

F.
v.
ICC

125th Session

Judgment No. 3907

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms F. F. against the International Criminal Court (ICC) on 21 May 2016 and corrected on 16 June, the ICC's reply of 28 September 2016, the complainant's rejoinder of 9 January 2017 and the ICC's surrejoinder of 20 April 2017;

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

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

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

The complainant challenges the decisions to abolish her post and terminate her fixed-term appointment.

At the material time the complainant was employed with the ICC as Head of the Staff Administration Unit at grade P-3 under a fixed-term contract which was due to expire on 13 April 2020.

In 2013 the Assembly of States Parties to the Rome Statute of the International Criminal Court authorized the Registrar of the Court to reorganise the Registry. This reorganisation became known as the *ReVision* Project. In August 2014 the Registrar issued Information Circular ICC/INF/2014/011 entitled "Principles and Procedures Applicable to Decisions Arising from the *ReVision* Project" (Principles and Procedures). On 13 June 2015 Information Circular ICC/INF/2014/011 Rev.1 was

issued, which revised the Principles and Procedures; the revised version was in force at the material time.

By a letter dated 17 June 2015 the complainant was notified by the Registrar that her post was being abolished and that her appointment would terminate as of 15 October 2015. It was explained that it had been decided to change the structure of the Human Resources Section (HRS) and as a result her position was no longer required; what was needed instead was the position of HR Officer – Entitlements and Payroll. She was informed *inter alia* of the options that were open to her, including the acceptance of an enhanced agreed separation package or the opportunity to apply as an internal candidate (for newly created positions arising as a direct result of the *ReVision* Project) with the priority consideration provided for in the Principles and Procedures. In the event that she sat for an interview for any position as a priority candidate, she would lose the option to accept the enhanced agreed separation package.

Following the letter of 17 June the complainant applied as an internal candidate with priority consideration for several new positions that had arisen as a direct result of the *ReVision* Project.

On 16 July 2015 the complainant requested a review of the decision of 17 June as follows: “Reference is made to your notification letter of 17 June 2015 [...] in relation to the abolishment of my current post of Head, Staff Administration as of 15 October 2015. I would like to make a request for review [...]”. In a letter of 21 August the Registrar replied that the complainant had requested a review of the decision to abolish her post and he maintained that decision.

On 5 October the complainant submitted a statement of appeal in which she challenged the decisions to abolish her position and terminate her appointment.

By a letter of 13 October 2015 the Registrar informed the complainant that she had not been successful in securing a position as a result of the recruitment exercises she had participated in. She was further notified that her appointment would terminate on 22 October.

On 20 October the complainant filed a request for suspension of action with respect to the decision to terminate her appointment. On 22 October she was notified that the termination date of her appointment was extended until 23 October. Also on 22 October the Appeals Board recommended that her request for suspension of action be denied. On 23 October 2015 the Registrar accepted that recommendation and the complainant separated from service that day.

In a report of 22 January 2016 the Appeals Board concluded that the complainant's appeal of 5 October 2015 was fully receivable. A majority of the members of the Appeals Board recommended that the Registrar should: (a) consider ordering a work survey, if feasible, on the functions the complainant was actually performing at the relevant time and the impact, if any, on the classification of her post; (b) consider whether she could be reassigned to any position without competition and, if not, indicate the reasons why and the positions that had been considered; and (c) in all events, consider awarding her compensation for the violations of the ICC's duty of care towards her and compensation if a desk audit or reassignment were impossible given the passage of time. It also recommended that the Registrar consider appropriate compensation for the failure to conduct a work survey of the complainant's post. In a minority opinion, one member of the Appeals Board dissented in part on the merits.

On 22 February 2016 the Registrar informed the complainant that he did not agree with the Appeals Board's conclusion that her appeal was receivable with respect to the decision to terminate her appointment. He also did not accept the recommendations of the majority of the Appeals Board. Thus, he maintained the decisions to abolish her post and terminate her appointment. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to order her reinstatement in her former position of Head of the Staff Administration Unit. If reinstatement in her former post is not possible, she seeks reinstatement in another equivalent post. In addition, she claims compensation for loss of salary, including post adjustment, medical insurance, long term care subsidy and pension benefits, with interest on those amounts from 23 October 2015. In the

alternative, she claims damages in the sum of 367,562.90 euros (representing five times her annual base salary), plus other emoluments. She seeks moral damages and reasonable costs. She claims any other remedy the Tribunal considers appropriate and in her rejoinder she states that this could take the form of punitive damages.

