NINETY-SIXTH SESSION

Judgment No. 2315

The Administrative Tribunal,

Considering the complaint filed by Mr A. V. against the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO PrepCom) on 8 August 2003, the Commission's reply of 10 September, the complainant's rejoinder of 10 October and the Commission's surrejoinder of 24 October 2003;

Considering the applications to intervene filed by A. M., B. M., J. U. and S. Y., and the Commission's observations thereon of 30 October 2003;

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

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

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

A. The complainant is a citizen of the Russian Federation and was born in 1959. From 31 March 1997 he was appointed under a three-year fixed-term contract as Chief of the Conference Services Section at grade P.5 in the Commission's Provisional Technical Secretariat, established in 1997. At the time of his first contract it was the United Nations Staff Rules and Regulations that were applicable to staff of the Secretariat. His appointment was extended twice, each time for a period of two years. By a letter of 5 July 1999 it was extended until 30 March 2002 and in June 2001 it was extended until 30 March 2004, which would amount to seven years of service.

The Preparatory Commission issued Administrative Directive No. 20, relating to recruitment, on 8 April 1998. Revision 1 of that Directive, concerned recruitment, appointment, reappointment and tenure and was issued on 21 May 1999. It provided for a seven-year service limit. On 8 July 1999 the Commission issued revision 2 of the Directive. Paragraph 4.1 states that appointments to the Professional and higher categories shall initially be made under a fixed-term contract - normally for three years - and that staff members in those categories "may be granted two further appointments of two years each". It continues:

"The need for rotation in staff will be an important consideration in determining whether to grant these appointments. [...] The maximum period of service would be seven years."

In relation to that seven-year period, paragraph 4.2 indicates that exceptions "may be made because of the need to retain essential expertise or memory in the Secretariat".

The Commission had issued its Staff Regulations on 21 August 1998 and on 25 August 1999 it approved its Staff Rules. Rule 4.4.01(c) specified that in granting fixed-term appointments the Executive Secretary "shall bear in mind the non-career nature of the Commission". On 2 October 2002 the Secretariat published a legal opinion on the application of the seven-year limit. It addressed two legal issues, one concerning at which point the seven-year period actually started.

By a memorandum of 31 March 2003 the Chief of the Personnel Section informed the complainant that his fixed-term appointment would not be extended when it expired on 30 March 2004. Citing Administrative Directive No. 20 (Rev.2), he told him that the matter of whether to extend his appointment had been reviewed by the complainant's division director and a Personnel Advisory Panel, and that the Executive Secretary had found no grounds in his case for making an exception to the seven-year maximum period of service. By an e-mail of 2 April 2003 the complainant asked to be provided with copies of the documents associated with the setting up of the said Personnel Advisory Panel. On 9 April he requested a copy of the Panel's recommendation. That request was denied but he was given copies of documents that were submitted to the Panel, such as a memorandum and his appraisal

reports.

He wrote to the Executive Secretary on 27 May, seeking a review of the decision not to renew his contract. On 6 June 2003 the Executive Secretary confirmed his decision. By a letter of 16 June the complainant sought authorisation to submit an appeal directly with the Tribunal and requested a suspension of the non-renewal decision until the Tribunal has delivered its judgment. On 23 June the Executive Secretary authorised his direct appeal to the Tribunal. It is the decision of 6 June 2003 that the complainant impugns.

The complainant - and other staff members too - has since obtained a four-month extension of his contract to allow time for any ruling by the Tribunal to be given effect.

B. The complainant submits that the impugned decision is tainted by an error of law on two grounds.

First, it was based on Administrative Directive No. 20 which promulgated the seven-year service limit but was itself unlawful, principally because it was inconsistent with the Staff Regulations issued by the Preparatory Commission. Indeed, in order to comply with the hierarchy of norms the impugned policy in the Directive had to comply with the Staff Regulations, but did not do so. It was not consistent with the principle put forward in Regulation 4.2, according to which "[t]he paramount consideration in the recruitment, employment and promotion of the staff shall be the necessity of securing the highest standards of professional expertise [...]". By imposing a limitation on the length of service the Commission is not offering career perspectives to its staff members, which in turn will mean it will not be able to retain staff meeting the "highest standard" criterion. Most other organisations, he points out, offer career perspectives; the CTBTO PrepCom has to compete with them in recruiting employees and should offer similar conditions of employment.

