

The Administrative Tribunal,

Considering the complaints filed by Mrs M. A., Mr K. A., Mrs H. A.-Y., Mr R. B., Mrs J. B., Mr V. C., Mr L. C., Mrs J. D.O., Mrs D. D., Mr H.-L. D., Mrs V. F., Mr J.-R. M., Mrs B.L.M. R., Mrs J. M., Mrs C. M., Mrs C.F. M.-C., Mrs A.M. R., Mr M. R., Mrs N. R., Mrs I. S., Mr M. T., Mr H. V., Mrs R. V. and Mrs C. W. against the International Telecommunication Union (ITU) on 29 November 2005 and corrected on 20 March 2006, considering the ITU's reply of 22 May 2006, the complainants' rejoinder of 22 August and the Union's surrejoinder of 13 October 2006;

Considering the complaints filed by Mrs P. B.-G., Mrs C. C.d.E., Mrs M. D. and Mr T. T. against the ITU on 5 October 2005 and corrected on 20 January 2006, the ITU's reply of 11 May, the complainants' rejoinder of 30 June and the Union's surrejoinder of 11 August 2006;

Considering the complaint filed by Miss J. C. against the ITU on 5 October 2005 and corrected on 12 January 2006, the ITU's reply of 11 May, the complainant's rejoinder of 26 July and the Union's surrejoinder of 11 September 2006;

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 none of the parties has applied;

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

A. Service Order No. 02/08, issued by the ITU on 9 September 2002, provides in paragraph 2.4.1 that “[u]pon completion of four years of continuous service on fixed-term contracts, a staff member will normally be offered a permanent contract”. It specifies that the granting of such a contract is subject to “continued satisfactory service” and “confirmation that continuing work and funding is available”. Paragraph 2.4.2 provides that the decision “shall be taken by the Secretary-General and, as regards the staff of each Bureau, upon recommendation of the Director concerned”.

All the complainants held fixed-term contracts. The group of 24 complainants worked in various departments in the ITU General Secretariat. With regard to the complainants who brought the second of the present cases, all but one were employed in the TELECOM secretariat, which in budgetary terms is an autonomous and independent unit of the General Secretariat. One complainant, Mrs B.-G., had been working in TELECOM since 1993, but in early 2004 was redeployed elsewhere in the General Secretariat, under a fixed-term contract that was due to expire in December 2005. When she sought conversion of her contract she was told that she had to maintain a proven satisfactory level of service for an additional six-month period. The complainant who brought the third case also worked in the TELECOM secretariat.

At varying dates from late 2002, the complainants' respective supervisors wrote to the Personnel and Social Protection Department, requesting that the complainants' contracts be converted into permanent ones. The complainants themselves also submitted requests to that Department. No action was taken to convert their contracts but at varying dates their fixed-term appointments were extended. Those who worked in TELECOM received contract extensions dated 15, 16 and 17 November 2004, extending their appointments for another two years, that is to say until 31 December 2006. On 3 March 2005 two complainants from TELECOM filed internal appeals challenging the extension of their contracts on a fixed-term basis.

By letters dated 4 March 2005 – and in one case 23 March 2005 – all the complainants who worked in TELECOM were informed on behalf of the Secretary-General that their fixed-term appointments would not be converted into permanent appointments. Similar letters, dated between 23 March and 2 May 2005 were sent to the group of 24 complainants. In those decisions the complainants' attention was drawn to the fact that although at the ITU

Council's 2002 session the Union had indicated that 50 to 60 per cent of staff would eventually have permanent contracts, by 2005 that percentage had been exceeded. They were also informed therein that the "unrestricted and systematic conversion" of fixed-term contracts would "place the Union in a very difficult situation", and, because of that, the condition concerning availability of funding had to be applied on an "ITU-wide basis" and not just to each individual post; that situation was to continue until the 2005 session of the Council "when the funding issue [would] become clear".

As from 4 March 2005 other complainants filed internal appeals challenging the decision not to convert their fixed-term contracts. The group of 24 complainants, along with 12 other staff members, filed identical internal appeals. Those appeals were joined and were dealt with by the Appeal Board in a single report dated 21 July 2005. The Board issued separate reports, dated 10 and 27 May 2005, on the individual appeals filed by the group of complainants who were, or in one case, had been working in TELECOM.

