B. H. (No. 14)

v.

WIPO

141st Session **Judgment No. 5096**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourteenth complaint filed by Mr N. B. H. against the World Intellectual Property Organization (WIPO) on 8 July 2021 and corrected on 12 August 2021, WIPO's reply of 10 January 2022, the complainant's rejoinder of 19 April 2022 and WIPO's surrejoinder of 21 July 2022;

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

Having examined the written submissions;

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

The complainant seeks a retroactive redefinition of his employment relationship.

The complainant joined WIPO on 17 February 1999 as Clerk, at grade G-2, under a short-term contract. From that date until 31 May 2012, he was continuously employed on 25 successive short-term contracts. These contracts included short breaks (one to fifteen days) and varied in duration (two to twelve months). He was promoted multiple times, and his final short-term contract was offered on 4 July 2011 and ran until 29 July 2012; he then held grade G-5.

On 15 May 2012, the complainant was offered a fixed-term appointment at grade G-5, which he accepted on 23 May 2012. His appointment took effect on 1 June 2012 and was extended twice up to

31 March 2018. On 1 April 2018, the complainant was granted a continuing appointment.

In the meantime, on 25 November 2013, the complainant, together with other staff members, wrote to the Director General asking for a redefinition of his employment relationship when he held short-term contracts and to be compensated for having been kept in a precarious and irregular employment situation. His request was rejected by the Organization on 24 January 2014.

The complainant, together with other staff members, filed a request for review of that decision, which was rejected by the Director General in July 2014. They each filed an appeal with the WIPO Appeal Board (WAB), which recommended dismissing them as irreceivable as their submissions were not individualised, in particular regarding the fact that no information was provided regarding their individual contractual situation or concerning "related measures"[*] taken by the Administration in their regard. Consequently, the WAB could not reach a decision on each individual appeal. The complainant was informed, on 8 September 2015, of the Director General's decision to endorse the WAB's recommendation. The complainant, together with other staff members, impugned this final decision before the Tribunal and in Judgment 3943, the Tribunal found that his internal appeal was not properly filed, and that the WAB should have enabled him to correct his appeal by granting him a reasonable period of time and explained to him that it was incumbent on him to provide all the information necessary for an examination of the merits of his claims to have his employment relationship redefined. The Tribunal therefore remitted his case, along with many others, to WIPO for a fresh review by the WAB.

On 29 January 2018, WIPO referred the cases back to the WAB. In May 2019, the WAB suspended the proceedings, awaiting rulings in two allegedly similar cases involving former short-term staff members. The WAB resumed the proceedings after the Tribunal delivered, on 3 July 2019, Judgments 4160 and 4159 by which it rejected the complaints as irreceivable for failure to exhaust the internal means of redress.

[*] Registry's translation.

In its report of 11 February 2021, the WAB recommended dismissing the appeal as irreceivable. It concluded that the complainant had failed to challenge his contractual status within the required timeframe after being granted a fixed-term appointment in May 2012, which regularized his employment. The WAB found his situation comparable to that of other complainants whose complaints had previously been dismissed by the Tribunal in Judgments 4160 and 4159 and held that the complainant sought a retroactive redefinition of his employment status long after the fact. While acknowledging that the complainant had corrected his appeal as instructed, the WAB criticized the Organization for unnecessarily prolonging the process, which led to additional legal expenses and delay. It recommended dismissing the appeal but awarding the complainant compensation for the delay in the internal appeal proceedings and reimbursing his legal fees in a reasonable amount.

On 12 April 2021, the complainant was notified that the Director General endorsed the WAB's recommendation to dismiss his appeal as irreceivable. He nevertheless awarded him 300 Swiss francs for the delay in the internal proceedings. He also accepted the recommendation to reimburse his legal fees, but limited the amount to the equivalent of one hour of legal work on the ground that the Organization had acted reasonably throughout the process. This is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision of 12 April 2021 and to "recognize and re-qualify [his] employment status", and to convert the short-term contracts he held between 14 February 2000, which is the starting date of his second short-term contract, and 1 June 2012, into a fixed-term or a permanent appointment as of 14 February 2000. He also asks the Tribunal to order WIPO to "reconstruct" his career accordingly and to recalculate his pension rights with retroactive effect as if he had held a fixed-term contract or permanent appointment as of 14 February 2000. Additionally, he seeks compensation for material injury covering salary, benefits, step increases, pension contributions, and all entitlements due during that period. He claims 130,000 Swiss francs of moral damages for the 13 years of "insecure" short-term employment and undue delay in internal

adjudication. He further seeks full reimbursement of all legal fees related to this complaint and an increase of the internal appeal legal fee award to 5,000 Swiss francs. He also requests to be paid interest at the rate of 5 per cent per annum on all awarded sums from 14 February 2000 until full payment, and to be reimbursed any taxes he may have to pay if the sums awarded are subject to national taxation. Lastly, he asks to be granted any other relief as the Tribunal deems to be necessary, just, and fair.