He adds that the seven year policy clearly could not have been based on Regulation 4.2 because that regulation does not even imply any limitation of length of service. Although the Staff Rules of 25 August 1999 introduced a reference to the "non-career nature of the Commission", they entered into force after the promulgation of Administrative Directive No. 20 and cannot therefore alter the fact that the Directive was devoid of any legal basis.

Secondly, the impugned decision is illegal because it did not comply with the principle of non-retroactivity. The complainant maintains that upon his recruitment in 1997 there was no policy limiting the length of service. The United Nations Staff Rules and Regulations that applied at the time did not refer to any limitation of service, and nor did the Staff Regulations introduced on 21 August 1998. Moreover, Administrative Directive 20 did not mention that the policy of limiting the maximum period of service would apply retroactively from the Commission's creation. Staff members understood that it would apply from 1999. In fact, it was only by the legal opinion issued on 2 October 2002 that staff were informed that the seven year policy would be applied retroactively. Moreover, the contract he signed in 2001 carried no indication that it would be a final extension. The impugned decision constituted a retroactive application of a rule which goes against his interest, since it diminishes his period of service with the organisation. The Commission's attitude on the matter was clearly not in keeping with the good faith principle.

Furthermore, the complainant submits that the impugned decision is vitiated by a breach of due process of law, inasmuch as the recommendation of the Personnel Advisory Panel was kept from him as was the documentation associated with the setting up of the Panel in question. He was deprived of the possibility of using the Panel's recommendation in support of his appeal against the decision not to renew his contract.

Because of his good performance he considers he was entitled to a two-year contract extension, but was deprived of that possibility by the impugned decision. The decision has affected his career prospects and has resulted in financial loss.

The complainant seeks the quashing of the impugned decision, and asks the Tribunal to draw all legal consequences from such rescission. He wants a two-year extension of contract, or else compensation "equivalent to two years of his last gross salary", as well as moral damages, and costs.

C. In its reply the Commission submits that the complaint is devoid of merit. It considers that the decision not to renew the complainant's appointment was validly taken and conformed to the applicable rules and the practices of the Commission. With regard to Regulation 4.2, it states that nothing therein actually excludes the possibility of a limitation of the period of service. In fact, the Staff Regulations made it clear that there could be no expectation of

unlimited tenure. Regulation 4.4, concerning fixed-term appointments, provides that at no time shall such an appointment "be deemed to carry any expectation of or right to extension or renewal". This was reinforced by the wording of the complainant's letter of appointment and the two letters of extension he received, which made it clear that there could be no expectation of renewal. Even if at the time of his first contract he thought he had an expectation of obtaining extensions that would take him beyond the seven-year period, that expectation would have been extinguished by the promulgation of Administrative Directive No. 20 (Rev.1) in May 1999.

The Commission asserts that there is nothing in its Regulations or Rules that would prevent it from implementing the limited tenure policy. The complainant has in its opinion failed to show how such a policy would affect the objective referred to in Regulation 4.2, of securing the highest standards of professional expertise, and it does not accept his suggestion that the said policy would not be in the interest of the Commission.

It rebuts the complainant's allegation that the impugned decision did not comply with the non-retroactivity principle, arguing that the promulgation of Administrative Directive No. 20 (Rev.1) did not change his contractual status with regard to the past. The applicable provisions allowed him to have an initial three-year contract with two possible extensions of two years, all of which he has obtained. Whether the starting point of the seven years should be in 1997 or 1999 is irrelevant for the question of retroactivity. The point of reference for calculating the seven years varies according to when the staff member entered the service of the Commission, which does not go against the non-retroactivity principle. The tenure policy, however, could only affect the complainant at the date when he had completed seven years of service. The 1999 directive simply confirmed the existing policy of the Commission. The defendant maintains that it has informed staff of relevant developments and acted in good faith.

The Commission submits that the complainant's plea of breach of due process is without merit. It gives reasons why it believes it was justified in not providing the complainant with the Panel's recommendation or the documents associated with the setting up of the Panel in question. The composition, deliberations and recommendations it makes have to be kept confidential otherwise staff members on such panels would not feel they could discuss matters freely. The complainant's assumption that the recommendation would have contained elements to support his claims is mere conjecture.

Lastly, it submits that in the absence of an unlawful decision the complainant has suffered no prejudice. The extension of his appointment was at the discretion of the Executive Secretary and was subject to there being exceptional circumstances as set out in paragraph 4.2 of the directive.