The ICC submits that the complaint is irreceivable insofar as it concerns the decision to terminate the complainant's appointment. It asks the Tribunal to dismiss the complaint and to deny the complainant's requests for relief. The ICC challenges the quantum of damages she claims, and asks the Tribunal to deduct the sum of the termination indemnity paid to her and any occupational earnings by the complainant from 23 October 2015 until 13 April 2020 from any compensation awarded to her for economic loss.

CONSIDERATIONS

1. On 17 June 2015 the Registrar of the Court informed the complainant of the decision to abolish her position. In the same letter, the complainant was also informed about the termination of her appointment. In the present complaint, the complainant challenges the abolition of her position and the termination of her appointment. These decisions stem from the restructuring of the Court's Registry.

2. The ICC submits that to the extent the complainant contests the decision to terminate her appointment, her complaint is irreceivable. The ICC argues that in her request for review the complainant contested the decision to abolish her position and not the termination of her appointment. It was only in the internal appeal that the complainant expanded the scope of her appeal to include the decision to terminate her appointment.

3. In her pleadings, it appears that the complainant viewed the 17 June letter as the notification of a single decision. This is also reflected in her response to the ICC's position on receivability. The complainant points to the sentence in the letter that states: "[a]s such your post will

be abolished and your appointment would terminate as of 15 October 2015.” The complainant stresses that this sentence can only be understood as a decision to abolish her post and consequently to terminate her appointment. That is, without the abolition of the post there would be no termination of the appointment. The Tribunal notes that if she were to be successful in her complaint regarding the abolition of her post, then it follows that the termination of her appointment would be rendered unlawful. The only basis on which the termination of the appointment could survive is if the abolition of the position is lawful. For reasons that will become evident, at this point, a resolution of the receivability issue is unnecessary. Suffice it to say that decisions to abolish a post and terminate an appointment are separate and distinct decisions.

4. The complainant advances a number of arguments in support of her contention that the Registrar’s decision to abolish her position and terminate her appointment was unlawful. She submits that the Principles and Procedures on which the decision was based were unlawfully promulgated; the decision to abolish her position was tainted by procedural error as the classification process was not conducted in compliance with the Principles and Procedures; the conditions precedent for the abolition of her position were not met; the ICC failed to make reasonable efforts to redeploy the complainant; and the decision was tainted by improper motive and abuse of process.

5. As the lawfulness of the promulgation of the Principles and Procedures is a central issue in this complaint, the following review of Presidential Directive ICC/PRES/D/G/2003/001 of 9 December 2003 (Presidential Directive), the Principles and Procedures and the relevant Staff Regulations and Staff Rules will provide the required context for the discussion to follow.

6. The Presidential Directive governs the promulgation of the ICC’s three types of administrative issuances: Presidential Directives, Administrative Instructions and Information Circulars. In relevant part, section 1.2 of the Presidential Directive provides that “[r]ules, policies or procedures intended for general application may only be established by

duly promulgated Presidential Directives and Administrative Instructions”. Pursuant to section 2.1, a Presidential Directive is required for “the promulgation of procedures for the implementation of regulations, resolutions and decisions adopted by the Assembly of States Parties”. Under section 2.1(b), this includes the “[p]romulgation of Staff Regulations and rules”. Section 3.1 relevantly states that the procedures for the implementation of Staff Regulations and Rules must be prescribed by Administrative Instruction. Section 4.1 provides that an Information Circular is “limited to isolated announcements of one time or temporary interest which do not involve policies or regulatory matters covered under sections 2 and 3”. Section 5.1 requires that “[o]fficials proposing the promulgation of an administrative issuance shall ensure that it is prepared in proper consultation with all major organizational units concerned”. Pursuant to section 6.1, a “proposal for an administrative issuance that has followed the consultative process set out in section 5 [...] shall be submitted to the Office of the Registrar for final processing”. Under section 6.2, the central registry is responsible for reviewing any proposed new issuance to ensure, among other things, that “it has been cleared by the Legal Advisory Services Section in order to ensure compliance with the Statute, Rules of Procedure and Evidence, other instruments and directives of the Court [...]”. Lastly, section 6.3 states that “[a]n administrative issuance shall not be submitted for signature without certification that all of the [listed] requirements have been met”.