WIPO asks the Tribunal to dismiss the complaint in its entirety as irreceivable since the complainant failed to challenge his past contractual status in a timely manner, and in any event, as devoid of merit.

CONSIDERATIONS

1. The complainant requests oral proceedings. The Tribunal observes that the parties have presented ample written submissions and documents to permit the Tribunal to reach an informed and just decision on the case. Accordingly, the request for oral proceedings is denied.

2. The complainant was employed by WIPO from 17 February 1999 to May 2012 under a short-term contract, renewed 25 times with no significant breaks. On 1 June 2012, he was granted a one-year fixed-term contract, which was subsequently extended for two years, then again for three years, until 31 March 2018. Since 1 April 2018, he has held a continuing appointment.

As from 25 November 2013, the complainant repeatedly requested the Director General to retroactively reclassify his employment situation as having been under a fixed-term contract, as from the date of commencement of his second short-term contract on 14 February 2000.

3. The complainant challenges the 12 April 2021 decision whereby the Director General rejected his appeal against earlier decisions, adopted in May and July 2014, whereby the Director General

had confirmed the rejection of his requests for recharacterization of his employment status.

In keeping with the WAB's report of 11 February 2021, the 12 April 2021 decision concluded that the complainant's appeal was time-barred, as he had failed to challenge his short-term contracts within the statutory time limits. The WAB determined that, at the latest, he should have challenged his first fixed-term contract within the prescribed timeframe.

4. It is important to note that the impugned decision follows Judgment 3943, delivered on 24 January 2018, which set aside earlier decisions rejecting the appeals of several staff members, including the present complainant, as irreceivable for lacking sufficient detail to enable a proper consideration by the WAB. Although Judgment 3943 found the internal appeals defective in this respect, it held that this defect could not be lawfully raised against the complainants without first granting them an opportunity to correct their appeals. Consequently, the Tribunal remitted these cases to WIPO to be examined afresh by the WAB after such corrections had been made. Crucially, Judgment 3943 explicitly left open the possibility that these appeals could still be rejected as time-barred, stating that there was not "any need for the Tribunal to rule on the other issues raised [in] the complaints, including that of the receivability of the internal appeals on which the Appeal Board did not give an opinion".

5. The complainant's arguments raise six grounds, the first addressing the receivability of his internal appeal and the remaining five concerning the merits of his case and the alleged delay in the proceedings. They are as follows:

(i) the appeal is receivable in its entirety, as the complainant followed all applicable laws and did not fail to exhaust internal means of redress;

(ii) his request for the regularization of his employment situation was justiciable;

(iii) his request complied with the requirements in Staff Rule 11.4.3(a) regarding motivation and supporting documentation;

(iv) the decision to keep him on short-term contracts for an excessive period of time was unlawful;

(v) the decision to keep him on temporary assignments for a long period of time undermined his dignity; and

(vi) the impugned decision erred in awarding him minimal damages for the delay in the proceedings and legal costs.

6. Regarding the receivability of his internal appeal, the complainant advances several arguments challenging the finding that his internal appeal was time-barred, which can be summed up as follows:

(i) the WAB's reasoning on irreceivability is flawed, lacking a basis in clear, applicable legal provisions or principles in force at the relevant time;

(ii) contrary to WIPO's assertion, he could not have challenged his "last" short-term contract, as he had no way of knowing whether it would be his final one;

(iii) he had no reason to challenge his first fixed-term contract, as it did regularize his position and was, therefore, lawful;

(iv) at the time of both his last short-term contract and his first fixed-term contract, he could not have sought compensation for the 13 years of unlawful short-term employment, as he was unaware that compensation was possible. After the Tribunal delivered Judgment 3090 on 8 February 2012, he became aware only of the fact that the long succession of his short-term contracts might potentially result in a legal relationship with WIPO and might entitle him to a recharacterization of his contract. It was only after Judgment 3225 was delivered on 4 July 2013 that he became aware of his entitlement to compensation. Once he became aware of Judgment 3225 and his right to compensation, he promptly submitted his request;

(v) there was no appealable administrative decision regarding recharacterization or compensation prior to the Director General's decision of 24 January 2014, whereby his request for compensation was rejected. Conversely, the earlier decision of 15 May 2012 to grant him a fixed-term contract and regularize his employment did not constitute a decision implicitly denying compensation for past material damages and redefinition of his employment status with retroactive effect;

(vi) the impugned decision incorrectly distinguishes his case from those adjudicated in Judgments 3225 and 3090. While it is true that the complainant in Judgment 3225 was still a short-term employee at the time she brought her case to the Tribunal, her status at that time was not considered relevant for the decision of the Tribunal and was not even mentioned therein. What mattered in Judgment 3225, and what should matter in the present complaint, was the period in which the complainant was kept in a precarious employment situation and the Organization's failure to recognize the true nature of their legal relationship;

(vii) the arguments and the jurisprudence on time limits are irrelevant because the WIPO Staff Regulations and Rules and the Tribunal's jurisprudence did not clearly articulate a specific time limit for staff members to request employment recharacterization and related compensation;

(viii) it is well established in the jurisprudence of the Tribunal that statutory rules on internal appeals, while essential for proper administration, "are not supposed to be a trap or a means of catching out a staff member who acts in good faith"; and

(ix) WIPO's "unconscionable conduct" over 13 years of precarious contracts, violating the fundamental principle of "equal pay for equal work", bars it from relying on any alleged time limits for filing an appeal (the existence of which is denied). Judgment 2282 found that an organization cannot benefit where its own actions prevented the other party from abiding by the rules or procedures.

7. WIPO maintains that the internal appeal was irreceivable, rendering the present complaint equally irreceivable.

8. WIPO's objection to receivability is well founded, as the complainant fails to demonstrate that his internal appeal was receivable. This aligns with the Tribunal's reasoning in Judgment 4655, which addressed similar litigation, regarding eleven WIPO staff members, as will be further explained.

9. The origin of the present complaint lies in the practice (as already noted in Judgments 4655, consideration 2, 4654, consideration 2, 4160, consideration 3, and 4159, consideration 3) which became widespread at WIPO – and indeed in other international organizations, in similar forms – during the 1990s and early 2000s, consisting of employing some staff under short-term contracts which were renewed repeatedly. One consequence of this practice, which was boosted by the large expansion in WIPO's activities at a time when the Organization was not in a position to incorporate all the posts corresponding to its needs in its ordinary budget, was that the employees concerned, commonly referred to as "long-serving temporary employees", often pursued a career within the Organization for many years without acquiring the status of staff members or enjoying the related benefits.

10. In Judgment 3090, delivered on 8 February 2012, an enlarged panel of judges of the Tribunal found that the long succession of short-term contracts awarded to the complainant in that case had given rise to a legal relationship between the complainant and WIPO which was equivalent to that on which permanent officials of an international organization may rely. It therefore held that WIPO, in considering that the complainant belonged to the category of temporary employees, had failed to recognize the real nature of its legal relationship with that complainant, and that, in so doing, WIPO had committed an error of law and had misused the rules governing short-term contracts.

In Judgment 3225, delivered on 4 July 2013, which dealt with a similar case, the Tribunal confirmed this precedent by taking the notion of redefinition of the contractual relationship underlying such injury to

its logical conclusion, as far as compensation for material injury was concerned. On this basis, it ordered WIPO to pay damages to the complainant corresponding to the loss of remuneration and other financial benefits resulting from the fact that the complainant had not been regarded as holding a fixed-term appointment. The Tribunal notes, parenthetically, that the correctness of Judgment 3090 and Judgment 3225 is not raised by the Organization in these proceedings.

The complainant's primary claim in the present complaint is to have this case law applied to his situation.

11. As noted in Judgment 4655 (considerations 6, 7, and 8), prior to Judgments 3225 and 3090, WIPO had already initiated a process to regularize the contractual situation of long-serving temporary employees. In particular, the Organization adopted a reform enabling staff members to be recruited on temporary appointments, in line with a recommendation of the International Civil Service Commission (ICSC). Pursuant to a revision of the Staff Regulations which came into force on 1 January 2012, amending Regulation 4.14 (on types of appointment) in this regard, a Regulation 4.14bis (subsequently Regulation 4.16) was incorporated into the Staff Regulations in order to establish legal provisions governing temporary appointments, which were for a maximum period of 12 months but could be extended several times up to a limit originally set at five years. Pursuant to Regulation 4.14bis, the rules governing this new type of appointment were set out in Office Instruction No. 53/2012 (Corr.) of 5 November 2012 and its annexes.