D. In his rejoinder the complainant expands on his pleas. He reaffirms his view that an administrative directive can only implement or clarify a primary legislation. He notes that the Commission is not arguing that Regulation 4.2 "authorises" the seven-year limit, but merely that the said regulation does not "exclude" the possibility of a limit on length of service. Administrative Directive 20, in his view went beyond Regulation 4.2, announcing a restriction on service that was not even implied in the regulation. He refers to other organisations that apply a limited tenure policy to support his belief that it could have negative effects on staff morale.

No mention, he adds, is made in the Administrative Directive 20 to the retroactive application of the seven year policy. The decision to apply it as from 1997 was therefore obviously made at a later stage, in breach of the non-retroactivity principle.

E. In its surrejoinder the Commission rebuts the complainant's pleas. It states that the Executive Secretary had the authority to implement a limitation of tenure policy, and points out that the States Signatories have endorsed the seven-year limit as set out in Administrative Directive 20.

It denies that such a policy would limit the Commission's ability to attract highly-qualified staff and rejects the complainant's assumptions on this score as mere speculation.

It maintains its position that the policy is entirely compatible with the Staff Regulations and Rules and has no retroactive effect. At the time of its issuance, the directive limited the possibility for the complainant to obtain an extension of a future fixed-term contract beyond a total of seven years of service.

CONSIDERATIONS

1. The complainant joined the staff of the Preparatory Commission's Provisional Technical Secretariat in March 1997 under a three-year fixed-term contract. His contract was subsequently twice extended - each time for a period of two years. By a letter of 5 July 1999 he was granted an extension to 30 March 2002, and by a further letter dated 6 June 2001 his contract was extended to 30 March 2004.

2. On 31 March 2003 the complainant was informed that his contract would not be extended when it expired in March 2004. The decision not to renew his appointment was based on Administrative Directive No. 20 (Rev.2), which was issued on 8 July 1999. That revision embodied a policy, first introduced in May 1999, that staff members appointed to the Professional and higher categories and internationally recruited staff should not, except in certain limited exceptions, remain in service for more than seven years.

3. On 27 May 2003 the complainant requested the Executive Secretary of the Commission to review the decision not to renew his contract. On 6 June the Executive Secretary confirmed his earlier decision on the ground that the complainant did not fall within the limited exceptions allowed by the Administrative Directive. The complainant then requested the Executive Secretary to allow him to submit a complaint directly with the Tribunal without first appealing to the Joint Appeals Panel. The Executive Secretary acceded to that request and the complainant filed his complaint on 8 August 2003.

4. After proceedings were instituted, the Executive Secretary extended the contract of the complainant and other persons in a similar position to ensure that any ruling by the Tribunal in favour of the complainant would take effect. That extension was granted without prejudice to the complainant's right to maintain these proceedings.

5. The complainant challenges - on three distinct grounds - the decision of the Executive Secretary not to renew his contract. First, the policy contained in Administrative Directive No. 20 (Rev.2) is contrary to the Preparatory Commission's Staff Regulations and, thus, a decision based on that policy necessarily involves an error of law. Secondly, by calculating the period of seven years referred to in the Administrative Directive from the date on which a staff member commenced employment rather than from the date of the directive, the Executive Secretary has, in the case of staff members joining the Commission prior to May 1999, wrongly given the policy retroactive effect. Thirdly, the impugned decision was vitiated by a lack of due process in that he was not given a copy of the recommendation of the Personnel Advisory Panel provided to the Executive Secretary as part of the decision-making process.

6. The complainant seeks the quashing of the decision of 6 June 2003; and either a two-year contract extension or compensation equivalent to "two years of his last gross salary". He also claims 10,000 euros in moral damages, and costs.

7. The Commission contends that the seven year policy contained in revisions 1 and 2 of Administrative Directive No. 20 is authorised by the relevant Staff Regulations and Rules and that its implementation involves no retroactivity. It also points out that the recommendation of the Personnel Advisory Panel is confidential and, thus, there was no breach of due process. Further, it contends that there is no basis for ordering a two-year extension of contract or material damages as sought by the complainant even if he is successful in his argument that the impugned decision should be set aside.

8. Staff Regulation 4.4, upon which the Commission relies as authority for Administrative Directive 20, provides:

"Staff shall be granted fixed-term appointments under such terms and conditions, consistent with the present Regulations, as the Executive Secretary may prescribe. A fixed-term appointment may be extended or renewed at the discretion of the Executive Secretary [...]. At no time, however, shall such an appointment be deemed to carry any expectation of or right to extension or renewal."

