

**114th Session**

**Judgment No. 3162**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr H.C. G. against the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO PrepCom, hereinafter “the Commission”) on 20 August 2010 and corrected on 4 January 2011, the Commission’s reply dated 14 March, corrected on 16 March, the complainant’s rejoinder of 31 May, and the Commission’s surrejoinder of 7 September 2011;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant is a Norwegian national born in 1968. He joined the Provisional Technical Secretariat of the Commission on 15 April 2009 as Chief of the Procurement Section in the Division of Administration, at grade P-5, on a three-year fixed-term appointment, subject to the certification of his successful completion of a six-month probationary period ending on 14 October 2009. His letter of

appointment stipulated that failure to obtain such certification would result in termination of the appointment with 30 days' written notice.

On 21 October 2009 the complainant participated in the 565th meeting of the Committee on Contracts, which is the body responsible for making recommendations to the Executive Secretary on awards of contracts under the Financial Regulations and Rules. One of the contracts to be reviewed by the Committee on that occasion concerned the operation of two monitoring stations forming part of the International Monitoring System. The two stations in question had been operated by an institution under a contract which was due to expire on 30 September 2009. Thereafter, another operator was to take over but, as the contract had not been finalised, the data-flow between one of the monitoring stations and the Commission's International Data Centre (IDC) was interrupted on 1 October 2009. Following urgent discussions with the national authorities concerned, the data-flow resumed on 3 October and, three days later, at the request of the Executive Secretary, the Director of IDC and a Legal Officer undertook an on-the-spot emergency mission to resolve the outstanding issues. The Executive Secretary subsequently instructed that a review of the process leading to the new contract be conducted by a Review Team in order to avoid such incidents in the future.

During the meeting on 21 October, the complainant expressed concerns as to whether the proper procedures had been followed with respect to the new contract. According to the minutes of that meeting, he stated that since no representative of the Procurement Section had been present during the emergency mission, "there had been a breakdown of internal controls, and he [...] could not ensure that no 'back-hand deals' or promises were made" – a remark to which several members of the Committee objected. In the event, the Committee recommended that the Executive Secretary approve the new contract, and the contract was eventually signed on 17 November 2009.

The minutes of the 565th meeting of the Committee on Contracts were signed by the Executive Secretary on 11 November. He approved

the Committee's recommendations, but added in a handwritten comment a request to the complainant "to provide evidence which served [as] the basis for his allegations". In a memorandum to the Executive Secretary dated 16 November 2009, the complainant stated that his comments at the meeting had not been intended to call into question the integrity of any of his colleagues.

The Review Team issued its report concerning the process leading to the new contract in January 2010. It noted that the scope of authority delegated to the staff members who had taken part in the emergency mission was unclear.

Following a meeting on 16 February 2010 with the Executive Secretary, the complainant addressed to the latter a memorandum dated 25 February in which he wrote that it was his "perception that the successful completion of [his] probation period [was] tied to [his] retracting statements made in the 565<sup>th</sup> meeting of the Committee [on] Contract[s]" in the absence of a "substantial basis for the statements". Referring to a transcript he had obtained of the audio recording of that meeting, he stated that he realised that one of his statements, out of context, might be misinterpreted and perceived as allegations, and he regretted any harm the statement might have caused. Following further meetings on 4 March, the complainant was instructed by the Executive Secretary to send the same formulation of regret used in his memorandum of 25 February 2010 to the Legal Officer and the Director of IDC, and to make a statement in those terms at the next meeting of the Committee. The complainant subsequently sent a memorandum to these two officials, and an Addendum to the Minutes of the 565th Meeting of the Committee on Contracts was drafted containing a similar retraction by the complainant.

In the meantime, on 3 November 2009 the complainant's supervisor, the Director of the Division of Administration, completed a performance appraisal report covering the complainant's first six months of service. He stated that he was "extremely pleased" with the complainant's performance and recommended his "continued service with the Commission". On 28 April 2010 the complainant received a

second performance appraisal report from his supervisor for the period from 16 October 2009 to 15 April 2010. He was evaluated as having “done an excellent job of managing his section”.