The Appeal Board found in favour of all the complainants. It recommended converting their fixed-term contracts into permanent ones. In its report of 21 July in relation to the 36 persons whose appeals were joined, it stated that the conversion should be conditional on the complainants meeting the first and second criteria set out in Service Order No. 02/08, "taking into account the recommendation of the Director of the Bureau or head of [General Secretariat] department concerned".

The Council's 2005 session was held from 12 to 22 July 2005. Prior to that, the TELECOM complainants were informed by letters of 7 July 2005 that the Secretary-General had decided to confirm the "provisional" decision not to convert their fixed-term contracts and was rejecting their internal appeals. Those complainants impugn the decisions of 7 July. In the case of the complainant who used to work in TELECOM, she was informed by letter of 28 July 2005 that her appeal was rejected and she impugns that decision. By that same letter she was informed that during its session, held earlier in July, the Council had concluded that the measures taken by the Secretary-General with regard to the suspension of contract conversions were "prudent and wise", and were to be maintained until the Council's 2006 session when they would be reconsidered. That was said too in letters of 31 August 2005 by which the group of 24 complainants were each informed that the Secretary-General had decided to maintain the decision not to convert their contracts. The 24 complainants impugn the decisions of 31 August 2005.

B. The complainants each challenge what they consider to be a final decision on their internal appeals, and argue that their complaints are receivable. They are also appealing against the Administration's continued refusal to convert their fixed-term contracts into permanent ones. They object to the fact that when they themselves requested conversion, the ITU often kept silent and instead of granting them permanent appointments, merely extended their fixed-term contracts. Noting that the Administration had always argued that its refusal to convert their contracts was only a provisional decision and that the final decision would depend on the deliberation of the Council, the complainants submit that, by the terms of Service Order No. 02/08, a staff member's contract is to be converted as soon as the conditions set out in the Service Order are met.

They hold that they did meet the conditions laid down in Service Order No. 02/08. First of all, each of them had fulfilled the condition of satisfactory service over four consecutive years. Regarding the other two conditions, continuing work and availability of funding, they contend that the ITU is using those conditions as mere pretexts for refusing to convert their contracts into permanent ones. It is overlooking the fact that conversion of contracts results in almost no additional costs for the organisation and would be in its best interests. They object to the unilateral suspension of the conversion of contracts imposed in 2004. They point out that there is no clause in Service Order No. 02/08 limiting the number of permanent contracts that can be granted, adding that if the ITU wished to impose a limitation it would have to incorporate a clause to that effect into the Service Order.

The complainants plead breach of equal treatment, noting in particular that while their requests for conversion of their contracts were denied, 100 or so other staff members had their contracts converted. The result was that staff members with fewer years of experience than the complainants had, were given permanent appointments. The complainants in the first and second cases assume that contracts were converted on a "first come, first served" basis, adding that such a procedure does not follow the spirit of the Service Order, and is unfair, unpredictable and arbitrary. Whatever selection criteria are chosen, they believe those criteria should be properly communicated to staff. They contend that they had a right to be informed of actions and decisions that might affect their legitimate interests, adding that the Administration acted in disregard of that right inasmuch as it failed to inform them which selection criteria would be applied. Those employed in the TELECOM secretariat emphasise that there are no grounds for treating TELECOM staff differently. The complainant who was redeployed in the General Secretariat

also alleges unequal treatment because of the extra six-month requirement that was imposed in her case.

The complainants in the first case ask the Tribunal to set aside: (1) the decisions dated between 23 March and 2 May 2005 respectively by which the Secretary-General refused the conversion of their contracts; (2) the “implied decisions” not to convert them during the period November 2004 to May 2005; and (3) the Secretary-General’s final decisions of 31 August 2005 on their internal appeals.

In the second and third cases, the complainants ask the Tribunal to set aside: (1) the decisions dated 15 to 17 November 2004 by which their contracts were extended; (2) the implied decisions during the period 17 November 2004 to 3 March 2005 not to convert their contracts; (3) the decisions of 4 March 2005 refusing to convert them; and (4) the Secretary-General’s decisions of 7 and 28 July 2005 on their respective internal appeals.

