The complainant has not demonstrated, to the Tribunal's satisfaction, that this further element exists in the present case in relation to the changes impugned in these proceedings.

31. Moreover the complainant bears the burden of establishing her case (see, for example, Judgments 4097, consideration 17, and 3912, consideration 13). In many respects her pleas are vague and unclear. For example, the basis on which she had, historically, been receiving the dependency rate of pay is not articulated with any precision. It appears from observations in her brief that it was not because she had a dependent spouse but rather dependent children. But she does not establish her calculations of potential future loss as a result of the abolition of the dependency rate are well founded, because, having regard to the age and circumstances of her children, she would have been entitled to the

dependency rate for the entire period the transitional arrangements would operate. It would only be in the context of clearly articulated argument by reference to proven or uncontroversial facts, the Tribunal might reach a level of satisfaction that indeed acquired rights have been breached. It would be a large step for the Tribunal to do so and could only be done on a firm foundation.

32. In the result, the complaint should be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 11 December 2020, Mr Patrick Frydman, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 18 February 2021 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

DRAŽEN PETROVIĆ