Under this reform, the holders of temporary appointments were given the status of WIPO staff members, which had not been the case previously for persons on short-term contracts. Thus, although they were entitled to only some of the allowances and benefits granted to other staff members, they otherwise enjoyed the rights recognized by the WIPO Staff Regulations and Rules, which enabled them, for example, to make use of the ordinary internal means of redress provided therein. Pursuant to paragraph (f) of the aforementioned Regulation 4.14bis, "special transitional measures", defined in Annex II to Office Instruction No. 53/2012 (Corr.) of 5 November 2012, were established

for persons previously holding short-term contracts with five or more years of continuous service on 1 January 2012 (as was the case for the complainant in the present case). In particular, it was stipulated in this respect that the abovementioned five-year maximum period set for temporary appointments would not be applicable to them.

At the same time, WIPO endeavoured to enable staff who had until then been continuously employed under short-term contracts, as well as holders of temporary contracts awarded in the context of this reform, to obtain fixed-term appointments. To this end, during the 2008-2009 to the 2014-2015 biennia, the Organization created a large number of posts to be filled using fixed-term contracts. It also encouraged the appointment of former long-term temporary staff to these posts, in particular by earmarking a large number of the posts advertised at that time for internal candidates.

The complainant in the present case was awarded fixed-term contracts from June 2012 under this policy.

12. In Judgments 4160 and 4159, delivered on 3 July 2019, the Tribunal ruled on complaints seeking redefinition of the employment relationships of two WIPO staff members who had been employed from 2002 to 2012 under short-term contracts renewed several times before being awarded temporary contracts and then, in the case of one of them, a fixed-term contract. The Tribunal dismissed these complaints on the grounds that the complainants' internal appeals in both cases were time-barred since they had not challenged the decisions to appoint them under temporary contracts within the applicable time limit. The Tribunal held that, in view of the modification of the legal relationships between the parties resulting from the grant of these contracts, which were of a fundamentally different nature from the short-term contracts which had preceded them, and given that the conclusion of these contracts also regularised the complainants' contractual situation, the absence of any challenge to these decisions within the time limit for filing appeals necessarily barred the complainants from requesting the redefinition of their previous employment relationships. The Tribunal also emphasized that these complainants' situations differed radically

from those in Judgments 3225 and 3090, where complainants were still on short-term contracts when seeking redefinition (see Judgments 4160, consideration 8, and 4159, consideration 8).

13. As the WAB rightly considered in its report of 11 February 2021, followed by the Director General in the impugned decision, the case law established by Judgments 4160 and 4159 is fully applicable to the present case. Consequently, the Organization's objection to the receivability of the complaint, based on the internal appeal being time-barred, is well founded.

As the Tribunal has already affirmed in Judgment 4655, consideration 10, the approach in Judgments 4160 and 4159 concerning the consequences of a failure to challenge within the applicable time limit a temporary employment contract granted after a period of employment under short-term contracts, must apply, *a fortiori*, to a fixed-term contract granted under similar circumstances. A fixed-term contract, being even more fundamentally different from a short-term contract, constituted, *a fortiori*, a modification of the legal relationship and regularized the staff member's contractual status. The complainant failed to challenge the decision granting him a fixed-term contract within the applicable time limit for appeal, and also accepted his new contract without reservation. Consequently, he was precluded from seeking a redefinition of his employment relationship at a later date.

14. As in Judgment 4655, consideration 11, the Tribunal notes that the complainant was plainly aware that he was in a similar situation to that of the staff members in Judgments 4160 and 4159, and that he sensed that the resulting case law would therefore be applicable to his own case. Indeed, the evidence in the record shows that, on 13 May 2019, pending the internal appeal, the parties, including the present complainant, were notified of the WAB's decision to suspend consideration of the appeal, pending the Tribunal's decision on the two cases, which later culminated in Judgments 4160 and 4159.

The complainant maintains that his request for redefinition cannot be considered as time-barred because it is solely an action for compensation for misuse of precarious contracts, and such actions are not subject to time limits under WIPO's rules. He further argues that no decision on his request for redefinition existed before 24 January 2014, and that the grant of his first fixed-term contract was not a decision concerning recharacterization and compensation.

