



**UNITED NATIONS APPEALS TRIBUNAL**  
**TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2011-255



**Gehr**  
**(Appellant)**

**v.**

**Secretary-General of the United Nations**  
**(Respondent)**

**JUDGMENT**

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**Before:** Judge Inés Weinberg de Roca, Presiding  
Judge Sophia Adinyira  
Judge Mary Faherty

**Judgment No.:** 2012-UNAT-236

**Date:** 29 June 2012

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** Self-represented

**Counsel for Respondent:** John Stompor/Wambui Mwangi

**JUDGE INÉS WEINBERG DE ROCA, Presiding.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Mr. Walter Gehr on 20 September 2011 against Judgment No. UNDT/2011/142, issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 12 August 2011. The Secretary-General filed an answer on 8 November 2011.

### **Synopsis**

2. An international organization necessarily has the power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts and the redeployment of staff.

3. The heads of departments/offices retain the authority to transfer staff members within their departments or offices to vacant posts at the same level (paragraph 2.4 of ST/AI/2006/3 (Staff selection system), applicable at the time), as a result of the restructuring of the office.

4. The venue of the public hearing is that of the court. The circumstance in which a party may wish to participate via video-link has no impact on the seat of the tribunal, where the judges sit and where the public can attend.

5. Pursuant to Article 18(5) of the UNDT Statute, the Judge may limit oral evidence as he or she deems fit.

6. The appeal is dismissed.

### **Facts and Procedure**

7. The facts as set out in paragraphs 3 to 26 of the UNDT Judgment are not contested:

3. The Applicant joined the United Nations Office on Drugs and Crime (“UNODC”) in 2002. With effect from 12 November 2003, he was appointed as Project Coordinator of the Office for Prevention of International Terrorism, under an appointment governed by the 200 series of the Staff Rules which was subsequently extended.

4. With effect from 1 November 2007, the Applicant’s appointment was converted into a one-year fixed-term appointment under the 100 series of the Staff Rules. Also, as at that date, the Applicant was appointed to the post of Senior Terrorism Prevention Officer, at level P-5, in the Terrorism Prevention Branch (“TPB”), within the Division of Treaty Affairs (“DTA”). His appointment was extended twice, until 31 January 2010.

5. Following a restructuring of TPB in April 2008, his functional title was changed to that of Chief of the Counter-Terrorism Legal Services Section I. In this capacity, he was the First Reporting Officer of five staff members.

6. In the fall of 2009, the Chief of TPB and the Officer-in-Charge of DTA announced to TPB staff that the Branch was to be reorganized.

7. On 1 October 2009, seven out of around 45 TPB staff members were notified of the decision not to renew their appointments beyond their expiry.

8. On 8 December 2009, the Applicant was informed orally by the Chief of TPB and the Officer-in-Charge of DTA that his post would be abolished and that he would be reassigned, at the same level, to the position of Senior Legal Adviser which was to be created within the Office of the Chief of TPB. In the exchange which ensued with the Chief of TPB, the Applicant pointed out that the position of Senior Legal Adviser would not involve any supervisory functions, and he asked to be provided with a written “proposal ... [in order for him to] make a fully informed decision”. The Chief of TPB responded in an email of 11 December 2009, confirming that he was to be laterally reassigned to the position of Senior Legal Adviser, whose functions were “in line with the overall restructuring of TPB”.

9. On 7 January 2010, the Chief of TPB distributed to TPB staff draft terms of reference for the new structure as well as a document entitled “Timeline for implementation of the new structure for TPB” which reflected the following schedule:

07/01/2010	Draft [terms of reference] of TPB given to staff
07/01/2010	Revision of [terms of reference] for posts initiated – ongoing discussion with staff
15/01/2010	... DTA [t]erms of reference ... to [the Executive Director] for approval
22/01/2010	[F]inal revision of inputs provided to Chief of TPB
29/01/2010	Finalization of all [terms of reference] for TPB posts to be submitted to M[anagement, Human Resources Management Section] for approval
01/02/2010	New structure [u]nofficially implemented and worked by

10. On 12 January 2010, the Chief of TPB sent an email to TPB staff, attaching the draft terms of reference for the new structure and asking for their input. The Applicant replied on 14 January, suggesting that someone else develop the terms of reference concerning the position of Senior Legal Adviser since he had never aspired to this position.

