

P.
v.
ICC

127th Session

Judgment No. 4060

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr J. P. against the International Criminal Court (ICC) on 20 October 2015 and corrected on 11 December 2015, the ICC's reply filed on 15 December 2016 following a stay of proceedings, the complainant's rejoinder of 16 February 2017 and the ICC's surrejoinder of 24 May 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, an ICC Senior Security Officer, contests the decision to temporarily withdraw his authorisation to carry a firearm.

The complainant joined the ICC's Safety and Security Section (SSS) in August 2003 as a Security Officer at grade G-3. In May 2005 he became a Senior Security Officer at grade G-4.

On 3 March 2014 he filed a complaint of harassment against his immediate supervisor and two other staff members serving in his section. By a memorandum of 12 June 2014, the Chief of SSS informed him that he had decided to temporarily withdraw his firearm authorisation as a precautionary measure, based on concerns expressed by his colleagues and supervisors. He added that this decision, which had been taken in

accordance with Administrative Instruction ICC/AI/2004/003 on “The Use of Physical Force and of Firearms by ICC Security Officers”, would remain in effect until a medical examination arranged by the Human Resources Section (HRS) had been conducted with positive results pursuant to Staff Rule 104.13(b) and that, in the meantime, his duties would be modified in such a way that he would not need to have access to or handle firearms or ammunition.

On 16 June 2014 the Chief of HRS formally requested the complainant to undergo an assessment by an external mental health professional and informed him that HRS was in the process of setting up an appointment for that purpose. On 19 and 23 June 2014 the Chief of HRS and the Chief of SSS, respectively, provided the complainant with further information regarding the reasons underpinning the temporary withdrawal of his firearm authorisation. Reference was made in these communications to his alleged inability to manage his anger and frustration and to instances of aggressive behaviour allegedly exhibited by him since 2007 and, more recently, during an incident involving another Security Officer on 4 June 2014.

On 1 August 2014 the complainant requested a review and the suspension of the decision to temporarily withdraw his firearm authorisation and he asked to be provided with the file containing the concerns raised against him and to be given an opportunity to respond. On 27 August 2014 he withdrew that request, but he subsequently requested its reinstatement.

Despite his initial reservations expressed in an email of 14 July 2014 to the Registrar of the ICC, the complainant agreed to submit to a medical examination and on 18 September 2014 he underwent a psychiatric assessment by Dr T., an external medical practitioner. On 25 September and 3 December 2014 he requested that Dr T.’s report be submitted directly to the Registrar of the ICC without it being shared with the Staff Welfare Officer, whom he did not consider impartial. The Registrar confirmed his agreement that the report be submitted directly to him. On 22 January 2015 the complainant met with Dr T. and received a copy of her report. On 29 January a copy thereof was submitted to the Registrar.

On 3 February 2015 the Chief of the Registry's Legal Advisory Services Section sought the complainant's authorisation for the disclosure of Dr T.'s report to the ICC Medical Officer who, under Staff Rule 104.13(b), had to be satisfied that the complainant was fit for service, this being a prerequisite for reinstating his firearm authorisation. The complainant refused to authorise the disclosure of the report to the Medical Officer, which led the Registrar to inform him, by a memorandum of 20 February 2015, that he had frustrated the medical examination process and that, under such circumstances, his request for review of the decision to withdraw his firearm authorisation could not be granted.

On 11 March 2015 the complainant filed an appeal with the Appeals Board requesting the reversal of the decision to temporarily withdraw his firearm authorisation or, if this could not be granted, a new authorisation to carry a firearm. He also requested damages and costs.

On 8 April 2015 the Registrar requested the complainant to report to the Medical Officer, adding that he would be "compelled to take appropriate action" should the complainant refuse to cooperate. The complainant met with the Medical Officer on 16 April 2015 and provided her with a copy of the report drawn up by Dr T. In a memorandum of 17 June 2015 to the Director of the Division of Management Services (DMS), the Medical Officer reported her conclusions and recommendations. She expressed the view that the complainant lacked insight into the effect of his behaviour on others and had trouble handling his stress and frustration. She concluded that, while he did not appear to be suffering from a medical condition in the sense of Staff Rule 104.13, she still recommended from a health and safety perspective that he seek proper counselling as a condition for the reinstatement of his firearm authorisation.

