



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/074

Judgment No.: UNDT/2012/106

Date: 13 July 2012

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

GEHR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

**ON APPLICATION FOR
INTERPRETATION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Ingeborg Daamen-Mayerl, UNOV/UNODC

Introduction

1. On 5 November 2011, the Applicant, a staff member of the United Nations Office on Drugs and Crime (“UNODC”), filed an application for interpretation of Judgment *Gehr* UNDT/2011/178.

Facts

2. The Applicant joined UNODC in Vienna in 2002. With effect from 1 November 2007, he was appointed in the Terrorism Prevention Branch (“TPB”) within the Division of Treaty Affairs (“DTA”).

3. In the fall of 2009, the Applicant was informed that, owing to a reorganization of TBP, he would be reassigned at the same level to the post of Senior Legal Adviser which was to be created within the Office of the Chief of TPB. A classification notice was eventually issued in March 2011 for the post in question.

4. On 16 May 2011, the Applicant filed with the Tribunal an application whereby he challenged the classification decision in relation to the post of Senior Legal Adviser as well as the decision of the Chief of TPB, then his first reporting officer, to use terms of reference different from those submitted in the context of the classification process to appraise his performance for the period from 1 April 2010 to 31 March 2011 (“2010-2011 performance appraisal”). That application was registered under Case No. UNDT/GVA/2011/024.

5. On 18 October 2011, the Tribunal issued *Gehr* UNDT/2011/178 in Case No. UNDT/GVA/2011/024. It found that, at the material time, there existed no valid delegation of authority for the United Nations Office at Vienna (“UNOV”) to classify the Applicant’s post. It also found that the “decision of [his] first reporting officer to use terms of reference ... which [we]re different from those submitted for the purpose of classification and from those [he] had [previously] received” constituted a preliminary decision which could only be reviewed within the context of the assessment of the final decision and that, in any event, the

Applicant's 2010-2011 performance had been appraised on the basis of a work plan which was consistent with the requirements set out in ST/AI/2010/5.

6. On 5 November 2011, the Applicant filed the instant application for interpretation of *Gehr* UNDT/2011/178, which was registered under Case No. UNDT/GVA/2011/074.

7. On 31 December 2011, the Applicant was separated from service.

8. By letter of 20 April 2012 addressed to the President of the Dispute Tribunal, he sought recusal of the Judge assigned to Case No. UNDT/GVA/2011/074, alleging a conflict of interest in that the Judge had already ruled on the issue which formed the subject of his application for interpretation.

9. By Order No. 1 (PRES/2012) issued on 22 June 2012, the President of the Dispute Tribunal rejected the Applicant's motion for recusal.

Parties' submissions

10. The Applicant's principal contentions are:

In a memorandum of 11 February 2010 addressed to the UNODC Executive Director, the Officer-in-Charge of DTA explained that the implementation of the new TPB structure would be achieved "through reassignment of existing posts ... as well as by modification of the [t]erms of [r]eference and job cla[ss]ifications for posts as appropriate". In addition, in the context of another case before the Tribunal, the Respondent stated that the classification process would "clarify and finally determine the terms of reference for the position" of Senior Legal Adviser. According to staff rule 2.1, posts must be classified according to standards promulgated by the Secretary-General and related to the nature of the duties, the level of responsibilities and the qualifications required. In view of the fact that *Gehr* UNDT/2011/178 rescinded the classification decision, the Tribunal should explain the implications of said Judgment as to the Applicant's title, duties and responsibilities.

11. The Respondent's principal contentions are:
 - a. Following *Gehr* UNDT/2011/178, the Office of Human Resources Management in New York undertook a review of the classification decision which is still ongoing. However, the outcome of this review will have no material impact on the grading of the Applicant's post or his job description;
 - b. In *Gehr* UNDT/2011/178, the Tribunal considered that the Applicant's functional title and responsibilities had been changed to those of Senior Legal Adviser and that his duties had been described with sufficient precision in draft terms of reference which had been shared with him. It further found that his main functions were reflected in his work plan. Thus, the Applicant was and still is fully aware as to what his duties and responsibilities were.

Consideration

12. Article 12.3 of the Tribunal's Statute provides:

Either party may apply to the Dispute Tribunal for an interpretation of the meaning or the scope of the final judgement, provided that it is not under consideration by the Appeals Tribunal.
13. In *Allen* Order No. 42 (GVA/2010), the Tribunal held:
 10. [A] request for interpretation of a judgment is receivable only if the operative part of it gives rise to uncertainty or ambiguity about its meaning or import. This has been consistently held by other international administrative tribunals which were vested, before UNDT, with the power to interpret their own judgments (see e.g. ILOAT, Judgment 802, *In re Van Der Peet* (No. 10); Judgment No. 2483; IMFAT, Order No. 2005-2).
 11. This finding is in line with the very *raison d'être* of article 12, paragraph 3, of the UNDT statute. Indeed, the purpose of an application for interpretation is not to seek further justification of the grounds for a given decision, but to obtain clarification of the decision itself (see ILOAT, Judgment No. 2483).

14. In view of the above, the Tribunal considers that the instant application for interpretation must be deemed irreceivable, for the operative part of *Gehr* UNDT/2011/178 is not ambiguous or misleading as to its practical implications.

15. The operative part is further clarified in that Judgment as the Tribunal explained that the classification decision in relation to the Applicant's post of Senior Legal Adviser was rescinded because UNOV did not have a valid delegation of authority. As to the Applicant's contention that his 2010-2011 performance had been appraised on the basis of draft terms of reference which were different from those used in the context of the classification process, the Tribunal considered that administrative instruction ST/AI/2010/5 (Performance Management and Development System)—which applied to the Applicant's 2010-2011 performance appraisal—did not require that staff members' performance be appraised on the basis of terms of reference but on the basis of individual work plans. It further found that the Applicant's work plan "included clear goals, actions to undertake to achieve each goal and measurement through a statement of success criteria" and it accordingly rejected the Applicant's contention.

16. It would be contrary to the letter and spirit of article 12.3 of the Tribunal's Statute to seek a reversal or modification of a final judgment under cover of interpretation. The correctness of a judgment is not a matter to be dealt with in this framework, as interpreting, by definition, means shedding light on the original meaning, as opposed to altering it. The proper avenue to challenge a judgment issued by the Dispute Tribunal is the filing of an appeal before the Appeals Tribunal, a possibility that the parties to Case No. UNDT/GVA/2011/024 chose not to make use of.

Conclusion

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

The application for interpretation of Judgment *Gehr* UNDT/2011/178 is rejected.

(Signed)

Judge Thomas Laker

Dated this 13th day of July 2012

Entered in the Register on this 13th day of July 2012

(Signed)

René M. Vargas M., Registrar, Geneva