

S. (No. 8)

v.

IAEA

124th Session

Judgment No. 3831

THE ADMINISTRATIVE TRIBUNAL,

Considering the eighth complaint filed by Ms H. S. against the International Atomic Energy Agency (IAEA) on 21 November 2013 and corrected on 18 February 2014, the IAEA's reply of 10 June, the complainant's rejoinder of 5 September, and the IAEA's surrejoinder of 17 December 2014, corrected on 14 January 2015;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

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

The complainant challenges the decision to dismiss her allegations of harassment.

Facts relevant to this complaint can be found in Judgment 3188, delivered in public on 6 February 2013, and Judgment 3215, delivered in public on 4 July 2013, concerning the complainant's first and second complaints respectively. Suffice it to recall that in Judgment 3215 the Tribunal found that the complainant had raised the question of harassment in a memorandum of 16 June 2009 for the specific and confined purpose of advancing a compensation claim for a service-incurred illness under Appendix D to the Staff Regulations and Staff Rules. It was only on 9 September 2010 that she had first made a claim of harassment which involved allegations of misconduct that might require action on the part of the IAEA against individuals or to

otherwise protect the complainant. At the time of the delivery of Judgment 3215 the harassment complaint of 9 September was the subject of an internal review and the Tribunal dismissed that aspect of her second complaint as irreceivable.

In the meantime, before the delivery of Judgment 3215, on 19 November 2010 the complainant met with a member of the Administration to discuss a possible resolution of her harassment claim. In the absence of an agreement between the parties, the complainant was notified on 5 January 2011 that her harassment complaint of 9 September had been forwarded to the Office of Internal Oversight Services (OIOS) for investigation.

On 9 June 2011 the OIOS declined to investigate the matter and referred it back to the Administration so that formal mediation could be undertaken. Later that month the Director of the Division of Human Resources (MTHR) requested that the OIOS pursue the investigation, given that previous attempts at mediation had been unsuccessful.

In its final investigation report of 12 July 2012 (OIOS report) the OIOS concluded that the complainant's allegations could not be substantiated.

By an e-mail of 22 August 2012 the complainant enquired about the status of her harassment complaint. She was informed that same day that it was being processed by MTHR.

In a letter of 30 October 2012 the complainant was notified that the Administration had decided to close the harassment case. On 12 December 2012 she asked the Director General to review that decision and she sought moral and material damages and disclosure of the OIOS investigation files. In a letter of 15 January 2013 Director General denied her requests. On 14 February 2013 the complainant filed an appeal with the Joint Appeals Board (JAB) in which she challenged that decision and sought, among other things, disclosure of the OIOS investigation files. She filed a supplemental statement with the JAB on 13 March 2013.

The complainant was not provided with a copy of the OIOS investigation files or the OIOS report. The JAB issued its report on 5 August 2013. It concluded that the OIOS investigation was comprehensive and was not flawed by any material deficiencies. Due process had been

followed in the handling of the harassment complaint and there had been no undue delay. In addition, the relevant provisions of the OIOS Procedures for the Investigation of Staff Members (AM.III/4) precluded the complainant from having access to the OIOS files or the OIOS report. The JAB recommended that the Director General uphold the original decision and dismiss the appeal. By a letter of 2 September 2013 the Director General informed the complainant that he accepted the JAB's conclusions and had decided to dismiss her appeal and maintain the decision to close the case concerning her harassment complaint as unsubstantiated. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision. She claims material and moral damages and costs in the sum total of 75,000 euros.

The IAEA requests the Tribunal to dismiss the complaint in its entirety and to deny all of the complainant's claims. In its surrejoinder it asks the Tribunal to order the complainant to pay costs on the grounds that this complaint constitutes an abuse of process. Alternatively, in the event that the Tribunal upholds the complaint, the IAEA asks it to disallow the complainant's claim for costs for the same reason.

CONSIDERATIONS

1. The complainant submits her due process rights were breached; the IAEA failed to investigate her harassment complaint promptly and expeditiously; the JAB erred in its analysis; the OIOS investigation and report were flawed and there was an abuse of power on the part of an IAEA official.

2. The complainant contends that the IAEA's failure to provide her with a copy of the OIOS report and its investigation file constitutes a breach of her due process rights. She argues that a staff member alleging harassment has a right to the disclosure of the OIOS report and other OIOS investigative materials so that she or he may prepare and lodge an internal appeal against the decision taken by the IAEA in relation to those allegations.