The Appeals Board issued its report on 26 June 2015 recommending that the appeal be rejected in its entirety. By a memorandum of 27 July 2015, the Registrar informed the complainant that he had decided to accept that recommendation. That is the impugned decision.

The complainant asks the Tribunal to reverse the decision to temporarily withdraw his firearm authorisation or, if this request cannot be

granted, to order the ICC to reinstate his authorisation to carry a firearm. He seeks 75,000 euros in moral damages and 25,000 euros in costs.

The ICC asks the Tribunal to dismiss the complaint in its entirety. It indicates in its surrejoinder that, following a review of the complainant's case, his firearm authorisation was reinstated on 22 February 2017. It submits that the impugned decision thus ceased to have a legal effect and that the complaint has therefore become moot.

CONSIDERATIONS

1. In a 12 June 2014 memorandum, the Chief of SSS notified the complainant, a Senior Security Officer at grade G-4, of the decision to temporarily withdraw his firearm authorisation until a medical examination established his fitness to perform armed duties. This decision resulted in a lengthy dispute between the parties that came to an end on 22 February 2017 when the Administration reinstated the complainant's firearm authorisation. At this point, it is sufficient to note that on 11 March 2015 the complainant filed an appeal against the decision to withdraw his firearm authorisation. Subsequently, in his 27 July 2015 decision, the Registrar of the ICC accepted the Appeals Board's recommendation and rejected the appeal. This is the impugned decision.

2. A number of issues are raised in this complaint, however, before dealing with these issues there is a preliminary matter to address. The ICC submits that in view of the 22 February 2017 reinstatement of the complainant's firearm authorisation the complaint is moot, insofar as the impugned decision no longer has legal effect. As this was raised in the ICC's surrejoinder filed with the Tribunal on 24 May 2017, the complainant has not had an opportunity to make submissions concerning the mootness of the complaint. In the circumstances of this complaint, there is no need for such submissions.

3. Consistent precedent has it that "[a]s a matter of law, a claim is moot when there is no longer a live controversy. Whether or not there is a live controversy is a matter to be determined by the Tribunal" (see,

for example, Judgment 2856, under 5). As a result of the reinstatement of the complainant's firearm authorisation, the impugned decision is no longer operative and, consequently, the complainant's claim for the reversal of "the decision to temporarily remove [his] authority to carry a firearm or, in case this cannot be granted, reinstate [his] authorisation to carry a firearm" has been overtaken by the 22 February 2017 decision. The fact that the impugned decision is no longer in force, however, does not resolve the other live issues between the parties concerning the lawfulness of that decision and the consequences of that decision for which the complainant claims moral damages.

4. The first issue concerns the reasons given to the complainant for the decision to withdraw his firearm authorisation. In the 12 June 2014 memorandum notifying the complainant of the decision, the Chief of SSS stated that the decision was based on "the concerns expressed by [the complainant's] colleagues and supervisors, and [that] it [was] supported by the Staff Welfare Officer". On 23 June 2014 the Chief of SSS sent another memorandum to the complainant in which he stated that the "purpose of [the] memo [was] to provide [him] with information that led to the temporary withdrawal of [his] firearm authorisation". The Chief noted the complainant's request at their meeting of 12 June 2014 for an incident report regarding a 4 June 2014 confrontation with Mr B.F., the complainant's immediate supervisor. The Chief of SSS observed that he did not "consider this as an incident but a measure that has been put in place as [a] result of events culminating to a discussion that took place between [the complainant] and [Mr B.F.] on 04 June 2014 in the cafeteria". The Chief of SSS observed that [Mr B.F.] "considered [the complainant] extremely agitated, sweating, red faced and aggressive in the manner in which [the complainant] inform[ed] him of [his] complaint". The Chief of SSS added:

"In addition to the personal observations of [Mr B.F.], another supervisor and number of your colleagues have expressed their fear and concern regarding your aggressive responses to instructions given to you and your ability to manage your anger and frustration.

