



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/021/
UNAT/1634
Judgment No.: UNDT/2012/006
Date: 11 January 2012
Original: English

Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

ZEDAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Joseph Grinblat, OSLA

Counsel for Respondent:
Arnold Kreilhuber, UNEP

Introduction

1. The Applicant appeals against the decision not to renew his fixed-term appointment as the Executive Secretary, Convention on Biological Diversity (“CBD”) beyond 31 December 2005. The Applicant contends that the decision not to renew his appointment beyond 31 December 2005 was in breach of administrative arrangements between the Secretariat of the CBD and the United Nations Environment Programme (“UNEP”), which provides administrative support to the Secretariat of the CBD. The Applicant submits that he had a legitimate expectancy of renewal and that the decision was motivated by prejudice and extraneous considerations. The Applicant also submits that the decision was based on advice given by the Executive Director, UNEP, which was in retaliation for Applicant’s concerns with regard to inadequate support provide by UNEP and the United Nations Office at Nairobi (“UNON”) to the Secretariat of the CBD. The Applicant seeks equitable relief and monetary compensation.

2. The Respondent denies all allegations of unfairness and procedural impropriety and asserts that the decision was in compliance with the appropriate administrative arrangements and that the Applicant did not have a legitimate expectancy of renewal of his contract.

Employment background

3. The Applicant joined UNEP in 1983 and served on a series of fixed-term appointments until July 1991, when he was given a probationary appointment and subsequently promoted to the D-1 level as Coordinator for Biological Diversity and Biotechnology. In April 1992, the Applicant’s probationary appointment was converted to a permanent appointment. In September 1999, the Applicant was appointed as Executive Secretary, CBD, at the D-2 level. In December 2000, his post was upgraded to the level of Assistant Secretary-General. The Applicant received a

further two-year fixed-term appointment at the level of Assistant Secretary-General, with effect from July 2002.

4. The fixed-term appointment was subsequently extended for one year, until 30 June 2005. According to the Applicant, at the end of this term he expected an extension of two years to 30 June 2007. However, he was given an extension of six months, to 31 December 2005, following which he separated from the Organization.

5. The central issue in this case concerns this final extension of six months, at the end of which a new Executive Secretary was to take office for a three-year period. The Applicant contends that he had a reasonable and legitimate expectation that, instead, he would be given a two-year contract, as was recommended by the Bureau of the Conference of the Parties to the Convention (“COP”), the governing body of the CBD.

Procedural background

6. In accordance with the procedures applicable at the time, the Applicant filed, by letter dated 14 October 2005, a request for administrative review of the decision to extend his contract only until 31 December 2005. On 20 December 2005, the Applicant filed an appeal with the Joint Appeals Board (“JAB”). In its Report No. 06/2007, the JAB recommended that the Secretary-General rejects the Applicant’s appeal.

7. The Applicant subsequently filed an appeal with the former United Nations Administrative Tribunal. On 1 January 2010, the case was transferred to the New York Registry of the Dispute Tribunal.

8. The Tribunal held case management discussions and issued a series of case management orders for the purpose of clarifying the issues in contention, identifying documents which would be required and identifying witnesses and evidence to

corroborate the contentions and assertions being advanced on behalf of the Respondent.

9. On 2 September 2011, the Tribunal held a hearing to hear evidence from the Applicant and consider the parties' closing submissions. It was agreed that in the absence of evidence from Mr. Klaus Töpfer, Executive Director, UNEP, or any of the decision-makers, the Tribunal should proceed to consider the case on the documents and the evidence available to it.

Issues

10. The issues raised by the parties in this case may be summarised as follows:

a. Did the Respondent follow the correct procedures as agreed between UNEP and the COP with regard to the decision to limit the Applicant's extension of appointment to six months and to appoint Mr. Ahmed Djoghlaif, the then Assistant Executive Director, UNEP, and Director of Division of the Global Environment Facility, UNEP, as the new Executive Secretary?

b. Did the Applicant have a legitimate expectation of renewal beyond the six-month period that ended on 31 December 2005?

c. Was the contested decision irrational or vitiated by extraneous factors in contravention of the principles contained in the Charter of the United Nations?

d. Did the JAB commit any error of procedure or substance in reaching its findings and in recommending to the Secretary-General that the Applicant's appeal be rejected?

