UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2013-UNAT-357

Baig, Malmström, Jarvis, Goy, Nicholls, Marcussen, Reid, Edgerton, Dygeus, Sutherland

(Respondents/Appellants)

v.

Secretary-General of the United Nations

(Appellant/Respondent)

JUDGMENT

Before:	Judge Mary Faherty, President Judge Sophia Adinyira Judge Luis María Simón Judge Richard Lussick Judge Rosalyn Chapman
Case Nos.:	2012-383, 2012-394, 2012-395, 2012-396, 2012-398, 2012-399, 2012-400, 2012-401, 2012-402, 2012-403, 2012-404
Date:	17 October 2013
Registrar:	Weicheng Lin

Counsel for Respondents/Appellants:	Self-represented
Counsel for Secretary-General:	Phyllis Hwang Rupa Mitra Simon Thomas

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against Judgment No. UNDT/2012/129, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 29 August 2012 in the case of *Malmström et al. v. Secretary-General of the United Nation*s. The Secretary-General appealed on 1 November 2012 (Case No. 2012-383) and the Respondents/Appellants answered individually on 11 January 2013.[1]

2. The Appeals Tribunal also has before it the following ten individual appeals filed by the Respondents/Appellants against the same UNDT Judgment:

- On 29 October 2012, Ms. Laurel Amdur Baig appealed and, on 15 January 2013, the Secretary-General answered (Case No. 2012-394).
- On 29 October 2012, Ms. Susanne Malmström appealed and, on 14 January 2013, the Secretary-General answered (Case No. 2012-395).
- On 29 October 2012, Ms. Michelle Jarvis appealed and, on 15 January 2013, the Secretary-General answered (Case No. 2012-396).
- On 29 October 2012, Ms. Barbara Goy appealed and, on 15 January 2013, the Secretary-General answered (Case No. 2012-398).
- On 29 October 2012, Mr. Julian Samuel Nicholls appealed and, on 14 January 2013, the Secretary-General answered (Case No. 2012-399).
- On 29 October 2012, Mr. Mathias Marcussen appealed and, on 14 January 2013, the Secretary-General answered (Case No. 2012-400).
- On 29 October 2012, Mr. Robert William Reid appealed and, on 15 January 2013, the Secretary-General answered (Case No. 2012-401).
- On 29 October 2012, Ms. Carolyn Edgerton appealed and, on 15 January 2013, the Secretary-General answered (Case No. 2012-402).

[1] Ms. Sutherland hand dated her answer 14 January 2013.

- On 29 October 2012, Mr. Philip Dygeus appealed and, on 15 January 2013, the Secretary-General answered (Case No. 2012-403).

- On 29 October 2012, Ms. Ann Elizabeth Sutherland appealed and, on 15 January 2013, the Secretary-General answered (Case No. 2012-404).

Facts and Procedure

3. The facts established by the Dispute Tribunal in Judgment No. UNDT/2012/129 (which are not disputed by the parties) read as follows:[2]

> ... On 25 May 1993, the Security Council by [R]esolution 827 (1993) decided to establish [the International Criminal Tribunal for the former Yugoslavia (ICTY)], an *ad hoc* international tribunal, for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia as of 1 January 1991, and requested the Secretary-General to make practical arrangements for the effective functioning of the Tribunal.
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> ... By memorandum dated 20 May 1994 addressed to the Acting Registrar of ICTY, the Under-Secretary-General for Administration and Management defined the arrangements for the recruitment and administration of ICTY staff and delegated to the Registrar the "authority to appoint staff, in the name of the Secretary-General, up to the D-1 level".
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> ... In accordance with the provisions of the above-mentioned delegation of authority (...), staff members were recruited specifically for service with ICTY, as explicitly reflected in their letters of appointment which provide that "[t]his appointment is strictly limited to service with [the ICTY]", on 100-series fixed-term appointments.
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> ... In November 1995, by Secretary-General's bulletin ST/SGB/280, the Secretary-General announced his decision, effective 13 November 1995, to suspend the granting of permanent appointments to staff serving on 100-series fixed-term appointments in view of "the serious financial situation facing the Organization".
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> ... In [R]esolution 1503 (2003) dated 28 August 2003, the Security Council endorsed the ICTY completion strategy and urged ICTY to take all possible measures to complete its work in 2010.
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> ... In June 2006, by Secretary-General's bulletin ST/SGB/2006/9, the Secretary-General partially lifted the freeze on the granting of permanent appointments and conducted an exercise to consider for conversion to a permanent appointment those staff who were eligible as of 13 November 1995. In this exercise,

[2] The following facts are taken from paragraphs 5–28.

six ICTY staff members were considered and one of them was granted a permanent appointment.

... On 23 June 2009, the Secretary-General issued the Secretary-General's bulletin ST/SGB/2009/10 on "Consideration for conversion to permanent appointment of staff members of the Secretariat eligible to be considered by 30 June 2009".

... "Guidelines on consideration for conversion to permanent appointment of staff members of the Secretariat eligible to be considered as of 30 June 2009" were further approved by the Assistant Secretary-General for Human Resources Management [(ASG/OHRM)] on 29 January 2010, and transmitted by the Under-Secretary-General for Management on 16 February 2010 to all Heads of Department and Office, including at ICTY, requesting them to conduct a review of individual staff members in their department or office in order to make a preliminary determination on eligibility and subsequently, to submit recommendations to the Assistant Secretary-General for Human Resources Management on the suitability for conversion of eligible staff members.

... By letter dated 17 February 2010, the President of ICTY wrote to the Secretary-General ... to complain about the position taken by the Under-Secretary-General for Management, during a townhall meeting at ICTY two weeks earlier, that ICTY staff were not eligible for conversion because ICTY was an organization with a finite mandate.

... By letter dated 10 March 2010, the Under-Secretary-General for Management responded to the above-mentioned letter from the President of ICTY, clarifying that "[i]n accordance with the old staff rules 104.12(b)(iii) and 104.13, consideration for a permanent appointment involves 'taking into account all the interests of the Organization'". She further noted that in 1997, the General Assembly adopted [R]esolution 51/226, in which it decided that five years of continuing service did not confer an automatic right to conversion to a permanent appointment and that other considerations, such as the operational realities of the Organization and the core functions of the post should be taken into account in granting permanent appointments. Therefore, she added, "when managers and human resources officers in ICTY are considering candidacies of staff members for permanent appointments they have to keep in mind the operational realities of ... ICTY, including its finite mandate".