[...]

The issue of the fluctuation in your temperament and both physical and verbal expressions of this have been observed and reported in different forms at least since 2007. Already at that time your senior supervisor raised concerns to the former Chief of Security regarding your suitability to carry firearms due to apparent aggressiveness, inability to reason and use of abusive language.

Since then there has been repeated occurrences where above attributes are all mentioned by your supervisors, training staff or those involved in the administration of the Section. Most of these occurrences you have been spoken to by your supervisors and some are recorded observations.”

5. The complainant submits that beyond being informed that colleagues and supervisors had expressed concerns about him, he was not given reasons for the decision. He states that he was not told which colleagues and supervisors had expressed concerns and the nature of the concerns was not clarified. Moreover, prior to the withdrawal of his firearm authorisation he was never informed of any such concerns and he never received any warnings regarding those concerns. The complainant adds that there was no documentation in his Official Status file about the alleged concerns of colleagues and supervisors, or the 12 June 2014 decision, in breach of paragraph 2.2 of Administrative Instruction ICC/AI/2008/002. Thus, he was never aware of or given an opportunity to respond to the alleged concerns. The complainant maintains that, as such, the decision was not substantiated and was, therefore, unfair.

6. The ICC submits that the reasons for the contested decision were communicated to the complainant in the 12 June 2014 memorandum, in which he was given notification of the contested decision, and in the subsequent memorandum of 23 June 2014, in which more detail was provided. The ICC argues that in keeping with the Tribunal’s case law these memoranda gave the complainant, as stated in Judgment 2124, under 4, “an opportunity of knowing and evaluating whether or not the decision should be timely contested” which the complainant, in fact, did. Moreover, the complainant was fully aware of his behavioural issues. Concerns regarding his behavioural pattern were officially communicated to the complainant on at least two occasions during his performance assessment at which times he was given an opportunity to discuss and also challenge them. In relation to the contested decision itself, the

complainant had opportunities to express his views concerning his behaviour in the appeal process and the medical assessment process.

7. Regarding the absence of documentation in the complainant's Official Status file, the ICC submits that Administrative Instruction ICC/AI/2008/002 is irrelevant in the present case. Sections 3 and 5 require the Administration to provide a staff member with an opportunity to comment on any adverse material to be placed in her or his Official Status file. The complainant's supervisor, the Chief of SSS, did not request the inclusion of the concerns expressed by the complainant's colleagues either formally or informally in the complainant's Official Status file. Thus, there was no adverse material placed in the complainant's Official Status file on which the complainant had to comment beforehand.

8. At this point, some additional background is required. On 3 March 2014 the complainant filed a harassment complaint against Mr B.F. and two other colleagues that in broad terms arose from a 3 September 2013 incident. According to a document filed in the rejoinder, on 2 July 2014 a Panel of the Disciplinary Advisory Board dealing with case DAB 02/2014 interviewed the Chief of SSS to "inquire about his perspective on DAB 02/2014 case, particularly on the 3 September 2013 incident raised by [the complainant] as well as on the decision of firearm removal made by [the Chief of SSS] on 12 June 2014". According to the minutes of the interview, the Panel asked the Chief of SSS "whether [the complainant's] issue ha[d] arisen for the 1st time", to which the Chief of SSS responded that the question "was difficult to answer". For the purpose of the issue regarding the adequacy of the reasons, a recital of the entire response is unnecessary. The minutes relevantly record the first part of the Chief of SSS's response as follows:

"[The Chief of SSS] said that he has compiled a binder on [the complainant's] behaviour and functioning since 2007 for his own information and reference. The binder included emails and other documents from supervisors, scheduling and training officers. The binder contained reasonable frequent incidents on [the complainant], including minor conflicts with colleagues. [The complainant] has never been subject to any disciplinary action. According to [the Chief of SSS], over the year[s] [the complainant] has consulted medical and staff welfare officers few times."

On 5 March 2015 the complainant viewed his Official Status file. The file did not contain any documentation regarding the concerns of colleagues referenced at the time of the 12 June 2014 decision or the 12 June 2014 decision itself.