Facts

11. The Applicant accepts, in substantial measure, the facts in the JAB report but describes it as incomplete and selective. The Respondent relies upon the facts as presented in the JAB report.

12. The following relevant facts are as recorded in the JAB Report No. 06/2007:

7. In a letter dated 8 November 2004, the [Executive Director], UNEP, wrote to the President of the COP-7 [i.e., the Seventh Meeting of the COP] of the CBD – namely the Minister of Science, Technology, and the Environment, Malaysia. The [Executive Director] referred to COP-7’s decision VII/34[,] “invit[ing] the President of the Conference of the Parties to consult with the Executive Director of the United Nations Environment Programme and liaise with the Office of the Secretary-General of the United Nations on future appointments”. The [Executive Director] submitted that[,] accordingly, “based on [his] prerogative as the head of the organization providing secretariat support to the Convention, “he intended to recommend to the [Secretary-General], with the concurrence of the President/COP-7, the appointment of a new [Executive Secretary] as of 1 July 2005. To this end, the [Executive Director] wished to recommend for the President/COP-7’s consideration, the candidature of Dr. Ahmed Djoghlaflaf, then the Assistant Executive Director of UNEP and Director of the Division of the Global Environment Facility.

8. In a note verbale dated 3 December 2004, the Ministry of Foreign Affairs, Malaysia, advised the [Executive Director], UNEP, that the Minister of Science, Technology, and the Environment, Malaysia, concurred with the [Executive Director]’s recommendation and supported Dr. Djoghlaflaf’s candidature.

9. On 8 December 2004, the [Executive Director], UNEP, wrote to the [Secretary-General] advising that, on behalf of the President of the COP-7 as well as on his own behalf, he was recommending Dr. Djoghlaflaf as the [Executive Secretary], CBD, for a mandate of three years beginning 1 July 2005.

10. In a letter dated 29 December 2004, the President/COP-7, wrote to the [Secretary-General], advising that in its meeting in Montreal on 22–23 December 2004, the Bureau of the COP-7 “noted with appreciation the useful contribution rendered by [the Applicant]” in furthering the objectives of the Convention. He furthered that

the Bureau “decided to revisit” the decision of the Bureau of COP-6 [i.e., the Sixth Meeting of the COP] as well as Decision VII/34, and

“unanimously supported the extension of the term of office of the current Executive Secretary Mr. Hamdallah Zedan for another two (2) years beginning 1 July 2005 and requested [the President, COP-7] to invite the [Secretary-General] to kindly consider the Bureau’s recommendation”.

11. In a letter of appointment dated 15 July 2005, the [Secretary-General] offered [the Applicant] a Fixed-Term Appointment at the level of Assistant Secretary-General in the UN Secretariat, “in accordance with the terms and conditions specified [therein] and subject to the provisions of the Staff Regulations and Staff Rules”. The reappointment was for a period of six months effective 1 July 2005, therefore expiring 31 December 2005. The letter of appointment further provided that “[t]his Fixed-Term Appointment does not carry any expectancy of renewal”. The [Applicant] signed the letter on 25 August 2005.

Relevant legal provisions

13. Decision IV/17 of the Fourth Meeting of the COP, entitled “Administrative Arrangements between [UNEP] and the Secretariat of the [CBD]” (May 1998), and Decision VII/34 of the Seventh Meeting of the COP, entitled “Administration of the Convention and the budget for the programme of work for the biennium 2005–2006” (February 2004), set out the procedure and define the roles of the COP and its Bureau, the Executive Director of UNEP, and the Secretary-General in the process leading to the appointment of the Executive Secretary, CBD.

14. The relevant sections of Decision IV/17 are set out below (emphasis added):

I. Personnel Arrangements

1. The Executive Secretary of the CBD will be appointed by the Executive Director of UNEP *after consultation with the Conference of the Parties through its Bureau. The level and term of office of the appointment will be determined by the Conference of the Parties.* The term of office may be extended by the Executive Director of UNEP *after consultation with the Conference of the Parties.* Consultations on

these matters will be conducted *through the Bureau of the Conference of the Parties*. ...

...

3. *Posts and their levels are established by the Conference of the Parties* for classification and recruitment purposes in conformity with the principles laid down by the General Assembly of the United Nations.

4. ... All appointments and promotions to posts above the D1/L-6 level, or termination of appointment above the D1/L-6 level, *require prior approval of the Secretary-General of the United Nations*.

