

F. (Nos. 1 and 2)

v.

WHO

134th Session

Judgment No. 4534

THE ADMINISTRATIVE TRIBUNAL,

Considering the first complaint filed by Mr C. D. F. against the World Health Organization (WHO) on 25 March 2019, WHO's reply of 30 July, the complainant's rejoinder of 27 September 2019 and WHO's surrejoinder of 6 January 2020;

Considering the second complaint filed by Mr C. D. F. against the WHO on 28 January 2020, WHO's reply of 13 July, the complainant's rejoinder of 12 August and WHO's surrejoinder of 23 November 2020;

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

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

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

The complainant is a former staff member of UNAIDS – a joint and co-sponsored United Nations programme on HIV/AIDS administered by WHO. He challenges the decision to separate him from service on 31 October 2018, being the date on which he reached his retirement age according to the Staff Rules then in force, as well as the decision not to approve an exceptional extension of his appointment beyond retirement age.

Facts relevant to this case can be found in Judgment 4527, also delivered in public this day, in which fifteen former WHO staff members challenged the decision of the WHO Executive Board to extend the mandatory age of separation (MAS) to 65 as of 1 January 2019 instead of 1 January 2018.

On 23 December 2015 the United Nations (UN) General Assembly decided that “the mandatory age of separation for staff recruited before 1 January 2014 should be raised by the organizations of the United Nations common system to 65 years, at the latest by 1 January 2018, taking into account the acquired rights of staff”.

On 22 January 2016 the UNAIDS Deputy Executive Director of Management and Governance informed UNAIDS staff that “[t]hrough the [General Assembly] resolution, the mandatory age of separation has been raised to 65, effective by 1 January 2018, taking into account the acquired rights of staff”.

On 25 January 2016 the UNAIDS Director, Human Resources Management (HRM) shared with UNAIDS staff members an email of 13 January 2016 from the WHO Director, Human Resources Department (HRD), stating that “the implementation date for the increased MAS will require an amendment to WHO Staff Rules, which we will submit to the Executive Board. [...] In the meantime, the MAS for WHO staff recruited prior to 1 January 2014 remains unchanged”. WHO Staff Regulations and Staff Rules apply to staff members serving with the UNAIDS Secretariat, pursuant to Section XI of the Memorandum of Understanding on a Joint and Cosponsored United Nations Programme on HIV/AIDS and the Introduction to the Staff Regulations and Staff Rules for Staff Members of UNAIDS.

On 18 April 2016 the UNAIDS Director, HRM, shared another email from the WHO Director, HRD, dated 15 April 2016, informing staff that: “In January 2017, the Administration will also present the necessary amendments to Staff Rules to increase the mandatory age of separation to 65 for staff recruited before 1 January 2014. [...] It is important to note that these amendments are subject to the approval by the Executive Board and will be effective 1 January 2018”.

In late 2016 the complainant became aware that the position he then held as Regional Operations Manager in the UNAIDS Regional Office for Latin America and the Caribbean, based in Panama, was to be abolished. He was formally informed that his position was abolished by a letter of 2 November 2016 and that he was eligible to participate in the reassignment process in accordance with Staff Rule 1050.2.

On 22 December 2016 the complainant was informed that he had been reassigned to the post of Compliance Officer in Geneva, Switzerland. The letter stated that: “Subject to the period of appointment, staff members are expected to serve the full period of the Standard Duration of Assignment (SDA) for the duty station of their assigned position” and that “the SDA for this position [was] currently 5 years”.

At the 140th session of the WHO Executive Board, held in January 2017, the question was raised as to whether the amendment relating to the extension of the mandatory age of separation to 65 for staff members recruited before 1 January 2014 should enter into force with effect from 1 January 2018, in accordance with the UN General Assembly Resolution of December 2015, or at a later date, in view of the financial implications for WHO.

On 1 June 2017, during its 141st session, the Executive Board decided that the amendments to the WHO Staff Regulations and Staff Rules on the implementation of the new MAS at 65 would enter into force as of 1 January 2019. UNAIDS staff were so informed by an email of the Director, HRM, of 26 June 2017.

On 21 August 2017 the complainant requested by an email to the Executive Director of UNAIDS that his appointment be exceptionally extended to allow him to retire at age 65.

On 25 August 2017 the complainant requested the review of the decision of 26 June 2017 to raise the MAS to 65 years only on 1 January 2019, instead of 1 January 2018.