9. Staff Rule 4.4.01, which entered into force on 25 August 1999 after revisions 1 and 2 of Administrative Directive 20 were issued, relevantly provides:

"All staff members shall be granted fixed-term appointments.

(a) A fixed-term appointment, having an expiration date specified in the letter of appointment, may be granted for a period or periods not exceeding three years.

(b) [...]

(c) In granting fixed-term appointments, the Executive Secretary shall bear in mind the non-career nature of the Commission."

10. Regulation 4.2, upon which the complainant relies to argue that the Administrative Directive is inconsistent with the Staff Regulations, provides:

"The paramount consideration in the recruitment, employment and promotion of the staff shall be the necessity of securing the highest standards of professional expertise, experience, efficiency, competence and integrity."

11. Administrative Directive No. 20, which does not form part of the Staff Regulations or Rules, was first issued on 8 April 1998 and, at that stage, dealt solely with recruitment policy. Revision 1, which was issued on 21 May 1999, introduced what has become known as "the seven year policy". Revision 2, upon which the impugned decision was based, was issued on 8 July 1999. Paragraph 4 of that directive relevantly provides:

"4.1 Appointments to the Professional and higher categories and all appointments of internationally recruited staff shall initially be made under a fixed-term contract for a period, normally of three years, which carries no expectation of renewal. These staff members may be granted two further appointments of two years each, subject to the provisions of this Directive. The need for rotation in staff will be an important consideration in determining whether to grant these appointments. Appointments of a shorter duration may also be granted when the needs of the Commission so require. The maximum period of service would be seven years.

4.2 Exceptions to the period of seven years referred to in paragraph 4.1 may be made because of the need to retain essential expertise or memory in the Secretariat and shall be kept to an absolute minimum compatible with the efficient operation of the Secretariat. Any such exceptions will be reported by the Executive Secretary to the Commission."

12. The relevance of reporting exceptions to the Commission is explained by the history of the seven year policy. Apparently, there was an earlier attempt by some States Signatories to introduce a provision into the Staff Regulations and Rules imposing a shorter maximum period of service. The attempt failed because consensus could not be reached. Thereafter, there was broad consultation between the States Signatories and the Provisional Technical Secretariat and, in August 1999, the Executive Secretary reported to the Ninth Session of the Preparatory Commission as to the embodying of the seven year policy in Administrative Directive No. 20 (Rev.2). It seems that there was then no opposition to that policy.

13. After the introduction of the policy, Working Group A, a subsidiary policy-making organ of the Commission, asked the Secretariat to provide information as to when the seven-year period would start to run. In a legal opinion issued by the Commission in response to that request, it was stated that:

"In its approach to this issue [The Provisional Technical Secretariat had] proceeded on the basis of the discussion in the Preparatory Commission and [Working Group A] which indicated that Member States understood the seven year period to commence from the very beginning of the organization's existence, even though the policy was not formally promulgated until May 1999. [...] The Executive Secretary has taken the position that he will apply the limitation in light of this understanding."

14. Administrative Directive 20 also makes provision for the involvement of a Personnel Advisory Panel in the reappointment process. Paragraph 3.3 of the directive requires that such a panel be nominated "in order to make a recommendation in respect of each possible reappointment" and provides as to its composition. Paragraph 3.5 relevantly provides that the Panel "shall make recommendations in respect of possible reappointment by consensus to the Executive Secretary", paying particular attention to certain specified matters. It also provides that the recommendations of the Panel are to be submitted to the Executive Secretary for decision.

15. There is no provision in Administrative Directive 20 requiring the recommendations of the Personnel Advisory Panel to be confidential or, which is more to the point, to be withheld from a candidate for reappointment. However, Staff Rule 11.1.02 (j), which applies in relation to appeals to the Joint Appeals Panel, provides that, if information or documentation relating to the proceedings of the personnel advisory panels is requested by the Joint Appeals Panel, the chairperson of the Personnel Advisory Panel is to decide upon the request "taking into account the interests of confidentiality".

16. It is convenient first to consider the complainant's contention that, so far as it embodies the seven year policy, Administrative Directive 20 is inconsistent with Staff Regulation 4.2 which, as already noted, provides that the paramount consideration in the recruitment, employment and promotion of staff is to secure the highest standards of expertise, experience, efficiency, competency and integrity. Two things should be noted. First, that regulation does not provide that that is the sole consideration, but rather the paramount consideration; nor does it refer to the reappointment of staff, but rather to recruitment, employment and promotion. Accordingly, it must be read in the context of Regulation 4.4 which provides only for fixed-term appointments with the possibility of renewal, but expressly negatives any expectation or right of that kind.