11. With effect from 1 February 2010, the Applicant’s appointment was extended until 31 January 2011.

12. By an email of 20 January 2010, the Officer-in-Charge of DTA invited the Applicant to promptly express his reservations, if any, and sought confirmation that he wished to take on the position of Senior Legal Adviser. In response to these queries, the Applicant stated that he maintained the view which he had previously conveyed in writing to the Chief of TPB and asked whether any administrative decision had been or was to be taken concerning his role in UNODC.

13. Further exchanges ensued between the Chief of TPB, the Chief of the Human Resources Management Service (“HRMS”) and the Applicant, in which the latter enquired whether an administrative decision had already been taken with respect to his reassignment.

14. By an email of 27 January 2010 to the Applicant, the Chief of TPB stated:

[T]he managerial decision to laterally reassign you ... was taken as part of the restructuring of TPB, as requested and approved by the [UNODC] E[xecutive] D[irector] ... [T]he administrative implementation of the decision will be part of the formal implementation of the new TPB structure, once new Terms of Reference and detailed structure of the Branch have been elaborated.

15. On the same day, the Applicant sought further clarifications as to whether or not the Executive Director’s approval constituted the administrative decision to reassign him.

16. Meanwhile, on 25 January 2010, the Applicant had met with the Regional Ombudsman to discuss his situation, following which the latter had requested the Administration to suspend any administrative action in relation to the Applicant’s case.

17. Responding to a request from the Chief of TPB, the Applicant sent on 29 January 2010 a draft work plan for the new position of Senior Legal Adviser.

18. On 2 February 2010, the Chief of TPB distributed to TPB staff a chart dated 1 February 2010 which reflected the new structure for the Branch. On 5 February, she sent an amended version of the same chart, which was also dated 1 February 2010, together with terms of reference, advising that those documents had just been submitted to the Officer-in-Charge of DTA for review and would thereafter be submitted to the Executive Director for approval.

19. By memorandum dated 11 February 2010, the Officer-in-Charge of DTA sent to the Executive Director an amended version of the chart together with the terms of reference for TPB, recommending that the new structure be effective retroactively as from 1 February 2010.

20. On 12 February 2010, the Chief of TPB informed TPB staff that the Executive Director had formally approved the new structure and the next step would be the drawing up of the terms of reference for individual positions within the structure. Shortly thereafter, she sent to the Applicant draft terms of reference for the position of Senior Legal Adviser and asked for his comments and suggestions. The terms of reference specified:

[T]he incumbent leads the elaboration and implementation of a strategic vision and a related programme of work of UNODC/TPB in the field of nuclear, chemical and biological terrorism and related and emerging topics. The incumbent's work assignments also include, upon request by management, provision of legal advice, including advisory services to assist states to establish a legal framework to fully implement the international legal regime against terrorism and to train those responsible for its application.

More specifically, the incumbent, within the delegated authority, is responsible for the following duties:

- Develop, in close consultation with the Specialized Terrorism Prevention Unit, a programme of work for UNODC/TPB in the area of nuclear, chemical and biological terrorism;
- Lead the mobilization of extra-budgetary resources necessary for the implementation of the programme of work including by ... elaborating funding proposals in the area of nuclear, chemical and biological terrorism, by undertaking substantive consultations with representatives of possible donor countries and by continuous follow up regarding funding opportunities;
- Contribute ... to integrating activities in the area of countering nuclear, biological and chemical terrorism in the development of UNODC's regional and country-specific programmes;
- Initiate, maintain and develop partnerships and undertake joint activities in the area of countering nuclear, biological and chemical terrorism with relevant organizations and other stakeholders...;
- Design, organize and execute expert working group meetings on specific subjects in the area of nuclear, biological and chemical terrorism;
- Provide continuous advice to the Chief of the Branch relating to UNODC/TPB activities in the area of countering nuclear, chemical and biological terrorism;
- Provide, upon request, specialized policy, strategy, programme and legal advice and technical input to UNODC senior management and the Chief of TPB upon management request more broadly on complex legal and related substantive issues of terrorism prevention, for setting and guiding policy approaches, programme content and implementation strategies, including advice on and interpretations of the universal instruments against terrorism, other international treaties governed by the public international law and United Nations resolutions for the prevention and suppression of terrorism, including UNGA and Security Council resolutions; and on legal provisions, draft legal provisions, resolutions and draft resolutions on thematic areas relevant to countering terrorism;
- Provide, upon management request and in consultation with the Specialized Terrorism Prevention Unit and the Regional and National Terrorism Prevention

Unit, specialized policy, strategy, programme and legal advice to Government officials for setting and guiding national policies, strategies and implementation plans for fulfilling the international legal obligations in counter-terrorism and facilitating related cooperation among countries in the light of public international and constitutional law and in the context of comparative criminal law;

- Contribute, upon management request and in consultation with the Specialized Terrorism Prevention Unit and the Regional and National Terrorism Prevention Unit, to the delivery of technical assistance to requesting countries, in particular in the area of nuclear, chemical and biological terrorism and other topics as assigned;

- Contribute ... to the development of new capacity building initiatives with regard to the area of nuclear, biological and chemical terrorism...