The complainant’s request for review was rejected by a decision of 23 October 2017, on the ground that the email of 26 June 2017 did not constitute a final administrative decision and that he did not allege any non-observance of the terms of his appointment, which had remained

unchanged. In his decision, the Deputy Executive Director *ad interim* also noted that a decision to extend the appointment of a staff member beyond retirement age is a discretionary decision of the Executive Director that may be exercised in exceptional circumstances and in the interests of the Organization. Notwithstanding the complainant's request, he had no entitlement to such an extension.

On 22 January 2018 the complainant filed an appeal with the Global Board of Appeal (GBA) against the decision of 23 October 2017.

On 16 May 2018 the complainant received his separation letter informing him that his appointment with UNAIDS would come to an end on 31 October 2018 as he would then reach the mandatory date of retirement. He challenged that decision in a second request for review.

By a decision of 14 September 2018 the complainant's second request for review was rejected, on the grounds that the matters raised therein were already addressed in the decision of 23 October 2017 on his first request for review and that the alleged rejection of his request for extension was now time-barred.

In its report of 21 November 2018 the GBA concluded that the statements by the WHO Director, HRD, were for information purposes and did not give rise to a legal obligation on the part of the Organization as the approval of the Executive Board was required prior to any changes to the retirement age entering into effect. It did not find that the complainant had been subject to unequal treatment, nor any evidence of breach of promise, bad faith or discrimination. The GBA found the claim relating to the extension request irreceivable for non-exhaustion of internal remedies and recommended that the complainant's first appeal be dismissed in its entirety.

On 27 December 2018 the complainant was informed that the Executive Director of UNAIDS had decided to follow the GBA's recommendation to dismiss his first appeal. While the Executive Director agreed with the GBA's main findings, he disagreed with the GBA's conclusion that the complainant's claim relating to the extension of his appointment was a new claim. The Executive Director explained that, in the absence of a definitive reply, his request for extension was deemed to be rejected as of 20 November 2017 by virtue of Staff Rule 1225.2.1.

Consequently, the Executive Director considered that this claim was time-barred. That is the decision impugned in the first complaint.

Meanwhile, also in December 2018, the complainant filed his second appeal before the GBA against the decision of 14 September 2018.

In its report of 3 September 2019 the GBA found that the appeal was irreceivable in so far as the complainant reiterated the same arguments as his first appeal. It found that the decision to separate him had been taken in accordance with applicable rules. However, with respect to the complainant's request for extension, it found that it was not treated with sufficient consideration and was not timely given. It recommended awarding the complainant 8,000 Swiss francs in compensation and a maximum of 5,000 Swiss francs in legal costs.

On 23 October 2019 the Executive Director of UNAIDS decided to dismiss the complainant's appeal in its entirety, on the ground that he had failed to show any non-observance of his terms of appointment. With respect to his request for an exceptional extension of his appointment, he had been provided with a definitive decision on 27 December 2018, which the complainant challenged in his first complaint before the Tribunal, he therefore considered that the matter had become moot and decided not to follow the GBA's recommendation. That is the impugned decision in the second complaint.

In his first complaint the complainant asks the Tribunal to set aside the impugned decision and the decision to implement MAS 65 on 1 January 2019. He further requests the Tribunal to order his reinstatement until he reached the new MAS of 65. In the alternative, he asks the Tribunal to award him the sum of no less than 627,349.84 Swiss francs in material damages. He also claims 5,000 francs in moral damages, as well as 10,000 francs in costs.

WHO argues that the complainant's first complaint is irreceivable *ratione materiae*. Subsidiarily, WHO requests the Tribunal to dismiss the complaint as unfounded in its entirety. In the event that costs are awarded, WHO requests that the amount of costs be established by the Tribunal and that its payment "be conditional upon the receipt of invoices, proof of payment, and upon the complainant not being eligible for reimbursement from other sources".

In his second complaint the complainant asks the Tribunal to set aside the impugned decision and to order his reinstatement until he reached until he reached the new MAS of 65. In the alternative, he asks the Tribunal to be awarded the sum of no less than 630,700 Swiss francs in material damages. He also claims 10,000 francs in moral damages, as well as 10,000 francs in costs.