7. Paragraphs 4 and 5 of the Principles and Procedures respectively set out their scope and purpose. The Principles and Procedures “apply to positions, established posts and GTA, affected by the Project” and are “limited to the period of operation of the Project”. The purpose of the Principles and Procedures is to “establish a framework for the implementation of decisions arising from the restructuring process [...]”. At paragraph 6, it states that the Principles and Procedures “are intended to compliment the ICC Staff Regulations and Rules (‘SRRs’) and Administrative Issuances (‘AIs’)”. Only two decisions are specifically identified in the Principles and Procedures as arising from the restructuring process, namely, the redeployment of positions and the abolition of positions. Except for one paragraph concerning the process for the

redeployment of positions, the remainder of the document appears to be directed at the abolition of positions. In particular, the Principles and Procedures deal with the reasons for which positions may be abolished; the notification of decisions to abolish positions; information regarding appeals of decisions to abolish a position and the conciliation procedure; the enhanced agreed separation package available to staff members whose positions are abolished; the classification of positions; priority recruitment for candidates whose posts are abolished; and support mechanisms for staff members affected by decisions made as part of the *ReVision* Project.

8. Separation from service is governed by the ICC Staff Regulations and Staff Rules. Staff Regulation 9.1 is the source of the Registrar's discretionary authority to terminate the appointment of a staff member prior to the expiration of the staff member's contract. The Regulation lists the grounds on which an appointment may be terminated and relevantly includes, under paragraph 9.1(b)(i), "[i]f the necessities for the service require the abolition of the post or reduction of the staff". Staff Regulation 9.1(a) also requires the Registrar to give reasons for the termination of the appointment. Staff Regulation 9.2 provides that if the Registrar terminates an appointment, the staff member must be given the applicable notice and indemnity payment provided in the Staff Regulations and Staff Rules.

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

10. Staff Rule 109.2(a) provides that the termination of a staff member's appointment shall take place in accordance with Staff Regulation 9.1(b) and the reasons for the termination must be given in writing. Pursuant to Staff Rule 109.2(e), the staff member must be given

at least thirty days' written notice of the termination or the amount of time stipulated in the staff member's letter of appointment. Under Staff Rule 109.2(f), in lieu of notice, the Registrar may authorize compensation "equivalent to salary, applicable post adjustment and allowances that the staff member would have received had the date of termination been at the end of the relevant notice period [...]". Staff Rule 109.2(g) provides for the payment of a termination indemnity (as detailed in that rule) to a staff member whose appointment exceeds six months and whose appointment is terminated.

11. Staff Rule 109.2(l) provides that, where an appointment is ended by mutual agreement pursuant to Staff Rule 109.1(b)(iii), a staff member may be paid, at the discretion of the Registrar, an indemnity of up to one and a half times the termination indemnity stipulated in Staff Rule 109.2(g). Lastly, pursuant to Staff Rule 109.2(n), a staff member who is to be separated "as a result of [...] the abolition of a post [...] may be placed on special leave without pay pursuant to staff rule 105.3 (b) (viii)" and, "[i]n such cases, the Court shall, on the written request of the staff member prior to being placed on special leave, pay the pension contribution of the Court and/or the staff member during the period of special leave". Staff Rule 109.2(n) also provides that "[t]he total amount of the contributions shall be deducted from the termination indemnity otherwise payable to the staff member". Staff Rule 105.3(a) provides that "[s]pecial leave without pay may, at the discretion of the Registrar [...] be granted for a continuous period of up to two years at the request of a staff member". Staff Rule 105.3(b) lists the reasons for which special leave without pay may be granted including "[a]ny other compelling reasons". At this point, it must also be observed that there are no Staff Regulations or Staff Rules governing the abolition of a post. The only references in the Staff Regulations and Staff Rules to the abolition of a position are as a ground for the termination of appointment and entitlement to special leave without pay.