15. The relevant section of Decision VII/34 states:

5. *Notes* the recommendation of the Bureau of the sixth meeting of the Conference of the Parties *to reappoint the current Executive Secretary*. The Conference of the Parties further invites the President of the Conference of the Parties to consult with the Executive Director of the United Nations Environment Programme and liaise with the Office of the Secretary-General of the United Nations on future appointments.

16. The Charter of the United Nations provides as follows:

Article 101

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

...

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

17. The former relevant staff regulations provide:

Regulation 4.1

As stated in Article 101 of the Charter, the power of appointment of staff members rests with the Secretary-General. ...

Regulation 4.2

The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

Regulation 4.3

In accordance with the principles of the Charter, selection of staff members shall be made without distinction as to race, sex or religion. So far as practicable, selection shall be made on a competitive basis.

Applicant's submissions

18. The Applicant's principal contentions may be summarised as follows:
 - a. The contested decision was in breach of Decision IV/17 of the COP, which states that the appointment and extension of appointment of the Executive Secretary, CBD, require consultation with the COP, through its Bureau. Further, the level and term of office is determined by the COP;
 - b. The correct procedure under Decisions IV/17 and VII/34 was not followed in terms of extension of the Applicant's appointment and the appointment of the new Executive Secretary, CBD;
 - c. The contested decision ignores the views of the 188 State Parties to the CBD as expressed through the Bureau of the COP that unanimously supported the extension of the Applicant's contract until 30 June 2007 and did not support the appointment of a new Executive Secretary;
 - d. The contested decision does not take into consideration the Applicant's legitimate expectancy of contract extension through to 30 June 2007;
 - e. The renewal of the contract of the Applicant to 31 December 2005, instead of to 30 June 2007, and the appointment of a new Executive Secretary,

CBD, with effect from 1 January 2006, were vitiated by arbitrariness, prejudice, cronyism, and motivated by reasons other than the interests of the Organization;

f. The advice of the Executive Director, UNEP, to the Secretary-General to not renew the Applicant's contract beyond 31 December 2005 was in retaliation for expressing his concerns with regard to the inadequate support provided by UNEP and UNON to the Secretariat of the CBD.

Respondent's submissions

19. The Respondent's principal contentions may be summarised as follows:

a. The decision not to renew the Applicant's fixed-term appointment was a proper exercise of the Respondent's discretion;

b. The Respondent acted in accordance with Decision VII/34 in consulting with and deciding upon the terms of the Applicant's reappointment until 31 December 2005;

c. The Applicant did not have any expectancy of renewal, having signed his final letter of appointment extending his appointment for six months, only until 31 December 2005;

d. The contested decision was not vitiated by any countervailing circumstances and was not otherwise tainted by prejudice or other improper motives.

Consideration

Preliminary observations

20. Although the Tribunal granted disclosure of the investigation reports concerning allegations against Mr. Djoghlafl by several staff members, including the

Applicant, and Mr. Djoghlaflaf's counter-allegations against them, the Tribunal made it clear to the parties that this case is not concerned with whether Mr. Djoghlaflaf had committed any breach of the UN's conduct and disciplinary code. Instead, this case concerned the question whether the Executive Director of UNEP, at the time he made his recommendation to the Secretary-General, failed to comply with the procedures agreed between the COP and UNEP and, in particular, the strong recommendation in the letter dated 29 December 2004.

21. An examination of the investigative findings relating to the allegations made against Mr. Djoghlaflaf do raise a legitimate question as to why the Respondent preferred him as against the Applicant who had proven to be a successful and highly regarded Executive Secretary. Additionally, the Applicant received strong support from the COP, as evidenced by their letter of 29 December 2004 to the Secretary-General. However, in the absence of evidence from Mr. Töpfer or any other witness with direct knowledge of the procedures and considerations leading to the recommendation to the Secretary-General, the Tribunal decided that it would be unsafe and, in light of its factual findings, unnecessary, to engage in an exploration of the reasons for the impugned decision. The legally determinative question in this case is the legitimacy of the decision itself and not the motives underlying it.

Jurisprudence on expectancy of renewal

22. In principle, fixed-term contracts do not carry an expectancy of renewal (see former staff rule 104.12(b)(ii)). However, an expectancy of renewal may be created by countervailing circumstances, such as violation of due process, arbitrariness, or extraneous motivation on the part of the Administration (see also *Obdeijn* UNDT/2011/032, paras. 40–41). All administrative decisions should be given full and fair consideration and should be based on proper grounds and be in conformity with the requirements of due process (see *Ahmed* UNDT/2010/161, affirmed in *Ahmed* 2011-UNAT-153).