9. The Tribunal has consistently held that the affected staff member must be given reasons in support of any adverse administrative decision (see, for example, Judgments 2124, under 3, 3041, under 9, and 3617, under 5). As stated recently in Judgment 3903, under 21, the rationale underlying the obligation to give reasons is to safeguard the staff member's rights, which requires, among other things, that "the affected staff member must be given an opportunity of knowing and evaluating whether or not the decision should be timely contested" (see Judgment 2124, under 4). Implicit in this statement is that the evaluation as to whether the decision should be contested involves a consideration of whether, having regard to the nature of the decision, there are other options to explore short of initiating the internal appeal process. For example, to state a few, the staff member may wish to initiate a discussion regarding remedial action that she or he could take, if warranted, or pursue informal or formal mediation. Particularly, in cases such as the present case, the adequacy of the reasons is critical and requires sufficiently clear, precise and intelligible reasons. Based on the considerations below, the Tribunal finds that the reasons given to the complainant were not adequate.

10. For reasons that will become evident, it is useful to deal firstly with the complainant's submission that the ICC breached the provisions of Administrative Instruction ICC/AI/2008/002, entitled "Official Status file". Staff Rule 104.16 requires the establishment and maintenance of a confidential Official Status file for each staff member with the right of each staff member to view her or his own file. The Administrative Instruction was promulgated pursuant to Staff Rule 104.16 with the stated purpose of establishing the procedures for the maintenance and viewing of the Official Status file to be kept by HRS. Paragraphs 2.2 and 2.4 set out the broad range of materials that are to be kept in the Official Status file together with any comments of the staff member in

relation to those materials. Relevantly, paragraph 2.7 provides that “[a]ny working file kept by an Organ, Division or Section for its own convenience shall not include any adverse material on a staff member’s performance or conduct”. Pursuant to paragraph 3.1, “[n]o adverse material shall be placed on the Official Status file of a staff member unless the staff member concerned is first given the opportunity to make comments thereon, which shall also be included in the file”. Adverse material is defined in paragraph 3.2 as “any correspondence, memorandum, report, note or other document that reflects adversely on the character, reputation, conduct or performance of the staff member”.

11. Section 5 of Administrative Instruction ICC/AI/2008/002 sets out the “[p]rocedures for [the] filing of adverse material from internal sources”. Paragraph 5.1 requires that “[a]ll performance appraisal reports, investigative reports and other communications pertaining to the staff member’s conduct or behaviour are a matter of record and shall be open to comment by the staff member”. Under paragraph 5.2, it is only the Head of an Organ, Director of Division or Chief of Section who may request that adverse material be placed in a staff member’s Official Status file, provided that the staff member has been given an opportunity to comment on the material. Lastly, pursuant to paragraph 5.3, a staff member must be notified of any request to include in her or his Official Status file “investigative reports or other communications pertaining to his or her conduct or behaviour” and must be given a copy of the request and the material to be filed. The staff member then has five days to submit written comments to HRS.

12. As noted above, the ICC takes the position that the provisions of Administrative Instruction ICC/AI/2008/002 are irrelevant in this case. It is observed, however, that the ICC’s rationale for this position misses the mark. It is not disputed that since 2007 the Chief of SSS maintained a binder regarding the complainant’s behaviour and functioning for his own information and reference that included emails and other documents from supervisors, scheduling and training officers. According to the Chief of SSS’s statements during the interview with the DAB Panel,

the binder contained frequent incidents about the complainant, including minor conflicts with colleagues.

13. It appears that the Chief of SSS's statements in his 23 June 2014 memorandum to the complainant reflected the information he had collected over a number of years beginning in 2007. It also appears from the same memorandum that the materials the Chief of SSS collected over the years reflected adversely on the complainant's conduct and, thus, came within the definition of "adverse material" in paragraph 3.2 of Administrative Instruction ICC/AI/2008/002. Moreover, having regard to the fact that the Chief of SSS was the senior staff member in the complainant's section coupled with his own statement regarding the reason he maintained the binder, it is evident that the binder was a "working file" within the meaning of paragraph 2.7 of the aforementioned Administrative Instruction. Paragraph 2.7 is clear that a "working file" shall not include any adverse material on a staff member's performance or conduct. In collecting the emails and documents and maintaining the binder about the complainant's behaviour, the Chief of SSS breached the provision in paragraph 2.7 of Administrative Instruction ICC/AI/2008/002.