These arguments are unfounded.

As already affirmed in Judgment 4655, consideration 15, the Tribunal considers that this manner of presenting the cases is contrived. In a dispute involving a challenge to individual decisions, as here, compensation for injury arising from the alleged unlawfulness of those decisions could only be granted as a consequence of their being set aside, which presupposes by definition that they have been challenged within the applicable time limit (see also Judgment 4830, consideration 6).

The complainant's reference to the case law which relates to different situations, is unpersuasive.

His contention that Judgment 3225 focused only on compensation and not on the timeliness of the challenge to administrative decisions is misconceived. The complainant in Judgment 3225 had challenged the Organization's decisions while she was still on short-term contracts and had asked that all her contracts, at least from the second one, be converted into fixed-term contracts. Based on these findings, the Tribunal held:

– a long succession of short-term contracts had given rise to a legal relationship between the complainant and the Organization which was equivalent to that on which permanent staff members may rely;
– in considering that the complainant belonged to the category of short-term employees, the defendant had failed to recognise the real nature of their legal relationship with her;
– the employment relationship should be reclassified as if a fixed-term contract had been in place from the second short-term contract's effective date;

– the complainant was entitled to material damages, identified as any additional salary and financial benefits of all kinds to which she would have been entitled had she received a fixed-term appointment as from the established date; and
– the complainant was entitled to moral damages for the moral injury she suffered for having been kept in a precarious situation without a valid reason.

It is clear that Judgment 3225 allowed the claims for redefinition and damages on the basis that the short-term appointments had been challenged in a timely manner.

Conversely, the present complainant never challenged his short-term contracts within the established time limit, nor did he challenge them even after receiving his first fixed-term contract.

Furthermore, endorsing the argument that a claim for recharacterization and compensation has no time limits – which would contradict Judgments 4655, 4654, 4160, and 4159 – would allow staff members to circumvent appeal time limits by seeking compensation at any time for injury caused to them by an individual decision they failed to challenge promptly. Such a situation is unacceptable given the necessity of legal stability, which is the very justification for time limits and their enforcement (see Judgment 3406, consideration 12, and the case law cited therein). Additionally, the Tribunal notes that the decisions granting the complainant a sequence of short-contracts were, in themselves, decisions negatively affecting him, and, as such, challengeable decisions. Indeed, as recalled above, other staff members in the same situation as the complainant did challenge their short-term contracts. In any event, the decision to grant the complainant his first fixed-term contract clearly showed detrimental effects, insofar as it ignored the 25 past short-term contracts and failed to retroactively reclassify his employment. Consequently, contrary to the complainant's contention, a decision denying recharacterization and compensation did exist prior to 24 January 2014. The Tribunal, consistent with Judgment 4655, holds that it was the decision on his first fixed-term contract.

15. Based on considerations 13 and 14 above, the complainant's arguments listed in consideration 6 above, under (i), (ii), (iii), (v), (vi), (vii), (viii), and (ix) are rejected.

16. The Tribunal now addresses the complainant's argument listed in consideration 6 under (iv) that he became aware of his entitlement to compensation for the alleged unlawful short-term contract sequence only when Judgment 3225 was delivered on 4 July 2013.

This argument is unfounded.

As the Tribunal has repeatedly stated, officials are expected to know the rules and regulations to which they are subject (see Judgments 4777, consideration 6, and 4673, consideration 16). Ignorance or misunderstanding of the law is no excuse (see Judgments 4741, consideration 13, 4673, consideration 26, and 4573, consideration 4).

As a staff member, the complainant was expected to be aware of the available remedies for challenging the long series of short-term contracts and the relevant time limits. As already noted, other staff in his position duly requested recharacterization of their employment relationship while still on short-term contracts.

His assertion that he was unaware of the possibility of obtaining retroactive recharacterization of his fixed-term contract and material or moral compensation, is also factually incorrect.

Judgment 3090 can be seen as the starting point, with regard to WIPO, of the case law according to which a long series of short-term contracts may give rise to a legal relationship equivalent to that of permanent staff. It also awarded the complainant in that case moral damages in the sum of 60,000 euros for having been kept in a precarious employment situation.

Judgment 3090 was delivered on 8 February 2012. At that time, the complainant still held a short-term contract, his first fixed-term contract commencing on 1 June 2012. Thus, by 1 June 2012 at the latest, he should have been fully aware that he could challenge either his last short-term contract or his first fixed-term contract, alleging the

Organization's failure to retroactively convert his employment relationship.

