



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

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Case No. 2016-900

**Ademagic et al.**  
**(Respondents/Appellants on Cross-Appeal)**  
**v.**  
**Secretary-General of the United Nations**  
**(Appellant/Respondent on Cross-Appeal)**

**Order No. 289 (2017)**

1. On 30 June 2016, the United Nations Appeals Tribunal (Appeals Tribunal) issued Judgment No. 2016-UNAT-684 (Ademagic et al.) (2016 Judgment) in the cases of 246 current or former staff members (Ademagic et al. litigants) of the International Criminal Tribunal for the former Yugoslavia (ICTY) vs. the Secretary-General of the United Nations. In the 2016 Judgment, the Appeals Tribunal partially affirmed the judgment of the United Nations Dispute Tribunal (UNDT) No. 2015/115 (UNDT Judgment), in so far as it remanded the matter to the ASG/OHRM “for retroactive individualised consideration” of the Ademagic et al. litigants’ suitability for conversion of their appointments to permanent ones, as mandated by ST/SGB/2009/10. The Appeals Tribunal required that this reconsideration exercise take place within 90 days from the publication of the 2016 Judgment, i.e., by 22 November 2016.
2. On 15 November 2016, each of the Ademagic et al. litigants received a letter from Mr. Victor Kisob, Officer-in-Charge of the Office of Human Resources Management (OHRM) informing whether they would be granted a conversion to a permanent appointment. The majority of the litigants were denied conversion.
3. On 12 January 2017, the Ademagic et al. litigants submitted a request for management evaluation challenging their denials of conversion. Included in their request were personal statements supporting their respective allegations that relevant data relied upon in the contested decisions was inaccurate or not taken into account.

4. On 3 March 2017, Mr. Yukio Takasu, Under-Secretary-General for Management (USG/Management) communicated the Administration's decision to accept the recommendations of the Management Evaluation Unit (MEU) to uphold the contested decisions with respect to all but 22 of the Ademagic et al. litigants. With respect to these 22 litigants, the USG/Management stated that:

... the MEU advised that OHRM [was] reviewing its decisions ... based on information provided in the personal statements ... and that a final decision [was] pending. Accordingly, the MEU [found] that the request for management evaluation with respect to [these 22 litigants was] premature and[,] thus, not-receivable at this time.

5. In March, May and June, there were e-mail exchanges between counsel for these 22 Ademagic et al. litigants and Mr. Victor Kisob, Acting Assistant Secretary-General for Office of Human Resources Management (Acting Assistant ASG/OHRM), regarding the timing and process of the new review. OHRM indicated in these e-mail exchanges that it was endeavouring to complete the review, at the latest, by early April 2017. There were subsequent discussions regarding OHRM's need to obtain additional information concerning staffing of offices in the duty stations of Zagreb, Belgrade and Sarajevo in 2011 and referral to central review bodies. By mid-June 2017, Mr. Kisob informed that OHRM "has obtained the relevant information, and is finalizing its review ... [which] will be referred to the central review bodies next week, following which a recommendation will be made and I will be in the position to make the final decisions".

6. On 21 June 2017, these 22 Ademagic et al. litigants filed an "Urgent Motion for Execution of Judgment" (Movants) wherein they seek an order requiring immediate execution of the 2016 Judgment and the issuance of final decision letters. The Movants emphasize that they were entitled to execution of the 2016 Judgment no later than 22 November 2016 but still remain deprived of a final decision more than 300 days after the 2016 Judgment and more than 100 days since the MEU response on 3 March 2017. The Movants submit that the interest of justice warrants that their Motion be heard on an urgent basis.

7. On 7 July 2017, the Secretary-General submitted his comments to this Motion. The Secretary-General argues that the Movants did receive a timely final decision and that the Administration's new review does not place them in the same position as if the

Administration had not complied with the 2016 Judgment's deadline. He submits that granting the Motion is not the appropriate recourse in the present context and that he is willing to forego management evaluation should any of the Movants want to challenge their decisions once issued.

8. The relevant provisions of the Statute of the Appeals Tribunal (Statute) applicable to the present motion are: (i) Article 2(3), which provides in relevant part that the Appeals Tribunal may "issue all orders necessary or appropriate in aid of its jurisdiction and consonant with the present statute"; and (ii) Article 11, which provides that "[w]here a judgment requires execution within a certain period of time and such execution has not been carried out, either party may apply to the Appeals Tribunal for an order for execution of the judgment". Article 27 of its Rules of Procedure contains the same language as Article 11 of the Statute.

9. The Appeals Tribunal notes with grave concern that the Secretary-General has not yet fully complied with the Appeals Tribunal's 2016 Judgment, despite the jurisprudence emphasizing the inviolability of a Tribunal order<sup>1</sup> and the long history of this case. The Appeals Tribunal wishes to emphasize that orders and judgments of the Tribunals must be executed with alacrity.

10. Pursuant to the above-referenced provisions, the Appeals Tribunal grants the Urgent Motion for Execution of Judgment and orders that the Secretary-General fully execute the 2016 Judgment within 21 calendar days from the issuance of this Order.

11. The Appeals Tribunal does not order immediate execution in light of the fact that on 16 June 2016 OHRM indicated that it would be referring its review to the central review bodies "next week, following which a recommendation will be made and [OHRM] will be in the position to make the final decisions". Given the importance of the central review body process, the Appeals Tribunal finds that allowing sufficient time for it and the subsequent final stages of the decision process to finish is in both the Movants' interests as well as the interest of justice. The Appeals Tribunal also finds that this extra time would not cause the Movants' any undue harm.

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<sup>1</sup> *Dalgaard et al. v Secretary-General of the United Nations*, Judgment No. 2015-UNAT-532, para. 23 (and cases cited therein).

12. The Secretary-General is advised that failure to comply with the execution deadline established herein will result in a finding of manifest abuse of process and the award of costs, pursuant to Article 9(2) of the Statute and, possibly, a referral for accountability, pursuant to Article 9(5) of the Statute.

13. In view of the foregoing, the motion is granted.

**IT IS HEREBY ORDERED that the Urgent Motion for Execution of Judgment is GRANTED and the Secretary-General is ordered to fully execute the 2016 Judgment by issuing final decisions with respect to each of these 22 Ademagic et al. litigants within 21 calendar days of the issuance of this Order (i.e., by no later than 5:00 p.m. (EDT, New York) on the 4th of August 2017).**

Original and Authoritative Version: English

Dated 14<sup>th</sup> day of July 2017 in Vienna, Austria.

*(Signed)*  
Judge Deborah Thomas-Felix  
President

Entered in the Register on this 14<sup>th</sup> day of  
July 2017 in New York, United States.

*(Signed)*  
Weicheng Lin, Registrar