3. The complainant claims that the procedures followed by the IAEA when there has been a report of misconduct are comparable to procedures used at other international organisations “where the grievance is considered by a panel strictly mandated to consider whether harassment has occurred, after which referral may be made to the executive head for possible disciplinary action. The grievance panel can interview witnesses and obtain documents, and makes detailed findings, and its report is made available to the aggrieved staff member.” (Emphasis added.) Further, “[o]nce an action is taken following the disciplinary procedure, the aggrieved staff member may lodge an internal appeal.” In the complainant’s view, it follows that “access to the OIOS Report and its findings, including any transcripts of witness interviews, become essential for the staff member alleging harassment”.

4. She also argues that there has been a procedural error. She relies on Judgment 3272, under 14, where the Tribunal reiterated the well-established principle that “a staff member must, as a general rule, have access to all evidence on which the authority bases (or intends to base) its decision against him”. She notes that the JAB had a copy of the OIOS report which contained witness interviews and other materials gathered by the OIOS during its investigation. The complainant also notes that the OIOS is obligated to prepare a written record of an interview with the subject of an investigation. She states that in addition to her supervisor she identified a number of subjects in her harassment complaint and contends that she should have been given the written records of their interviews because they were made available to the JAB. As she was not given a copy of the OIOS report or any evidence the OIOS gathered during the investigation, she was unable to challenge the finding of the JAB, reflected in the Director General’s final decision, that the OIOS concluded that there was no evidence of harassment.

5. The complainant disputes the IAEA’s argument that although the case law recognizes that the subject of an investigation is entitled to review an investigation report to respond to the allegations made against her or him, this same right has not been recognized in the case law for the reporters of alleged misconduct. She points out that in the

case leading to Judgment 3250 the organisation provided an investigator's report concerning allegations of harassment made by the complainant in that case to that complainant. She also disputes the IAEA's reliance on the confidentiality provisions in the OIOS Procedures for the Investigation of Staff Members. She argues that confidentiality cannot defeat due process rights.

6. Lastly, the complainant maintains that the IAEA's failure to disclose the OIOS report compromises the Tribunal's power of review. As well, the IAEA's disclosure of the OIOS report in its reply in the proceedings before the Tribunal does not remedy the breach of due process during the internal appeal.

7. Before turning to the IAEA's submissions on disclosure, an overview of its process for dealing with an allegation of misconduct is useful. In Appendix G to the Administrative Manual, Part II, Section 1, entitled "Procedures to be Followed in the Event of Reported Misconduct" (Appendix G), an action in relation to a staff member's misconduct may be initiated in several ways including upon receipt by the Director of MTHR of a written report from a staff member. If the Director of MTHR, upon reviewing that report, considers that further investigation is required, the report is sent to the Director of OIOS for further investigation who, in turn, reports the findings of the investigation to the Director of MTHR.

8. The process to be followed in the conduct of an investigation is detailed in the Administrative Manual, Part III, Section 4, entitled "OIOS Procedures for the Investigation of Staff Members" (OIOS Procedures). The process includes a screening of the report of alleged misconduct. Paragraph 13 of the OIOS Procedures provides, among other things, that the "OIOS will assess the reported allegation to determine whether" all the enumerated requirements have been met. Next, a determination is made as to whether the allegation of misconduct warrants an investigation. If an investigation is not warranted the Director of OIOS or the Director of MTHR informs the reporter of the

possible misconduct (if the reporter is identified) that the investigation into her or his report is concluded.

9. As to the reporting of the results of an investigation, the OIOS Procedures provide that a Draft Investigation Report prepared by the investigator is forwarded to the Director of OIOS to determine whether there is sufficient evidence to substantiate the report of possible misconduct. If there is insufficient evidence the Director of OIOS will direct that the investigation be closed and the subject of the investigation will be informed of this decision in writing. If the report of possible misconduct is substantiated, the subject of the investigation is given a copy of the Draft Investigation Report and an opportunity to comment on it. After taking into account the subject's comments, a Final Investigation Report is prepared and forwarded to the Director of MTHR, the subject is informed that the investigation has been concluded and the reporter of the misconduct is also informed that the investigation into their report is concluded. If the investigation results in a finding that the report of misconduct is substantiated, the procedures in Appendix G are engaged again. These may include the imposition of disciplinary measures following or in the absence of a referral to the Joint Disciplinary Board, the imposition of sanctions which are not considered disciplinary in nature, or closure of the case. Other than being the initiator of an action, there are no other references to the reporter of the possible misconduct in Appendix G.