12. Turning to the decision to abolish the complainant's position, the complainant submits that the Principles and Procedures were unlawfully promulgated by the issuance of an Information Circular

rather than by a Presidential Directive or an Administrative Instruction. In summary, the complainant submits that as the Principles and Procedures impacted the terms of employment of non-Registry staff members and were, therefore, of general application, their promulgation by way of an Information Circular violated section 1.2 of the Presidential Directive. The complainant disputes the ICC's assertion that the Principles and Procedures are of "temporary interest" as contemplated in section 4.1 of the Presidential Directive. While not conceding this point, the complainant submits that there are two criteria in section 4.1 that must be met for the promulgation of an administrative issuance by way of an Information Circular. The second criterion that must be met is that the administrative issuance does not "involve policies or regulatory matters". The complainant argues that the statement in the Principles and Procedures that they are intended to complement the Staff Regulations and Staff Rules and administrative issuances is an acknowledgement that they involve policies or regulatory matters. The complainant also adds that the ICC's assertion of its consultation with the Staff Union Council has not been demonstrated and, in any event, it is irrelevant. In her view, as the promulgation of the Principles and Procedures was unlawful, the changes they purported to impose were without legal effect and any decision based on them was also unlawful.

13. The ICC disputes the complainant's assertion that the Principles and Procedures were generally applicable to all staff members of the Court. The ICC stresses that the Principles and Procedures were only intended to apply to Registry staff members. The ICC acknowledges that, as the Appeals Board observed, the Principles and Procedures may have had some indirect or remote effects on staff members outside the Registry. However, the Principles and Procedures only applied to Registry staff members, that is, those affected by the related administrative decisions abolishing their specific posts and terminating their appointments. Therefore, the Principles and Procedures did not fall within the "[r]ules, policies or procedures intended for general application" under section 1.2 of the Presidential Directive. The ICC also stresses that the positions and appointments of staff members in

other organs of the Court were not affected by decisions arising from the *ReVision* Project.

14. The ICC also disputes the complainant's submissions regarding the permanent nature of the changes introduced in the Principles and Procedures in violation of section 4.1 of the Presidential Directive and that the Principles and Procedures prescribe procedures for the implementation of the Staff Regulations and Staff Rules. The ICC argues that the Principles and Procedures do not prescribe procedures for the implementation of the Staff Regulations and Rules, in that, unlike the Staff Regulations and Staff Rules, they do not apply to all staff members of the Court. Moreover, the Principles and Procedures are only of temporary interest as they will only last for the duration of the *ReVision* Project.

15. The ICC adds that as the Principles and Procedures were intended to apply only to Registry staff and were lawfully promulgated by way of an Information Circular, the Registrar was not required to consult the other organs of the Court. The consultation with the Staff Union Council simply underscored the broad support for the Principles and Procedures and is a relevant consideration in determining their lawfulness.

16. The ICC's submission that as the application of the Principles and Procedures is limited to Registry staff members it does not fall within the ambit of section 1.2 of the Presidential Directive is rejected. The fact that the Principles and Procedures were only intended to apply to Registry staff members does not overtake the statement in the Staff Regulations, under the heading, "Scope and Purpose", that the "Staff Regulations and Rules shall apply to all staff of the Court". Moreover, the requirement in section 1.2 of the Presidential Directive that "[r]ules, policies or procedures intended for general application" must be promulgated by Presidential Directives or Administrative Instructions must be read in the context of the other provisions in the Presidential Directive. Under section 2.1, a Presidential Directive is required for the promulgation of Staff Regulations and Staff Rules adopted by the Assembly of States Parties. Pursuant to section 3.1, the purpose of an

Administrative Instruction is relevantly to prescribe procedures for the implementation of Presidential Directives including procedures for the implementation of the Staff Regulations and Staff Rules. Importantly, section 4.1 limits the use of Information Circulars “to isolated announcements of one time or temporary interest which do not involve policies or regulatory matters covered under sections 2 and 3 [...]”.

17. Although the ICC stresses that the Principles and Procedures were intended to complement the Staff Regulations and Staff Rules, a review of its provisions do not bear this out. Indeed, as illustrated below, a number of the provisions in the Principles and Procedures involve regulatory matters.