WHO argues that the complainant's second complaint is irreceivable *ratione materiae* as well as *res judicata*. It submits that his claims regarding his request for an extension are both time-barred and *res judicata* as they were dealt with in the final decision of 27 December 2018. Subsidiarily, WHO requests the Tribunal to dismiss the complaint as unfounded in its entirety. In the event that costs are awarded, WHO requests that the amount of costs be established by the Tribunal and that its payment "be conditional upon the receipt of invoices, proof of payment, and upon the complainant not being eligible for reimbursement from other sources".

WHO further requests the Tribunal to join the second complaint with his first complaint, as well as with several other similar complaints filed by former WHO staff members challenging the implementation of the MAS of 65, or alternatively, that these complaints be considered at the same session.

The complainant asks the Tribunal to reject WHO's requests for joinder.

CONSIDERATIONS

1. The complainant had been on the staff of UNAIDS until his separation from service effective 31 October 2018 when he turned 62 years of age. The complainant has filed two complaints with the Tribunal, one on 25 March 2019 and the other on 28 January 2020. The underlying subject matter of the first complaint was a decision to alter the mandatory age of separation to 65 years but to do so effective 1 January 2019 and not 1 January 2018. On this topic, the complainant's internal appeal resulted in a report of the GBA dated 21 November 2018 (the first GBA report) and a consequential decision of the Executive Director of 27 December 2018 dismissing the appeal which is impugned in the first

complaint (the December 2018 impugned decision). The underlying subject matter of the second complaint was the decision to separate the complainant from service and, arguably, not to exceptionally extend his appointment beyond retirement age. On this second topic, the complainant's internal appeal resulted in a report of the GBA dated 3 September 2019 (the second GBA report) and a consequential decision of the Executive Director of 23 October 2019 dismissing the appeal which is impugned in the second complaint (the October 2019 impugned decision). It is desirable that the two complaints be joined so one judgment can be rendered.

2. In December 2015 the UN General Assembly decided that the mandatory age of separation for staff of UN common system organizations should be raised to 65 years. This decision was to apply to staff recruited before 1 January 2014. The decision contemplated that the introduction of this mandatory age of separation should take place no later than 1 January 2018.

3. Within UNAIDS, staff were notified by email from the Director, HRM, dated 18 April 2016 that the Staff Rules would be amended to reflect this change and the amendments would be effective 1 January 2018. The staff had earlier been told in an email dated 22 January 2016 from the Deputy Executive Director of Management and Governance that the mandatory age of separation had been raised to 65, effective by 1 January 2018. This did not occur. As a result of the processes of deliberation and decision-making within WHO, a decision was made on 1 June 2017 by WHO's Executive Board that the change to the mandatory age of separation reflected in the WHO Staff Rules as contemplated by the decision of the UN General Assembly, would be effective 1 January 2019. The change would therefore not apply to staff who reached the retirement age of 60 or 62 in 2017 or 2018.

WHO Staff Regulations and Staff Rules apply to staff members of UNAIDS. Indeed, UNAIDS derives its legal status from WHO as the administering organization in accordance with WHO's Staff Regulations and Staff Rules and UNAIDS staff members are thus subject to the conditions of service as determined by WHO.

The specified mandatory age of separation was subject to a proviso that the Executive-Director could exceptionally decide to extend the appointment of a member of staff beyond the existing retirement age (of 60 or 62). The complainant unsuccessfully applied for an extension in August 2017. The complainant was affected by the decision specifying the implementation date of 1 January 2019 as he reached the pre-existing retirement age of 62 on 31 October 2018.

4. By letter dated 16 May 2018, the complainant was informed that “[...] in October 2018, [he] will reach the mandatory date of retirement. This is therefore to confirm that [his] appointment with UNAIDS will come to an end on 31 October 2018, in accordance with Staff Rule 1020.1.” The letter, in this respect, correctly reflected the then operative provisions of the Staff Rules. Staff Rule 1020.1 was in peremptory terms declaring that “Staff members shall retire [...]” at one of a number of nominated ages depending on the personal circumstances of the official and subject to a proviso involving a decision of the Executive Director to exceptionally extend a staff member’s appointment beyond retirement age.

5. The complainant advances what are described as eight substantive legal arguments consolidating the pleas in the complaints. The first is that UNAIDS had violated a promise concerning the submission of amendments to the Staff Rules relating to the mandatory age of separation. The second and related argument is that UNAIDS had violated a promise concerning when relevant amendments to the Rules would enter into force. The third argument is that there had been a violation of a promise that UNAIDS HRM and WHO would cooperate to ensure the entry into force of the new mandatory age of separation on 1 January 2018. The fourth is that the complainant was promised he could serve the full five-year SDA in a position to which he was reassigned at the end of 2016. The fifth is that the perpetuation of the regime embodied in Staff Rule 1020.1 violated the principle of equality of treatment. The sixth is that UNAIDS unlawfully rejected the complainant’s extension request. The seventh is that the complainant’s separation violated a policy of healthy ageing. The eighth is that the complainant had been denied the right to an effective internal appeal.