By a letter dated 11 June 2010 the Executive Secretary terminated the complainant’s appointment with 30 days’ notice. He stated that at the end of the period of probation, which had tacitly been extended until 14 April 2010, he was not in a position to issue the required certification of a successful completion of his probation because, in particular, of the complainant’s failure “to demonstrate the standard of honesty” that he, the Executive Secretary, expected from an international civil servant of his standing.

By a memorandum of 23 June 2010 to the Executive Secretary, the complainant sought review of that decision on a number of grounds, including the fact that he had received two favourable performance appraisal reports in the relevant period.

On 29 June 2010 he requested that the Joint Appeals Panel recommend suspension of implementation of the termination decision on the basis that it would cause irreparable injury to his reputation and future employment possibilities. In its report of 8 July the Panel stated that it could not recommend the suspension of the decision since it considered “that there could not be an irreparable injury to the [complainant] at this point”. By a letter of 9 July 2010 the Executive Secretary informed the complainant that he had decided to reject his request for suspension, and by another letter of the same date – which is the impugned decision – he rejected his request for review. He added that he was willing to waive the Joint Appeals Panel’s jurisdiction if the complainant did not accept his decision.

B. The complainant contends that the decision to terminate his appointment is flawed for breach of procedural due process. According to Administrative Directive No. 3, the evaluation of a staff member’s performance for the purpose of certifying whether or not his or her service during the probationary period has been satisfactory is based on a performance appraisal of the first six months of service, which he says was, in his case, excellent. Furthermore, the

Directive only allows the extension of the probationary period where the performance appraisal report is unsatisfactory, and where the staff member consents. He asserts that he was given no written or oral warnings that his performance was unsatisfactory. Furthermore, the probationary period having ended on 14 October 2009, performance issues arising subsequent to that date cannot be cited as grounds for not confirming his appointment at that time or for extending the probationary period. Thus, in his view, he was entitled to rely on the representation of his supervisor that his probation was successful and his appointment confirmed at the end of the six-month period. On this basis and relying on Judgment 2529, the complainant argues that by the time of his termination he was no longer subject to the condition that he receive certification of having given satisfactory service during probation. Moreover, if the Executive Secretary considered that his behaviour during the Committee on Contracts meeting amounted to misconduct, as may be inferred from the reference in the termination letter to a failure “to demonstrate the standard of honesty” expected from an international civil servant, he was entitled to have this issue decided in accordance with the applicable disciplinary procedures. The Executive Secretary was not free to terminate his contract relying on the rules governing probation.

The complainant also contends that the decision to terminate his appointment amounted to a hidden sanction and retaliation for reporting breaches of the procurement rules. The Executive Secretary did not substantiate in any way his allegations of dishonesty, or indeed his assertions concerning the complainant’s ability to work in a team, so that in accordance with Judgment 1317 the decision should also be set aside on this basis.

Relying on the Tribunal’s case law, the complainant asserts that the actions taken by the Executive Secretary to pressure him into retracting his statements, and the ultimate termination of his appointment, as well as the consistent breach of his due process rights, amounted to harassment. He adds that the impugned decision is tainted with hostility, bias, bad faith and prejudice and that his termination was disproportionate to any alleged misconduct.

Lastly, the complainant contends that the recommendation by the Joint Appeals Panel not to suspend the implementation of the termination decision was tainted by errors of fact and law, since the Panel failed to address the issue of his due process rights and the serious consequences for him of the charges of dishonesty. In this regard, the complainant emphasises that his sudden dismissal on the basis of dishonesty had devastating consequences for his reputation, and will continue to have repercussions for the rest of his career.