Furthermore, and crucially, a judgment by the Tribunal, establishing a principle favorable to staff members, cannot ordinarily be considered a "new fact" absolving staff from observing the requirements of the internal means of redress.

As Judgment 4682 established, in consideration 4:

> "[S]ince time limits are an objective matter of fact, any other conclusion, even if founded on considerations of equity, would impair the necessary stability of the parties' legal relations, which is the very justification for a time bar. In particular, the fact that a complainant may have discovered a new fact showing that the impugned decision is unlawful only after the expiry of the time limit for submitting an appeal is not in principle a reason to deem her or his complaint receivable. It is true that, notwithstanding these rules, the Tribunal's case law allows an employee, concerned by an administrative decision which has become final, to ask the Administration for review, either when some new and previously unforeseeable fact of decisive importance has occurred since the decision was taken, or when the employee is relying on facts or evidence of decisive importance of which she or he was not and could not have been aware before the decision was taken. However, the fact that, after the expiry of the time limit for appealing against a decision, the Tribunal has rendered a judgment on the lawfulness of a similar decision in another case, does not come within the scope of these exceptions (see Judgment 3002, considerations 13 and 14). Only under very special circumstances, did the Tribunal accept that the delivery of one of its judgments could be described as a new and unforeseeable fact of decisive importance, within the meaning of the above-cited case law and could therefore have the effect of reopening the time limit within which a complainant could lodge an appeal (see Judgment 676)."

No exceptional circumstances of this nature exist in the instant case, as the complainant could not have been unaware of his right to challenge his short-term contracts or, at the latest, his first fixed-term contract, for the reasons already stated.

17. In light of the foregoing, none of the complainant's arguments disputing the time bar on his internal appeal, as per the case law stemming from Judgments 4655, 4654, 4160, and 4159, can be accepted.

18. In accordance with the Tribunal's established precedent, based on Article VII, paragraph 1, of its Statute, the untimeliness of the complainant's internal appeal renders the present complaint irreceivable. This is due to his failure to exhaust the available internal means of redress, which are only considered exhausted when recourse to them has been made in compliance with formal requirements and within the prescribed time limit (see Judgments 4655, consideration 20, 4654, consideration 13, 4160, consideration 13, 4159, consideration 11, 2888, consideration 9, 2326, consideration 6, and 2010, consideration 8).

19. As the complaint is irreceivable, the complainant's arguments in grounds 2 to 5 of his brief, pertaining to the merits of the case, will not be addressed.

20. In his sixth ground, the complainant asserts that the impugned decision erred in granting him minimal damages for the delay in proceedings and his legal costs.

His arguments are unfounded.

International civil servants are entitled to expect timely consideration of their cases by internal appeal bodies. Failure to ensure expeditious proceedings constitutes a failing on the part of the employer organisation (see Judgments 3510, consideration 24, and 2116, consideration 11). The Tribunal's case law dictates that the amount of compensation that may be granted under this head ordinarily depends on two essential considerations, namely the length of the delay and the effect of the delay on the employee concerned (see Judgments 4635, consideration 8, 4178, consideration 15, 4100, consideration 7, and 3160, consideration 17). In the present case, approximately three years and three months elapsed between the delivery on 24 January 2018 of the aforementioned Judgment 3943, whereby the complainant's case was remitted to WIPO for the complainant's appeal for reconsideration by the WAB, after correction, and the notification of the 12 April 2021 decision on the complainant's appeal. The Organization's liability is assessed solely against this period, as Judgment 3943 found no reason to compensate for delay caused by the setting aside of the initial decision due to the

appeal's flaw. While this delay is undeniably long, it is important to consider that, to a small extent, the slowness can be attributed to the stay of proceedings duly granted pending Judgments 4160 and 4159. Furthermore, from the delivery of those judgments on 3 July 2019, the complainant could not, in the light of those precedents, reasonably have remained uncertain about the likely outcome of his own appeals. The usual adverse effects of such a delay were therefore significantly mitigated in the present case. In these circumstances, the Tribunal considers that the complainant, who has already received 300 Swiss francs in compensation under this head pursuant to the impugned decision itself, has not established that he has suffered injury warranting greater redress on account of the delay complained of (see Judgment 4655, consideration 21).

21. It follows from the foregoing that the complaint will be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 23 October 2025, Mr Michael F. Moore, President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.