



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2012/053

Judgment No.: UNDT/2013/025

Date: 19 February 2013

English

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: René M. Vargas M.

KACAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Shelly Pitterman, UNHCR

Introduction

1. The Applicant contests the decision of 30 November 2011 by which the Representative of the United Nations High Commissioner for Refugees (“UNHCR”) in Turkey refused to renew his fixed-term contract, which was set to expire on 31 December 2011.

2. He requests compensation equal to one year's net base salary for material damages suffered and a review of his pension entitlement at the United Nations Joint Staff Pension Fund. He also requests compensation in the amount of USD100,000 for moral damages.

Facts

3. The Applicant entered into service at the UNHCR Field Office in Van, Turkey, on 18 September 2007, at the G-6 level, with a one-year fixed-term contract. His functional title was Protection Associate. His contract was renewed annually by the Ankara Office and his last contract expired on 31 December 2011. Previously, starting in March 2001, the Applicant had worked as individual contractor as a lawyer for the UNHCR Field Office in Van.

4. During the month of May 2011, UNHCR operations in Turkey were inspected by the HRC Inspector General's Office.

5. On 23 October 2011, a violent earthquake hit the city of Van, leading to the evacuation of most UNHCR staff members from the city, except for a reduced team that included the Applicant. Following a second earthquake that hit Van on 9 November 2011, the remaining staff, with the exception of a few volunteers which included the Applicant, left Van. Owing to a strong aftershock on 15 November 2011 that made UNHCR facilities unusable, all remaining staff evacuated the area.

6. By email dated 28 November 2011, all UNHCR staff members in Turkey received a copy of the Inspector General's report on UNHCR operations in

Turkey. Among other things, the report recommended a review of the staffing structure as well as the level of presence in Turkey, including in Van.

7. On 30 November 2011, the Applicant and the other staff members on fixed-term contracts at the Van Office received an email informing them that their contracts would not be renewed after 31 December 2011.

8. On 27 January 2012, the Applicant requested a management evaluation of the decision not to renew his contract. As no response was forthcoming within the 45 days following his request, he filed an application with the Tribunal on 8 June 2012.

9. On 12 July 2012, UNHCR filed its reply requesting that the Tribunal reject his application. The Applicant responded on 16 August 2012.

10. A hearing was held on 5 February 2013 in Geneva, with the parties appearing in person.

Parties' submissions

11. The Applicant's contentions are:

- a. He was never informed of the reason for the non-renewal of his contract;
- b. He was treated improperly, even though he had just remained on duty for 20 days in Van despite the earthquakes, which in itself created a legitimate expectation that his contract would be renewed. Given the previous renewals and his good performance evaluations, he was in a position to expect that his contract would be renewed beyond 31 December 2011. One day before he learned of the decision not to renew his contract, he had attended an UNHCR training session;
- c. His experience and skills qualify him for a range of different posts in UNHCR;

d. The decision not to renew his contract is discriminatory and unlawful, as it was taken based on the report of the Inspector General's Office, and the actual reason for the non-renewal was his Kurdish background. His post has not been abolished, and the funding for it still exists. The other staff members serving in Van have been transferred to other posts within UNHCR in Turkey;

e. In July 2011, four months prior to his departure, a new Protection Associate vacancy in the Van Office was announced;

f. Contrary to the Administration's contention, UNHCR never encouraged him to find another job or to apply for other vacancies in Turkey;

g. He has suffered a significant loss, for not only was his house destroyed during the earthquake, but he has also lost all means of supporting his family.

12. The Respondent's contentions are:

a. According to rule 4.5(c) of the Staff Regulations, a fixed-term appointment does not carry any expectancy of renewal. The Applicant had no good reason to expect his contract to be renewed;

b. Contrary to the Applicant's contention, the decision was not based on the Inspector General's report, the recommendations of which were never implemented owing to the earthquake in Van;

c. The reason for the non-renewal was the closure of the UNHCR Office in Van following the earthquake. There is nothing to suggest that the decision had anything to do with the Applicant's Kurdish background, and the burden of proof for such allegations lies with the Applicant; moreover, the contracts of two Kurdish staff members, one of whom had a temporary appointment, were renewed;

d. While the Applicant's post was not abolished, operations in Van were suspended and a resumption date has not yet been determined. Not all staff members who were serving in Van were transferred to Ankara, but only those with indefinite contracts, except for the Head of Office, who, his fixed-term contract notwithstanding, was recruited as an international civil servant and was therefore in a different position from the Applicant.

Consideration

13. As his principal argument for contesting the decision not to renew his fixed-term appointment, the Applicant, who was serving in the city of Van in Turkey, states that the decision was taken because of his Kurdish origin.

14. Regulation 4.5 of the Staff Rules states:

(a) Appointment of Under-Secretaries-General and of Assistant Secretaries-General shall normally be for a period of up to five years, subject to prolongation or renewal. Other staff members shall be granted either a temporary, fixed-term or continuing appointment under such terms and conditions consistent with the present Regulations as the Secretary-General may prescribe;

(b) A temporary appointment does not carry any expectancy, legal or otherwise, of renewal. A temporary appointment shall not be converted to any other type of appointment;

(c) A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service;

(d) The Secretary-General shall prescribe which staff members are eligible for consideration for continuing appointments.

15. A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service.

16. In its Judgment *Jennings* 2011-UNAT-184, the Appeals Tribunal affirmed that the burden of proving that the grounds for non-renewal were unlawful lies with the staff member contesting the decision not to renew his or her contract.

17. In order to support the argument that the non-renewal of his contract was discriminatory because it had to do with his Kurdish origin, the Applicant refers

primarily to the findings contained in a report of the UNHRC Inspector General's Office issued on 28 November 2011, following an inspection carried out in Turkey, particularly in Van, in May 2011. On page 14 of that report, the Representative of the High Commissioner in Turkey is advised to re-examine the functions of staff of the Field Office Van and to transfer refugee registration and refugee status determination (RSD) procedures from Field Office Van to the Ankara Office, to avoid any claims or perceptions of political bias.

18. Given the statements cited by the Applicant during the hearing regarding the Van law enforcement authorities' desire that he leave his position as Protection Associate, the Tribunal believes that this recommendation may have been included in the report in order to reduce possible tensions between the local Turkish authorities and some Kurdish UNHRC staff members. However, the facts as set forth above indicate that, while all staff members were informed of the report's recommendations in November 2011, the recommendations were apparently drafted before the earthquake of 23 October 2011 that left the city in ruins.

19. The Tribunal therefore finds that, while the recommendations contained in the report could perhaps have prompted the Representative of the UN High Commissioner in Turkey not to renew the Applicant's contract, it was in fact the very severe earthquakes that occurred in Van between 23 October and 15 November 2011 that forced UNHCR to close Field Office Van, rendering moot the report's recommendations.

20. The memorandum of 27 December 2011 addressed by the Representative of the High Commissioner in Turkey to the Director of the Division of Human Resources Management, UNHCR, describes the measures taken after the earthquakes that had made the UNHCR facilities in Van unusable, particularly those measures affecting the staff members deployed in Van. The duties carried out at Field Office Van were transferred to the Ankara Office, and, given that there was no plan to reopen Field Office Van before June 2012, the following measures were taken for staff members.

21. The Head of Office in Van, an international recruit at the P-3 level, was temporarily redeployed to Ankara, as were one GL-4 and one GL-3 staff member with indefinite contracts. One of the GL staff members, holder of an indefinite contract, was of Kurdish origin. The contracts of three other staff members with fixed-term contracts, including the Applicant, were not renewed when they expired. One of the staff members, of Kurdish origin, was offered a temporary position in Silopi on 23 January 2012.

22. The Tribunal therefore finds that the Applicant has not provided evidence that the contested decision was discriminatory and that, on the contrary, the facts of the case show that the non-renewal of the Applicant's appointment, which expired on 31 December 2011, was owing solely to a force majeure, namely the suspension of the Field Office Van operations as of 15 November 2011, an organizational measure that UNHCR was forced to take following the earthquakes.

23. While the Applicant maintains that he has not been treated in the same manner as the other staff members, what has been stated above regarding the situation of the staff members working in Van shows that his situation was different from those of the staff members who continued to serve in their posts.

24. The Applicant complained, both in writing and at the hearing, that UNHCR did not offer him a new contract in 2012. The Tribunal recalls that the end of a fixed-term appointment confers no special rights on its holder and that the Applicant has also acknowledged that he never applied for vacancies announced by UNHCR in 2012 that might have been appropriate for him.

25. It follows from the above that the Applicant has failed to demonstrate that the decision not to renew his contract was unlawful; all his claims should therefore be dismissed.

Conclusion

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

The application is rejected.

(Signed)

Judge Jean-François Cousin

Dated this 19th day of February 2013

Entered in the Register on this 19th^{day} of February 2013

(Signed)

René M. Vargas M., Registry, Geneva