23. The Administration's discretionary power in the matters of appointment, promotion, and termination is not unfettered (see *Asaad* 2010-UNAT-021). The Administration must act in good faith, respect procedural rules, and its decisions must not be arbitrary or motivated by factors inconsistent with proper administration. In addition, its decisions must not be based on erroneous, fallacious or improper motivation.

Was the Applicant properly considered for an extension of appointment?

24. The Respondent asserts that the Applicant was considered for an extension of appointment beyond 31 December 2005. However, the Respondent has failed to produce a copy of the advertisement, memoranda, decision notes or any witness to prove the assertion that full and fair consideration was given to the Applicant's candidature in order to give effect to the principle that the paramount consideration in the employment of staff is to secure the highest standard of efficiency, competence and integrity. It was not part of the Respondent's case that the Applicant was not eligible for consideration by reason of age, competence or any other material factor. It was apparent that he was interested in continuing in the post. The Respondent did not provide any explanation as to why, notwithstanding his successful record of achievement and the strong support from the COP, the Applicant was not offered an extension of appointment beyond 31 December 2005.

25. In compliance with the Tribunal's Order requesting the Respondent to provide evidence in support of the contention that proper procedures were followed, the Respondent produced a letter dated 21 March 2011 from Mr. Amedeo Buonajuti, at the time the Chief of Office of the Executive Director, UNEP, stating that the recruitment process followed established procedures. He explained briefly that a consultative process was followed and that several names were put forward for consideration. He added that the Applicant's contribution was assessed in comparison to the other candidates before a recommendation was made to the Secretary-General.

However, he made it clear that he was not prepared to testify in person before the Tribunal.

26. Mr. Buonajuti's untested assertions were of no assistance to the Tribunal. The Respondent was reminded, by Order No. 185 (NY/2011) of 21 July 2011, of the importance of producing one or more witnesses whose evidence could be tested at a hearing before the Tribunal and to produce any contemporaneous document in support of their contentions. The Respondent was unable to produce any witnesses, explaining that this was due to the lapse of time since the events in question and the fact that key individuals were no longer within the control of the Respondent.

27. Whilst it is understandable that the Respondent might well not be able to produce witnesses who are no longer under the control of the Organization, the absence of an audit trail evidencing the procedural steps leading up to the appointment is a matter of surprise and should be of grave concern to the Secretary-General. As a general principle of good governance and administration, it should be obligatory on those involved in decisions on selection for recruitment or promotion to create and maintain proper records in order to give full effect to the commitment of the General Assembly to integrity and transparency at every stage in the decision-making process. Whilst this principle should be regarded as being of general application, it is of particular importance where the Secretary-General has personal responsibility for making the appointment. He must be entitled to accept in good faith that when a recommendation is made to him, all the necessary procedural requirements and safeguards have been complied with. The integrity of the office requires no less.

28. In his letter of 8 December 2004 to the Secretary-General, recommending the successful candidate, the Executive Director of UNEP stated, in effect, that established procedures were followed and the protocols agreed with the COP were observed. He assured the Secretary-General that there had been an "exhaustive review of the strengths and weaknesses of the potential candidates". It is a matter of

surprise that, given such an exhaustive review, there is no audit trail recording the process.

29. The following sequence of events is revealing:

a. On 8 December 2004, the Executive Director of UNEP wrote to the Secretary-General advising on behalf of the President of the Bureau of the COP, as well as himself, that Mr. Djoghlaf was the candidate being recommended for appointment for a three year term;

b. On 29 December 2004, the President of the Bureau of COP-7 wrote to the Secretary-General, informing him that at its meeting in Montreal on 22 and 23 December 2004, the Bureau of the COP unanimously supported the extension of Mr. Zedan for a further term of two years beginning 1 July 2005;

c. Given the inconsistency between the communications of 8 and 29 December 2004, the office of the Secretary-General wrote to Mr. Töpfer asking for further clarification;

d. On 11 January 2005, Mr. Töpfer wrote to the President of the Bureau of the COP asking for his personal views. This was surprising given the clear terms of the President's letter of 29 December 2004, expressing the collective decision of the COP, expressed through its Bureau, to give unanimous support to the extension of the Applicant's term as the Executive Secretary for another two years;

e. In his response of 16 February 2005, the President of the Bureau of COP-7 reiterated its support for the extension of the Applicant's appointment for two years from 1 July 2005. This letter was sent by the President to the Secretary-General on 3 March 2005.