... On 23 April 2010, ICTY implemented an online portal on staff eligibility for permanent appointments.

... On 11 May 2010, ICTY transmitted to the Office of Human Resources Management ("OHRM"), at the United Nations Secretariat Headquarters in New York, the list of staff eligible for conversion to a permanent appointment.

... At the XXXIst Session of the Staff-Management Coordination Committee ("SMCC") held in Beirut from 10 to 16 June 2010, it was "agreed that management [would] consider eligible Tribunal staff for conversion to a permanent appointment on a priority basis".

... On 12 July and 16 August 2010, the ICTY Registrar transmitted to the [ASG/OHRM] the names of 448 eligible staff members who had been found suitable for conversion by ICTY and who were therefore "jointly recommended by the Acting Chief of Human Resources Section" and the Registrar of ICTY.

... On 31 August 2010, the Deputy Secretary-General, on behalf of the Secretary-General, approved the recommendations contained in the Report of the SMCC XXXIst Session (...), including the recommendation that eligible ICTY staff would be considered for conversion to permanent appointments on a priority basis.

... Based on its review of the ICTY submissions of 12 July and 16 August 2010, OHRM disagreed with the ICTY recommendations and on 19 October 2010, it submitted the matter for review to the New York Central Review bodies ("CR bodies") — namely, the Central Review Board for P-5 and D-1 staff, the Central Review Committee for P-2 to P-4 staff, and the Central Review Panel for General Service staff - stating that "taking into consideration all the interests of the Organization and the operational reality of ICTY, OHRM [was] not in the position to endorse ICTY's recommendation for the granting of permanent appointment", as ICTY was "a downsizing entity and [was] expected to close by 2014 as set out in the latest report on the completion strategy of the Tribunal (A/65/5/Add.12) following the Security Council [R]esolution 1503 (2003)".

... In November and December 2010, the New York CR bodies reviewed the recommendations made for ICTY staff and concurred with the OHRM recommendation that the staff members not be granted permanent appointments.

... On 22 December 2010, in anticipation of the closure of ICTY, the Security Council adopted resolution 1966 (2010), establishing the International Residual Mechanisms for Criminal Tribunals, which is to start functioning on 1 July 2013 for ICTY, and should be "a small, temporary and efficient structure, whose functions and size will diminish over time, with a small number of staff commensurate with its reduced functions". The [R]esolution also requested ICTY to complete its remaining work no later than 31 December 2014.

... In February 2011, ICTY staff were informed that there had been no joint positive recommendation by OHRM and ICTY on the granting of permanent appointments and that accordingly, the cases had been referred "to the appropriate advisory body, in accordance with sections 3.4 and 3.5 of ST/SGB/2009/10".

... Further to her review of the CR bodies' opinion of late 2010, the [ASG/OHRM] noted that the CR bodies did not appear to have had all relevant information before them. Accordingly, on 4 April 2011, OHRM returned the matter to

> the CR bodies, requesting that they review the full submissions of ICTY and OHRM and provide a revised recommendation.
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> ... By memorandum dated 27 May 2011, the Central Review bodies informed the [ASG/OHRM] that they endorsed again the recommendation made by OHRM "on non-suitability for conversion of all recommended [the ICTY] staff to permanent appointments, due to the limitation of their service to their respective Tribunals and the lack of established posts".
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> ... By memorandum dated 20 September 2011, the [ASG/OHRM] informed the ICTY Registrar [*inter alia*] that:
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> > ... Pursuant to my authority under section 3.6 of ST/SGB/2009/10, I have decided in due consideration of all circumstances, giving full and fair consideration to the cases in question and taking into account all the interests of the Organization, that it is in the best interest of the Organization to (i) accept the [Central Review bodies'] endorsement of the recommendation by OHRM on the non-suitability [for conversion of ICTY staff].
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> ... By letters dated 6 October 2011, the ICTY Registrar informed each of the Applicants of the decision of the [ASG/OHRM] not to grant them a permanent appointment. The letter stated that:
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> > This decision was taken after review of your case, taking into account all the interests of the Organization and was based on the operational realities of the Organization, particularly the downsizing of ICTY following the Security Council Resolution 1503 (2003).
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> ... On 5 December 2011, the Applicants requested management evaluation of the above-mentioned decision.
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> ... By letters dated 17 January 2012, the Under-Secretary-General for Management informed [them] that the Secretary-General had decided to uphold the decision not to grant him/her a permanent appointment.
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> ... On 16 and 17 April 2012, the Applicants filed the[ir] applications [with the UNDT] ...

4. On 22 August 2012, the Dispute Tribunal conducted a joint oral hearing in this case together with several other cases filed by ICTY staff members, or former staff members, against the common decision not to grant them permanent appointments.

5. In Judgment No. UNDT/2012/129, the Dispute Tribunal took note of the fact that, on 20 May 1994, the Under-Secretary-General for Administration and Management granted the Acting Registrar of the ICTY the delegated authority "to appoint staff, in the name of the

Secretary-General, up to the D-1 level, and to terminate appointments up to that level except for terminations under article X of the Staff Regulations". The UNDT held that "the authority 'to appoint staff', which was expressly delegated to the ICTY Registrar, necessarily included, absent a clear exception, the authority to grant permanent appointments", and that "in line with 'the desire of the Security Council to establish a fully independent judicial body' recalled in the introduction of the delegation, if the intention had been to exclude from the broad delegation to appoint staff the authority to grant permanent appointments, such an exclusion should have been explicit".

6. Accordingly, in view of this broad discretionary authority (which, the UNDT found, had not been subsequently withdrawn or limited), the Dispute Tribunal held that the ASG/OHRM was not the competent decision-maker to determine the granting of permanent contracts to ICTY staff members and, thus, "the contested decisions were tainted by a substantive procedural flaw".

7. The Dispute Tribunal proceeded to rescind the decisions not to grant the Respondents/Appellants permanent appointments, specifying: "The rescission of the decisions ... does not mean the[y] should have been granted permanent appointments, but that a new conversion procedure should be carried out."

8. Having reached this decision, the UNDT proceeded to order compensation in lieu of specific performance, pursuant to Article 10(5)(a) of the Statute of the Dispute Tribunal. Recalling "the nature of the irregularity which led to the rescission, that is, a procedural irregularity as opposed to a substantive one" and the fact that "staff members eligible for conversion have no right to the granting of a permanent appointment but only that to be considered for conversion", which is "a discretionary decision [in which] the Administration is bound to take into account 'all the interests of the Organization' (see former staff rule 104.12(b) and section 2 of ST/SGB/2009/10), as well as 'the operational realities' of the Organization (see General Assembly [R]esolution 51/226)", the UNDT set the compensation to be paid as an alternative to specific performance at 2,000 Euros.

9. It is this decision of the UNDT which forms the basis of the instant appeals.

10. In Order No. 139 (2013), the Appeals Tribunal took note of the fact that, on 29 August 2012, the Dispute Tribunal in Geneva had rendered three similar Judgments: the above-referenced Judgment No. UNDT/2012/129, *Malmström et al. v. Secretary-General of the*

United Nations, Judgment No. UNDT/2012/130, *Longone v. Secretary-General of the United Nations*, and Judgment No. UNDT/2012/131, *Ademagic et al. v. Secretary-General of the United Nations*, each of which had been appealed by the Secretary-General (Secretary-General's appeals)[3] as well as by the affected individuals (individual appeals).[4]

11. The Appeals Tribunal further noted that all sixteen cases were related and that the panels assigned thereto had referred the cases to the full bench for consideration, having determined that they raised "a significant question of law" that warranted consideration by the Appeals Tribunal as a whole pursuant to Article 10(2) of the Statute of the Appeals Tribunal. Accordingly, the Appeals Tribunal decided to hold one oral hearing in all of the cases.

12. In Order No. 158 (2013), the Appeals Tribunal noted that as Judge Weinberg de Roca had recused herself from the cases and Judge Courtial would not attend the Fall session, the Appeals Tribunal "as a whole" would comprise five Judges for the purposes of these cases. In view of the time difference between New York and The Hague, the Appeals Tribunal scheduled the oral hearing as follows: the Secretary-General's appeals on the morning of 9 October 2013; and the individual appeals on the morning of 10 October 2013.

[3] Cases No. 2012-383, *Malmström et al. v. Secretary-General of the United Nations*, No. 2012-384, *Longone v. Secretary-General of the United Nations* and No. 2012-385, *Ademagic et al. v. Secretary-General of the United Nations.*

[4] Against Judgment No. UNDT/2012/129, *Malmström et al. v. Secretary-General of the United Nations*, the instant cases, namely:
Case No. 2012-394, Baig
Case No. 2012-395, Malmström
Case No. 2012-396, Jarvis
Case No. 2012-398, Goy
Case No. 2012-399, Nicholls
Case No. 2012-400, Marcussen
Case No. 2012-401, Reid
Case No. 2012-402, Edgerton
Case No. 2012-403, Dygeus
Case No. 2012-404, Sutherland

Against Judgment No. UNDT/2012/130, *Longone v. Secretary-General of the United Nations*:
Case No. 2012-397, Longone

Against Judgment No. UNDT/2012/131, *Ademagic et al. v. Secretary-General of the United Nations*:
Case No. 2012-393, Ademagic et al.
Case No. 2012-408, McIlwraith

Submissions

The Secretary-General's Appeal

13. The Secretary-General submits that the UNDT erred in law and in fact, and reached an unreasonable result in Judgment No. UNDT/2012/129.

14. He contends that the delegation of authority granted to the ICTY Registrar in 1994 did not include the authority to grant permanent appointments. The memorandum in question was an inter-office memorandum, to be construed as such, and made reference to the ICTY's restricted mandate and lifespan. No express exclusion of permanent appointments was required, because the authority granted was already limited in term, function and level. Moreover, the delegation of authority was never expanded to include granting permanent appointments and could not have been, given the "freeze" on permanent appointments then in force. Furthermore, ICTY staff were never intended to be offered permanent appointments, in view of the non-continuing nature of their functions.

15. The Secretary-General argues that the UNDT relied on obsolete rules, which had been revised in 2004 to make express mention of the "executive head" of programmes, funds and subsidiary organs having the authority to grant permanent appointments within such programme, fund or subsidiary organ. As the ICTY Registrar did not have the status of "executive head", the UNDT erred in law in applying this provision to the ICTY. Moreover, ST/SGB/2006/9 and ST/SGB/2009/10 made it clear that only the ASG/OHRM had the authority to grant permanent appointments; as such, even if the Registrar had had such delegated authority, it was implicitly revoked by these Bulletins.

16. Finally, the Secretary-General requests that the Appeals Tribunal consider the case itself, in the event that it decides to overturn the UNDT Judgment, rather than remand the matter for consideration on the merits. He asserts that the ICTY staff members should not prevail on the merits. The correct procedure was followed and the ASG/OHRM reasonably exercised her discretion. The ICTY staff members' appointments were limited to the ICTY, which has no continuing need for their functions.

The Respondents/Appellants' Answer to the Secretary-General's Appeal

17. The Respondents/Appellants submit that the Secretary-General has failed to show any error in the UNDT's finding that the ICTY Registrar had the delegated authority to grant permanent contracts to ICTY staff members.

18. They contend that the ICTY Registrar's delegated authority was broad and encompassed conversion to permanent appointments. They further contend that his delegated authority was not formally revoked by the 2004 amendments to the Staff Regulations and Rules or any other legislative provision.

19. The Respondents/Appellants argue that their employment contracts included the right to be considered for a permanent appointment, by virtue of their incorporation of the Staff Regulations and Rules.

20. They maintain that the limitation of the ICTY mandate, as well as the express limitations in their employment contracts, is irrelevant to the issue of their conversion to permanent appointments, which could have been similarly limited to the ICTY.

21. Moreover, the Respondents/Appellants rely on the explicit language of General Assembly Resolution 65/247 of 24 December 2010 on continuing appointments to support their argument that exclusion of a group of staff members must be explicit and transparent, as well as prospective.

22. The Respondents/Appellants ask the Appeals Tribunal to uphold the impugned UNDT Judgment. That failing, they request that the Appeals Tribunal remand the case to the UNDT for a decision on the merits or give them an opportunity to "fully brief" the Appeals Tribunal.