10. Some preliminary observations are necessary. The complainant's assertion set out in consideration 3, above, is fundamentally flawed. First, whether the Appendix G procedures are comparable to those of other international organisations is irrelevant. Second, and more importantly, it confounds two distinct and separate parts of the Appendix G procedures, namely, the investigation process and the disciplinary process. Third, in the present case, the disciplinary process was not engaged. And, in any event, the due process rights of a person accused of misconduct found in the disciplinary process in Appendix G do not apply to the reporter of alleged misconduct. Fourth, the role of the Joint Disciplinary Board is materially different from that of the JAB, as is the evidence and information available to it for the performance of its function. It is

also observed that under Appendix G the appeal from a disciplinary measure imposed after consideration by the Joint Disciplinary Board is directly to the Tribunal.

11. It is also important to note that beyond a provision in the OIOS Procedures which provides that the reporter of the alleged misconduct shall be informed that the investigation has been concluded, there are no provisions in the IAEA Administrative Manual that have been referred to by the parties which provide for or authorize the disclosure of any investigative materials or the OIOS report to the reporter of the alleged misconduct. Further, Judgment 3250 relied on by the complainant does not support such disclosure. In that case, the Tribunal did not make a finding regarding disclosure, as the organisation had provided the relevant report to the complainant prior to the filing of the complaint with the Tribunal. Thus, in the present case, at the time the complainant was informed of the Administration's decision to close her harassment case, the IAEA was under no obligation, statutory or otherwise, to disclose the OIOS report or its investigative materials to the complainant. However, this does not end the matter.

12. At the outset, it must be observed that, contrary to the complainant's assertion, the JAB was not provided with any records of interviews or other materials in the OIOS's investigation file. According to the JAB report, at paragraph 15, the JAB considered "the OIOS Final Investigation Report dated 12 July 2012". There are no references, footnoted or otherwise, in either the JAB report or the impugned decision, to OIOS materials or records beyond those contained in the OIOS report itself. As there is no evidence that the JAB had any materials or written records from the OIOS investigation files, the only issue is whether, having provided the OIOS report to the JAB, the Administration was also obliged to provide the complainant with a copy of the OIOS report.

13. The JAB concluded that the complainant was precluded from having access to the OIOS files or the OIOS report on the ground that the OIOS Procedures provide that "confidentiality must be maintained in

order to protect the integrity of the investigative process”. The Director General endorsed this conclusion in the impugned decision.

14. In light of the above finding in relation to the non-disclosure of the investigative materials, a consideration of the IAEA’s position in this regard is unnecessary. The IAEA maintains that the non-disclosure of the OIOS report to the complainant was lawful. It submits that the complainant was given sufficient and relevant information regarding the findings and conclusions in the OIOS report to enable her to challenge the impugned decision of 2 September 2013. She was provided with the JAB report, which contained extensive details of the OIOS’s findings and conclusions concerning her various allegations, including quotes from the report itself, and which addressed the complainant’s concerns. She was also given additional information in the letter of 30 October 2012 from the Director of MTHR and by way of the Director General’s letters of 15 January and 2 September 2013. Additionally, although the case law establishes that due process requires that the subject of an investigation is entitled to comment on an investigation report in order to respond to the allegations against her or him, the case law does not extend this right to the reporter of alleged misconduct.

15. Although the IAEA accepts that an administrative decision cannot be based on material that was not provided to the staff member, it points out that in stating that this principle is a “general rule” the Tribunal has acknowledged that there are exceptions to this general rule. For example, in Judgment 3264, under 16, the Tribunal recognized that in principle there may be a reason in law for non-disclosure of a report; in Judgment 3272 the Tribunal affirmed the confidentiality of records of the discussions regarding the merits of applicants for a post; and in Judgment 2700, under 6, the Tribunal accepted that “there may indeed be some special cases in which a higher interest stands in the way of the disclosure of certain documents”.