30. At this point, the audit trail comes to an end. The Tribunal has not been provided with any evidence or explanation as to what, if anything, transpired in the

four months between this letter from the President and the letter dated 15 July 2005 from the Secretary-General to the Applicant offering him an extension of appointment not for the two-year period, as requested by the COP, but for six months to 31 December 2005. It is inconceivable that such an important record relating to an apparently controversial appointment should either not have been maintained or, if it was, could not be produced to the Tribunal despite the best efforts of Counsel for the Respondent.

31. The Tribunal finds that the following facts in this case are inconsistent with the requirement of due process and transparency in decision-making within the United Nations.

a. As stated above, the absence of a proper audit trail in relation to this decision is surprising and must remain a matter of concern;

b. The Tribunal does not consider it appropriate to go into the precise details regarding the allegations and counter-allegations made between Mr. Djoghlaif and members of his staff, both before and since the decision promoting him to the position of Executive Secretary. However, what is relevant and significant is evidence pointing to the considerable delay on the part of Mr. Töpfer in commencing timeous investigations into these allegations;

c. The Executive Director of UNEP deliberately omitted to give full effect to the agreement between the CBD and UNEP. Even if he understood that it was appropriate to engage in consultations with the President of the Bureau of COP, it was abundantly clear from letter dated 29 December 2004 that the President was acting on behalf of the COP (through its Bureau) expressing its unanimous support for the extension of the term of office of the Applicant. Notwithstanding this, Mr. Töpfer wrote to the President of the Bureau of the COP, seeking his personal views. Even if the President had any personal views and even if those views were not consistent with the views of

the COP, it should have been patently obvious to any senior public servant that to write in such a manner seeking the personal views of the President was wholly inappropriate. It must be incontrovertible that the letter following a meeting in Montreal on 22 and 25 December 2004 was the formal position of the Bureau of the COP. In the circumstances, no explanation has been offered to the Tribunal as to why the views expressed in the President's letter of 29 December 2004, and regarding which the Office of the Secretary-General sought clarification, seems to have been brushed aside.

d. The fact that the Applicant had reached retirement age was raised at various stages before the JAB and the Respondent's response to the appeal. However, this claim was, in effect, abandoned in the course of proceedings before this Tribunal.

32. The Tribunal finds that a sitting candidate who has a successful record of achievement, who was aware that he was being strongly supported by the COP and who knew that Mr. Töpfer, the Executive Director, UNEP, was obliged under the agreed procedures to consult the COP through its Bureau before making his recommendation to the Secretary-General, would reasonably entertain a legitimate expectancy of renewal.

33. The Respondent has failed to satisfy the Tribunal that the unanimous recommendation of the Bureau of the COP was given due consideration and that the Applicant's situation was considered in accordance with the procedures agreed between UNEP and the COP. The Tribunal therefore finds that the Respondent did not follow the established procedure for the appointment of the Executive Secretary, CBD, and failed to give full, fair, and proper consideration to the Applicant's candidacy.

Allegations of improper motivation

34. Whilst the burden of proving improper motivation on the part of the decision-maker rests on the Applicant (*Parker* 2010-UNAT-012, *Hepworth* 2011-UNAT-178, *Jennings* 2011-UNAT-184), it has to be accepted that the question whether or not a decision was tainted by bias or prejudice can only usually be decided on the basis of inferences drawn from the primary facts. Clearly, no individual is likely to admit bias, unfair prejudice or improper motive. Indeed, individuals may not even be aware of the exercise of their own bias or motives, which are sometimes unconscious. Although the Applicant asserted that there was prejudice and bias against him, the Tribunal's primary focus was on the question whether the decision to offer the Applicant an extension of appointment for six months only, instead of two years, was a breach of his rights, rather than on the reasons for the treatment. In the circumstances, the Tribunal did not consider it appropriate or necessary to carry out an in-depth analysis of the motives of the Executive Director, UNEP. In any event, such an exercise would have been frustrated by the very fact that the Respondent did not call Mr. Töpfer as a witness in these proceedings.