18. The Principles and Procedures, at paragraph 13, provide that “[i]n the event that the staff member’s appointment expires in the period between the date of notification of the abolition of a position and the effective date of abolition, the staff member’s appointment **shall** be extended until the effective date of abolition” (emphasis added). However, Staff Regulation 4.5(a) relevantly provides that “[a]n appointment may be extended or renewed at the discretion of the Registrar or the Prosecutor, as appropriate, **if the staff member is willing to accept such extension** or renewal” (emphasis added). While the obligatory extension of an appointment until the effective date of the abolition of the incumbent’s position may from a staff member’s perspective be viewed as positive, the extension of an appointment is governed by Staff Regulation 4.5(a). Even though paragraph 13 of the Principles and Procedures is applicable only to the abolition of posts as a result of the restructuring process, it involves a change to Staff Regulation 4.5(a).

19. As discussed above, under the Principles and Procedures, a staff member whose post is abolished is given a choice of two options: the acceptance of an “enhanced agreed separation package” or priority consideration as an internal candidate for newly created positions arising from the *ReVision* Project. Paragraph 17 sets out a time frame within which a staff member may opt to accept the enhanced agreed separation package. As well, a staff member who sits an interview as a priority candidate forfeits the right to take the enhanced agreed

separation package. Paragraph 17 then states that “[a]ny separations following the [stipulated] period shall be effectuated on the basis of the termination indemnity provisions contained in Staff Rule 109”.

20. Staff Rule 109.2(g) governs the payment of a termination indemnity. It provides that except as provided in paragraphs (j), (k) and (l), “a staff member whose appointment exceeds six months, and whose appointment is terminated, shall be paid a termination indemnity” in accordance with the table provided in that paragraph. Paragraph (j) concerns the indemnity payable in the case of termination of appointment for health reasons. Paragraph (k) concerns the indemnity payable in the case of termination of appointment for unsatisfactory service or dismissal for misconduct other than by summary dismissal. Paragraph (l) provides for the payment of an indemnity when an appointment is ended by mutual agreement pursuant to Staff Rule 109.1(b)(iii). It is convenient to note that the Principles and Procedures, at paragraph 19, provide that where a staff member accepts the enhanced agreed separation package, the cause of the separation from service is separation by mutual agreement pursuant to Staff Rule 109.1(b)(iii). Given that a termination indemnity is only payable to a staff member whose appointment is terminated, paragraph 17 of the Principles and Procedures appears to be either an attempt to broaden the application of the payment of a termination indemnity to “any separations” or a means of circumventing Staff Regulation 9.1 governing the termination of appointments. In either case, it clearly involves a change to the regulatory framework.

21. Paragraph 18 of the Principles and Procedures sets out the terms of the enhanced agreed separation package. Among other things, it provides for the following payment:

- “(i) Payment of standard termination indemnity, to which a staff member would ordinarily be entitled as provided in the table under Staff Rule 109.2(g), plus an increase of 50% pursuant to Staff Rule 109.2(l) for agreed terminations;
 - (ii) Exceptional payment of an additional sum of 3 months’ salary, including allowances and post adjustment;
 - (iii) Payment of notice period as provided for in the staff member’s terms of appointment;
- [...]”

22. Staff Rule 109.2(1) governs the payment of an indemnity to a staff member whose appointment is ended by mutual agreement pursuant to Staff Rule 109.1(b)(iii). It gives the Registrar the discretionary authority to pay an indemnity of up to one and a half times the termination indemnity in Staff Rule 109.2(g). It is observed that the payment due to a staff member under the terms of the enhanced agreed separation package exceeds the amount contemplated in the Staff Rule.

Paragraph 18 of the Principles and Procedures also provides:

“(iv) Use of a period of Special Leave Without Pay pursuant to Staff Rule 105.3 (b) (vii), which shall be extended as follows solely for the purposes of the Project insofar as staff members within the following categories shall be permitted to make pension contributions, at their own expense, for an additional maximum period of 2 years: staff members who at the time of notification of abolition of their post (a) are within two years of meeting the mandatory minimum contributory period of 5 years of contributions as stipulated at Article 28 UNJSPF Regulations; (b) are within 7 years of reaching the current mandatory retirement age of 62 years of age (ie those 55 years of age and older).”

It is clear from the language of paragraph 18 itself that it provides an enhancement to Staff Rule 105.3(b)(vii) governing the Special Leave Without Pay.