All the complainants ask the Tribunal to order that their fixed-term contracts be converted into permanent ones, and claim moral damages and costs. The complainants in the first and second cases also seek the production of documents. They want the Administration to produce: (i) a data sheet concerning other staff whose contracts had been converted, showing when they entered the Union, when their supervisors requested conversion, and when their contracts were actually converted; and (ii) copies of the contracts of those staff both “at the time the staff member entered the Union, and at the time when his/her contract was converted”.

C. In its replies the ITU argues that the decision not to convert the complainants’ contracts was based on a strict application of Service Order No. 02/08. While acknowledging that the organisation must respect the rules it has itself established, it points out that the choice of type of appointment offered to a staff member is a discretionary matter and the Secretary-General is entitled to exercise his discretionary powers when considering the criteria for application of the Service Order. In that respect, it was no longer certain that the criterion regarding availability of funding could be met. The ITU explains that two weeks after Service Order No. 02/08 was issued the Plenipotentiary Conference issued Decision COM6/2, concerning the financial plan of the Union for the period 2004 to 2007, and instructed the Secretary-General, *inter alia*, to elaborate a cost reduction programme, including a possible staff reduction. The process of converting contracts began at the beginning of 2004 but because of budgetary considerations it was suspended in mid-2004 pending a ruling on the matter by the Council at its 2005 session. The ITU contends that the suspension was lawful and became necessary for reasons of “flexibility of administrative management”. Furthermore, at its 2005 session, the Council itself approved the suspension measure taken by the organisation and decided that it should be extended until the next session of the Council in 2006.

The ITU denies that the complainants were subjected to unequal treatment. They were in a different situation in fact and in law than the 100 or so staff whose contracts were converted between January and June 2004. There were specific reasons why certain fixed-term contracts could not be converted at that time. In some instances continuing work had not been guaranteed and, for certain complainants, no contract conversion recommendation had been submitted to the Personnel and Social Protection Department. Similarly, there was no breach of equal treatment with regard to those in the TELECOM secretariat, because staff employed there are not in the same situation in fact and in law as other staff members in the Union. The ITU emphasises that the TELECOM secretariat was by nature not a permanent organ and the posts there were “unestablished” ones. It was clear that the criteria in Service Order No. 02/08 relating to continuing work and availability of funding could not be met in regard to the TELECOM staff, with the result that their contracts could not be converted.

It denies processing the conversion of contracts on a “first come, first served” basis. Rather, it proceeded in a logical and pragmatic manner, having regard to the workload in the Personnel and Social Protection Department at the time.

Regarding receivability, the ITU submits that the decision of 7 July 2005, impugned by three of the TELECOM complainants, was taken before the Council’s session took place and was thus only a provisional decision. But it points out that as the Council’s 2005 session was held soon afterwards it no longer has any reason to contest the receivability of those complaints. In respect of the claims put forward by the complainants, it considers that the ones for moral damages and costs and for the production of documents are irreceivable as they have been put forward for the first time before the Tribunal.

D. In their rejoinders some complainants submit that the budgetary constraints faced by the Union are immaterial to the case in hand, particularly as the conversion of their fixed-term contracts would have no financial impact on the Union. In their opinion, budgetary uncertainty cannot be used as an excuse for non-conversion of

their contracts; nor can conversion be denied on the grounds of “flexibility of management”. The complainants argue that the ITU had no reason to halt the process of contract conversions in mid-2004 and should have converted their contracts upon receipt of their supervisors’ recommendations. Moreover, they cannot be denied such conversions on the grounds that any supervisor failed to provide a recommendation in a timely manner. Certain complainants object to the fact that it took the defendant organisation one year to respond to the legitimate requests that they themselves had sent to the Administration, and they consider that delay to be excessive.

The complainants from TELECOM point out that Service Order No. 02/08 does not exclude TELECOM staff from contract conversion. In their opinion, it was applicable to all staff members, and they are entitled to have their contracts converted under the same conditions as anyone else working under an ITU contract. Moreover, continuous work and available funding for TELECOM activities had been confirmed. They believe some complainants ended up not having their contract converted just because their supervisors had failed to send in a recommendation in a timely manner.