16. As a further example, the IAEA points to Judgment 3287 where the Tribunal, at consideration 16, observed that the case under consideration provided “an example of where a specific provision

effectively denying disclosure for the purposes of promoting confidential communications with an internal auditor should be maintained fully and given effect.” The IAEA contends that this reasoning is equally applicable in the present case. It argues that paragraph 6 and other related provisions in the OIOS Procedures are essential to ensuring an objective and effective investigative system. The IAEA’s reliance on this case may be conveniently dealt with here. The Tribunal’s observation in Judgment 3287 does not support the IAEA’s argument. The issue in that case was whether the provision in the organisation’s Internal Audit Charter justified the organisation’s refusal to provide the complainant in that case with a copy of an Internal Audit and Oversight Division report. Relevantly, the request for disclosure was made shortly after the completion of the report and before any internal proceedings had been initiated. Thus, it was not a situation in which a final administrative decision adversely affecting the complainant was based, or was intended to be based on the report, as in this case.

17. In Judgment 3347, in addition to reiterating the well-established general rule quoted above, the Tribunal, at consideration 19, held:

“It is equally well settled that a statement in a staff regulation or other internal document that a report is confidential will not ‘shield a report [...] from disclosure to the concerned official’. Moreover, ‘[i]n the absence of any reason in law for non-disclosure of the report, such non-disclosure constitutes a serious breach of the complainant’s right to procedural fairness’ (Judgment 3264, under 16).”

A consideration of the IAEA’s claim of confidentiality in this case is unnecessary. The fact that it voluntarily produced a copy of the OIOS report with minimal redactions in its reply in these proceedings before the Tribunal completely undermines the claim of confidentiality. The IAEA’s refusal to provide the complainant with a copy of the OIOS report even with redactions was a breach of the complainant’s right to procedural fairness for which she is entitled to an award of moral damages in the amount of 15,000 euros. In the circumstances, it is not advisable to set aside the impugned decision. Also, in the circumstances, a consideration of the IAEA’s additional pleas in relation to the non-disclosure of the OIOS report is unnecessary.

18. The complainant submits that the JAB report is tainted by error of law. In her view the JAB considered it relevant that the complainant considered the actions of her former supervisor and other officials as “unintentional”. The complainant argues that it is well settled in the case law that proof of malice or intent is not required to establish harassment. This submission is rejected. The attribution of the statement to the JAB is incorrect. In its report, the JAB reviewed the contents of the OIOS report which included the OIOS’s reporting of the complainant’s own statement that the behaviour of her supervisor was possibly “unintentional”. The JAB did not comment or make any finding regarding the complainant’s statement.

19. The complainant also submits that the JAB erred in relying solely on the OIOS report and by not conducting an independent inquiry. She maintains that there was ample evidence for the JAB to find that she was harassed given that the standard of proof is much lower in an internal appeal than the standard of beyond a reasonable doubt applicable to finding of misconduct. This submission must also be rejected. The JAB’s role is to hear appeals brought by staff members against administrative decisions and to advise and make recommendations to the Director General regarding the appeal. In this case, the complainant’s appeal was brought against the administrative decision to close her case of harassment. Appendix G provides that a finding of misconduct which includes by definition harassment rests with the Deputy Director General of the Department of Management if the alleged offence is serious and manifest enough to warrant summary dismissal or with the Joint Disciplinary Board and not the JAB.

20. The complainant submits that the IAEA breached its obligation to process her harassment complaint promptly. Although in her view she lodged the complaint on 16 June 2009, based on the record, and indeed by a finding of this Tribunal in Judgment 3215, it is clear the harassment complaint giving rise to the present case was filed on 9 September 2010. The complainant notes that even if the latter date is accepted, it amounts to a 25-month delay in the processing of her complaint.

21. In her rejoinder the complainant attributes part of the delay to two reasons not raised in the complaint. First, instead of immediately advising the OIOS that the informal attempts to resolve the complaint of harassment were concluded, the Director of MTHR waited six months to request a “re-opening of the investigation”. The complainant states that she was not aware “that [the] OIOS had made a ‘proper assessment of the allegations’ prior to the settlement conference.” Second, she claims that the Director of MTHR’s request to “re-open” the investigation raises serious concerns and contends that part of the delay was also attributable to the fact that the OIOS was also investigating allegations of misconduct made against her by the Director of MTHR. She also states:

“[The] OIOS indicate[d] that at the time the [Director of MTHR] requested [the] OIOS to re-open its investigation he also submitted additional documents to [the] OIOS; however, these documents were not provided to [me]. [I] do not recall giving documents to the [Director of MTHR] for forwarding to [the] OIOS. [I] had direct contact with [the] OIOS as confirmed in its report, including ‘letters, emails, IOMs, and in three interviews. [...]