23. Paragraph 20 of the Principles and Procedures states that for a staff member who takes the enhanced agreed separation package, the 120 day notice period (under paragraph 13) for the abolition of positions is waived and replaced by the notice period in the staff member’s terms of appointment. It also provides that in these cases “the staff member shall separate as soon as is practicable and notice shall be effectuated as payment in lieu of notice as provided at staff rule 109.2(f)”. However, in Staff Rule 109.2(f) the payment in lieu of notice is specifically limited to the termination of an appointment. It does not apply to a separation by mutual agreement. As an aside, it is observed that the use of the word “terminations” at paragraph 18(i) of the Principles and Procedures fails to have regard to the statutory distinction between a termination of an appointment and a separation by mutual agreement. This is another attempt to broaden the application of a staff rule for the purpose of the restructuring process under the *ReVision* Project.

24. The above review of the Principles and Procedures shows that a number of the provisions involve the implementation of material changes to the Staff Regulations and Staff Rules including, in some instances, significant enhancements to existing benefits under the Staff Regulations and Staff Rules. It is convenient to observe that, contrary to the ICC's assertion, these provisions do impact non-Registry staff members. One of the central purposes of staff regulations and rules is to ensure the equal treatment of all staff members. As these provisions are said to only apply to decisions arising from the *ReVision* Project, if accepted, they would result in unequal treatment not only for staff members outside the Registry but also for those Registry staff members not affected by the restructuring.

25. The complainant also submits that the Principles and Procedures were not cleared by the Legal Advisory Services Section prior to their promulgation as required in section 6.2(e) of the Presidential Directive. She points out that despite the risks surrounding the promulgation of the Principles and Procedures by way of an Information Circular identified by the Chief of the Registry Legal Advisory Services Section in an email of 12 August 2014 to the Registrar, they were nonetheless promulgated without having dealt with the issues raised. The ICC takes the position that the email is merely legal advice and is not probative of the intentions of the Registrar. In addition, it indicates support for the promulgation of the Principles and Procedures by way of an Information Circular. The Tribunal notes that section 6.3 of the Presidential Directive states that “[a]n administrative issuance shall not be submitted for signature without certification that all the [requirements in section 6.2] have been satisfied”. Although section 6.3 is directed at the requirements that must be met prior to submitting an administrative issuance for signature, it necessarily implies that an administrative issuance should not be signed without the requisite clearance. In the absence of the requisite clearance, the Registrar lacked the authority to sign the Information Circular.

26. In conclusion, pursuant to the Presidential Directive, the Principles and Procedures should have been promulgated by an Administrative Instruction or, arguably, by a Presidential Directive.

As the promulgation of the Principles and Procedures by Information Circular was in violation of the Presidential Directive, they were without legal foundation and are, therefore, unlawful as are the decisions taken pursuant to the Principles and Procedures. It follows that the decisions to abolish the complainant's position and to terminate the complainant's appointment were also unlawful and will be set aside.

27. The complainant sought the disclosure by the ICC of specific documents. It appears from the pleadings that she subsequently obtained documents which may have satisfied, either partially or completely, this request. In any event, given the Tribunal's findings in this case, an order for the production of documents will not be made.

28. The ICC has made submissions with respect to the confidentiality of evidence that has been submitted by the complainant to the Tribunal. The Tribunal has taken note of these submissions and has referred to the evidence it considers necessary to achieve justice between the parties.

29. In conclusion, the impugned decision and the decisions of 17 June 2015 will be set aside. The Tribunal will award the complainant material damages in the amount of 220,000 euros, less the amount paid to her as a termination indemnity. The Tribunal has taken into account all of the circumstances of the case in determining this amount, including the duration of the complainant's contract, the income she would have earned at the ICC, but has also taken into account the income she could have earned in other employment and the possibility that in due course her employment could have been terminated lawfully. The complainant is entitled to an award of moral damages in the amount of 40,000 euros. She is also entitled to an award of costs in the amount of 8,000 euros.

DECISION

For the above reasons,

1. The Registrar's 22 February 2016 decisions are set aside as are his 17 June 2015 decisions.

2. The ICC shall pay to the complainant material damages in the amount of 220,000 euros, less the amount paid to her as a termination indemnity.
3. The ICC shall pay the complainant moral damages in the amount of 40,000 euros.
4. The ICC shall pay the complainant costs in the amount of 8,000 euros.
5. All other claims are dismissed.

In witness of this judgment, adopted on 9 November 2017, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 24 January 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