The Respondents/Appellants' Appeal

23. The Respondents/Appellants submit that the UNDT erred in law in Judgment No. UNDT/2012/129, when it determined that it was required to order compensation as an alternative to specific performance, pursuant to Article 10(5)(a) of the UNDT Statute. Relying upon Judgment No. UNDT/2012/121, *Rockcliffe v. Secretary-General of the United Nations*, they argue that cases of conversion to permanent appointment do not fall under Article 10(5)(a),

which requires alternative compensation to be set where the impugned decision concerns "appointment, promotion or termination".

24. In the alternative, the Respondents/Appellants contend that the amount of compensation set was inadequate, given the injury suffered. They aver that the UNDT erred in fact and in law in compensating on the basis of procedural error (the Dispute Tribunal apparently accepting that the ICTY staff members were not suitable for permanent appointments), rather than compensating them for breach of contract. The Respondents/Appellants consider that appropriate compensation would be equal to the amount of their respective termination indemnities under Annex III of the Staff Regulations and Rules.

25. Furthermore, the Respondents/Appellants submit that the UNDT erred in fact and in law in denying their request for compensation for non-pecuniary damages.

26. They request the Appeals Tribunal to overturn the UNDT Judgment to the extent it provides the Secretary-General with the alternative of paying compensation in lieu of complying with the UNDT Order, and to order the conversion process to proceed under the authority of the Registrar. In the alternative, they request that the Appeals Tribunal reverse the award as insufficient and increase it to the applicable termination indemnity. Finally, they each request an order of compensation in the amount of 20,000 Euros for non-pecuniary damages flowing from the Secretary-General's alleged bad faith handling of the conversion process.

The Secretary-General's Answer to the Respondents/Appellants' Appeal

27. The Secretary-General submits that the Respondents/Appellants had no foreseeable chance of being granted a permanent appointment, as the operational realities of the United Nations precluded it. As such, he argues that the UNDT erred in rescinding the impugned decision and in ordering compensation.

28. In the alternative, if the Appeals Tribunal upholds the UNDT's decision to rescind, then the Secretary-General contends that the UNDT was correct in finding applicable Article 10(5)(a) of the UNDT Statute and in ordering compensation as an alternative to specific performance.

29. With respect to the quantum of the alternative compensation, however, the Secretary-General contends that it was "overly generous", that the argument that the Respondents/Appellants deserved more is not sustainable, and that, in fact, it should be vacated or reduced.

30. Furthermore, he argues that the UNDT was correct in not ordering compensation for pecuniary or non-pecuniary losses resulting from the impugned decision.

31. In sum, the Secretary-General requests that the Appeals Tribunal dismiss each appeal.

Considerations

Procedural matters

32. As a matter of judicial economy, the Appeals Tribunal has decided to consolidate the eleven appeals listed in the headnote of this Judgment. Each of the appeals arises from Judgment No. UNDT/2012/129 and, moreover, the staff members' appeals[5] are substantively identical.

The Secretary-General's Appeal

33. The question for determination is whether the UNDT erred in law in concluding that the authority to grant appointments that was delegated to the ICTY Registrar in 1994 included the authority to grant permanent appointments.

34. For the purpose of determining this issue, it is necessary:

(i) to set out in some detail the evolution within the United Nations' statutory framework of the entitlement of staff members on fixed-term contracts to be converted to permanent appointments; and

(ii) to conduct an analysis of the authority delegated to the ICTY Registrar in 1994.

[5] The Appeals Tribunal will refer to the Respondents/Appellants as the "staff members".

The United Nations' statutory framework

35. In 1982, the General Assembly adopted Resolution 37/126 which provided that "staff members on fixed-term contracts upon completion of five years' continuous good service shall be given every reasonable consideration for a career appointment".[6]

36. By Resolution 51/226 of 3 April 1997, the General Assembly modified the permanent appointment scheme by resolving that "five years of continuing service as stipulated in its Resolution 37/126 of 17 December 1982 do not confer the automatic right to a permanent appointment, and also decides that other considerations, such as outstanding performance, the operational realities of the organizations, and the core functions of the post, should be duly taken into account".

37. These criteria for conversion from a fixed-term contract to a permanent appointment were duly reflected in the Staff Regulations and Rules and, in particular, were reflected in former Staff Rule 104.12(b) (applicable as at 30 June 2009), which provided:

> ...
>
> (ii) The fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment;
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> (iii) Not withstanding subparagraph (ii) above, upon completion of five years of continuing service on fixed-term appointments, a staff member who has fully met the criteria of staff regulation 4.2 and who is under the age of fifty-three years will be given every reasonable consideration for a permanent appointment, taking into account all the interests of the Organization.

38. Former Staff Rule 104.13 provided in relevant part that:

> (a) The permanent appointment may be granted, in accordance with the needs of the Organization, to staff members who, by their qualifications, performance and conduct, have fully demonstrated their suitability as international civil servants and have shown that they meet the high standards of efficiency, competence and integrity established in the Charter, provided that:
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> ...

[6] Para IV(5). In so doing, the General Assembly was acting in accordance with the Report of the International Civil Service Commission (ICSC) (A/30/37), which had urged the United Nations "to come to grips with the problem of granting successive fixed-term contracts over an extended period of time, as this create[d] a climate of anxiety and insecurity among staff which [was] not in the interests of sound management".

> (iii) They have completed five years of continuous service under fixed-term appointments and have been favourably considered under the terms of rule 104.12 (b) (iii).

39. Invariably, with regard to the staff members in this appeal, their respective successive letters of appointment stated, *inter alia*: "You are hereby offered a Fixed-Term Appointment in the Secretariat of the United Nations, in accordance with the terms and conditions specified below and subject to the provisions of the Staff Regulations and Staff Rules, together with such amendments as may from time to time be made to such Staff Regulations and such Staff Rules."

40. Having made provision in the Staff Rules following A/RES/37/126 for the conversion from fixed-term appointment to permanent appointment for eligible and suitable staff, the Secretary-General on 9 November 1995, through the issuance of ST/SGB/280, suspended the granting of permanent appointments "until further notice". This suspension or "freeze" applied to staff members appointed under the 100 Series, including ICTY staff members, apart from certain exceptions.[7]

41. In June 2006, by ST/SGB/2006/9, the Secretary-General partially lifted the freeze on conversion to permanent appointments, and conducted an exercise to consider those staff members who were eligible for conversion as of 13 November 1995. Some 905 staff members[8] were converted to permanent appointments: six ICTY staff members were considered under this exercise and the contract of one was converted to permanent.

42. By Resolution 63/250 of 24 December 2008, the General Assembly approved proposals of the Secretary-General for contract reform and, in view of the forthcoming revision of the Staff Regulations and Rules, the Secretary-General proceeded to consider for conversion to permanent appointments those staff members who were eligible under the 100 Series as at 30 June 2009.[9]

43. To give effect to the General Assembly's direction, the Secretary-General promulgated ST/SGB/2009/10 on "Consideration for Conversion to Permanent Appointment of Staff Members of the Secretariat Eligible to be Considered by 30 June 2009", as follows:

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[7] As explained by the Secretary-General, the only permanent appointments granted between 1999 and 2006 were to staff who had joined the United Nations through the competitive examination process and had successfully completed their probationary period. This exception was approved by the General Assembly.
[8] A/Res/65/305/Add.1 (2010), para. 67.
[9] *Ibid*., at para. 69.

Section 1

Eligibility

To be eligible for consideration for conversion to a permanent appointment under the present bulletin, a staff member must by 30 June 2009:

(a) Have completed, or complete, five years of continuous service on fixed-term appointments under the 100 series of the Staff Rules; and

(b) Be under the age of 53 years on the date such staff member has completed or completes the five years of qualifying service.

Section 2

Criteria for granting permanent appointments

In accordance with staff rules 104.12 (b) (iii) and 104.13, a permanent appointment may be granted, taking into account all the interests of the Organization, to eligible staff members who, by their qualifications, performance and conduct, have fully demonstrated their suitability as international civil servants and have shown that they meet the highest standards of efficiency, competence and integrity established in the Charter.

Section 3

Procedure for making recommendations on permanent appointments

3.1 Every eligible staff member shall be reviewed by the department or office where he or she currently serves to ascertain whether the criteria specified in section 2 above are met. Recommendations regarding whether to grant a permanent appointment shall be submitted to the Assistant Secretary-General for Human Resources Management.

3.2 A similar review shall also be conducted by the Office of Human Resources Management or the local human resources office.

3.3 In order to facilitate the process of conversion to permanent appointment under the present bulletin, recommendations to grant a permanent appointment that have the joint support of the department or office concerned and of the Office of Human Resources Management or local human resources office shall be submitted to the Secretary-General for approval and decision in respect of D-2 staff, and to the Assistant Secretary-General for Human Resources Management for all other staff.

3.4 In the absence of joint support for conversion to permanent appointment, including cases where the department or office concerned and the Office of Human Resources Management or local human resources office both agree that the staff member should not be granted a permanent appointment, the matter shall be submitted for review to the appropriate advisory body designated under section 3.5 below. The purpose of the review shall be to determine whether the staff member

concerned has fully met the criteria set out in section 2 of the present bulletin. The advisory body may recommend conversion to permanent appointment or continuation on a fixed-term appointment.

3.5 For the purpose of this section, the appropriate advisory body shall be:

(a) For staff at the D-2 level, the Senior Review Group;

(b) For staff at the P-5 and D-1 levels administered by offices located in New York, Geneva, Vienna and Nairobi, the advisory body shall be the Central Review Board established at the location. Staff members serving at other locations shall normally be considered by the Central Review Board in New York but may be referred to another Board in order to expedite the process;

(c) For staff at the P-2 to P-4 levels administered by offices located in New York, Geneva, Vienna, Nairobi, Addis Ababa, Bangkok, Beirut and Santiago, the advisory body shall be the Central Review Committee established at the location. The Central Review Committee in New York shall also consider eligible staff in the Field Service category;

(d) For staff in the General Service and related categories administered by offices located in New York, Geneva, Vienna, Nairobi, Addis Ababa, Bangkok, Beirut and Santiago, the advisory body shall be the Central Review Panel established at the location.

3.6 The recommendations of the advisory body shall be submitted to the Secretary-General for decision in respect of staff at the D-2 level. Recommendations in respect of all other staff members shall be submitted for decision to the Assistant Secretary-General for Human Resources Management.

3.7 Staff members who, after consideration, are not granted a permanent appointment will continue to serve on a fixed-term appointment, and shall not be eligible to be considered for a permanent appointment in the future.

44. On 29 January 2010, the ASG/OHRM approved "Guidelines on consideration for conversion to permanent appointment of staff members of the Secretariat eligible to be considered as at 30 June 2009", which were subsequently transmitted to all "Heads of Departments and Office" within the United Nations, including the ICTY, on 16 February 2010, for a review of their staff members to determine eligibility and make recommendations to the ASG/OHRM, for consideration for conversion.

The ICTY exercise

45. On 11 May 2010, the ICTY Chief of Administration sent OHRM a list of the ICTY staff members deemed eligible for conversion to permanent appointment pursuant to Section 1 of ST/SGB/2009/10. Thereafter, the ICTY conducted a "suitability review" of the eligible staff members and, on 12 July 2010 and 16 August 2010, respectively, the ICTY Registrar duly submitted to the ASG/OHRM, "for consideration and review",[10] two lists of ICTY staff members who had been found suitable and were recommended for conversion to permanent appointment.

46. None of the ICTY Registrar's recommendations was ultimately approved by the ASG/OHRM and her decision not to grant permanent appointments to the staff members in this appeal, or to any other recommended ICTY staff member, was duly upheld by the Secretary-General following the management evaluation process.

The proceedings before the UNDT

47. In their respective applications to the UNDT, the staff members challenged the substance of the ASG/OHRM's decision not to grant them permanent appointments.

48. In the course of his respective replies to the applications, the Secretary-General, *inter alia*, stated that "the ICTY Registrar was not granted discretionary authority to grant permanent appointments. The [ASG/ORHM] retains this authority." This statement prompted the UNDT to direct that the Secretary-General file additional submissions in support, *inter alia*, of his claim.

49. Among the documentation furnished by the Secretary-General was a memorandum dated 20 May 1994 (the delegation memorandum), addressed to the Acting Registrar of the ICTY from the Under Secretary-General for Administration and Management, the relevant provisions of which are:

> 1. Consistent with the desire of the Security Council to establish a fully independent judicial body, as a subsidiary organ of the Security Council, the Statute of [the ICTY] provides ... that the staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar, who is also responsible for the administration and servicing of [the ICTY]. The purpose of this memorandum is

[10] 12 July 2010 memorandum.