[I] consider that the [Director of MTHR] requested [the] OIOS to re-open the investigation solely for the purpose to investigate [me] for possible misconduct without notifying [me] in breach of the procedures. This is proven by the aggressive and threatening memo from [the Director of MTHR] of 10 December 2010 in which he falsely accuse[d] [me] of malingering and twice threaten[ed] that [my] actions [would be] ‘placed on the record for further consideration’.”

The complainant adds that the “OIOS itself indicates in its report that following receipt of the additional documents from the [Director of MTHR] it ‘conducted a second, more in depth assessment of the allegations’.” She contends that the threats in the memorandum of 10 December 2010 are an abuse of power and amount to misconduct on the part of the Director of MTHR.

22. A review of the relevant chronology is useful: on 19 November 2010 the complainant, her counsel and the Director of MTHR met to discuss the possibility of an informal resolution of the harassment complaint; on 10 December 2010 the Director of MTHR informed the complainant that he had rejected her proposals and that the informal process was concluded; on 5 January 2011 the Director of MTHR informed the complainant that in accordance with Appendix G he was

referring her complaint to the OIOS for investigation; on 5 January 2011 the Director of MTHR also wrote to the Director of OIOS requesting, in accordance with Appendix G, the initiation of an investigation and he enclosed the complainant's report of harassment of 9 September 2010 and a copy of his 10 December 2010 memorandum to the complainant; on 9 June 2011 the Director of OIOS informed the Director of MTHR that the OIOS declined to investigate the matter because a formal mediation must precede the formal investigation procedure and the allegations raised by the complainant did not meet the criteria set in paragraph 13 of the OIOS Procedures; and on 22 June the Director of MTHR returned the matter to the Acting Director of OIOS informing him that an informal resolution of the matter had been unsuccessful and requested that the OIOS "pursue" the investigation. On 30 October 2012 the complainant was informed that the Deputy Director General of the Department of Management had concluded that there was insufficient evidence to support her allegations and that in keeping with paragraph 4(d) of Appendix G she had, therefore, decided to close the case.

23. Leaving aside for the moment the inaccuracy of the complainant's contention that the Director of MTHR requested a "re-opening of the investigation", the chronology set out above makes it abundantly clear that the Director of MTHR referred the harassment complaint to the OIOS on 5 January 2011. There was no delay of six months as alleged or, indeed, any undue delay between the closure of the informal resolution process and the referral to the OIOS. It appears that the complainant's reference to the request for a "re-opening of the investigation" is to the Director of MTHR's 22 June response to the memorandum from the OIOS of 9 June 2011. According to the memorandum of 9 June an investigation had not been initiated as, among other things, the criteria in the OIOS screening process had not been met. Further, contrary to the complainant's statement, the Director of MTHR asked the OIOS to "pursue the investigation" because the attempted mediation was unsuccessful. There is nothing in the record indicating that at any time the investigation was stopped and then re-opened. The complainant's statement that the OIOS made an assessment of the allegations before the settlement conference is without foundation.

It is clear from a reading of the OIOS report that the “proper assessment of the allegations” was made subsequent to the receipt of the Director of MTHR’s request of 5 January 2011 for the initiation of an investigation into the complainant’s harassment complaint. As well, it is equally clear that this assessment was the “assessment of the allegations” required in the screening process of the OIOS Procedures. The Tribunal rejects the complainant’s argument that the statement in the OIOS report that the OIOS “conducted a second, more in depth assessment of the allegations” further evidences that there were two investigations. In the same sentence containing the aforementioned statement, the report states that the OIOS also invited the complainant for an interview. Given that this was stated in the context of the start of the investigation that the OIOS had earlier declined to initiate, it cannot be construed as referring to a second investigation.