17. Much of the complainant's argument is directed to the proposition that the Commission cannot secure services of the standard specified in Regulation 4.2 if it cannot retain those services beyond seven years, particularly as it has to compete for staff with other international organisations. That proposition is not self-evidently correct. Nor is it established by pointing, as the complainant does in his submissions, to international organisations which have a similar policy and which, according to the complainant, have or may have had difficulties in recruiting and retaining suitable staff. Moreover, and as the Commission points out, paragraph 4.2 of Administrative Directive 20, which allows for exceptions in the case of a need to retain "essential expertise or memory in the Secretariat" ensures that, to that extent, its staffing needs can be satisfied.

18. When due regard is had to the terms of Regulation 4.2, which specifies the paramount but not the sole criteria for the recruitment, employment and promotion of staff and to the terms of the exception allowed by paragraph 4.2 of the directive, it is apparent that the seven year policy, as embodied in the directive, is not inconsistent with that regulation. The complainant's argument to the contrary must be rejected.

19. To say that the seven year policy is not inconsistent with Regulation 4.2 is not to say that it is authorised by Regulation 4.4, as claimed by the Commission. At least that is so insofar as the Executive Secretary has purported to implement that policy as a general rule applicable to all staff. It is correct, as the Commission contends, that Regulation 4.4 allows for the imposition of terms and conditions as prescribed by the Executive Secretary. However, it is clear from Regulation 4.2 that such terms and conditions may be imposed on the grant of a fixed-term contract, and not subsequently. Accordingly, the Executive Secretary may prescribe a seven year policy and specify in a fixed-term contract that it will not be extended or renewed except in accordance with that policy. And because the extension or renewal of a fixed-term contract for a limited term is, itself, a fixed-term contract, Regulation 4.4 permits the imposition of an appropriate term or condition to implement such a policy on renewal or extension.

20. Although the embodiment of the seven year policy in Administrative Directive 20 may properly be viewed as the prescribing of a term or condition upon which fixed-term contracts may be granted, it does not itself operate as the imposition of that term or condition. To be effective, a term or condition of the kind now in question must be incorporated in the contract, even if only by reference: a reference to the Staff Regulations and Rules is not sufficient because they do not incorporate the Administrative Directive in question. By implementing the seven year policy in the way that he purported to do in the present case, the Executive Secretary was attempting to enforce a term or condition that was not incorporated in the contract between the complainant and the Preparatory Commission. In this last regard, it is sufficient to note that, although a term or condition could have been imposed to give effect to the seven year policy on either of the occasions on which the complainant's contract was renewed, the letters of extension contained no such provision.

21. Regulation 4.4 does not authorise the enforcement of terms or conditions which are not part of a fixed-term contract. This is precisely what the Executive Secretary has attempted to do by deciding not to renew the complainant's contract because of the seven year policy in Administrative Directive 20. That is an error of law and, accordingly, the impugned decision of 6 June 2003 must be set aside.

22. There are two aspects to the rule against retroactivity. The first is a rule of interpretation which requires that a provision not be construed as having retroactive effect unless that is clearly intended. The second is a substantive rule of international civil service law which, as explained in Judgment 1589, prevents a retroactive change in the legal status of staff save in limited circumstances which are not presently relevant. However, to state the rule in this way is not to expose what is meant by "retroactive".

23. In general terms, a provision is retroactive if it effects some change in existing legal status, rights, liabilities or interests from a date prior to its proclamation, but not if it merely affects the procedures to be observed in the

future with respect to such status, rights, liabilities or interests.

24. As already pointed out, the complainant is employed under a fixed-term contract with no expectation of or right to extension or renewal. Thus, were the seven year policy applicable in determining whether to renew his appointment (which, as already indicated, it is not and will not be until some appropriate term is incorporated in his contract), it would not affect his existing rights, liabilities or status. At most, it would affect the discretion to be exercised by the Executive Secretary on the question of his reappointment. If the policy were applicable, the discretion would be limited to the question whether in his case there was a need to "retain essential expertise or memory". On the other hand, if the policy is not applicable, there is a more general discretion to be exercised having regard to the interests of the defendant.

25. A change in the nature of the discretion to be exercised in determining whether to grant future rights by the extension or renewal of a contract cannot be said to effect a change in an existing legal interest, much less in an existing legal right or existing legal status. Accordingly, the seven year policy embodied in Administrative Directive 20 is not retroactive even if the seven year period is computed from a time prior to the proclamation of that policy.

26. The complainant rightly contends that Administrative Directive 20 does not expressly state the date from which the seven-year period is to run. However, it refers to the "maximum period of service" and, in its natural and ordinary meaning, that expression refers to the entirety of an employee's service regardless of when that service commenced. And as the seven year policy does not effect a change in existing legal rights, liabilities, interests or status, there is no reason to read it in any different sense.

The complainant's arguments with respect to retroactivity must therefore be rejected.

27. With regard to his plea of breach of due process, it is well settled, as stated in Judgment 1815, that "[t]o ensure due process both in internal proceedings and before the Tribunal [a] staff member must get any items of information material to the outcome". In that case, it was held that the staff member in question was entitled to be provided with "the names of [an] advisory body's members", it being said that "[w]ho they are may of course affect its reasoning and the weight its report carries, and so the staff member should be allowed at least to comment". *A fortiori* in the case of a recommendation which, as here, is a formal part of the decision-making process. That recommendation may involve some error which has been carried into the actual decision and which warrants the decision being set aside.

28. Moreover, should a claim of confidentiality be made, for example, where a recommendation contains immaterial information on a third party, it is for the party making that claim to establish the grounds upon which the claim is based. In such a case, precautions may be taken to maintain confidentiality.

29. In the present case, the Commission provides no grounds for its argument of confidentiality other than the need for the Personnel Advisory Panel to be able freely to discuss relevant matters. In a decision-making process which is subject to internal review and to the jurisdiction of this Tribunal, that is not an acceptable basis for a claim of confidentiality. Moreover, the Commission's reliance on Staff Rule 11.1.02(j) is misplaced. That rule applies to information and documentation, not to the actual recommendation of a Personnel Advisory Panel. Further, it contemplates that some information and documentation may be confidential, not that all information and documentation is necessarily confidential.

30. The complainant's claim that the decision of 6 June 2003 is vitiated by a breach of due process must also be upheld.

31. As already indicated, the decision of the Executive Secretary of 6 June 2003 must be set aside. It does not follow, however, that the complainant is entitled to an order that his contract be renewed for a further period of two years or, in the alternative, to an award of damages equivalent to two years' gross salary.

32. The Tribunal may, when setting aside a flawed decision not to renew a contract, order renewal for an appropriate term, as was done in Judgments 1298 and 1633. But it does so only if that is clearly the fair course to take. That was the situation in Judgment 1633 where, in practical terms, the question for decision was not whether a contract should be renewed but whether it should be renewed for two or for five years.

33. In the present case, it is implicit in the Executive Secretary's decision that no consideration was given to the

questions whether, if the seven year policy was not applicable, it was in the interests of the Commission for the complainant's contract to be renewed and, if so, for what term. They are matters for the Executive Secretary to decide and, accordingly, the matter must be remitted to enable a new decision to be made on the basis that the seven year policy is wholly irrelevant to the renewal decision. If it is decided to renew his contract, the Executive Secretary may wish to impose a term or condition to give effect, so far as is possible, to the seven year policy.

34. Although the decision not to renew the complainant's contract must be set aside, this is not a case for the award of moral damages. The case was clearly in the nature of a test case and its outcome depends on a technical legal issue. Further, the complainant's position has been protected by the extension of his contract for a period which has enabled this matter to be determined and will enable effect to be given to this decision.

35. Because this is in the nature of a test case, costs will be awarded in the sum of 5,000 euros.

36. The applications to intervene are allowed, and the interveners are entitled to the same relief as the complainant, save in the matter of costs, insofar as they are in the same position in law and in fact.

DECISION

For the above reasons,

1. The Executive Secretary's decision of 6 June 2003 is set aside.

2. The matter is remitted so that the Executive Secretary may make a new decision on the question of the renewal of the complainant's contract on the basis that the seven year policy is wholly irrelevant to the renewal decision.

3. The Commission is to pay the complainant's legal costs in the sum of 5,000 euros.

4. The applications to intervene are allowed.

5. All other claims are dismissed.

In witness of this judgment, adopted on 13 November 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2004.

Michel Gentot

James K. Hugessen

Mary G Gaudron

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 20 February 2004.