6. Several of these arguments have been addressed in another judgment rendered at this session (see Judgment 4527) concerning other proceedings brought by fifteen complainants though the context in which the issues arose in the other proceedings was different. In the present case the lacuna in the complainant's pleas is how any of these arguments have a bearing on the lawfulness of the then operative Staff Rules which were applied to the complainant in the letter of separation of 16 May 2018. In the absence of the complainant demonstrating that the Staff Rules which were applied had no legal effect, UNAIDS was entitled, indeed obliged, to apply them. As noted earlier, the applicable rule was in peremptory terms.

7. A material part of the complainant's case is that UNAIDS breached promises and he is entitled to relief. In his brief the complainant identifies four promises made to him which were not, on his account, honoured. He says that as these promises were not fulfilled, he suffered injury and he is entitled to damages and other relief. It can be noted immediately that, as noted in Judgment 4527, the first and second alleged promises are not actionable promises which could found relief. The following discussion of some of the applicable legal principles is part of a discussion found in the other judgment referred to at the beginning of consideration 6 above. The various elements of a promise and related circumstances that give rise to a legal liability to honour the promise, are fourfold. The third element is that the breach of the promise would cause injury to the person who relies on it. The third element has two sub-elements. One is that the promisee has relied on the promise and the second is that this reliance has caused injury to the promisee in the event of non-fulfilment of the promise (see Judgment 3619, consideration 14).

8. With one qualification, the complainant's analysis in his pleas does not establish, even arguably, that he relied on any of the four alleged promises and that this reliance caused him injury. The qualification concerns events in late 2016 and early 2017. In late 2016 the complainant became aware that the position he then held was to be abolished, namely the position of Regional Operations Manager in the UNAIDS Regional Office for Latin America and the Caribbean based in Panama. By letter

dated 2 November 2016 he was formally advised of the abolition of his post and that the procedures in the Staff Rules for reassignment would be engaged to endeavour to find him another post. It transpired that a post was identified to which the complainant could be reassigned namely a position of Compliance Officer based in Geneva, Switzerland. The complainant was informed of his reassignment to this position by letter dated 22 December 2016 from the Director, HRM, in Geneva. The letter included the following: “Subject to the period of appointment, staff members are expected to serve the full period of the Standard Duration of Assignment (SDA) for the duty station of their assigned position. Please note that the SDA for this position is currently 5 years”. A copy of this letter was signed by the complainant on 5 January 2017 signifying his acceptance. On 9 January 2017, the complainant sent an email to the WHO Ombudsman saying, amongst other things, he would not proceed with litigation (by inference, challenging the abolition of his post) because of his reassignment.

9. The relevance of these events and this correspondence is twofold. Firstly, and specifically, do they establish that the complainant was promised (the fourth promise referred to in consideration 5 above) he could serve the full five-year SDA in a position to which he was reassigned at the end of 2016 and that, by taking up the reassignment and abandoning any challenge to the decision to abolish his position, he acted to his detriment based on that promise? Secondly, and more generally, do they establish that the complainant acted to his detriment as he then believed, because of the first, second and third promises referred to in consideration 5 above, that the mandatory age of separation would be increased to 65 years effective 1 January 2018 and before his retirement under the pre-existing regime?

10. The second question can be answered readily. In a lengthy email dated 7 November 2016 to the WHO Ombudsman the complainant addressed several topics including the UN policy of increasing the mandatory age of separation. He noted that if introduced effective 1 January 2018, staff who were subjected to a mandatory retirement age of 60 or 62 would “theoretically have the option by [1 January] 2018 to

retire at 65". He also noted that "[u]ntil the [1 January] 2018 deadline set for implementation of the new mandatory age of retirement, much water will flow under the bridges and plans often change" and identified the "huge financial burden" these new arrangements presented. The complainant went on to say "I cannot be expected to make plans for myself and my family, based on what the 'future' Staff Rules may look like in January 2018. By nature I am not a speculator nor a gambler, so I can only base my plans and make decisions that will impact my family on the basis of [...] my 'current' contract, employment conditions and the current WHO Staff Rules". Quite clearly the complainant was not at this time relying at all on the alleged first, second and third pleaded promise.

