



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

GEHR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:

Introduction

1. By an application dated 25 July 2012, the Applicant challenges the Administration's failure to complete the classification process and to take a proper classification decision in relation to the post of Senior Legal Adviser.

2. He asks the Tribunal to declare the classification process unlawful and to award him compensation for the violation of his due process rights and the Administration's undue delay in carrying it out.

Facts

3. The Applicant joined the United Nations Office on Drugs and Crime in Vienna in 2002. With effect from 1 November 2007, he was appointed to the post of Senior Terrorism Prevention Officer, at level P-5, in the Terrorism Prevention Branch ("TPB"), within the Division of Treaty Affairs ("DTA"). His functional title was changed to that of Chief of the Counter-Terrorism Legal Services Section I in April 2008, and his fixed-term appointment was extended several times until 31 December 2011 when he was separated from service.

4. In the fall of 2009, the Chief of TPB and the Officer-in-Charge of DTA informed the Applicant that, in the context of the reorganisation of TPB, 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.

5. On 15 March 2011 a classification notice for the post of Senior Legal Adviser was issued by the Human Resources Management Section and sent to the Applicant.

6. On 15 May 2011, the Applicant filed with the Tribunal an application whereby he challenged the classification decision of 15 March 2011.

7. In Judgment *Gehr* UNDT/2011/178 issued on 18 October 2011, the Tribunal found that, at the material time, there existed no valid delegation of authority for the United Nations Office at Vienna to classify the Applicant's post.

It accordingly rescinded the classification decision of 15 March 2011 in relation to the post of Senior Legal Adviser.

8. On 25 July 2012, the Applicant requested management evaluation of the decision not to complete the classification process. No response to this request has been rendered as of today.

9. Also on 25 July 2012, the Applicant filed with the Tribunal the application which forms the subject of this Judgment.

Consideration

10. According to article 9 of its Rules of Procedure, the Tribunal may determine, on its own initiative, that summary judgment is appropriate. This usually would happen when there is no dispute as to the material facts of the case and judgment is restricted to a matter of law. It may be even more appropriate for issues related to the admissibility of an application (see, *inter alia*, *Samardzic et al.* UNDT/2010/019 as confirmed by *Samardzic* 2010-UNAT-072; *Shakir* UNDT/2010/028 as confirmed by *Shakir* 2010-UNAT-056). The issue raised in the instant case, to wit, the admissibility of the application, is such a matter of law.

11. Article 8.1(c) and (d) of the Tribunal's Statute states that an application shall be receivable if:

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; and

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or

b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation

for disputes arising at Headquarters and 45 calendar days for other offices ...

12. In *Planas* UNDT/2009/070, the Tribunal held:

[I]n terms of receivability of an application before the Tribunal it is not sufficient merely to initiate the management evaluation procedure. Applicants have to await, in general, the outcome of this administrative review before they may submit an application to the Tribunal. Only when no response to a request for management evaluation is provided within the time limits of article 8.1(d)(i)(b), a direct application to the Tribunal is receivable. A “response” in that sense is characterized by a decision from the Management Evaluation Unit ...

13. In his application, though the Applicant indicates that he requested management evaluation, he also states that “[he] is of the opinion that it is not required from a legal point of view”.

14. Section 5 of administrative instruction ST/AI/1998/9 (System for the classification of posts) reads as follows:

The decision on the classification level of a post may be appealed by the head of the organizational unit in which the post is located, and/or the incumbent of the post at the time of its classification, on the ground that the classification standards were incorrectly applied, resulting in the classification of the post at the wrong level.

15. Section 6.14 further provides:

The Assistant Secretary-General for Human Resources Management or the head of office, as appropriate, shall take the final decision on the appeal. A copy of the final decision shall be communicated promptly to the appellant, together with a copy of the report of the Appeals Committee. Any further recourse against the decision shall be submitted to the United Nations Administrative Tribunal.

16. In this case, the Applicant identifies the contested decision as “[t]he decision not to carry through the classification process to its conclusion”. In view of the fact that he is not challenging a classification decision but the Administration’s failure to make a new classification decision, he is not exempt under the above provisions from requesting management evaluation and awaiting

the outcome thereof. Having failed to do so, his application must be deemed irreceivable as premature.

Conclusion

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

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 31st day of July 2012

Entered in the Register on this 31st day of July 2012

(Signed)

René M. Vargas M., Registrar, Geneva