The complainant requests that the Tribunal set aside the impugned decision and order the removal of any prejudicial material from his personnel file. He also claims material damages equivalent to what he would have earned had his three-year appointment not been terminated, plus interest from due dates, material damages of 300,000 euros for loss of enhanced earning capacity, moral damages of 100,000 euros, exemplary damages of 100,000 euros and costs.

C. In its reply the Commission submits that in his memorandum of 23 June 2010 the complainant requested review only of the decision to terminate his appointment, and not of the separate administrative decision not to issue him with the required certification for successful completion of his probation. It asserts that the latter decision cannot now be challenged before the Tribunal as the complainant has failed to make use of internal means of redress.

The Commission also submits that the Executive Secretary's decision to terminate the complainant's appointment was lawful and was taken in conformity with the terms and conditions of his appointment, in the Commission's interest, and within the framework of the Executive Secretary's discretionary authority. The complainant accepted the terms and conditions of his appointment, which included that the appointment was subject to the certification of his successful completion of the six-month probationary period. Under Staff Rule 4.4.01(b) that period may be extended by the Executive Secretary. Referring to the complainant's memorandum of 25 February 2010, the Commission argues that he knew perfectly well that his

appointment had not been confirmed and that the required certification by the Executive Secretary was still pending. Furthermore, the fact that the complainant did not make any “appropriate enquiry” at the end of his first six months of service as to the confirmation of his appointment indicates that he had implicitly agreed to an extension of his probation.

The Commission denies that there were any breaches of procurement rules and that the impugned decision in any way represents a hidden sanction. It rejects the allegations of harassment, hostility, bad faith, prejudice and bias. The Executive Secretary’s actions reflected his duty, as head and chief administrative officer of the Secretariat, to deal with the complainant’s gratuitous and damaging allegations against colleagues. The complainant chose to call into question the integrity and honesty of two staff members who had participated in an emergency mission, despite the fact that they did so under the express authorisation of the Executive Secretary himself. This demonstrated not only the complainant’s inability to be a good team player, but also “outright dishonesty that could result in damage to the integrity of senior management and the image of the organisation”.

The Commission explains that at one of the meetings of 4 March 2010 the complainant agreed to retract his allegations and make an appropriate apology. However, at a meeting of the Committee on Contracts held the following day, after reading out his apology, he stated that he had read it out “only because the Executive Secretary had requested him to do so”. The Commission takes him to task for not having sent a letter of apology to the Director of IDC or circulating his clear apology amongst the staff of the Procurement Section, as promised. It therefore considers that such behaviour demonstrates a lack of honesty and integrity and does not meet the standards expected of an international civil servant, in particular one serving as Chief of the Procurement Section. Referring to the Tribunal’s case law, the Commission points out that conduct which is not satisfactory “may or may not affect the quality of the service

given” by a staff member, and it submits that in this case the complainant’s behaviour was considered by the Executive Secretary to impair the quality of his service to the Commission.

In its view, there was no requirement for the Executive Secretary to resort to disciplinary proceedings, such proceedings being irrelevant to the confirmation of the complainant’s appointment following his period of probation. Furthermore, since the complainant did not challenge the decision not to issue the required certification, the Executive Secretary was under an obligation to proceed with termination, the terms of appointment being unequivocal that failure to obtain such certification would result in termination.

The Commission also submits that under Staff Rule 11.1.02(c)(iii) the Executive Secretary’s decision not to suspend implementation of the termination decision is not subject to appeal. In any event, the Joint Appeals Panel was correct in its determination that the implementation of the decision would not cause irreparable damage to the complainant.

D. In his rejoinder the complainant presses his pleas and contends that his complaint is receivable in its entirety. He points out that the wording of his memorandum of 23 June 2010 makes it clear that he was expressly challenging both decisions. The complainant also disputes the Commission’s view that the suspension decision is not subject to appeal: Staff Rule 11.1.02(c)(iii) merely applies to the internal appeal process and serves to exhaust the complainant’s internal remedies, as required by Article VII, paragraph 1, of the Statute of the Tribunal.