14. Moreover, it must also be observed that paragraph 5.1 of the aforementioned Administrative Instruction provides that "communications pertaining to the staff member's conduct or behaviour are a matter of record" and "shall be open to comment by the staff member". At some point in time after the 12 June 2014 decision the complainant became aware of the fact that the Chief of SSS had maintained a binder. However, there is nothing in the record indicating that the complainant was ever informed of the contents of that binder, let alone of the time when the Chief of SSS received the relevant communications, or that he was ever given an opportunity to comment, in violation of the provision in paragraph 5.1. Thus, it follows that the ICC's argument regarding the fact that the Chief of SSS did not request the inclusion of these materials in the complainant's Official Status file is directly at odds with the requirement in paragraph 5.1 of Administrative Instruction ICC/AI/2008/002.

15. As to the ICC's submission that the complainant was fully aware of his behavioural issues, it is observed that in his performance appraisal report for the period from March 2013 to February 2014, under the heading "Interaction", it is stated that the complainant "[e]xpresses opinions, information and key points of an argument clearly; handles contacts with diplomacy and tact; communicates in a transparent and open way with internal and external contacts, while complying with confidentiality requirements". In the comment for the "End-of-year Rating" for "Interaction" it is stated that the complainant "can on occasion allow personal frustration to gain the better of him. Several examples of where his interaction with others has left room for improvement have been brought to his attention during the reporting period." Other than this one observation and the rating "Requires development" under the heading "Interaction", the complainant received ratings of "Fully-competent" under all other headings for the period from March 2013 to February 2014. Although there is a reference in that performance appraisal to the complainant's "personal frustration" getting the better of him at times, and the management of his frustration is mentioned in the 23 June 2014 memorandum from the Chief of SSS, there is no mention in the comments in the performance appraisal report of the fear and concern of colleagues stemming from the complainant's aggressive responses to instructions and inability to manage anger. Nor do the comments refer to the alleged verbal and physical expressions due to fluctuation in the complainant's temperament, his aggressiveness, inability to reason and use of abusive language.

16. In the performance appraisal report for the following year, the period from March 2014 to February 2015, under the heading "Interaction", the comment is the same as the one quoted above for the previous year. In the comment under "End-of-year Rating" for "Interaction", in addition to a positive observation, it is stated that the complainant chose not to communicate with two supervisors except for "strictly work related issues with the motivation that he considered the working environment as hostile". The comment also states that this was addressed with the complainant several times and that he was offered help to overcome the obstacle in communication but the complainant

maintained his position not to communicate. The observations above in the last two sentences in consideration 15 are equally applicable in relation to this performance appraisal report. Accordingly, it cannot be said that, based on these two performance appraisal reports, the complainant was “fully aware of his behavioural issues” identified in the reasons for the decision. Additionally, the ICC did not adduce any evidence, beyond the observations in the two performance appraisal reports, that the complainant was ever warned about the alleged behavioural issues.

17. As to the ICC’s assertion that the complainant had opportunities to express his views regarding the alleged behavioural issues in the appeal process in relation to the contested decision itself and in the medical assessment process, it is observed that given the inadequacy of the reasons and the absence of any additional information about the alleged concerns that pre-dated the 12 June 2014 decision, at the time when the complainant filed his appeal on 11 March 2015, it was virtually impossible for him to refute allegations without any information concerning the relevant details of the various allegations. The ICC’s assertion is without merit. As to the medical assessment process, leaving aside the utility of attempting to refute allegations in the context of a medical examination, the same reasoning applies.