21. On 22 February 2010, the Applicant submitted a request for management evaluation of the decisions of 12 February to abolish the post of Chief of the Counter-Terrorism Legal Services Section I and to laterally reassign him to the position of Senior Legal Adviser.

22. By a letter dated 22 April 2010, the Applicant was informed that the Secretary-General had found that the decision to abolish the litigious post had been duly motivated and taken in accordance with the relevant rules. He further considered that the decision to reassign the Applicant to the position of Senior Legal Adviser constituted a proper exercise of discretion and decided to uphold the decision, subject to a reclassification exercise.

23. On 27 April 2010, the Applicant filed his application with the Tribunal.

24. In April and May 2010, draft generic job profiles for all individual positions within the new TPB structure were sent for approval to HRMS.

25. On 15 March 2011, a classification notice was issued for the post of Senior Legal Adviser and sent to the Applicant. The notice stated that the classification had taken effect retroactively as from 1 April 2010.

26. On 7 June 2011, a hearing was held on the merits in the present case, to which the Applicant and Counsel for the Respondent attended. During the hearing, three witnesses were heard, namely the Chief of TPB, the Officer-in-Charge of DTA, and a Senior Coordinator within TPB.

8. On 12 August 2011, the UNDT issued Judgment No. UNDT/2011/142. The UNDT found that the restructuring of the TPB was a valid exercise of the Secretary-General's discretion. It further found that Mr. Gehr's post had not been abolished; rather, Mr. Gehr had been reassigned against the same budgeted post and his functional title and responsibilities were eventually changed to those of Senior Legal Adviser. The UNDT was satisfied that the reassignment was justified by the restructuring of the TPB which entailed a redistribution of functions. The UNDT

noted that Mr. Gehr had chosen to submit a separate application regarding the classification process, and that it would therefore not make any ruling on this issue in the case at bar. Similarly, the UNDT found that Mr. Gehr's allegations of harassment and discrimination were unrelated to the decision to restructure the TPB and to reassign him, the only matter properly before the UNDT. The UNDT therefore rejected Mr. Gehr's application.

9. Mr. Gehr appeals the UNDT Judgment. On 24 June 2012, and upon Mr. Gehr's request, the Appeals Tribunal held an oral hearing in Geneva, Switzerland. Both parties attended the hearing via video-link.

### **Submissions**

#### **Mr. Gehr's Appeal**

10. Mr. Gehr submits that the UNDT erred in finding that the restructuring of the TPB was a valid exercise of the Secretary-General's discretion; and that he had been validly reassigned as the Senior Legal Adviser of the TPB.

11. Mr. Gehr submits that the UNDT erred in concluding that Mr. Gehr's post was not abolished; and in failing to recognize that prior to his reassignment he had been informed that his post would be abolished.

12. Mr. Gehr asserts that the UNDT exceeded its competence in finding that the draft terms of reference of the position of Senior Legal Officer were sufficiently precise; that the UNDT did not properly construe the notion of a right to be heard in relation to the Organization's decision to reassign him; and that the UNDT failed to address his assertion that his supervisors lacked good faith during the restructuring process. Mr. Gehr also asserts that the UNDT erred in fact in finding that Mr. Gehr admitted that he felt competent and disposed to take up fundraising activities.

13. Mr. Gehr submits that the UNDT failed to exercise jurisdiction vested in it. In particular, he submits that the UNDT failed to address several of his allegations, including "abuse of authority, bad faith, ill will, unfair dealings, humiliation by his supervisors", "lack of respect for the dignity of the Appellant", the fact that "the ... contested administrative decision ha[d] been taken out of favouritism for a third party", "failure by the Administration to guarantee a healthy environment", and "lack of integrity of the management evaluation process". The UNDT further erred in not addressing Mr. Gehr's allegation that his reassignment was procedurally flawed because the position was filled without advertisement or open competition.

