



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/078

Judgment No.: UNDT/2011/179

Date: 18 October 2011

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: Anne Coutin, Officer-in-Charge

LARKIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Stephen Margetts, ALS/OHRM, UN Secretariat

Introduction

1. In this case, which has been remanded by the Appeals Tribunal to the Dispute Tribunal for further consideration, the Applicant contests the decision by the Chief, Office of Staff Legal Assistance (“OSLA”), Office of Administration of Justice, UN Secretariat, not to disclose a conflict of interest allegedly affecting his cases against the Administration of the Office of the United Nations High Commissioner for Refugees (“UNHCR”).
2. The Applicant requests:
 - a. Compensation for the damage done to his cases;
 - b. Compensation for the stress and distress inflicted on him;
 - c. An order requiring a solemn undertaking from OSLA that it will not pass to UNHCR information that the Applicant gave on the understanding that it was privileged and confidential.

Facts

3. The Applicant filed the present application with the Dispute Tribunal on 28 March 2010. He claimed that there was a conflict of interest stemming from the fact that the Chief of OSLA had served, prior to his taking up his current functions, with UNHCR, whose management had made the contested decisions in the cases he intended to file with OSLA assistance. The Applicant complained about the non-disclosure of such fact.
4. By Judgment No. UNDT/2011/028, issued on 2 February 2011, the Dispute Tribunal rejected the application as irreceivable, but also finding that it had no merits in any event.
5. Further to the Applicant’s appeal, the Appeals Tribunal considered, in its Judgment *Larkin* 2011-UNAT-135 of 8 July 2011, that the Dispute Tribunal erred in law in finding the said application not receivable. It stated in this respect that “the services provided by OSLA and the manner in which the representation is

implemented can have an impact on the staff member's terms of appointment and therefore can fall within the jurisdiction of the UNDT ...". It further held that there was no indication of whether or not the Management Evaluation Unit, which has the power to waive its own time limits, would have waived the time limits in the circumstances of this case. Accordingly, the Appeals Tribunal reversed Judgment No. UNDT/2011/028 and remanded the case to the Dispute Tribunal for a trial on the merits.

6. On 9 September 2011, the Applicant expressed his wish to make an updated written submission to the Dispute Tribunal.

7. By letter dated 12 September 2011, the Tribunal advised the parties that an oral hearing was not considered necessary, while giving them the opportunity to take position thereon. The parties agreed that no oral hearing be held.

Parties' submissions

8. The Applicant's principal contentions are:

a. Legal counsel have a duty to disclose conflicts of interest. The Chief of OSLA decided not to do so. The Applicant has no recollection of the Chief of OSLA having told him that he had previously served with UNHCR;

b. The service provided to the Applicant by OSLA was so "abysmally bad" that its degree of commitment must be questioned. Among other things, his counsel was not aware that he was presenting three cases instead of one; she ignored on a number of occasions his instructions and requests; she was not diligent regarding the deadlines and the Applicant was forced to approve an application which was not to his satisfaction, being threatened to no longer be represented one hour before the deadline for filing one of the applications;

c. The Chief of OSLA sent a letter to UNHCR "begging for their assistance" a few days before his phone conversation with the Applicant,

about which he only found out in late November 2009. This is worse than the non-disclosure of the prior employment of the Chief of OSLA.

9. The Respondent's principal contentions are:
 - a. The factual allegations in the application are denied. The Applicant was fully informed of the status of the Chief of OSLA;
 - b. There is no conflict of interest arising as a consequence of the prior status of the Chief of OSLA, nor should there be perception of such a conflict. The Chief of OSLA is mandated to maintain independence from the Administration. "The very nature of the Organization requires that the individuals act within discrete departments and working groups and fulfil the mandates of those departments or working groups".

Consideration

10. The Tribunal relies on the extensive submissions made by the parties at earlier stages of the proceedings and deems itself sufficiently informed, thus not requiring any further material.

11. Section 7.1 of the Secretary-General's bulletin ST/SGB/2010/3 (Organization and terms of reference of the Office of Administration of Justice) foresees the responsibility of the Chief of OSLA "to provide legal assistance to staff members in an independent and impartial manner". It is moreover generally accepted that "OSLA counsel are required to perform their duties in accordance with established professional, ethical and legal obligations".¹ Specifically, paragraph 9 of the self-issued "Guiding Principles of Conduct for Office of Staff Legal Assistance (OSLA) Affiliated Counsel in the United Nations" reads (emphasis added):

Counsel may not advise or act in a matter which involves any conflict of interest, whether personal, or arising from the nature of his/her duties on behalf of the Organi[z]ation, or otherwise. Counsel should, moreover, avoid advising or acting in any matter in which such conflict *might reasonably be seen to exist*. Should

¹ <http://www.un.org/en/oaj/legalassist/about.shtml> (last consulted on 18 October 2011).

any such question emerge, counsel must advise the client or future client of all relevant facts.

12. Taking into account this legal framework and after examination of the circumstances surrounding the present case, the Tribunal concludes that the alleged conflict of interest could not reasonably be seen to exist. In this connection, it is not disputed that the OSLA counsel then assigned to the Applicant did not have any particular relation with UNHCR; the alleged conflict of interest concerns exclusively her supervisor, the Chief of OSLA, who used to work for UNHCR before taking up his current position. Furthermore, it is not contended that the Chief of OSLA had been in any manner involved, while with UNHCR, in the managerial decisions that the Applicant sought to challenge.

13. Hence, the alleged conflict of interest would arise purely from the fact that the Chief of OSLA had served at the same body within the United Nations whose management made the decisions contested in the Applicant's cases.

14. However, this mere employment relationship, when tested against the standards commonly applied within and outside the Organization, falls short of supporting the conclusion that OSLA was—even potentially—prevented from correctly discharging its mandate.

15. As already pointed out in *Larkin* UNDT/2011/028, it is not unusual for a lawyer to fulfil different roles in the course of his or her professional career and it is widely admitted that this does not disqualify him or her from discharging his or her duties. In the context of the Organization, mobility of staff members to different positions is not only envisaged, but encouraged; a significant number of UN employees change jobs and entities during their career and it is hardly conceivable that they may be systematically regarded as inapt to discharge their successive functions because of their previous ones. As a matter of fact, no other UNHCR staff member or former staff member represented by OSLA has ever claimed that there was a conflict of interest based on the past employment relation of the Chief of the Office.

16. For all the above, the Tribunal considers that there were no meaningful indicia of a conflict of interest involving the Chief of OSLA as regards the

Applicant's cases and, consequently, there was no obligation to disclose on the part of OSLA.

Conclusion

17. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 18th day of October 2011

Entered in the Register on this 18th day of October 2011

(Signed)

Anne Coutin, Officer-in-Charge, Geneva Registry