11. As to the first question identified in consideration 9 above, the answer is also relatively clear. At the time of these events in late 2016, the complainant was well aware that his fixed-term contract had been extended until 31 July 2018 and that this had occurred in June 2016. In fact, he adverts to the "confirmation that [his] appointment was extended until July 2018" in the email of 7 November 2016 referred to in the preceding consideration. As already noted, the letter dated 22 December 2016 from the Director, HRM, in Geneva included the following: "Subject to the period of appointment, staff members are expected to serve the full period of the Standard Duration of Assignment [SDA] for the duty station of their assigned position. Please note that the SDA for this position is currently 5 years." It cannot be concluded, objectively, that this was a promise (the fourth promise referred to in consideration 5 above) the complainant could serve the full five-year SDA in the position to which he was reassigned at the end of 2016. Plainly the opening words ("Subject to the period of appointment") qualify everything said in the remainder of the quoted passage. Indeed, this was the conclusion of the GBA in its report of 21 November 2018. For the complainant, the period of appointment was until 31 October 2018. Moreover, there is nothing in the contemporaneous documentation or other persuasive evidence to sustain a conclusion that the complainant then believed he would occupy the reassigned position for a further five years notwithstanding that in August 2017 he did assert that was his

understanding (in his request for an extension). The complainant's pleas about breaches of promises are unfounded.

12. Part of the complainant's case in these proceedings is that the rejection of his request for an extension of appointment was legally flawed. The complainant made the extension request by email dated 21 August 2017. He did not receive a reply that involved a consideration of the request by the Executive Director, as required by the Staff Rules, until the Executive Director provided his reasons for dismissing the appeal in the December 2018 impugned decision. In that decision he addressed the extension request and said, amongst other things, "[n]otwithstanding your individual circumstances, service and contribution to UNAIDS, the interests of the organization were not best served by an extension of your appointment". The Executive Director revisited the extension request in the October 2019 impugned decision. He did so because he rejected one of the recommendations of the GBA and needed to explain why. In the second GBA report, the GBA recommended that the complainant be paid 8,000 Swiss francs in compensation and a maximum of 5,000 Swiss francs in legal costs. It did so because it believed the complainant had been entitled to "a reasoned and timely response", he received neither and was, in this respect, entitled to compensation. The GBA, in the course of its discussion on this topic, referred to Judgment 2513, consideration 10. There is a myriad of procedural and other legal complexities associated with the way UNAIDS dealt with the complainant's request for an extension of appointment. UNAIDS raises, in these proceedings, a multiplicity of technical if not tendentious procedural arguments as to why the complainant is now precluded from challenging, on the legal merits, the lawfulness of its consideration of the extension request.

13. However, it is sufficient, at least for the moment, to address the arguments of the complainant in his two complaints. In his first complaint the complainant began the plea by noting or asserting three things critical of UNAIDS handling of the extension request. However, the substance of the plea concerns a contention that the consideration of his request had violated the principle of equal treatment. He refers to the outcome of requests made by other identified and unidentified staff

as manifesting “extensions tainted by favouritism”. The complainant calls in aid in this argument and later, an expert report of 7 December 2018 into, broadly described, the governance of the UNAIDS Secretariat. In the second complaint the complainant’s pleas are differently focused. It is firstly argued that there had been an irregular refusal to examine the extension request. Secondly, that the request’s refusal constituted retaliation against the complainant. This is based on an HRD note concerning, amongst other things, a member of the staff of WHO indicating that to grant that staff member an extension would weaken the Organization’s position in related litigation and the Organization’s position in terminating yet another member of staff.

14. Each of these three contentions involve serious allegations which, in substance, constitute allegations of bad faith. But this needs to be proved (see, for example, Judgments 4264, consideration 10, 4146, consideration 10, 3743, consideration 12, and 2472, consideration 9), and it has not been in the present case. Judgment 2513 was relied on by the GBA in the second GBA report and by the complainant in his pleas. There are two features of that case which are not present in these proceedings. The first was that at least initially the extension in issue was supported by the complainant’s superior and the director of the relevant division. The second was that the executive head had formulated and published six criteria for the consideration of requests for an extension. In this respect, as noted by the Tribunal in consideration 8, the executive head had fettered his own very broad discretion and bound himself to follow the criteria he had established. It cannot ordinarily be expected that an executive head when assessing whether extending an appointment is “in the interests of the Organization”, a criterion of great generality and imprecision, needs to explain in any detail why a decision was taken not to take that step.