E. In its surrejoinders the ITU disputes the complainants’ argument that budgetary considerations should not be taken into account in the implementation of Service Order No. 02/08. In its opinion, the criteria of continuing work and availability of funding are inevitably associated with the organisation’s budget. It notes from the rejoinders submitted by the complainants that the dates they give with regard to their eligibility for contract conversion are in one or two instances not correct.

## CONSIDERATIONS

1. Although there are some differences in the employment histories of the complainants in these matters, which will be explained below in more detail, all complaints give rise to the same question, namely, the proper meaning and application of ITU Service Order No. 02/08. Moreover, all complaints arise out of the same factual circumstance, namely, a policy decision taken in July 2004 to suspend conversion of fixed-term contracts into permanent contracts pursuant to that order. Accordingly, it is appropriate that all complaints be joined.

2. The complainants differ in that those who are parties to the first case – 24 in all – are employed by the ITU but have not, at any relevant time been staff of TELECOM which is a self-funding ITU unit. The complainant in the third case and the four complainants in the second case, are ITU staff members who were, at the relevant times, members of the TELECOM secretariat. One of the complainants in the second case, Mrs B.-G., has since been deployed to ITU operations. At all relevant times, all complainants had completed four years of continuous service on fixed-term contracts and their service over those four years had been rated satisfactory or better.

3. Service Order No. 02/08 was introduced in September 2002. Paragraph 1.2 provides:

“The new contracts policy aims at providing greater uniformity in the treatment of the staff, providing more stable employment to the staff, making employment in the Union more attractive, and enhancing career development and staff mobility in the Union. It shall be implemented under the authority of the Secretary-General, according to the needs of the Union and in its best interests.”

Paragraph 4.3 provides:

“A staff member holding a fixed-term contract and having already completed four years of service shall be offered a permanent contract, subject to the conditions and according to the procedure outlined in paragraph 2.4 [...].”

Paragraph 2.4 reads as follows:

“2.4.1 Upon completion of four years of continuous service on fixed-term contracts, a staff member will normally be offered a permanent contract. The granting of this permanent contract shall be subject to continued satisfactory service, as defined in Staff Rule 4.14.1, and to the confirmation that continuing work and funding is available. Periods of service completed on short-term contracts, and at least a full month of special leave without pay and a full month of sick leave, shall not be taken into account in the calculation of the four-year period.

2.4.2 The decision to grant a permanent contract shall be taken by the Secretary-General and, as regards the staff of each Bureau, upon recommendation of the Director concerned. A negative decision of the Secretary-General shall be notified to the staff member with appropriate justification.”

4. Shortly after the introduction of Service Order No. 02/08, the Plenipotentiary Conference of 2002 – in Decision COM6/2 – instructed the Secretary-General and the ITU Council to elaborate and implement cost and staff reduction programmes in the years 2004 to 2007, but gave no specific guidelines as to how to do it. Because of this and although Service Order No. 02/08 was neither modified nor withdrawn, the ITU only began to apply that order in early 2004. Conversions were granted according to the order in which substantiated requests were submitted by supervisors, with priority being given to those staff members whose fixed-term contracts were due to expire within one or two months of the request. In this process, the fixed-term contracts of more than 100 ITU staff members were converted to permanent contracts between 1 January and 1 July 2004. Sometime in July 2004, the Secretary-General decided, because of uncertainties with respect to the 2006-2007 budget, to suspend the conversion of fixed-term contracts pending the 2005 session of the ITU Council. It seems that, at that stage, another 70 staff members had become eligible for contract conversions.

5. The Council met from 12 to 22 July 2005 and, seemingly, approved the course taken by the Secretary-General. It was agreed that there were “real uncertainties concerning the budget, and that no decisions [could] be made [with respect to the contract policy] until a decision [was] made regarding the budget for 2006-2007”.

6. At various times from December 2002, requests were made by the supervisors of the parties to the first complaint for conversion of the complainants’ fixed-term contracts. The complainants, themselves, also requested conversion of their contracts. The supervisors who submitted requests in December 2002 or in early 2003 were informed by the Chief of the Personnel and Social Protection Department that, as the 2004-2005 budget had not been confirmed, their recommendations could not be considered at that stage. Some requests were renewed in 2004 and others were then made for the first time. In some instances, no replies were received. Similarly, requests were made in 2004 for the conversion of the contracts of the complainants in the second case and the complainant in the third case. They also went unanswered notwithstanding that Service Order No. 02/08 remained in force.

