



**Before:** Judge Francesco Buffa

**Registry:** Geneva

**Registrar:** René M. Vargas M.

CAYLAN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Angela Arroyo, UNDP

## **Introduction**

1. On 26 January 2020, the Applicant, a former staff member of the United Nations Development Programme (“UNDP”), filed an application with the Tribunal contesting the decision not to extend her fixed-term appointment beyond 30 September 2019.
2. On 25 February 2020, the Respondent filed his reply.
3. On 26 January 2021, the present case was assigned to the undersigned Judge and was included in his docket for his current deployment.
4. By Order No. 44 (GVA/2021) of 16 February 2021, the Tribunal informed the parties of its intention to determine the case on the papers without holding a hearing. The parties were also instructed to file their closing submissions.
5. On 28 February 2021, the Applicant filed her closing submission and the Respondent filed his on 1 March 2021.

## **Facts**

6. On 1 August 2007, the Applicant joined UNDP Turkey on a fixed-term appointment as a United Nations Coordinator Analyst at the National Officer, B level. At the time of the contested decision, the Applicant served as United Nations Coordination Specialist at the National Officer C level.
7. In 2018, the General Assembly adopted resolution 72/279 whereby it decided to reinvigorate the role of the Resident Coordinator’s Office (“RCO”). In accordance with that decision, the Deputy Secretary-General issued guidance on revising the composition of the RCOs, including the abolition of current positions and the creation of new positions in line with the revised functions of the Office.
8. In accordance with the Deputy Secretary-General’s guidance, in January 2019, the RCO Turkey abolished all staff positions funded by the RCO, including the Applicant’s position of United Nations Coordination Specialist, and established new positions in line with the globally revised RCO structure.

9. In February 2019, the Applicant applied for the newly created position of Development Coordination Officer, Partnerships and Development Finance in the RCO.

10. The Applicant's fixed-term appointment, which was initially due to expire on 31 July 2019, was further extended until 30 September 2019.

11. On 6 August 2019, the United Nations Resident Coordinator in Turkey met with the Applicant to inform her that she had not been selected for the above-mentioned position of Development Coordination Officer, Partnerships and Development Finance.

12. On 7 August 2019, the Applicant was informed that her fixed-term appointment would not be renewed beyond its expiry date of 30 September 2019.

13. On 17 September 2019, the Applicant requested management evaluation of the decision indicated in para. 1 above.

14. On 30 September 2019, the Applicant separated from UNDP service.

15. By letter dated 29 October 2019, the Assistant Administrator and Director, Bureau for Management Services, UNDP, replied to the Applicant's request for management evaluation. The contested decision was upheld.

#### **Parties' submissions**

16. The Applicant's principal contentions are:

a. She was not informed about the RCO Transition plan issued on 20 November 2018, which precluded her to contest the decision to abolish her post;

b. She was not provided with any information about the transition of staff and she was the only UNDP staff member affected by said transition;

- c. There was a factual error in the response to her request for management evaluation as the expiry date of her contract was 31 July 2018 instead of 30 June 2019;
- d. Had it not been for the reform initiatives, her fixed-term appointment would have been extended as it was for the last 12 years because she had no performance or disciplinary issues;
- e. Her fixed-term appointment should have been terminated, rather than allowed to expire, because her separation was due to the abolition of her position;
- f. Her position was crucial in driving the process for formulating the next UN partnership framework. Therefore, by not extending her contract, the corporate priorities of the UN have been ignored, leaving the RCO without a leader and depriving the Resident Coordinator of any proper guidance and support; and
- g. She is entitled to a termination indemnity.

17. The Respondent's principal contentions are:

- a. The application is not receivable *ratione materiae* to the extent that the Applicant raises claims that she did not first raise in her request for management evaluation such as her claim concerning the Transition Plan;
- b. The decision not to renew the Applicant's fixed-term appointment was lawful;
- c. The Applicant has not claimed that the decision not to renew her appointment was flawed or that the decision was based on an improper motive;
- d. The abolition of the Applicant's position is a valid reason for the non-renewal of her fixed-term appointment;
- e. The Applicant did not challenge the merits of the abolition decision;

f. The abolition of her position was the result of a valid and objective restructuring exercise; and

g. Given that the Applicant was separated due to the expiry of her fixed-term appointment, rather than due to the termination of her appointment, the provisions under the UN Staff Regulations and Rules related to termination do not apply to her case.