Compensation

35. As the Appeals Tribunal stated in *Solanki* 2010-UNAT-044 and *Ardisson* 2010-UNAT-052, compensation must be set by the Dispute Tribunal following a principled approach and on a case-by-case basis. Damages may only be awarded to compensate for negative effects of a proven breach and the award should be proportionate to the established harm suffered by the Applicant (*Crichlow* 2010-UNAT-035). The Dispute Tribunal is in the best position to decide on appropriate relief, given its appreciation of the case (*Solanki*).

36. Having considered the parties' submissions on relief and taking into account the totality of circumstances in this case, the Tribunal finds that, had the proper procedures been followed, and had proper and fair consideration been given to the

Applicant's candidature, there was a high probability of his being appointed beyond 31 December 2005.

37. However, the Applicant's appointment beyond 31 December 2005 was nevertheless not a certainty, given the discretion exercised in the matter by the Secretary-General. Further, even if the Applicant's appointment were to continue beyond 31 December 2005, there is no certainty as to how long he would have continued in employment. It must be taken into account that the Applicant's last extension was for one year.

38. Accordingly, the Tribunal considers it appropriate to order that the Applicant be paid USD50,000 as compensation for the established breach of his rights and the resultant damage, including loss of potential employment, earnings and any associated benefits and entitlements.

39. Further, the Applicant gave evidence, which the Tribunal accepts, that he suffered anxiety and emotional distress as a result of the manner in which he was treated. The Tribunal awards a further sum of USD20,000 in compensation for this.

Observation

40. The Tribunal finds that the report, findings, and recommendations of the JAB were arrived at after an incomplete examination of the facts in that the JAB failed to address the correct factual questions and to test the assertions of the Respondent. This is most regrettable since the JAB's enquiries were closer in time to the events and it could have elicited more information in the form of documents and witness testimony. By focussing mainly on the issue of legal expectancy of renewal and the Applicant's age, the report of the JAB gave little or no weight to the failure on the part of the Administration to give full effect to the procedures agreed between UNEP and the COP and the lack of an audit trail evidencing procedural propriety in the decision-making process.

41. This case concerns events which occurred more than seven years ago. It would be comforting to the Organization to believe or, at least, to hope that in view of the positive steps that have been taken in recent years to improve managerial accountability and the introduction of a fully independent, professionalised and transparent system of internal justice that such examples of maladministration are less likely to recur.

42. In the absence of a rational and credible explanation for the way in which the appointment of the successful candidate was effected, the Tribunal concludes that the actions of the Executive Director of UNEP stemmed primarily from the degree of confidence on the part of a public servant in the arbitrary exercise of power without accountability. It could well have been that a fair and transparent process giving full effect to art. 101 of the Charter and staff regulations 4.2 and 4.3, testing the suitability of all candidates against objective criteria, would have resulted in the same outcome and it would have been fair and seen to be fair. Above all, such a process would have avoided damage to the Applicant and to the institution itself.

43. The Tribunal cannot but infer on the basis of such evidence as was put before it, and inferences made from lack of evidence, that this case epitomises the culture of impunity previously enjoyed by some senior managers that has contributed to the lack of confidence on the part of staff members in the ability or willingness of the system to live by the laudable principles of the Charter. The Tribunal hopes that those involved in decision-making will take comfort in the knowledge that a transparent process that is properly documented will enable them to justify their decisions in the event of challenge, at minimal cost to the Organization. It will also facilitate informal resolution of disputes by minimising the risk of suspicion and speculation. Finally, in the event of proceedings before the Tribunal, it will facilitate a fair, expeditious and cost-effective disposal of the case.

Orders

44. The Tribunal awards the Applicant the following:
- a. USD50,000 as compensation for the breach of the Applicant's right to be properly considered for an appointment beyond 31 December 2005, as recommended by the Bureau of the COP, and any resultant harm, including loss of potential employment, earnings and any associated benefits and entitlements; and
 - b. USD20,000 as compensation for anxiety and emotional distress.
45. The total sum of compensation as detailed in para. 44 above is to be paid within 60 days from the date this Judgment becomes executable, during which period interest at the US Prime Rate applicable as at that date shall apply. If the sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.
46. All other pleas are rejected.

(Signed)

Judge Goolam Meeran

Dated this 11th day of January 2012

Entered in the Register on this 11th day of January 2012

(Signed)

Hafida Lahiouel, Registrar, New York