In his view, the allegations that he failed to demonstrate honesty and integrity are based on two wilful misrepresentations by the Commission: firstly, that he actually made accusations against his two colleagues, and secondly, that he and the Review Team were incorrect in considering that there had been a breach of Financial Rule 11.5.01. He asserts that it is clear from the minutes and the verbatim transcript of his statements during the meeting on 21 October 2009 that he made no allegations against his colleagues.

The complainant maintains that there was indeed a breach of Financial Rule 11.5.01, which was confirmed by the Review Team. He invites the Tribunal to express its opinion on whether he and the Review Team were correct in their interpretation of the relevant rules. He argues that he did, in good faith, follow the precise instructions of the Executive Secretary and retract his statements concerning the two colleagues involved in the emergency mission of October 2009, as well as apologising in writing to both of them and making his apology known to the Committee on Contracts.

He explains that on 28 February 2011 he joined another international organisation under a two-year fixed-term appointment at grade P-4, step 12, subject to a one-year probationary period. He submits that he was able to obtain this appointment only because of his reputation among colleagues in the procurement sector. The salary he was able to negotiate is not at the same level as in his previous appointment. Moreover, had his appointment with the Commission not been terminated, he would have received a salary increment to the P-5, step 3 level, in April 2011. He no longer benefits from the same fiscal advantages and his new appointment is less secure. Furthermore, it represents a significant demotion in terms of the level of responsibility. He asserts that he has been deprived of the advantages his previous position represented in terms of career opportunities and has therefore suffered a loss of future earning capacity.

E. In its surrejoinder the Commission maintains its position in full and emphasises that the complainant has not substantiated his allegations of harassment, hostility, or ill will. The fact that he was appointed to a procurement position with another international organisation not long after his separation from service with the Commission shows that he has not suffered any damage to his professional reputation or loss of future earning capacity. He alone is responsible for the terms and conditions of his new appointment, since they are the result of a contract into which he entered of his own free will.

## CONSIDERATIONS

1. On 15 April 2009 the complainant joined the Commission on a three-year fixed-term appointment as Chief of the Procurement Section (grade P-5) in the Division of Administration. As Chief of the Procurement Section, he was responsible for ensuring “that all procurement actions are conducted in accordance with the relevant financial regulations and rules of the Commission”. His appointment was subject to a six-month probationary period as set out in the following terms in his letter of appointment:

“This appointment is subject to the certification of completion of six months satisfactory service (‘Probation’). This period starts on 15 April 2009 and ends on 14 October 2009. If you successfully complete this Probation period, the fixed term appointment shall be confirmed in writing. Failure to obtain this certification will result in the termination of your appointment, subject to 30 days written notice.”

The letter of appointment also incorporates by reference the Staff Regulations and Staff Rules of the Commission.

2. At the end of his six-month probation period, the complainant received a very positive performance appraisal report from his supervisor. Normally, upon successful completion of the probation period, the Executive Secretary certifies the appointment. This will be explained in greater detail below. Suffice it to say that the complainant’s probation period was never certified.

3. After the six-month appraisal period was over (but before the initial performance appraisal report was signed), the complainant made some remarks at a meeting of the Committee on Contracts. The content of these remarks is contested. The complainant argues that he was merely pointing out a procedural flaw in the negotiation of a contract: he believed that someone from the Procurement Section should have been involved in certain negotiations to finalise the contract. The Commission contends that the complainant made repeated allegations of “backhand deals” and other wrongdoing on the part of the staff involved in the negotiation of the contract.

4. The complainant and the Executive Secretary met several times in the aftermath of these remarks. It was at one of these meetings in February 2010 that the complainant appears to have first discovered that he was still on probation. The complainant submits that from the time of the meeting at which the remarks were made up to the time he was notified of his termination, he was pressured and harassed to retract what he had said regarding the procedural error.