18. The ICC’s failure to provide the complainant with adequate reasons for the 12 June 2014 decision constitutes a breach of the complainant’s due process rights and, accordingly, the decision is unlawful. This would warrant an order setting aside the decision, however, as noted above, such an order is unnecessary as the decision is no longer in force. The complainant is nonetheless entitled to moral damages for the breach of his due process rights.

19. During the time between June 2014 and February 2017, the main area of contention between the parties was centred on various aspects of the medical examination requirement. As will be illustrated below, in large measure the disputes were triggered by the complainant’s view that he was never given sufficient reasons for the decision to withdraw his firearm authorisation. In summary, the complainant submits that the

obligation to undergo a medical assessment without any “solid reasons” for the decision and the obligation to undergo psychological counselling is a violation of every individual’s right of respect for his physical and mental integrity.

20. With respect to the medical process, the ICC submits that it has consistently made the utmost efforts to facilitate the conclusion of the medical examination. The ICC maintains that it was the complainant’s reluctance to cooperate with the Administration at various stages of the procedure that frustrated and delayed the entire process. In its pleadings, the ICC cites a number of examples in support of this position. One example is the ICC’s submission that for more than two months following the notification of the 12 June 2014 decision the complainant refused to undergo a medical examination and to accept the arrangements made by the Administration with the external psychiatrist. This is not entirely accurate.

21. In a 16 June 2014 letter to the complainant, the Chief of HRS requested that he undergo a psychiatric assessment by an external health care provider and informed him that the process to set up the appointments was underway. In response to the complainant’s request for clarification and concern that he was carrying out functions at the G-2 grade, on 19 June 2014 the Chief of HRS wrote an email to the complainant. In summary, in the email, the Chief of HRS explained the rule regarding the requirement to undergo a medical examination; that the temporary removal of his firearm might require temporary changes in functions but, if possible, the functions would be at the G-3 level; and that the decision to remove his firearm was based on multiple reports of what appeared to be aggressive and unstable behaviour on his part and this impression was supported by the Court’s psychologist.

22. On 14 July 2014 the complainant advised the Registrar that the request to undergo a medical assessment interfered with his rights to privacy and his physical and mental integrity. The complainant explained that given this interference the obligation to undergo a medical assessment must be necessary for it to be justified. The complainant noted that the

decision was not supported by any evidence and was based on hearsay and rumours. He also advised the Registrar of his appeal of the decision and that he wanted to wait for a decision on his appeal before meeting with a psychologist. Relevantly, he added that should the Registrar rule that the examination was indeed necessary, he would be “happy to cooperate”. On 1 August 2014 the complainant filed a request for review and suspension of the 12 June 2014 decision.

23. In his 14 August 2014 reply to the complainant, the Registrar acknowledged the unusual and intrusive nature of the request to undergo a medical examination. He added that having regard to the circumstances of this special case he believed that “a medical examination would assist [him] in making informed decisions” and that “[he] was encouraged to read that [the complainant] would cooperate with the examination” and asked the complainant “to assist in this examination”. Subsequently, the complainant agreed to undergo a medical examination and on 27 August 2014 withdrew his 1 August 2014 request for review and suspension. On 18 September 2014 the complainant attended the psychiatric assessment with Dr T., an external psychiatrist, arranged by the Administration. Thus, it can be seen that although the complainant wanted to wait for a decision on the appeal proceedings he was about to initiate and in fact did on 1 August 2014, he was also willing to cooperate, which he did following his receipt of the Registrar’s 14 August 2014 email. For the purpose of resolving the present complaint, it is not necessary to decide whether the inadequacy of the reasons that rendered the decision unlawful has any bearing on the legitimacy of the request to attend a medical examination.