15. In his pleas, the complainant raises the issue of equality of treatment. The gist of his argument is this. Before 1 January 2019 (when the mandatory age of separation was increased to 65 years for all staff subject to the right of an individual staff member to invoke the pre-existing provision), Article 1020.1 of the WHO Staff Rules provided

for three mandatory ages of separation which were dependent on the time at which the member of staff became a participant in the United Nations Joint Staff Pension Fund. If it was before 1 January 1990, the age of separation was 60, if between that date and 31 December 2013, the age of separation was 62, and if on or after 1 January 2014, the age of separation was 65. The complainant says this regime was unfair and constituted unlawful unequal treatment and the regime was perpetuated for an additional year by the decision to implement the mandatory age of separation as uniformly 65 years on 1 January 2019 rather than 1 January 2018. The short answer to this argument is that the Tribunal has recognised in Judgment 3071, considerations 12 and 13 (citing Judgment 2915) that differing ages of retirement referable to different pension entitlements are not inherently discriminatory. These cases are referred to by WHO in its reply and the complainant does not, in his rejoinder, seek to establish, other than by assertion, that the contrary is true. Rather he focuses on the reasons for the decision to implement the mandatory age of separation a year later than originally proposed. If, however, the pre-existing regime was not demonstrated to be discriminatory, then its perpetuation for a further year does not establish otherwise. This plea is unfounded.

16. The complainant argues in his brief that the decision not to implement the mandatory age of separation of 65 until 1 January 2019, rather than 1 January 2018, was contrary to WHO's policy of healthy ageing as it might apply to UNAIDS staff. Even if true (which is by no means self-evident), nothing of substance is said about the legal consequences of this inconsistency. It is not at all obvious that there is any. This plea is without merit and unfounded.

17. The next issue raised by the complainant is that he was denied the right to an effective internal appeal. That is so, it is contended, because the GBA did not address three issues which had been raised by him in the internal appeal, namely the breach of the promise, as mentioned in consideration 5 above, to submit to the WHO's Executive Board the necessary amendments to the Staff Rules to implement the mandatory age of separation as 65, operative on 1 January 2018 as well

as the promise to cooperate and, additionally, the alleged breach of WHO's policy on healthy ageing. An internal appeal body has a duty to address pleas of substance (see, for example, Judgments 4169, consideration 5, and 4063, consideration 5). The last-mentioned alleged breach of WHO policy is not of substance and the GBA cannot be criticised for not addressing it.

18. The characterization of UNAIDS and WHO's conduct as involving promises is a construct used by the complainant when formulating his pleas in the internal appeal. The GBA was not obliged to embrace the complainant's construct of UNAIDS and WHO's conduct as involving the making of several promises. What it was obliged to do, and did, was address the substance of the conduct in the context of an alleged breach of promises. Whether its analysis was correct or not is beside the point. There was, in this respect, no denial of an effective right of internal appeal. This plea is unfounded.

19. One final procedural issue should be addressed. UNAIDS seeks the joinder of these complaints with others of staff members of WHO or, alternatively, asks that they be heard in the same session of the Tribunal. The latter has occurred. Joinder is opposed by the complainant. He points to the fact that a different organization is involved, any final administrative decision was made by a different executive head and insofar as there is a common plea about breach of promise, the factual foundation of the existence of the promise is different. Indeed, there is a difference between the promises alleged in these proceedings and those in the other proceedings. In all these circumstances it is inappropriate to join the complaints in this matter with the complaints in the other matter in order to render one judgment.

20. It is unnecessary to address some of the pleas of WHO including arguments about receivability.

21. The complainant has failed to establish that the decision to extend the mandatory age of separation to 65 as of 1 January 2019 instead of 1 January 2018 and the decision to separate him from service

and not to extend his appointment beyond retirement age are legally flawed and, accordingly, the complaints should be dismissed.

DECISION

For the above reasons,
The complaints are dismissed.

In witness of this judgment, adopted on 9 May 2022, Mr Michael F. Moore, President of the Tribunal, Mr Clément Gascon, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 6 July 2022 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

CLÉMENT GASCON

ROSANNA DE NICTOLIS

DRAŽEN PETROVIĆ