5. Eventually, the complainant apologised for his earlier remarks, stating that he did not believe that any backhand deals were done and he apologised for how his comments may have been taken out of context. He qualified his apology, continuing to insist that there was a procedural flaw and that someone from the Procurement Section should have been part of the negotiations. During another meeting with the Executive Secretary, the complainant was asked to make an unqualified retraction and apology, but he decided that he would not do so believing that his original apology sufficed.

6. At the end of a further six-month period, the complainant received a second positive performance appraisal report. However, on 11 June 2010 the Executive Secretary notified him that his appointment was terminated. The termination letter states in particular:

“As you are aware, your appointment [...] was subject to a period of probation which could be extended as appropriate. In your case, the period of probation which was tacitly extended ended on 14 April 2010.

Following an assessment I have made [...] I have [...] concluded that you lack the ability to work in harmony with some of the other units of the Secretariat and to operate as a good team player [...]. In addition, you have failed to demonstrate the standard of honesty that I expect from an international civil servant of your standing. In the circumstances I regret to inform you that I am not in a position to issue you with a certification of a successful completion of your probationary service.”

7. On 23 June 2010 the complainant submitted a request to the Executive Secretary for a review of the termination decision. He also asked for a retraction of the statements impugning his honesty in the termination letter. On 29 June the complainant requested the Joint

Appeals Panel to recommend suspending the implementation of the decision to terminate his appointment. On 9 July 2010 the Executive Secretary upheld the Panel's refusal to recommend the suspension and denied the request for review of the termination decision. He added that he was willing to waive the Panel's jurisdiction. By his complaint the complainant impugns the decision of 9 July 2010.

8. In summary, the complainant alleges that he was terminated for an improper purpose and that he was harassed by the Executive Secretary in order to obtain an unqualified retraction of his concerns. He also alleges that the proper procedures were not followed with respect to discipline, probation and harassment. Moreover, he asserts that he was not given any warning that his performance was inadequate.

9. The Commission counters that the complainant was afforded many opportunities either to substantiate his allegations of wrongdoing or give an unqualified apology. In its view, he was aware that his certification of probation was at risk. Since this was a certification of an appointment decision, full disciplinary proceedings were not required.

10. On the question of receivability, the Commission concedes that the complaint is receivable to the extent that it impugns the Executive Secretary's decision of 9 July 2010 confirming his earlier decision to terminate the complainant's appointment. It does not concede, however, that the Executive Secretary's refusal to certify the complainant's successful completion of his probationary service is properly before the Tribunal. The Commission argues that the termination letter conveyed "two separate and distinct administrative decisions". The first decision the Executive Secretary made had the legal effect of depriving the complainant of the certification of his appointment. The second decision "had the separate and distinct legal effect of bringing to an end the Complainant's contractual relationship with the Commission".

11. The Commission points out that in the complainant's memorandum of 23 June 2010 to the Executive Secretary disputing

his termination, he only expressly stated that he was challenging the termination decision. The memorandum was headed: “SUBJECT: Request for review of decision to terminate my contract”. It argues that “where [...] the reason for an administrative decision flows from the legal effect of an earlier administrative decision that was not duly contested, that earlier decision cannot be challenged belatedly within the context of a contestation of the later decision”. In its view, the complainant has not exhausted internal means of redress with respect to the decision not to certify his appointment. The defendant also disputes that the refusal to suspend the termination decision is properly before the Tribunal. In light of the conclusions the Tribunal has reached below on the termination decision, there is no need to consider this argument.

12. In his letter of 11 June 2010 the Executive Secretary stated that the decision not to certify the appointment was the basis for the decision to terminate the complainant’s appointment and in his letter of 9 July he indicated that he had decided to maintain the termination decision for the reasons given in the aforementioned letter. While it may be that there are two distinct decisions, the termination decision is grounded on the refusal to certify the appointment and as such they are inextricably linked. The complainant, in challenging the discretionary decision to terminate, also challenged the validity of the reasons underpinning that decision.