14. Mr. Gehr submits that the UNDT made several errors in procedure warranting a reversal of its Judgment. He submits that the UNDT erred in deciding to address his allegations regarding the classification process and harassment under other case numbers.

15. The Appellant also submits that the UNDT erred in denying the Appellant's request to guarantee access to the oral hearing, via videoconference in another duty station, namely Vienna. The Appellant submits that the UNDT erred in its holding that only access to the Tribunal's courtrooms be guaranteed, considering that the parties, their representatives and other interested parties were in Vienna; and by failing to consider a change of venue.

16. The Appellant submits that the UNDT erred by declining to hear three of the four witnesses proposed by the Appellant; and by severely truncating the testimony of the fourth witness.

17. The Appellant requests that the Appeals Tribunal reverse the UNDT Judgment. In the alternative, he requests that the Appeals Tribunal remand the case to the UNDT for a public hearing which, if conducted by videoconference, would allow interested persons to attend the hearing from a videoconference room at the United Nations headquarters in Vienna. He also requests an oral hearing of his appeal.

### **Secretary-General's Answer**

18. The Secretary-General submits that the UNDT correctly concluded that the restructuring of the TPB was a valid exercise of the Secretary-General's discretion. The decision to restructure the TPB was justified by genuine concerns of the Organization and the appropriate management procedures were followed in taking the restructuring decision. The Secretary-General submits that the UNDT did not err in finding that Mr. Gehr's reassignment was justified by the restructuring of the TPB.

19. The Secretary-General submits that the UNDT correctly concluded that Mr. Gehr had been validly reassigned as the Senior Legal Adviser of the TPB.

20. The UNDT correctly concluded that Mr. Gehr's post was not abolished and that his reassignment was justified by the restructuring of the TPB. Although Mr. Gehr had initially been informed that his post would be abolished, the Organization ultimately decided not to abolish his budgetary post. Mr. Gehr remained on the post, but with a changed functional title and with changed responsibilities. The Secretary-General also submits that, contrary to Mr. Gehr's



assertion, the UNDT did recognize in paragraph 8 of its Judgment that Mr. Gehr had initially been informed that the Organization intended to abolish his budgetary post.

21. The Secretary-General submits that the Appellant has not demonstrated that the UNDT failed to exercise jurisdiction vested in it such as to warrant a reversal of its Judgment. Contrary to Mr. Gehr's assertion, the UNDT did address his allegations regarding "abuse of authority, bad faith, ill will, unfair dealings, [and] humiliation". In response to Mr. Gehr's contention that the UNDT did not address his allegations that his reassignment was procedurally flawed because the position was filled without advertisement or open competition, the Secretary-General submits that the Organization was entitled to reassign Mr. Gehr pursuant to Staff Regulation 1.2(c) without advertising the post.

22. The Secretary-General submits that the Appellant has not established that the UNDT made any errors in procedure warranting a reversal of its Judgment. The UNDT did not err in deciding to address his allegations regarding the classification process and harassment under different case numbers. The Secretary-General submits that the Appellant failed to establish that the UNDT erred in not guaranteeing access to the public at the United Nations premises in Vienna; and in not hearing three witnesses suggested by Mr. Gehr.

23. The Secretary-General requests that the Appeals Tribunal reject the appeal in its entirety.

### **Considerations**

24. Mr. Gehr submits that the UNDT erred in finding that the restructuring of the TPB was a valid exercise of the Secretary-General's discretion.

25. The Administrative Tribunal of the International Labour Organisation (ILOAT) has held that it is well settled jurisprudence that "an international organisation necessarily has power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts and the redeployment of staff".<sup>1</sup>

26. Mr. Gehr submits that the restructuring, although a legitimate exercise of managerial discretion, was carried out arbitrarily to marginalize him. The report of the Joint Inspection Unit (JIU) on "Review of Management and Administration in ... UNODC" issued in 2010 held

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<sup>1</sup> ILOAT Judgment No. 2967, quoting ILOAT Judgment Nos. 2510 and 2856.

otherwise. It stated that UNODC implemented an organizational restructuring in April 2010 that had been triggered not only by financial difficulties requiring streamlining but also by previous oversight recommendations that pointed out duplications, overlaps/gaps of functions as well as lack of coordination. This legitimate restructuring of a department led to the termination and reassignment of staff members and, in Mr. Gehr's case, to his reassignment.