### **Consideration**

18. The Tribunal recalls that a fixed-term appointment does not carry any expectancy of renewal and expires automatically without prior notice on the expiration date pursuant to staff regulation 4.5(c) and staff rules 4.13(c) and 9.4. The Administration is, nevertheless, required to provide a reason for such a non-renewal upon the relevant staff member's request, and this reason must be lawful and based on correct facts (see, for instance, the Appeals Tribunal in *Islam* 2011-UNAT-115 (paras. 29-32), *Pirnea* 2013-UNAT-311 (para. 34), *Obdeijn* 2012-UNAT-201 (paras. 33-39), *Matadi et al* 2015-UNAT-592 (para. 16) and *Jafari* 2019-UNAT-927 (para. 35)).

19. The Appeals Tribunal has also previously held that a restructuring exercise constitutes a legal justification for not renewing a fixed-term appointment (see, for instance, *Islam*), and that the Administration has "broad discretion to reorganize its operations and departments to meet changing needs and economic realities" (see *Timothy* 2018-UNAT-847, para. 25).

20. In the present case, the Respondent argues that the non-renewal decision was based on the abolition of the position that the Applicant encumbered. The Respondent claims that her position, among others, was affected by a restructuring exercise of the RCO worldwide, which also included the RCO Turkey.

21. The Tribunal notes that the Applicant did not challenge the decision to abolish her position, which constituted the legal justification for the non-renewal of her fixed-term appointment. Consequently, the Tribunal will not examine whether the abolition decision was proper. This reasoning is in line with the Appeals Tribunal

ruling that a review of one administrative decision cannot be reopened in the adjudication of another decision (see for instance, *Santos* 2014-UNAT-415, paras. 26-29).

22. In the circumstances, the Tribunal finds that the non-renewal of the Applicant's fixed-term appointment was the result of the abolition of her post, which constituted a valid reason proffered by the Administration, and not challenged by the Applicant, for not renewing her appointment.

23. The evidence shows that the Applicant was given the opportunity to apply to vacancies within the revised structure of the RCO in Turkey, and that her initial appointment was extended for two additional months, that is until 30 September 2019. In the meantime, the selection process for the position of Development Coordinator Officer, Partnership and Development Finance to which she had applied was completed and she was ultimately not selected.

24. While the Applicant claims that the extension of her appointment was not to support her in securing an alternate position but to conveniently allow the Resident Coordinator in Turkey to deliver on the Resident Coordinator's failed calendar responsibilities, it remains that the Applicant's fixed-term appointment was renewed until 30 September 2019 and that she was separated as a result of its expiration.

25. The Tribunal notes that in her application, the Applicant mainly claims that her separation should be treated as a termination rather than as a non-renewal of her fixed-term appointment due to the abolition of her position in the RCO in Turkey.

26. Staff rule 9.6 on termination provides as follows (emphasis added):

**Definitions**

(a) A termination within the meaning of the Staff Regulations and Rules is a separation from service initiated by the Secretary-General.

(b) **Separation as a result of resignation, abandonment of post, expiration of appointment, retirement or death shall not be regarded as termination within the meaning of the Staff Rules.**

27. While it is undisputed that the reason for the non-renewal of the Applicant's appointment was the abolition of her post, this mere fact does not give her the right to be separated by termination.

28. Whether a staff member is separated as a result of a termination or the expiration of an appointment, it is a decision that touches the discretionary authority of the Administration considering the circumstances of each case. If the Applicant's fixed-term appointment would have been terminated prior to its expiration date, her separation would have been considered as termination.

29. However, since the Applicant was separated due to the expiration of her fixed-term appointment, her separation cannot be considered as termination pursuant to staff rule 9.6(b). Therefore, the retainment criteria referred to in staff rule 9.6(e) is not applicable to the Applicant's case, and she is not entitled to a termination indemnity pursuant to staff regulation 9.3(c) as she claimed.

30. Having said that, the Tribunal finds that the contested decision was lawful. Consequently, the Applicant is not entitled to the remedies requested.

### **Conclusion**

31. In view of the foregoing, the Tribunal REJECTS the application in its entirety.

*(Signed)*

Judge Francesco Buffa

Dated this 21<sup>st</sup> day of June 2021

Entered in the Register on this 21<sup>st</sup> day of June 2021

*(Signed)*

René M. Vargas M., Registrar, Geneva