13. The complainant alleges that the Commission committed multiple breaches of Administrative Directive No. 3 when his initial six-month probation period was completed. Firstly, the decision as to whether a probationary staff member’s appointment is certified is based upon the performance appraisal report. Based on the language of his appraisal report his performance was stellar. Secondly, after a positive performance appraisal report a recommendation of appointment certification must be sent to the Executive Secretary. There is no evidence that such a recommendation was ever sent to the Executive Secretary. Thirdly, an extension of the probation period is possible only if the performance appraisal report is unsatisfactory,

and the staff member involved consents to the extension, neither of which conditions was met. The complainant maintains that, based on the positive performance appraisal report and the lack of notification by the Commission, he “was entitled to rely on the representation of his supervisor that his probation was successful and his appointment confirmed at the end of the six-month period”. Moreover, his letter of appointment stated that his appointment “shall be confirmed in writing” upon successful completion of the probation period. Therefore, in his view, the Commission was obligated to provide him with the certificate of his appointment.

14. The Commission strenuously attempts to justify the termination of the complainant’s appointment on the grounds of the probation certification process and that one of the terms and conditions of his employment states: “If you successfully complete this Probation period, the fixed term appointment shall be confirmed in writing. Failure to obtain this certification will result in the termination of your appointment, subject to 30 days written notice.” It is argued that, since the complainant did not receive the certification, the Executive Secretary was acting lawfully when he terminated his appointment.

15. The Commission disputes that the complainant was entitled to rely on the statements of his supervisor to conclude that his probation was over. The certification of appointment decision rests with the Executive Secretary and not with the complainant’s supervisor. Moreover, this is a discretionary decision. The Commission claims that, as the complainant was a senior officer, the Executive Secretary had direct contact with him and was in a position to form an opinion of his attitude and integrity. The Executive Secretary, through his own assessment, found that the complainant was not a “good team player”. Further, the Commission also points to the termination letter of 11 June 2010 in which the Executive Secretary notes that the complainant’s probation had been “tacitly extended” to 14 April 2010.

16. The Commission also argues that the complainant consented to the extension of the probation period as required. It contends

that “[the complainant] and the Commission had implicitly agreed to an extension of the period of his probation” and points to the complainant’s letter of apology of 25 February 2010 as an implied acknowledgement that he was still on probation.

17. The position taken by the Commission ignores the fact that the procedure in relation to probation, including the certification of appointment, is governed by Administrative Directive No. 3. It reads in part:

- “2. The following procedure applies with respect to the completion of the probationary period of staff members of the [...] Commission:
- (a) The evaluation of a staff member’s performance for the purpose of certifying whether or not his or her service has been satisfactory will be based upon a performance appraisal of the first six months of service.
  - (b) If a staff member’s performance is found to be satisfactory on the basis of the performance appraisal report, the Chief or officer-in-charge of Personnel Services [...] will submit a recommendation to the Executive Secretary, who may certify (annex A) that the staff member has completed six months’ satisfactory service and the probationary period of the staff member will have been completed. A copy of the certificate of satisfactory service ending the probationary period will be given to the staff member [...].
  - (c) If a staff member’s performance is found to be unsatisfactory on the basis of the performance appraisal report, reasons will be given and shown to the staff member for comment. The Executive Secretary will then determine whether the thirty days’ written notice will be sent to the staff member or whether, with the agreement of the staff member concerned, the staff member’s probationary period will be extended by a further six months in order to enable him or her to obtain the certification of six months’ satisfactory service. If a staff member does not agree to an extension of his or her probation, he or she will be given thirty days’ notice as envisaged in the letter of appointment.
  - (d) In the case of an extension of the probationary period, the letter in annex B will serve as a model for notifications of such an extension. A probationary period may only be extended once [...].”