> to establish practical and flexible personnel arrangements, compatible with United Nations rules and personnel policies, to give effect to the Statute.
>
> 2. Staff of [the ICTY], selected in accordance with the provisions of Article 101, paragraph 3, of the Charter after an appropriate selection procedure, shall have the status of officials of the United Nations under Articles V and VII of the Convention on the Privileges and Immunities of the United Nations. The Rules and Regulations of the United Nations, and the administrative issuances promulgated by the Secretary-General pursuant thereto, will apply to staff serving with [the ICTY] in the same manner as they do to the staff of the Secretariat.
>
> 3. Staff of the Tribunal will be recruited specifically for service with [the ICTY] rather than with the Secretariat as a whole. Their letters of appointment will indicate that their services are limited to [the ICTY], and they will be regarded as external candidates should they apply for vacant posts elsewhere in the United Nations.
>
> 4. Given the highly specialized nature of the functions of the Tribunal, and the need for rapid response and flexibility, you are hereby delegated authority to appoint staff, in the name of the Secretary-General, up to the D-1 level, and to terminate appointments up to that level except for terminations under article X of the Staff Regulations, but including terminations for unsatisfactory services. Appointments or terminations above the D-1 level require prior approval by the Secretary-General. ...
>
> 5. The recruitment of the selected candidates should be based in the same policies and procedures followed for all candidates for United Nations posts at the same level. Geographic distribution would not apply, although the principle of recruitment on as wide a geographic basis as possible should be observed. ...
>
> 6. Given the nature of the mandate, appointments should initially be made on a short or fixed-term basis, not exceeding one year ...
>
> 7. For reasons of economy and practicality ... the Office of Human Resources Management at Headquarters will advise and assist you in such matters as ... interpretation of personnel policies, issuance of vacancy announcements should you so request ...
>
> 8. The administrative bodies established by the Secretary-General to advise him on staff matters, such as the Joint Appeals Board, the Joint Disciplinary Committee, and the Advisory Board on Compensation Claims, will have jurisdiction as regards staff serving with the Tribunal. The Secretary-General reserves his right to interpret the Staff Rules, and to take final decisions in appeals, disciplinary cases and compensation cases under Appendix D.

50. Following consideration of the delegation memorandum, and a cover note dated 24 May 1994 (the cover note) from the Director of Personnel Training to the Acting ICTY Registrar, the Dispute Tribunal found that "the authority 'to appoint staff', which was expressly

delegated to the ICTY Registrar, necessarily included, absent a clear exception, the authority to grant permanent appointments".

51. The UNDT found that this delegated authority was never expressly limited or subsequently revoked. Accordingly, it concluded that the ASG/OHRM lacked the competence to make the impugned decisions in respect of the staff members' conversion to permanent appointment and, thus, rescinded the decisions.

Did the UNDT err in finding that the ASG/OHRM lacked competence?

52. The Appeals Tribunal finds that the UNDT erred. In matters of delegation of authority, the legal instrument delegating authority must be read carefully and restrictively. The delegation memorandum makes no mention of permanent appointments and, having regard to the contents of the memorandum as a whole, such serious authority cannot be read into its use of the term "appoint". We hold that the delegation memorandum does not allow for creative interpretation, setting out as it does in a clear and unambiguous manner, the powers delegated to the Registrar, as well as several restrictions - temporal, geographic and even with respect to appointment and termination. Our finding in this regard is reinforced by the provisions of the cover note, which transmitted and explained the delegation of authority memorandum to the ICTY Registrar. The cover note made reference to "the unique nature of the [ICTY's] mandate and Statute" and anticipated that the delegation of authority granted to the ICTY Registrar "may need amplification as time goes by in order to clarify those aspects of the Staff Regulations and Rules which you will administer directly *and those which should be referred to the Secretary-General for final decision*". (Emphasis added.)

53. It is apparent from the foregoing that the delegated authority did not envisage that every aspect of the recruitment and administration of staff was to be the preserve of the ICTY Registrar. The Appeals Tribunal's understanding in this regard is further enhanced by paragraph 3 of the cover note, which provides, *inter alia*, that "[ICTY staff members] are also entitled to the procedural protections of the Staff Rules so it will be necessary for you to establish certain procedures, in matters such as promotion for example, which parallel those in effect elsewhere in the [United Nations] system".

54. The fact that the delegation memorandum, at paragraph 2 thereof, provides that the Staff Regulations and Rules, and other administrative issuances of the Secretary-General, "will apply to staff serving with the [ICTY] in the same manner as they do to the Staff of

the Secretariat", or that the Staff Rules in force as at 30 June 2009 encompass the criteria for conversion from fixed-term appointment to permanent appointment, does not, in the view of this Tribunal, militate against our finding that the ICTY Registrar was not conferred with the authority to grant permanent appointments. The purpose of former Staff Rule 104.12(b)(ii) and (iii) was to vest in *staff members* the opportunity of a permanent appointment, once eligibility and suitability criteria were met.

55. While the Dispute Tribunal placed reliance on the provisions of former Staff Rule 104.13(c) and 104.14(a)(i) in that they "expressly provide for permanent appointments to be granted by heads of 'subsidiary organs'" (and the ICTY is a subsidiary organ of the Security Council), the Appeals Tribunal nonetheless finds that even if it could be argued that as the "head" of a subsidiary organ, the ICTY Registrar could convert fixed-term contracts to permanent appointments, it remains the case that the authority delegated to the ICTY Registrar in 1994 was that "appointments should initially be on a short or fixed-term basis, not exceeding one year". Whilst this time limit was extended to two years in 1999,[11] the authority of the Registrar was never extended beyond that two-year limit.

56. Assuming a delegation of authority to the ICTY Registrar to convert did exist (and for the reasons set out above, we find it did not), the Appeals Tribunal is satisfied that such authority could not have survived the "freeze" imposed in 1995. Even when the "freeze" was lifted, it is abundantly clear that the conversion regime provided for in ST/SGB/2006/9 and ST/SGB/2009/10 became a radically different conversion exercise. Without any ambiguity, the ASG/OHRM became the decision-maker on the conversion exercises provided for in these Bulletins. The grantor of delegated authority always retains the inherent power to act or, of course, to alter, limit or revoke the delegated power. Thus, even had there been a delegated authority to convert in 1994, it was superseded by the provisions of the 2006 and 2009 Bulletins which had greater legal force than an inter-office memorandum.

