



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Cases No. 2012-383, No. 2012-384, No. 2012-385, No. 2012-393, No. 2012-394, No. 2012-395, No. 2012-396, No. 2012-397, No. 2012-398, No. 2012-399, No. 2012-400, No. 2012-401, No. 2012-402, No. 2012-403, No. 2012-404 and No. 2012-408.

**Ademagic et al., Baig, Malmstrom, Jarvis,
Longone, Goy, Nicholls, Marcussen, Reid,
Edgerton, Dygeus, Sutherland and McIlwraith
(Respondents/Appellants)**

v.

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

ORDER No. 178 (2014)

1. On 17 October 2013, the United Nations Appeals Tribunal (Appeals Tribunal) rendered the following Judgments: *Malmström et al. v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-357; *Longone v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-358; and *Ademagic et al. v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-359. The Judgments were published on 19 December 2013.

2. In each Judgment, the Appeals Tribunal held, *inter alia*,

... 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 [Assistant Secretary-General for Human Resources Management (ASG/OHRM)] (rather than to the [United Nations Dispute Tribunal]) 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 [International Criminal Tribunal for the former Yugoslavia (ICTY)] staff members demonstrating the proficiencies, competencies and transferrable skills which render them suitable for career positions within the Organization.

... 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.

3. On 12 March 2014, the Secretary-General filed a “Consolidated Motion for Extension of Time to Execute the Order in the UNAT Judgments”, in which he requested an extension until 19 June 2014 of his deadline to complete the new consideration exercise. Answers to this Motion were received from the current and former staff members concerned between 17 and 21 March 2014.

4. Various “Motions for Final Remedy” were filed by the litigants in *Malmström et al.* on 20 and 21 March 2014, and the Secretary-General responded thereto on 28 March 2014.

5. Meanwhile, on 27 March 2014, the Appeals Tribunal issued Order No. 176 (2014), ordering the Secretary-General to submit a detailed list of all steps taken in execution of the said Judgments since their publication, in order that the Appeals Tribunal could determine the good faith efforts made to meet the Appeals Tribunal’s original deadline. The Secretary-General complied on 31 March 2014. On 2 April 2014, a “Request for Leave to File Observations” on the Secretary-General’s submission in response to Order No. 176 (2014) was filed by the litigants in *Malmström et al.*

6. On 31 March 2014, Ademagic et al. and Longone filed “Motions for an Order Requiring the Respondent to Execute Judgment”. Also on 31 March 2014, *Ademagic et al.* filed a “Supplemental Motion for an Order Requiring Respondent to Execute the Judgment to Pay 3000 Euros” in respect of six individuals who had been denied the compensation ordered under the above-referenced Judgment. The Secretary-General responded to both Motions on 2 April 2014.

7. The Appeals Tribunal, having duly considered the submissions of all parties in the above-referenced cases, has decided to grant the Secretary-General's Motion and to extend the period for the completion of the conversion process until 19 June 2014. The Appeals Tribunal does not expect to entertain further Motions for extension of this time limit.

8. In view of this decision, the Appeals Tribunal rejects the related Motions and Counter-Motions filed in the above-referenced cases, as well as the "Request for Leave to File Observations" filed by the litigants in the *Malmström* group today.

9. With respect to the "Supplemental Motion for an Order Requiring Respondent to Execute the Judgment to Pay 3000 Euros", the Appeals Tribunal invites the parties to submit additional briefs on their arguments, which will then be considered by the Appeals Tribunal at its forthcoming summer session. Ademagic et al. are, thus, granted 15 calendar days to submit a brief which shall comply with the general provisions of the Appeals Tribunal Rules of Procedure and shall not exceed 15 pages. The Secretary-General will be provided with a copy of said brief and shall have the opportunity to respond in a similar fashion.

Original and Authoritative Version: English

Dated this 2nd day of April 2014 in New York, United States.

(Signed)

Judge Faherty, President

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Adinyira

(Signed)

Judge Simón

(Signed)

Judge Lussick

(Signed)

Judge Chapman

Entered in the Register on this 2nd day of April 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar