



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2012/020

Judgment No.: UNDT/2012/112

Date: 20 July 2012

English

Original: French

**Before:** Judge Jean-François Cousin

**Registry:** Geneva

**Registrar:** René M. Vargas M.

TSONEVA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Shelly Pitterman, UNHCR  
Fritz Bontekoe, UNHCR

## **Introduction**

1. The Applicant contests the decision of the United Nations High Commissioner for Refugees to discontinue the post of Senior Contracts Officer that she has held since 2007.

2. She requests that the Tribunal rescind the contested decision, grant her compensation for the harm suffered and hold UNHCR management accountable.

## **Facts**

3. The Applicant entered the service of the Office of the United Nations High Commissioner for Refugees (“UNHCR”) in September 2000. In December 2007, she was appointed to the P-4 expert post of Senior Contracts Officer and, as such, was in charge of the Contracts Unit in the Supply Management Service, Division of Emergency, Security and Supply (“the Division”). The Applicant, who held grade P-3, was promoted to the P-4 level as from 1 November 2009.

4. On 27 December 2011, the Applicant met with the Director of the Division in order to inform him of the difficulties faced by the Contracts Unit owing to the heavy workload of the Unit and the shortage of staff assigned to it. On that occasion, the Director of the Division mentioned that the Contracts Unit would be transferred from Geneva to Budapest and that the position of Senior Contracts Officer held by the Applicant would be discontinued.

5. In a letter dated 28 December 2011 addressed to the Applicant, the Director of the Division confirmed his intention to discontinue the position of Senior Contracts Officer effective 1 July 2012 and to create a new position, with a revised job description, in Budapest. The Director added that those measures would be submitted for approval to the UNHCR Budget Committee.

6. On 29 December 2011, the Applicant asked to meet with the Director of the Division of Human Resources Management (“DHRM”) to inquire about her professional prospects. In an email sent to the Applicant later that day, the

Director of DHRM confirmed that he had met with the Applicant to clarify procedural aspects related to position management.

7. In early 2012, the Applicant contacted several UNHCR staff members to seek their support and advice.

8. In a memorandum dated 6 January 2012 addressed to the Chairperson of the UNHCR Budget Committee, the Director of the Division requested the Committee's approval to discontinue the three positions, including that of the Applicant, which comprised the Contracts Unit in Geneva.

9. By letter dated 30 January 2012, the Director of the Division informed the Applicant that the Budget Committee had, on that same day, approved the transfer of the Contracts Unit to Budapest; that the position of Senior Contracts Officer would therefore be discontinued on 1 August 2012; and that a new position, with a revised job description, would be created in Budapest as from 1 April 2012. The letter also stated that the Applicant was eligible to apply for any vacancies announced as of "the date of the first notification, i.e. 28 December 2011".

10. On 6 February 2012, the Applicant submitted a request for management evaluation of the decision of 30 January.

11. Having received no response to her request for management evaluation, the Applicant submitted her application with the Registry of the Tribunal on 12 March 2012. The Respondent submitted his reply on 23 April 2012 and the Applicant submitted additional comments on 3 May 2012.

12. On 12 June 2012, at the Tribunal's request, the Respondent submitted the job description of the Applicant's position and that of the newly created P-4 position in Budapest.

13. On 10 July 2012, a hearing, which the Applicant and a Counsel for the Respondent attended in person, was held.

14. By Order No. 124 (GVA/2012) of 10 July 2012, the Tribunal ordered the Respondent to file additional documents. On 12 July 2012, the Applicant and the

Respondent both submitted additional documents, asking the Tribunal to preserve the confidentiality of some of those documents.

**Parties' submissions**

15. The Applicant's contentions are:

a. The applicable procedure under inter-office memorandum IOM/FOM No. 027/2009 on the Procedural Guidelines for Changes in the Status of Positions, particularly as a result of their reclassification, discontinuation or redeployment, was not respected;

b. She did not receive a letter duly signed by the Director of the Division or any other authorized staff member, informing her of the intention to discontinue her position. Furthermore, she did not receive the letter informing her of the intention to discontinue her position until after she had requested a meeting with the Director of DHRM;

c. Contrary to the provisions of the first paragraph of inter-office memorandum IOM/FOM No. 027/2009 and paragraph 18 of the Policy and Procedures on Assignments and Promotions of 14 June 2010, she was not consulted before the decision to transfer the Contracts Unit to Budapest and discontinue her position was taken. During her meeting with the Director of the Division on 27 December 2011, she was not informed of the reasons for that decision. The Director simply stated that the decision had already been taken and advised her to consult the Director of DHRM for further clarifications. Yet the Director of DHRM confirmed, at their meeting on 29 December, that the staff members concerned had to be consulted before the decision to discontinue their positions was taken;

d. The period of notification provided for in IOM/FOM No. 027/2009 should have commenced on 30 January 2012, not 28 December 2011;

e. She was not given the opportunity to discuss her professional prospects with senior managers from UNHCR or with DHRM, as provided

for in paragraph 11 of IOM/FOM No. 027/2009 and paragraph 20 of the Policy and Procedures on Assignments and Promotions;

f. As the position of Senior Contracts Officer is an expert post, in accordance with paragraph 14 of the Policy and Procedures on Assignments and Promotions, it should have been reviewed before any changes were made. Yet neither an assessment of the needs of the Organization nor a risk analysis was conducted before the contested measures were taken, even though they would have a serious impact on the interests and budget of UNHCR;

g. The restructuring process was not carried out in a transparent, fair, ethical and honest manner, and respectful of the rights of staff. A restructuring of the supply chain had been initiated in 2006 but had been concluded in 2010, at which time it had been agreed that the Applicant's position would remain in Geneva. In 2011, a single communication was circulated to staff in an attempt to clarify the distribution of responsibilities between Geneva and Budapest, but it made no mention of the possible discontinuation of positions in the Contracts Unit. Furthermore, in his memorandum of 6 January 2012 addressed to the Chairperson of the Budget Committee, the Director of the Division stated that the second phase of the restructuring that had begun in 2011 would seek to ensure that UNHCR would become the reference agency for non-food-item delivery, even though non-food items were not included in the Applicant's job description and were not part of her duties;

h. The grounds for the decision to discontinue her position were unlawful as the aim was to eliminate her. It would, in fact, have been possible to transfer her with her post to Budapest rather than creating a new position;

i. A number of staff members in the field and at UNHCR headquarters stressed how detrimental the decision to discontinue the Senior Contracts Officer position and the lack of an expert at headquarters would be. The Director of DHRM himself had supported the work of the

Contracts Unit and had recognized the need to maintain an expert presence at UNHCR headquarters in Geneva;

j. She is the only person in the Supply Management Service with the necessary experience, skills and training to meet the needs of UNHCR. She assists headquarters as well as nearly 400 field offices and, in the last four years, she has been responsible for extremely important strategic contracts in various domains. She attends meetings of the steering committee and some working groups and is regularly asked by the Director of the Division to review strategic and policy documents. This demonstrates that it is useful to have experts at UNHCR headquarters. Management should be held accountable because the contested decision is not in the interests of UNHCR;

k. None of the Contract Unit's clients in the field or at headquarters were informed of the transfer of services to Budapest and the discontinuation of her position, suggesting that there was no reason for these measures;

l. The contested measures were taken in violation of staff regulation 1, which sets out staff members' duties and obligations; the Statute of UNCHR; the UNHCR Code of Conduct; draft resolution A/C.5/66/L.27; and resolution 66/235, adopted by the General Assembly on 24 December 2011, which states that "the United Nations common system constitutes the best instrument through which to secure staff with the highest standards of efficiency, competence and integrity for the international civil service, as stipulated in the Charter of the United Nations";

m. The Director of the Division exercised pressure on some of the staff members that the Applicant had contacted in early 2012;

n. The recommendations adopted by the Staff-Management Coordination Committee ("SMCC") at its third and fourth meetings were not respected;

o. On numerous occasions in 2011, she alerted UNHCR management to the shortage of staff to deal with the Contract Unit's heavy workload, but no remedial action was taken. Furthermore, two separate positions, at the P-4 and P-5 levels, were created to replace the position of Senior Contracts Officer, a fact that indicates, on the one hand, that she was performing duties corresponding to two positions, one of them at a level higher than her own, and, on the other, that her requests for additional staff were warranted;

p. On the date that she submitted her additional comments the P-4 position created in Budapest had not yet been announced, so she had not been able to apply for it;

q. The contested measures have seriously affected both her health and her career prospects. Moreover, she will be placed on special leave with full pay as a staff member in between assignments, which will have serious financial implications for UNHCR. The discontinuation of her position will also have a negative impact on her family and her professional future.

16. The Respondent's contentions are:

a. In June 2007, the Deputy High Commissioner informed UNHCR staff of the decision to outpost certain administrative functions from Geneva to Budapest. The entire Supply Management Service, with the exception of the Contracts Unit, was affected by this measure. Following two studies carried out in 2008 and 2010, respectively, it was decided to restructure the Supply Management Service extensively and to merge the Contracts Unit with the Supply Infrastructure Support Section in Budapest;

b. Upon approval by the Budget Committee, the three positions of the Contracts Unit were discontinued in Geneva. Two positions were created within the Supply Infrastructure Support Section in Budapest; one of them has already been filled;

c. In accordance with the case law of the former United Nations Administrative Tribunal and of the Dispute Tribunal, the High Commissioner may reorganize UNHCR departments at his discretion and the Tribunal may exercise only limited control in that area. In this case, the decision to discontinue the Applicant's position was a valid exercise of that power;

d. According to staff regulation 1.2(c), staff members have no right to remain on a particular post and the Secretary-General can assign them to any position within the Organization according to the needs of the service;

e. The Director of the Division informed the Applicant orally during the meeting of 27 December 2011, and subsequently in writing the next day, of his intention to request the discontinuation of her position. He also informed her of the Budget Committee's approval and notified her that her position would be discontinued, six months prior to the implementation of that measure, in accordance with IOM/FOM No. 027/2009;

f. The decision to move the Contracts Unit to Budapest was thoroughly assessed by managers and the functions performed by the Applicant will continue to be performed by the Supply Infrastructure Support Section in Budapest;

g. The Applicant has failed to substantiate her claim that the restructuring process was not conducted with fairness and transparency. Similarly, it is unclear on what basis she contends that the contested decision violated the Statute of UNHCR, the SMCC recommendations, the UNHCR Code of Conduct and draft resolution A/C.5/66/L.27;

h. As regards the Applicant's alleged harm, the Dispute Tribunal has recalled the former United Nations Administrative Tribunal's view that "[t]he mere fact that a reorganization may hinder the prospects or in any way affect the career of a staff member does not necessarily point to the existence of discrimination or improper motives in the Administration". Furthermore, according to IOM/FOM No. 027/2009, the purpose of the



six-month period of notification is to allow the staff member to find an employment solution and the Director of the Division pointed out, in his letter of 30 January 2012, that the Applicant was eligible to apply for any vacancies announced as of the first notification. At the expiration of the six-month period, the Applicant will be placed on special leave with full pay as a staff member in between assignments.

### Consideration

17. Both parties submitted documents, asking the Tribunal to preserve their confidentiality. However, the Tribunal finds that there was no need to transmit them to the other party, since it has not based itself on these documents in reaching its decision.

18. In requesting that the decision of UNHCR to discontinue the position of Senior Contracts Officer be rescinded, the Applicant contends that the discontinuation procedure was flawed. At the outset, she maintains that she was not consulted in the manner outlined in the applicable provisions.

19. IOM/FOM No. 027/2009, which deals with changes in the status of positions, particularly as a result of reclassification, discontinuation or redeployment, provides, *inter alia*, that:

1. When a manager intends to seek a reclassification or review, including discontinuation ... of a position encumbered by a staff member who was appointed to the position through the A[ppointments,] P[romotions and] P[ostings] C[ommittee] or the A[ppointments,] P[ostings and] P[romotions] B[oard] process, the Manager must inform the staff member in writing that a reclassification/review of the position is being sought. Such information should be relayed to the incumbent of the position before submission of the request to the Budget Committee .... It is therefore the responsibility of the manager to discuss proposed changes in position status directly with the staff members concerned. In all cases, standard procedures as set out in the Staff Administration and Management Manual ... are to be followed.

20. The Policy and Procedures on Assignments and Promotions annexed to IOM/FOM No. 027/2009 of 14 June 2010 stipulates that:

18. When a manager intends to request a ... discontinuation ... of a position encumbered by a staff member who was appointed either under the process set out in this P[olicy and] P[rocedures on] A[ssignments and] P[romotions] or any previous process ... the manager is encouraged to inform the staff member of his or her intent in writing. As soon as a decision to change the status of the position has been taken, the manager must formally notify the staff member in writing of the decision and the effective date of the change of status of the position.

21. It is clear from the documents on record that the Applicant received a letter dated 28 December 2011, signed on behalf of the Director of the Division and confirming his intention to discontinue her position with effect from 1 July 2012, and that, by letter dated 30 January 2012, the Director of the Division informed her that the Budget Committee had, on the same day, approved the transfer of the Contracts Unit to Budapest, that the position of Senior Contracts Officer would therefore be discontinued effective 1 August 2012 and that a new position, with a revised job description, would be created in Budapest as from 1 April 2012.

22. The fact that the Director of the Division did not personally sign the letter sent to the Applicant does not constitute a procedural irregularity since, in any event, written notification was given.

23. Nevertheless, between 28 December 2011, the date of the written notification, and 30 January 2012, the date on which the decision to discontinue the position was taken, the Applicant was not asked to meet with the Director of the Division as required under the aforementioned paragraph 1 of IOM/FOM No. 027/2009.

24. It is clear from the aforementioned provisions that the procedure for informing concerned staff members begins when they are notified in writing that the discontinuation of their positions is being considered. The manager must then consult the concerned staff members so that they may submit their comments before the Budget Committee takes the final decision. While the Applicant was able to discuss the possible discontinuation of her position on 27 December 2011

in a meeting with the Director of the Division that she herself had requested, that meeting took place before the Applicant received written notification of the Administration's intention and cannot be considered to have replaced the meeting required under the aforementioned paragraph 1 of IOM/FOM No. 027/2009. Similarly, the fact that, at her own request, she met with the Director of DHRM on 29 December 2011 and that he clarified certain procedural aspects of the discontinuation of her position, as confirmed by the email that he sent to her on the same day, cannot be considered to have replaced the meeting with the manager concerned, as stipulated in the aforementioned provision, since the purpose of that meeting is to discuss the appropriateness of and the reasons for the planned discontinuation.

25. Decisions concerning the classification, discontinuation and redeployment of positions are internal organizational measures that have a significant impact on the situation of the staff members who encumber those positions. Therefore, given the importance of the Administration's decision for the staff member, the Tribunal must interpret very strictly the procedural obligation to meet with the person concerned prior to discontinuing a position. The meeting must be arranged by the Administration and held on a date that gives the staff member sufficient time, after receiving written notice of the Administration's intentions, to submit comments.

26. The process that led to the discontinuation of the Applicant's position was therefore improper and the decision in question was flawed.

27. The Applicant further contends that the notification period provided for in IOM/FOM No. 027/2009 should have commenced on 30 January 2012, not 28 December 2011.

28. The aforementioned memorandum states:

2. ... [T]he effective date of discontinuation ... of all positions that are encumbered will be no less than six months after the approval of the request by the Budget Committee ...

3. The six month period of notification starts from the date of the staff member being informed by his/her Manager of the relevant decision on the change in the status of the position ...

29. Furthermore, the Policy and Procedures on Assignments and Promotions stipulates that:

19. Changes in the status of encumbered positions shall come into effect no earlier than six months after the manager has formally notified the staff member of the change. With the express written agreement of the staff member or where the incumbent's normal S[tandard] A[ssignment] L[ength] expires earlier, the effective date of the change may be brought forward. The status of a position can be changed at an earlier stage if it is vacant or if the incumbent is reassigned.

30. It is clear from paragraphs 2 and 3 of the aforementioned memorandum and paragraph 19 of the Policy and Procedures on Assignments and Promotions that the notification period that determines the implementation date of the decision to discontinue a position begins with the "formal" notification of the decision, that is to say, after the Budget Committee has approved the measure. In this case, the Applicant received formal notification of the decision to discontinue her position effective August 2012 by the letter dated 30 January 2012. Thus, there was no irregularity with regard to the effective date of the contested decision.

31. Even assuming that the Applicant's allegations that UNHCR did not comply with certain provisions of the Policy and Procedures on Assignments and Promotions, which require the periodic review of job descriptions of expert posts, are correct, the Tribunal must conclude that this failure by the Administration does not affect the legality of the contested decision.

32. Furthermore, the fact that the newly created P-4 position had not been announced when the application was submitted and the fact that the Applicant had no opportunity to discuss her career prospects, which constitutes a violation of paragraph 11 of IOM/FOM No. 027/2009 and paragraph 20 of the Policy and Procedures on Assignments and Promotions, do not affect the legality of the contested decision since they occurred subsequent to that decision, the legality of which must be assessed as at the date on which it was taken.

33. Lastly, while the Applicant maintains that the contested decision was taken in violation of staff regulation 1, the Statute of UNHCR, the UNHCR Code of Conduct, recommendations adopted by the SMCC and draft resolution A/C.5/66/L.27, her allegations are not sufficiently detailed to enable the Tribunal to rule on them.

34. Thus, it follows from the foregoing that the decision to discontinue the Applicant's position must be rescinded because of the procedural irregularity identified above.

35. Since the decision to rescind the contested decision means that the latter is deemed never to have existed, the Applicant cannot claim to have suffered any material harm. With regard to the moral harm suffered by the Applicant, the Tribunal must bear in mind that the decision to discontinue her position was rescinded on procedural grounds and that it has not ruled on the merits of that decision. The Applicant is thus entitled only to compensation for the moral harm resulting from the violation of her right to be consulted in the required manner. A compensation in the amount of CHF2,000 constitutes a fair assessment of such moral harm .

36. Lastly, there is no reason for the Tribunal to apply article 10.8 of its Statute, which authorizes it to refer a case to the Secretary-General for possible action to enforce accountability.

### **Conclusion**

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

- a. The decision to discontinue the P-4 position of Senior Contracts Officer at UNHCR headquarters in Geneva is rescinded;
- b. The Respondent is ordered to pay the Applicant CHF2,000 in compensation;
- c. The aforementioned compensation shall bear interest at the US prime rate with effect from the date this Judgment becomes executable

until the date of payment. An additional five per cent shall be added to the US prime rate 60 days from the date this Judgment becomes executable.

*(Signed)*

Judge Jean-François Cousin

Dated this 20<sup>th</sup> day of July 2012

Entered in the Register on this 20<sup>th</sup> day of July 2012

*(Signed)*

René M. Vargas M., Registry, Geneva