



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. The Applicant challenges the decision to publish in a separate section of the Tribunal's website the Order of the President of the Dispute Tribunal rejecting his motion for recusal.

2. He seeks the removal of the Order from the Tribunal's website or, in the alternative, its publication in the same way as other decisions issued in relation to requests for recusal.

Facts

3. On 5 November 2011, the Applicant, a former staff member of the United Nations Office on Drugs and Crime, filed an application for interpretation of a judgment. Shortly after filing this application, he sought recusal of the Judge assigned to the case.

4. By Order No. 1 (PRES/2012) issued on 22 June 2012, the President of the Tribunal rejected the Applicant's motion for recusal. This Order was published on the Tribunal's website under the section "President's Orders".

5. In reply to his request for management evaluation, the Applicant was informed by letter of 18 September 2012 that his request was not receivable and, on 25 September 2012, he filed with the Tribunal the application which forms the subject of the present judgment.

Parties' submissions

6. The Applicant's principal contentions are:

- a. According to article 21 of the Tribunal's Rules of Procedure, it is for the Registrars of the UNDT to arrange for the publication of judgments. The decision to publish a ruling on the Tribunal's website therefore constitutes a challengeable administrative decision;

b. While several motions for recusal of a judge were decided by orders, others were decided by judgment. Yet, in all of these cases, the rulings were published on the Tribunal's website under the sections "Orders" and "Judgments", respectively;

c. According to article 26 of the Rules of Procedure, only judgments are to be published. Since the decision on the Applicant's motion for recusal was issued in the form of an order, the decision to publish it was unlawful;

d. The contested decision contravenes the agreed terms and conditions of the Applicant's employment. It further singles out his motion for recusal from other similar motions, thereby violating his right to equal treatment.

Consideration

7. Article 9 of the Tribunal's Rules of Procedure provides:

A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law. The Dispute Tribunal may determine, on its own initiative, that summary judgement is appropriate.

8. In the instant case, the facts cannot be disputed: the Applicant challenges the decision to publish in a separate section of the Tribunal's website the ruling whereby the President of the Tribunal rejected his motion for recusal. In addition, the only issue which the Tribunal must address is that of the admissibility of the application. Summary judgment is therefore appropriate.

9. Under the terms of article 2.1(a) of its Statute, the Tribunal's jurisdiction is strictly limited to reviewing the lawfulness of "administrative decisions" that are alleged to be in noncompliance with the terms of appointment or the contract of employment of a current or former staff member. This Tribunal has defined what constitutes a challengeable administrative decision as a decision taken by the Administration in an individual case that has direct legal consequences on an

individual's rights and obligations (see, *inter alia*, *Hocking, Jarvis, McIntyre* UNDT/2009/077, *Planas* UNDT/2009/086 as confirmed by *Planas* 2010-UNAT-049 and *Elasoud* UNDT/2010/111 as confirmed by *Elasoud* 2011-UNAT-173).

10. While the Applicant submits that the contested decision contravenes the agreed terms and conditions of his former employment, he does not identify which terms are allegedly violated other than by making a general reference to the principle of equal treatment.

11. Article 4.9 of the Tribunal's Statute provides that "[w]here a party requests ... recusal [of a judge], the decision shall be taken by the President of the Dispute Tribunal." Article 28.2 and 28.3 of the Rules of Procedure further state:

2. A party may make a reasoned request for the recusal of a judge on the grounds of a conflict of interest to the President of the Dispute Tribunal, who, after seeking comments from the judge, shall decide on the request and shall inform the party of the decision in writing. A request for recusal of the President shall be referred to a three-judge panel for decision.

3. The Registrar shall communicate the decision to the parties concerned.

12. In addition, article 11.6 of the Statute provides that "[t]he judgements of the Dispute Tribunal shall be published ... and made generally available by the Registry of the Tribunal."

13. The above provisions do not suggest, much less impose, any particular form for a President's decision on a request for recusal, and he or she has full discretion to determine whether such ruling should be issued in the form of an order or of a judgment. Further, they do not confer on staff members or former staff members a right not to have the rulings on requests for recusal in their case published—indeed when such rulings take the form of judgments, they must be published according to article 11.6 of the Statute—on the Tribunal's website, nor do they create a right to have these rulings published in a specific section of the Tribunal's website. Both the determination that a ruling on a request for recusal should be issued in the form of an order or of a judgment and the decision to

publish such rulings on the Tribunal's website are matters of internal organization which do not constitute acts adversely affecting staff members' rights.

14. Therefore, the Tribunal considers that the decision to publish Order No. 1 (PRES/2012) in the section "President's Orders" of the Tribunal's website does not constitute a challengeable administrative decision.

Conclusion

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

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 1st day of October 2012

Entered in the Register on this 1st day of October 2012

(Signed)

René M. Vargas M., Registrar, Geneva