24. As noted above, on 2 October 2014, the Registrar accepted the complainant’s proposal that Dr T.’s report would be submitted directly to him and upon receipt he would carefully review the recommendation and would consider all related issues, including the due process issue raised by the complainant. According to the pleadings, Dr T.’s report was completed on 20 October 2014. Ultimately, the complainant received the report on 22 January 2015 and, in turn, the Registrar received the report on 29 January 2015. The ICC attributes the delay from early

October 2014 to the end of January 2015 to the complainant's refusal to allow Dr T.'s report to be provided to the ICC Medical Officer. It is true that the complainant did refuse the sharing of the report with the Medical Officer on the basis that she was biased, however, there are differing accounts as to what transpired during that time frame. Suffice it to say that the lengthy delay cannot be attributed solely to the complainant. As stated above, on 16 April 2015 the complainant gave a copy of Dr T.'s report to the Medical Officer. He claims that he felt he was forced to do so in light of the Registrar's 8 April 2015 notification that he would be "compelled to take appropriate action if [the complainant] continue[d] to refuse to cooperate with the medical process". In the meantime, in mid-January 2015, the complainant reinstated his request for review of the 12 June 2014 decision.

25. On 17 June 2015 the Medical Officer sent to the Director of DMS her report in which she recommended that the complainant attend psychological counselling as a condition for the reinstatement of his firearm authorisation. On 30 June 2015 the Administration began the process of preparing a psychological counselling plan for the complainant. In the meantime, on 26 June 2015, the Appeals Board issued its report in which it found that the 12 June 2014 decision was "rational" and "reasoned" and that there was no breach of due process on the part of the Administration. On 27 July 2015 the Registrar informed the complainant of his decision to uphold the withdrawal of firearm authorisation.

26. On 31 July 2015 the complainant was informed of the Medical Officer's recommendation that he seek counselling as a condition for the reinstatement of his firearm authorisation. The following day, the complainant launched an appeal against the Medical Officer's recommendation and requested a review thereof by a medical referee pursuant to Staff Rule 106.11. In its pleadings the ICC notes that the complainant refused to accept the counselling and instead filed an appeal against the Medical Officer's recommendation. However, it is not surprising that the complainant refused the counselling given that he had not received a copy of the Medical Officer's report and, in fact, did not receive a copy of the report until 5 November 2015, after the

filing of his complaint with the Tribunal on 20 October 2015. There is nothing in the record indicating any reason for withholding the Medical Officer's report from the complainant at the time it was issued and before the Registrar issued the impugned decision.

27. The period from 1 August 2015 to 15 January 2016 was taken up with a dispute between the parties regarding the selection of a medical referee for the medical appeal. On the latter date the Registrar informed the complainant that if he did not follow the psychological counselling recommendation or select a medical referee, he would have no other option than to consider the termination of his appointment with the ICC. On 25 January 2016 the complainant agreed to the appointment of Dr P. On 8 February 2016 the ICC asked Dr P. whether he would serve as the medical referee, which he accepted, and on 25 November Dr P. issued his report. It is observed that this last delay was largely due to the difficulties the ICC encountered in contacting Dr P. and the significant amount of time before Dr P. responded. In the circumstances, it cannot be said that either of the parties was responsible for the delay in this last period.

28. Unfortunately, Dr P. did not fulfil his mandate of rendering a decision on the complainant's medical appeal and instead recommended that the new ICC Medical Officer should conduct a new assessment "to determine the way forward". Based on the new assessment, on 24 January 2017, the Medical Officer concluded that there was no psychological condition that would impair the complainant's capacity to carry firearms. As a result, upon the complainant's successful completion of the required training, his firearm authorisation was reinstated on 22 February 2017.

29. In addition to the breaches of the Administrative Instruction and the failure to give the complainant adequate reasons, a review of the chronology also shows that the Administration failed to provide the complainant with relevant information in a timely manner. This led to unnecessary delays in the resolution of the complainant's case, misunderstandings, and was an affront to the complainant's dignity. This ongoing failure to provide the complainant with the information which he was entitled to receive is exacerbated by the fact that the ICC

has not advanced any reasons for withholding the information. The complainant is entitled to moral damages in the amount of 20,000 euros and costs in the amount of 6,000 euros.

DECISION

For the above reasons,

1. The ICC shall pay the complainant moral damages in the amount of 20,000 euros.
2. The ICC shall also pay the complainant costs in the amount of 6,000 euros.
3. All other claims are dismissed.

In witness of this judgment, adopted on 1 November 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

YVES KREINS

DRAŽEN PETROVIĆ