57. The Appeals Tribunal determines, therefore, that the UNDT erred in law in finding that the authority to grant permanent appointments to ICTY staff members vested in the ICTY Registrar and, accordingly, vacates the UNDT decision on that basis. The Secretary-General's appeal on this issue is upheld.

[11] ST/AI/1999/1, "Delegation of authority in the administration of the Staff Rules", section 2.

The substance of the staff members' applications before the Dispute Tribunal

58. The Dispute Tribunal rescinded the contested decisions "without prejudice to the merits or substance of these decisions", and opined that "[s]ince the decision to grant a permanent appointment clearly involves the exercise of a discretion, it is not for the [Dispute] Tribunal to substitute its own assessment for that of the Secretary-General". It went on to state: "The rescission of the decisions therefore does not mean that the Applicants should have been granted permanent appointments, but that a new conversion procedure should be carried out."

59. Having determined that the ASG/OHRM (and not the ICTY Registrar) was the competent decision maker, the Appeals Tribunal considered whether the matter should be remanded to the UNDT on its merits, or whether the Appeals Tribunal itself should assess the merits of the impugned decision. Indeed, as an alternative to remanding the matter to the UNDT, both the Secretary-General (in his written and oral submissions) and the staff members (in their oral submissions) invite the Appeals Tribunal to deal with the merits.

60. The Secretary-General requests that we find that the staff members had no foreseeable chance of obtaining permanent appointments and that, accordingly, the ASG/OHRM reasonably exercised her discretion in refusing their conversion. He asks the Appeals Tribunal to dismiss the staff members' claims in their entirety.

61. The staff members argue that there is sufficient information before the Appeals Tribunal to make a determination in their favour, and order the granting of permanent appointments, given that their suitability has already been assessed by the ICTY Registrar. As we have reversed the UNDT on the issue of administrative authority, this particular argument must fail.

62. The Appeals Tribunal refuses the requests of both sides to determine whether the staff members should be granted permanent appointments. It is not the function of this Tribunal to stand in the shoes of the ASG/OHRM and involve itself in the decision-making process reserved for the ASG/OHRM pursuant to ST/SGB/2009/10. In cases such as the present, the jurisdiction of the Appeals Tribunal is limited to a judicial review of the exercise of discretion by the competent decision maker.

63. The Appeals Tribunal thus shall embark upon a review of the decision-making process undertaken by the ASG/OHRM, rather than remand this issue to the UNDT.

The ASG/OHRM's decision

64. The ICTY Registrar's recommendation of the staff members for conversion, pursuant to ST/SGB/2009/10, followed the determinations of the ICTY Registrar, and the ICTY HR department, that they were both eligible and suitable. There can be no dispute that the ICTY staff members were permitted to be so considered, notwithstanding some dissent in this regard at an early stage of the process. The question before the Appeals Tribunal is not whether the ICTY staff members were *eligible* for conversion but, rather, whether the determination of the ASG/OHRM that they were *not suitable* for conversion can withstand judicial scrutiny.

65. Each of the staff members who are the subject of the present Judgment received a letter, in identical terms, from the ICTY Registrar informing him or her of the decision taken by the ASG/OHRM to deny conversion. By way of example, the letter issued to Ms. Malmström on 6 October 2011 read as follows:

> Dear Susanne MALMSTROM,
>
> I wish to inform you that following the decision of the [ASG/OHRM] pursuant to ST/SGB/2009/10, you will not be granted a permanent appointment.
>
> This decision was taken after a review of your case, taking into account all the interests of the Organization, and was based on the operational realities of the Organization, particularly the downsizing of ICTY following the Security Council [R]esolution 1503 (2003).

66. ICTY staff members - like any other staff member – are entitled to individual, "full and fair" (in the lexicon of promotion cases) consideration of their suitability for conversion to permanent appointment. The established procedures, as well as the principles of international administrative law, require no less. This principle has been recognized in the jurisprudence of the Appeals Tribunal.[12]

67. We are not persuaded by the Secretary-General's argument that the staff members received the appropriate individual consideration in the "suitability" exercise. The ASG/OHRM's decision, as communicated to the staff members, provides no hint that their candidature for permanent appointment was reviewed by OHRM against their qualifications, performance or

[12] See *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110; *Charles v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-242; *Dannan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-340.

conduct; their proven, or not proven, as the case may be, suitability as international civil servants; or the highest standards of efficiency, competence and integrity, as established in the United Nations Charter. Each candidate for permanent appointment was lawfully entitled to an individual and a considered assessment on the above basis before a permanent appointment could be granted or denied. This was their statutory entitlement and cannot be overridden or disregarded merely because they are employed by the ICTY.

68. It is patently obvious that a blanket policy of denial of permanent appointments to ICTY staff members was adopted by the ASG/OHRM simply because the ICTY was a downsizing entity. The ASG/OHRM was not entitled to rely solely on the finite mandate of the ICTY or Security Council Resolution 1503 (2003) as the reason to depart from the principles of substantive and procedural due process which attaches to the ASG/OHRM's exercise of her discretion under ST/SGB/2009/10. We determine that the ASG/OHRM's discretion was fettered by her reliance, to the exclusion of all other relevant factors, on the ICTY's finite mandate. Accordingly, we are satisfied that the staff members were discriminated against because of the nature of the entity in which they were employed. As such, the ASG/OHRM's decision was legally void, being tainted by arbitrariness and the violation of the staff members' due process rights.

69. The approach adopted by the ASG/OHRM offended against the provision in former Staff Rule 104.12(b)(iii) that staff members would "be given every reasonable consideration for a permanent appointment". This Rule did no more than give effect to the wish expressed by the General Assembly as far back as 1982 in Resolution 37/126 that "staff members on fixed-term contracts upon completion of five years of continuing good service shall be given every reasonable consideration for a career appointment". Thus, the ASG/OHRM was not entitled to place reliance on the "operational realities of the Organization" *to the exclusion of all other relevant criteria* set out in Resolution 51/226, particularly when section 2 of ST/SGB/2009/10 gave clear and unambiguous instruction on what must be taken into account.

70. The right of the staff members, which was violated by the afore-mentioned discriminatory actions and by the absence of due process, is not to the granting of a permanent appointment but, rather, to be fairly, properly, and transparently *considered* for permanent appointment. Since we find that the ASG/OHRM breached the staff members' rights in this respect, the Appeals Tribunal hereby rescinds the impugned decision.