7. As the complainants’ contracts approached their end date, each was informed that his or her contract would be extended – generally for two years. Some were also informed that their contracts had not been converted at that stage because of a global impact study then being conducted. On various dates thereafter (many on 23 March 2005), the complainants were informed that it had been decided not to convert their fixed-term contracts. Each complainant then requested a review of that decision. In due course, each request was rejected, it being said that the decision was provisional. Thereafter, the complainants lodged appeals with the ITU Appeal Board.

8. The appeals of the complainants in the first case and those of 12 other ITU staff members were considered together by the Appeal Board. The Board recommended conversion of their fixed-term contracts provided that they met “the first and second criteria, taking into account the recommendation of the Director of the Bureau or head of [General Secretariat] department concerned as provided for in paragraph 2.4.2 of Service Order No. 02/08”. The appeals of the complainants in the second and third cases were dealt with individually and, in each case, the Board recommended the conversion of their fixed-term contracts.

9. The complainants were each informed that the Secretary-General had decided to reject the recommendations of the Appeal Board. Thereafter, the present complaints were lodged with the Tribunal, it being argued, amongst other things, that general budgetary uncertainty cannot justify the impugned decisions and that the failure to convert the complainants’ contracts constitutes unequal treatment. The complainants seek the setting aside of what are said to be implicit decisions not to convert their fixed-term contracts, as well as the actual decisions communicated to them and the decisions not to accept the recommendations of the Appeal Board. They also seek orders that their contracts be converted to permanent contracts, and claim moral damages and costs. Additionally, the complainants in the first and second cases ask for orders for the production of various documents for the purpose of demonstrating unequal treatment in comparison with those employees whose contracts were converted on or before 1 July 2004.

10. Although the ITU accepts that the present complaints are, themselves, receivable, it contends that the claim for moral damages and the request for the production of documents are irreceivable as they were made for the first time before the Tribunal. That contention must be rejected. The request for production of the documents in question is a procedural matter over which the Tribunal has complete authority. So, too, the claim for moral damages is a claim for consequential relief which the Tribunal has power to grant.

11. Two other preliminary matters should be noted at this stage. First, the ITU submits that decisions made

before the 2005 session of the ITU Council were temporary or provisional and, in effect, only became final decisions when the Council endorsed the suspension of Service Order No. 02/08 pending decisions on the 2006-2007 budget. A similar argument was put to the Appeal Board. The argument is untenable. Whatever might have been the outcome of the 2005 session of the Council, the decision not to convert the complainants' contracts when requested to do so was a final decision not to convert their contracts at that stage. It follows that the appeals were receivable by the Appeal Board. Had they not been, the present complaints would not be receivable by the Tribunal.

12. The second matter to be noted concerns the requests to set aside what are said to be implicit decisions refusing to convert the complainants' contracts. Those implicit decisions are said to have been constituted by the failure to respond to specific requests for conversion before finally informing the complainants that their contracts would not be converted. It may be that the complainants could have treated the failure to respond as a distinct decision entitling them to set the internal appeal procedures in motion. However, they did not. They lodged internal appeals only with respect to the actual decisions communicated to them. That being so, the Tribunal can deal only with those actual decisions.

13. The ITU argues that the decisions not to convert the complainants' contracts were justified by the requirement in Service Order No. 02/08 of "confirmation that continuing work and funding is available". That confirmation, it holds, necessitates consideration of the "overall budgetary situation". Further, the ITU points to the directive in paragraph 1.2 of the Service Order that the contracts policy should be "implemented under the authority of the Secretary-General, according to the needs of the Union and in its best interests". In that context, it asserts that, if the Secretary-General "had pressed on with the process of converting the contracts for all eligible staff members", he would have been failing in his duty to "take all the actions required to ensure economic use of the Union's resources".

14. The Secretary-General might have chosen to rescind or rewrite Service Order No. 02/08 in view of Decision COM6/2 but he took the responsibility not to do so. What he could not do was to keep it in the books but then not apply it according to its terms.

15. The course pursued prior to July 2004 and the arguments now advanced by the ITU indicate a failure to understand the nature of the decision to be made by the Secretary-General with respect to the conversion of a fixed-term contract. Service Order No. 02/08 requires the position of staff members to be considered individually having regard to the recommendation of the Director of the Bureau in which he or she is employed. Clearly, the Secretary-General may decide not to convert a staff member's contract notwithstanding a favourable recommendation. Equally clearly, he may take account of overall budgetary problems as they affect or are likely to affect the work or funding of the Bureau concerned. Even then, an assessment would have to be made as to the possible impact on the staff member concerned. Any other view would render meaningless the statement in paragraph 2.4.1 of Service Order No. 02/08 that "a staff member will normally be offered a permanent contract" after four years of continuous service. Moreover, there is nothing in the Service Order to suggest that the Secretary-General can simply suspend its operation and thereafter refuse to convert the contracts of individual staff members. Such a course is wholly inconsistent with the requirement in paragraph 2.4.2 that decisions be taken "as regards the staff of each Bureau, upon recommendation of the Director concerned". Further, that course would suggest, wrongly, that the Administration is not bound by its own rules and regulations.

16. Two further arguments are advanced by the ITU in support of its decisions not to convert the complainants' fixed-term contracts. The first relates to "flexibility of administrative management" which, it is said, is "essential to any international organization". It is sufficient to state that the matters to be taken into account when deciding whether or not to convert a fixed-term contract are specified in Service Order No. 02/08 and they do not include administrative flexibility. The second argument relates to a statement apparently made at the 2002 session of the ITU Council that "the proportion of staff members holding permanent contracts would [...] remain within between 50 and 60 per cent". It is claimed by the ITU that that proportion had reached 70 per cent by 1 July 2004. Whether or not that is so, there is nothing in Service Order No. 02/08 to indicate that it might properly be taken into account when deciding on the conversion of an individual staff member's contract.

17. As already indicated, Service Order No. 02/08 requires the Secretary-General to decide upon the conversion of fixed-term contracts on an individual basis. It does not permit a blanket suspension of the process which it directs. It is conceded by the ITU that, for the most part, the decisions affecting the individual complainants in the present cases were taken in consequence of the policy decision to suspend the conversion of fixed-term contracts

and not on the basis of a consideration of the budgetary position as it might affect them as individual staff members. That approach involved an error of law and, subject to a consideration of the position of the complainants in respect of whom additional arguments are put, the decisions to reject the recommendations of the Appeal Board and the earlier decisions not to convert the complainants' fixed-term contracts must be set aside.

18. The ITU puts an additional argument in relation to the staff members who are or were employed in TELECOM and who are complainants in the second and third cases. It is said that TELECOM is "by definition, not a permanent fixture" and, thus, its staff cannot be "guaranteed continuing work and its corollary, i.e., availability of funding". In the event that future TELECOM operations might cease because of budgetary difficulties, it would be permissible to cease converting the contracts of individual TELECOM staff members on that ground. Short of that situation, there is no basis for distinguishing between staff members who work in TELECOM and those who do not. The fact that TELECOM is not a "permanent fixture" is of no relevance in the absence of specific provisions to that effect in the Service Order. Certainly, it does not relieve the Secretary-General from the obligation to determine the availability of continuing work and funding in relation to each individual staff member. Accordingly, the argument made by reference to the nature of TELECOM must be dismissed. It follows that the decisions with respect to the complainants in the second and third cases involved the same error of law as those made solely in consequence of the decision to suspend the conversion of fixed-term contracts because of "overall" budgetary problems. It follows that those decisions must also be set aside.

19. Additional arguments are also put with respect to four of the staff members who are complainants in the first case. In the cases of Mr V. and Mr M., it is said that no recommendation was made for the conversion of their contracts, only for their extension. However, according to Mr V., a positive recommendation was in fact made with respect to his contract as early as December 2002. It is not possible to determine whether that recommendation was still current in March 2005 when he was informed of the decision not to convert his contract. No reason is provided for the absence of a recommendation with respect to Mr M.'s contract. It is possible that no recommendation was made because it was known that the operation of Service Order No. 02/08 had been suspended. In the absence of a recommendation, the proper course for the Secretary-General was to call for one before making a decision not to convert Mr M.'s contract. The terms of Service Order No. 02/08 dictate that a decision can only be taken "upon the recommendation of the Director [of the relevant Bureau]". The arguments advanced by the ITU with respect to Mr V. and Mr M. make it clear that, in neither case, were decisions made having regard to a relevant recommendation. Accordingly, those decisions were not taken in accordance with the procedure laid down in the Service Order and must be set aside.