18. The procedure in relation to the complainant deviated in a number of respects from the requirements of Administrative Directive No. 3. A fundamental error of the Executive Secretary was to rely on behaviour post-dating the probation as the main justification to refuse to issue a certificate of satisfactory service. In addition, there is no evidence that, at the end of the complainant's probationary period, 15 October 2009, the requisite recommendation, either positive or negative, was sent to the Executive Secretary as required by paragraph 2(b) of the aforementioned Directive. Although the Commission contends that the probation was extended, according to paragraph 2(c) of the Directive, it may only be extended on a finding that the complainant's performance was unsatisfactory on the basis of his performance appraisal report. There is no such evidence in the record. The requisite notification, under the same paragraph, that his probation was being extended was never provided and certainly the complainant never agreed to the extension as required. Alone, this complete disregard for its own procedure would justify a setting aside of the termination decision.

19. It is also observed that the Commission took none of the steps, as it obviously should have, to fulfil the well-established obligations of an organisation in relation to a staff member on probation that are fundamental aspects of the duty of an organisation to act in good faith towards its staff members and to respect their dignity. For example, it did not warn him that his service was unsatisfactory, it did not give him an opportunity to improve and no objectives were fixed by which improvement could be measured (see Judgments 2646 and, more particularly, 2529). Alone, this would also justify overturning the decision at issue.

20. In its pleadings the defendant recites a number of allegations about the complainant, including his negative impact on the work of the Commission, that he trivialised the role of others and cast aspersions on the honesty of other staff members and was not a team player, to name a few. It is observed, however, that having regard to

the nature of these allegations it would be expected that they would be documented in the complainant's performance appraisal report. Not only do they not appear in the two reports, but the comments reflect the exact opposite.

21. This does not end the matter. The only reasonable inference that can be drawn from the Commission's complete disregard of its own procedures in relation to the extension of probation and its total disregard of the well-established obligations and the fact that the alleged deficiencies did not appear in the performance appraisal reports is that the reason for the termination was not the decision not to certify the appointment but rather the complainant's conduct, which was viewed as dishonest.

22. An allegation of dishonesty is an allegation of unsatisfactory conduct that may result in disciplinary action. As such, it must be dealt with in accordance with the organisation's prescribed procedures (see Judgment 1724, under 14). That was not done in this case. This failure deprived the complainant of an opportunity to defend himself against a serious allegation and reflects a serious breach of his right to due process. The breach is particularly egregious having regard to the complainant's work and the nature of the allegations.

23. The breach of the complainant's due process rights, coupled with the procedural breaches and the Commission's breach of its duty to act in good faith, entitles the complainant to an award of moral damages in the amount of 30,000 euros. The complainant is also entitled to an award of material damages in an amount equivalent to the salary, allowances and other benefits that he would have received from 13 July 2010 to 13 July 2013 save for home leave and related allowances, less the complainant's net earnings from other sources during that period. The Commission will be ordered to remove and destroy any adverse material from the complainant's personnel file. The complainant will also be awarded costs in the amount of 10,000 euros.

DECISION

For the above reasons,

1. The Executive Secretary's decision of 9 July 2010 is set aside.
2. The Commission shall pay the complainant moral damages in the amount of 30,000 euros.
3. It shall also pay him material damages in an amount equivalent to the salary, allowances and other benefits that he would have received from 13 July 2010 to 13 July 2013 save for home leave and related allowances, less the complainant's net earnings from other sources during that period.
4. The Commission shall remove and destroy any adverse material from the complainant's personnel file.
5. It shall pay the complainant costs in the amount of 10,000 euros.
6. All other claims are dismissed.

In witness of this judgment, adopted on 9 November 2012, Mr Giuseppe Barbagallo, Presiding Judge of the Tribunal for this case, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2013.

Giuseppe Barbagallo  
Dolores M. Hansen  
Michael F. Moore  
Catherine Comtet