27. The heads of departments/offices retain the authority to transfer staff members within their departments or offices to vacant posts at the same level (see paragraph 2.4 of ST/AI/2006/3 applicable at the time).

28. In accordance with this provision, the JIU, in its report, advised the Executive Director to conduct a functional review of all UNODC divisions, sections and units, and align them to the reconfirmed prioritized framework for action of the Office, including by reorienting human and financial resources if necessary. It further recommended that the Executive Director take measures to improve the gender balance at the senior level and consider more candidates from developing countries.

29. In connection with a decision to reassign a staff member, the ILOAT made the following observation:

[T]he staff member is entitled to be informed of the reasons for the reassignment. In addition to ensuring transparency in decision making, providing the reasons for the reassignment permits a staff member to assess the courses of action that may be taken, including the lodging of an appeal, and it also permits a review of the lawfulness of the decision on appeal.<sup>2</sup>

30. In the fall of 2009, Mr. Gehr was informed of the decision that TPB would be restructured. On 22 February 2010, he requested management evaluation of the decision of December 2009 to reassign him as Senior Legal Adviser, and on 22 April 2010, he was informed of the Secretary-General's decision to abolish the litigious post. In the instant case, the reasons for the reassignment can be found in the restructuring and the recommendations of the JIU Report which in no way indicate a pattern of harassment or marginalization of Mr. Gehr.

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<sup>2</sup> ILOAT Judgment No. 3084, citing ILOAT Judgment No. 2839.

31. We do not need to address Mr. Gehr's submissions regarding the classification process. Mr. Gehr chose to address the respective claims in a separate application before the UNDT, which therefore disposed of them in a separate UNDT Judgment.

32. Mr. Gehr also appeals the decision of the UNDT rejecting his request to grant access to the Organization's premises in Vienna to the public to attend via video-link the hearing in Geneva.

33. The venue of the public hearing is that of the court. The fact that a party may wish to participate via video-link has no impact on the seat of the tribunal, where the judges sit and where the public can attend. Though we appreciate Mr. Gehr's argument that public hearings are important as it is a sign of transparency, we find his complaint unreasonable in light of the provisions of the Rules of Procedure of the Dispute Tribunal.

34. Article 16(6) of the Dispute Tribunal's Rules of Procedure provides not only that ordinarily proceedings shall be held in public, but also that they may be held by video-link, telephone or other electronic means. In *Mezoui*,<sup>3</sup> this Tribunal held that the assignment of venue is a matter of the court's discretion. Mr. Gehr has not shown that the choice of venue affected in any way the outcome of the case. The hearing of his case at the Dispute Tribunal was at his request by video-link from the Vienna Conference Centre and nothing prevented interested staff members to be present at the seat of the Tribunal. The appeal on this ground is dismissed.

35. Mr. Gehr further appeals the decision not to admit into evidence the testimony of three witnesses.

36. The Dispute Tribunal has a broad discretion to determine the admissibility of any evidence under Article 18(1) of its Rules of Procedure and the weight to be attached to such evidence. This Tribunal is mindful that the Judge hearing the case has an appreciation of all the issues for determination and the evidence before it.<sup>4</sup> As rightly pointed out by the Secretary-General, while Article 17(1) of the UNDT Rules of Procedure permits parties to call witnesses and experts to testify, Article 17(6) gives the Judge the discretion to decide whether the presence of witnesses is required. Under Article 18(5) of the UNDT Rules of Procedure, the

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<sup>3</sup> *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-101.

<sup>4</sup> *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123; *Larkin v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-134.

Judge may limit oral evidence as he or she deems fit. Mr. Gehr has failed to substantiate the allegation of bias against the Judge in this regard. The appeal on this ground is also dismissed.

37. Finally, Mr. Gehr has failed to demonstrate any error in the UNDT's finding that the Administration's decision to reassign him resulted from a restructuring of the office and was not tainted. He merely voices his disagreement with the UNDT's findings and resubmits his submissions before the UNDT. He has not met the burden of proof of demonstrating an error in the Judgment.<sup>5</sup>

### **Judgment**

38. The appeal is dismissed in its entirety.

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<sup>5</sup> *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035.

Original and Authoritative Version: English

Dated this 29<sup>th</sup> day of June 2012 in Geneva, Switzerland.

*(Signed)*

Judge Weinberg de Roca, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Faherty

Entered in the Register on this 12<sup>th</sup> day of September 2012 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar