



**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** René M. Vargas M.

LONGONE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**SUMMARY JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant, a staff member of the International Criminal Tribunal for the former Yugoslavia (“ICTY”), contests the decision of the Assistant Secretary-General for Human Resources Management (“ASG/OHRM”) to refuse the conversion of his fixed-term appointment to a permanent appointment, as notified to him on 6 October 2011.

## **Facts**

2. In 2009 the Organization undertook a one-time comprehensive exercise by which eligible staff members under the Staff Rules in force until 30 June 2009 would be considered for the conversion of their contracts to permanent appointments. By memorandum dated 20 September 2011, the ASG/OHRM informed the Registrar, ICTY, that:

Pursuant to my authority under section 3.6 of ST/SGB/2009/10, I have decided in due consideration of all circumstances, giving full and fair consideration to the cases in question and taking into account all the interests of the Organization, that it is in the best interest of the Organization to ... accept the [Central Review Board (“CRB”)] endorsement of the recommendation by OHRM on the non-suitability [for conversion of ICTY staff].

3. By letter dated 6 October 2011, the ICTY Registrar informed the Applicant of the ASG/OHRM decision not to grant him a permanent appointment.

4. On 18 April 2012, the Applicant filed with the Tribunal an application against the above decision adjudicated by Judgment No. UNDT/2012/130 on 29 August 2012.

5. The Applicant appealed this ruling and, by Judgment No. 2013-UNAT-358, the Appeals Tribunal “rescind[ed] the decision to the ASG/OHRM; remand[ed] the ICTY conversion exercise to the ASG/OHRM for retroactive consideration of the suitability of [the Applicant]” and awarded non-pecuniary damages.

6. The exercise was completed in June 2014, at which time the Applicant was informed of the decision to deny him the conversion of his appointment to a permanent one. He requested management evaluation of that decision, and by management evaluation dated 29 September 2014, the June 2014 decision was upheld.

7. On 30 December 2014, the Applicant filed an application dated 18 April 2012 against the first administrative decision of the ASG/OHRM, rejecting his conversion to a permanent appointment, as notified to him on 6 October 2011, and not against the June 2014 decision.

8. At the Registry's request, the Applicant completed his application on 6 January 2015. He filed 21 annexes and four additional documents, including the above-referenced UNAT Judgment and the management evaluation dated 29 September 2014.

9. On 8 January 2015, without further explanation, the Applicant submitted additional documents, including a letter dated 17 June 2014 whereby the ASG/OHRM advised him of the decision not to grant him a permanent appointment. None of these documents were listed in the Applicant's application form filed on 30 December 2014.

### **Consideration**

10. The material scope of any application before the Tribunal is defined by the decision contested therein. It is for the Applicant to clearly describe in the application the decision to be reviewed. In the present case, the application states unambiguously that the impugned decision is that not to convert the Applicant's fixed-term appointment into a permanent appointment, notified to him on 6 October 2011.

11. The Tribunal cannot but take note that this decision has already been reviewed by this Tribunal, back in 2012, in *Longone* UNDT/2012/130, which, further to the Applicant's appeal, was examined by the Appeals Tribunal in 2013—*Longone* 2013-UNAT-358. In other words, the legality of the

October 2011 decision has been litigated through the Organization's entire internal justice system and ruled upon by its highest court, the Appeals Tribunal, whose judgments are final and without appeal. Consequently, the matter is now *res judicata* (see *Shanks* 2010-UNAT-026bis; *Costa* 2010-UNAT-063).

12. Supposedly, the Applicant sought to contest the new decision of June 2014 before the Tribunal. However, he did not do so. Indeed, the application the Applicant filed on 30 December 2014 was dated 18 April 2012, and exclusively relates to the first non-conversion decision of 6 October 2011.

13. While the Tribunal has “an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested” (*Massabni* 2012-UNAT-238), such power cannot go so far as to shift the focus of the case to a decision which the Applicant had not even mentioned in his application. Being a lawyer by profession with lengthy experience serving with a tribunal, the Applicant could not ignore the importance of properly identifying, at the stage of his application, the decision he aimed to challenge. He cannot, either, modify the scope of the application through a subsequent, additional filing. Therefore, for the purpose of determining the scope of the application, the Tribunal cannot take the Applicant's additional filing of January 2015—submitted after the time limit for an application had elapsed—into account.

14. In light of the foregoing, the application must be declared irreceivable.

15. The issue of the application's receivability is a matter of law which may be assessed even without serving it to the Respondent and even if not raised by the parties (see *Gehr* 2013-UNAT-313; *Christensen* 2013-UNAT-335). With this in mind, the Tribunal considers it appropriate to rule on the application by summary judgment at this stage, without awaiting the Respondent's reply, in accordance with art. 9 of its Rules of Procedure.

**Conclusion**

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

The application is rejected.

*(Signed)*

Judge Thomas Laker

Dated this 12<sup>th</sup> day of January 2015

Entered in the Register on this 12<sup>th</sup> day of January 2015

*(Signed)*

René M. Vargas M., Registrar, Geneva