20. The other two staff members in respect of whom the ITU puts forward additional arguments are Mrs M.-C. and Mr R.. In the case of Mrs M.-C., her supervisor stated that he/she would "revert on the [question of the conversion of her contract] as soon as future plans within the [relevant Unit] ha[d] been clarified". That communication is not a recommendation, whether for or against conversion. Accordingly, it provided no basis for a decision not to convert Mrs M.-C.'s contract. For the same reasons as apply to Mr V. and Mr M., the decision relating to Mrs M.-C. must be set aside.

21. In the case of Mr R., a negative recommendation was made by his supervisor by reference to a restructuring that was then in progress. That was a matter that was properly to be taken into account by the Secretary-General when making his decision. However, it is contended on behalf of Mr R. that that is not a valid consideration because the funding of contracts is no longer linked to specific posts and, thus, the criteria of continuing work and available funding must be determined having regard to "the global ITU budget". This argument suffers from the same defect as that advanced by the ITU in support of the decision to suspend the conversion of contracts because of "overall" budgetary difficulties. As earlier explained, Service Order No. 02/08 requires the Secretary-General to consider the position of individual staff members, albeit that in that exercise regard may be had to the overall situation. Thus, the argument advanced on behalf of Mr R. must be rejected. None of the other matters advanced on his behalf or on behalf of the complainants generally, including the argument with respect to unequal treatment, provide any basis for concluding that the decisions with respect to the non-conversion of his contract should be set aside. Accordingly, his complaint must be dismissed.

22. Leaving aside Mr V., Mr M., Mrs M.-C. and Mr R., the ITU has made no attempt to establish that, individually, any of the other complainants failed to satisfy the criteria specified in Service Order No. 02/08 for the conversion of their fixed-term contracts. That being so, it is appropriate to make orders for their conversion. In the case of Mr V., Mr M. and Mrs M.-C., the appropriate course is for the matters to be remitted to the Secretary-General for reconsideration upon receipt of current recommendations from the Directors of the Bureaux in which

they are employed.

23. As all complainants, other than Mr R., have suffered the consequences of a wrongful decision, there should be an award of moral damages in the sum of 1,000 Swiss francs to each of them. Further, there should be an award of costs in each case in the sum of 500 francs. Although Miss C. was not legally represented, she should receive an award of costs in the same amount to compensate her for the time and expense involved in the preparation of her case.

24. It is unnecessary to consider the argument with respect to unequal treatment because the individual decisions, other than those with respect to Mr R., must be set aside for error of law or for failure to observe the procedures laid down by Service Order No. 02/08. Moreover, Mr R.'s case is not advanced by the argument with respect to unequal treatment. It follows that there is no occasion to order the production of documents as requested by certain complainants and their applications in that regard are dismissed.

## DECISION

For the above reasons,

1. The complaint of Mr R. is dismissed.
2. In the case of each of the remaining complainants, the complaint is allowed and the decision rejecting his or her internal appeal is set aside, as is the earlier decision refusing to convert his or her fixed-term contract to a permanent contract.
3. In the case of each of the remaining complainants, other than Mr V., Mr M. and Mrs M.-C., the ITU is to convert their fixed-term contracts to permanent contracts.
4. In the case of Mr V., Mr M. and Mrs M.-C, the matter is remitted to the Secretary-General for reconsideration in accordance with the procedures laid down in Service Order No. 02/08.
5. The ITU shall pay each of the complainants, other than Mr R., moral damages in the sum of 1,000 Swiss francs.
6. It shall also pay each of the complainants, other than Mr R., costs in the sum of 500 francs.

In witness of this judgment, adopted on 3 November 2006, Mr Michel Gentot, President of the Tribunal, Ms Mary G. Gaudron, Judge, and Mr Agustín Gordillo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 7 February 2007.

Michel Gentot

Mary G. Gaudron

Agustín Gordillo

Catherine Comtet