24. Lastly, the complainant’s reliance on a memorandum of 10 December 2010 from the Director of MTHR in support of her claim that she was also being investigated is without merit. This memorandum is not the same memorandum as the one referred to in the chronology set out in consideration 22, above. The former memorandum details a number of questions the Director of MTHR put to the complainant during the course of the meeting of 19 November 2010 and the responses both from the complainant and her counsel. The memorandum also notes the complainant’s statements in an e-mail of 12 January 2009 sent to another member of the Administration. The Director of MTHR indicated that the complainant’s various statements were of serious concern and were being placed on the record for further consideration.

25. The complainant characterizes this memorandum as “aggressive, defamatory, bullying, intimidating and threatening” and argues that it reflects the “attitude and hostility of the [IAEA] and its officials” by threatening her with disciplinary action based on discussions during a settlement conference. Further, in her view, it amounts to an abuse of power. The Tribunal finds that, in addition to the fact that the memorandum does not threaten the complainant as alleged, the characterization of its content is unjustified. Having regard to the

matters addressed in the memorandum, the Director of MTHR's expression of serious concern and that the matters would be placed on the record were entirely appropriate and can only be viewed as sound practice in the circumstances.

26. In conclusion on the issue of delay, in the impugned decision, the Director General acknowledged that although the time taken to process the complaint was longer than usual, it was not as a result of a lack of due diligence on the part of the IAEA. Instead, it was due to a number of factors explained in the OIOS report and noted in the JAB report. The Tribunal notes that the factors contributing to the delay included difficulties communicating with the complainant while she was on extensive periods of sick leave; difficulties identifying and securing the availability of several witnesses who were absent from the office on long-term missions; the complainant's updating of her allegations in the fall of 2011, December 2011 and January 2012, as well as informally by several telephone calls to the investigator, resulting in an expansion of the investigation including additional witness interviews and the collection of additional documentation; the voluminous documentation submitted by the complainant both initially and during the course of the investigation; and, lastly, time spent in an attempt to resolve the matter informally.

27. Without more, a 25-month delay in the investigation of a harassment complaint is inordinate. However, it is also observed that the claim in the instant case was factually complex. It involved allegations against several individuals requiring a detailed examination of multiple alleged incidents spanning over a long period of time. It also involved a consideration by the IAEA of voluminous documentation and multiple updates to the allegations. In addition, there were difficulties securing the availability of witnesses. In these circumstances, it cannot be said that the delay was unreasonable.

28. In her pleadings, the complainant raises a number of incidents and actions by the Administration that she argues amount to harassment. The OIOS investigated these allegations and based on that fact-finding process it concluded that there was insufficient evidence to support a

finding of harassment. Subsequently, the JAB concluded that the OIOS investigation was comprehensive and not deficient in any material respect. Other than the allegations of error in the JAB analysis considered above, the complainant does not identify any other reviewable error on the part of the JAB or the OIOS. Instead, she disagrees with the OIOS's conclusions based on its fact finding and, by extension, the JAB's findings. In effect, she is asking the Tribunal to make findings of fact and reach conclusions based on those findings. This is not the Tribunal's role. Where any internal appeal body has heard evidence and made findings of fact, the Tribunal will only interfere in the case of manifest error (see Judgment 3597, under 2, and the cases cited therein). In this case there were no manifest errors in the fact finding. Accordingly, the Tribunal will not consider the complainant's assertions of harassment.

29. Some final observations are necessary. First, this case illustrates the difficulties that accrue from a failure to disclose materials in a timely manner. In addition to compromising a staff member's ability to challenge an administrative decision in the internal appeal, it also undermines the purpose of the pleadings and negatively impacts the adjudicative process before the Tribunal.

30. Second, the Tribunal recognizes that while it should not happen, an erroneous statement in a pleading may occur due to inadvertence. However, inadvertence cannot account for the complainant's multiple mischaracterizations of events and statements in reports in her pleadings. Additionally, the expression of overt hostility is disrespectful and has no place in pleadings. Although the complainant was successful in part, there will be no award of costs either for or against the complainant.

DECISION

For the above reasons,

1. The IAEA shall pay the complainant moral damages in the amount of 15,000 euros.
2. All other claims are dismissed.

In witness of this judgment, adopted on 9 May 2017, Mr Giuseppe Barbagallo, Vice-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 28 June 2017.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