71. Accordingly, the matter must be remanded.

72. Because the Appeals Tribunal has legal authority to do so, and has sufficient factual information, the matter is hereby remanded to the decision maker, namely the ASG/OHRM (rather than to the UNDT) for the ASG/OHRM to consider, in accordance with the relevant statutory provisions and the principles of substantive due process, whether the staff members' fixed-term contracts should be retroactively converted to permanent appointments. There is a statutory obligation on the Administration, in the context of the best interests of the United Nations, to give "every reasonable consideration" to those ICTY staff members demonstrating the proficiencies, competencies and transferrable skills which render them suitable for career positions within the Organization.

73. The ASG/OHRM shall use a process that is fair, properly documented and completed in a timely manner. Given the duration of these proceedings, and mindful of the finite mandate of the ICTY and the stress uncertain contract situations imposes on staff, the Appeals Tribunal directs that the conversion process be completed within 90 days of the publication of this Judgment. Each staff member is entitled to receive a written, reasoned, individual and timely decision, setting out the ASG/OHRM's determination on his or her suitability for retroactive conversion from fixed-term to permanent contract. This applies equally to any litigant staff members who were part of the original conversion exercise at issue but have since left the service of the ICTY.

74. Remanding to the ASG/OHRM is not a recourse which, pursuant to Article 9(1)(a) of the Statute of the Appeals Tribunal, requires the setting of compensation in lieu of specific performance, because what the Appeals Tribunal is directing the ASG/OHRM to do is to lawfully exercise her discretion and carry out the conversion exercise mandated by Section 3.3 of ST/SGB/2009/10 in accordance with the requirements of fairness and due process.

The staff members' appeals

Compensation in lieu of rescission

75. The staff members appeal the Dispute Tribunal's setting of compensation in lieu of rescission of the impugned decision, on the ground that the UNDT erred in law in finding that it was required, pursuant to Article 10(5)(a) of its Statute, to set an amount of compensation which the Secretary-General could pay to each staff member as an alternative to the rescission. In the alternative, they challenge the quantum of the compensation set (2,000 Euros) and argue that it

should have been calculated on the basis of their foreseeable chance to obtain permanent appointments – which chance, they contend, was virtually certain.

76. As the Appeals Tribunal has vacated the decision of the Dispute Tribunal, for the reasons set out above, the staff members' appeal on this issue has been rendered moot. The Appeals Tribunal, having granted satisfaction in their substantive cases, finds no basis to award the staff members pecuniary damages.

The claim for non-pecuniary damages

77. The staff members argue that the UNDT erred in rejecting their claim for non-pecuniary damages. They submit that, at the hearing before the UNDT, they clarified and emphasised that, even if no alternative compensation were to be set, 20,000 Euros should be awarded to each of them as non-pecuniary damages.

78. The UNDT declined to make an award of non-pecuniary damages, pursuant to Article 10(5)(b) of its Statute, stating that "it would be highly speculative to award [such] compensation ... considering that it has decided to rescind the contested decisions only because of a procedural irregularity and ... has not addressed the merits of [the] decisions".

79. Since the Appeals Tribunal has vacated the erroneous finding of the Dispute Tribunal that the ASG/OHRM's decision should be rescinded for lack of competence, its reasoning cannot support the staff members' claim for non-pecuniary damages.

80. However, given that this Tribunal has addressed the merits of the impugned decision of the ASG/OHRM, and has determined that that decision violated the staff members' right to have been fairly, individually and properly assessed for conversion, we shall consider whether the breach warrants an award of non-pecuniary damages.

81. In *Asariotis*, the Appeals Tribunal stated:

> To invoke its jurisdiction to award moral damages, the UNDT must in the first instance identify the moral injury sustained by the employee. This identification can never be an exact science and such identification will necessarily depend on the facts of each case. What can be stated, by way of general principle, is that damages for a moral injury may arise:
>
> (i) From a breach of the employee's substantive entitlements arising from his or her contract of employment and/or from a breach of the procedural due process

> entitlements therein guaranteed (be they specifically designated in the Staff Regulations and Rules or arising from the principles of natural justice). Where the breach is of a *fundamental* nature, the breach may *of itself* give rise to an award of moral damages, not in any punitive sense for the fact of the breach having occurred, but rather by virtue of the harm to the employee.
>
> (ii) An entitlement to moral damages may also arise where there is evidence produced to the Dispute Tribunal by way of a medical, psychological report or otherwise of harm, stress or anxiety caused to the employee which can be directly linked or reasonably attributed to a breach of his or her substantive or procedural rights and where the UNDT is satisfied that the stress, harm or anxiety is such as to merit a compensatory award.[13]

82. We find that the substantive due process breaches in the ASG/OHRM's decision-making meet the fundamental nature test established in *Asariotis* and, as such, *of themselves* merit an award of moral damages. In assessing the quantum of such damages, the Tribunal takes into consideration the satisfaction being granted to the staff members, namely, that a new "suitability exercise" shall be conducted, with retroactive effect. This remedy – to a considerable extent – corrects the harm sustained by the staff members. Nevertheless, the Appeals Tribunal is persuaded that an award of damages is merited for the breach which occurred and, in all the circumstances, awards compensation in the amount of 3,000 Euros to each of the Respondents/Appellants. The Appeals Tribunal further holds that payment of compensation shall be executed within 60 days from the date of issuance of this Judgment to the parties. That failing, interest shall be applied, calculated as follows: five per cent shall be added to the US Prime Rate from the date of expiry of the 60-day period to the date of payment.

Judgment

83. The Appeals Tribunal vacates the Judgment of the Dispute Tribunal; rescinds the decision of the ASG/OHRM; remands the ICTY conversion exercise to the ASG/OHRM for retroactive consideration of the suitability of each Respondent/Appellant within 90 days of the date of publication of this Judgment in accordance with the guidelines set out by the Appeals Tribunal herein; and awards each Respondent/Appellant 3,000 Euros in non-pecuniary damages.

[13] *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-309, para. 36. (Emphasis in the original. Footnote omitted.) See also *Goodwin v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-346.

Original and Authoritative Version: English

Dated this 17th day of October 2013 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Faherty, Presiding	Judge Adinyira	Judge Simón
(Signed)	*(Signed)*	
Judge Lussick	Judge Chapman	

Entered in the Register on this 19th day of December 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar