



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/002

Order No.: 6 (GVA/2011)

Date: 25 January 2011

Original: English

**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** Víctor Rodríguez

NEAULT

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON SUSPENSION OF ACTION**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Stephen Margetts, ALU/OHRM, UN Secretariat

## **Introduction**

1. By application filed on 18 January 2011 and registered under case number UNDT/GVA/2011/002, the Applicant requested the United Nations Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of the decision not to select her for a vacant post.

## **Facts**

2. The Applicant joined the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in August 2007 as a Computer Information Systems Clerk, at grade G-4, in the Office of the Prosecutor (“OTP”).

3. On 1 March 2010, job opening No. VA 2010/REG/CHA/012-GS (“job opening No. 012”) was issued with a view to filling two G-5 posts of Judges Assistant in the ICTY Chambers. The Applicant applied on the same day and she was interviewed by a panel on 4 June 2010.

4. Under cover of a memorandum dated 8 June 2010, the interview panel transmitted to the Head of Recruitment and Training Unit its reports, whereby it found that none of the interviewed applicants were suitable candidates for the position. Concerning specifically the Applicant, it noted that, while working in OTP, she had been “to some degree substantively involved in several cases on behalf of the prosecution that are still before the tribunal, making the panel believe there is a likelihood of an actual or apparent conflict of interest”.

5. On 17 June 2010, the Central Review Panel (“CRP”) which had been appointed to review the process for compliance with the selection criteria reported on the outcome of its review. Unlike the interview panel, it found that “many of the candidates in fact met the criteria set out in the [job opening]” and it accordingly decided not to endorse the findings of the panel.

6. A different formation of the CRP reviewed the matter and concluded, in a memorandum of 12 August 2010, that “[a] perceived conflict of interests [wa]s not part of the pre-approved evaluation criteria” and that the reasons provided in

the reports of the interview panel were “insufficient to explain the rejection of all the applicants”. Consequently, it requested the interview panel to reconsider its reports of 8 June 2010.

7. In its revised reports transmitted to the Head of Recruitment and Training Unit under cover of a memorandum dated 23 September 2010, the interview panel found that five out of the seven candidates, including the Applicant, were qualified for the position.

8. On 28 September 2010, the CRP endorsed the revised reports of the interview panel.

9. On 7 October 2010, the Acting Head of the ICTY Chambers wrote in her capacity as Programme Manager to the Human Resources Section (“HRS”), explaining that, in her view, none of the qualified candidates were suitable for the position and she requested that HRS re-advertise the posts of Judges Assistant.

10. By a memorandum of 11 October 2010, the Applicant was informed that, although she had been included in the list of qualified candidates, she had not been selected.

11. On 13 October 2010, five G-5 posts of Judges Assistant in the ICTY Chambers were advertised in job opening No. VA 2010/REG/CHA/046-GS (“job opening No. 046”). The Applicant applied on the same day.

12. Also on 13 October 2010, she sought clarifications regarding the decision not to select her for the position advertised in job opening No. 012. The Chief of HRS responded on 21 October 2010, explaining that, although she had been found to be qualified for the position, she had been perceived as having a conflict of interest because she worked in OTP and she had been involved on behalf of one of the parties in cases which were currently before the ICTY Judges.

13. The Applicant was informed on 26 November 2010 that her application to the posts advertised in job opening No. 046 had been unsuccessful.

14. On 29 November 2010, the Applicant requested management evaluation of the decision of 11 October not to select her for the post of Judges Assistant advertised through job opening No. 012.

15. The Applicant separated from service on 31 December 2010, upon the expiry of her contract.

16. By an email of 12 January 2011, she was advised that the Management Evaluation Unit would not be in a position to communicate the outcome of its evaluation within the prescribed time limit, that is, by 15 January 2011.

17. On 18 January 2011, the Applicant filed with the Tribunal an application for suspension of action of the decision not to select her with respect to job opening No. 012.

18. Also on 19 January 2011, the Tribunal requested the Applicant to provide clarifications concerning her second application for the post of Judges Assistant. The Applicant responded on 21 January 2011 and the Respondent filed his reply on the same day.

#### **Parties' contentions**

19. The Applicant's contentions are:

a. The decision not to select her for the post of Judges Assistant is *prima facie* unlawful as it is based on improper motives and appears arbitrary. Her work with OTP was not of a substantive nature and the ICTY Chambers hired many former OTP staff members, who had been involved to the same or a larger degree in the work of OTP, to serve as Judges Assistants. In addition, in July 2008, she was offered a position in Chambers at a time when she was already working in OTP. Chambers also hired legal officers who had previously worked with defence teams and had therefore been substantially involved in cases as a party to the proceedings before ICTY. Thus, her application for the post was not given full and fair consideration.

b. The case is of particular urgency because the post to which she applied was re-advertised on 13 October 2010 and this second selection process is about to be completed;

c. Irreparable damage will be caused because:

i. Her non-selection to the post will impair her future career prospects at ICTY. If the five posts advertised through job opening No. 046 are filled, there will be no post available for her. Since she is now separated from ICTY, she will no longer be considered as an internal candidate with priority consideration in her future applications.

ii. As a result of the completion strategy, ICTY is in the process of downsizing and the only vacancies which are advertised are for temporary positions.

20. The Respondent's contentions are:

a. The application is moot since the selection process has been completed. The Acting Head of the ICTY Chambers took the selection decision on 29 December 2010, which was approved by the ICTY Registry on 10 January 2011, and offers of appointment were sent on 19 January 2011 to the successful candidates, who accepted them;

b. The Applicant failed to submit a request for management evaluation of the selection process concerning job opening No. 046;

c. The conduct of a selection process does not have direct legal consequences and does not constitute an administrative decision open to judicial review;

d. In light of the broad discretion which the Acting Head of the ICTY Chambers enjoyed to select the most suitable candidate, the Applicant has not shown that the decision was prima facie unlawful;

e. There is no urgency as the decision has now been implemented. In any event, the Applicant failed to diligently submit her request for suspension of action as her application was filed more than three months after she was notified of the decision;

f. The Applicant has not demonstrated that she would suffer irreparable harm. The only compensation she may receive would be monetary in nature owing to the fact that ICTY will not order the removal of the successful candidates from the posts.

### **Considerations**

21. At the outset of these considerations, the Tribunal observes that, in requesting the Tribunal to suspend, during the pendency of the management evaluation, the implementation of “the decision not to select [her] for the post of ... Judge’s Assistant”, the Applicant refers to the memorandum of 11 October 2010 which makes mention of job opening No. 012.

22. The selection process in relation to job opening No. 012 was terminated in October 2010 without any candidate being selected for appointment. Thus, it is the view of the Tribunal that the selection process in relation to job opening No. 012 offers no grounds for suspension of the decision not to select the Applicant for the post of Judges Assistant.

23. The Tribunal further notes that, in her application, the Applicant states that “the Tribunal must suspend the ICTY Management from filling at least one of the five available posts for a Judge’s Assistant ... until the end of the management evaluation process”. By referring to the five vacant posts, the Applicant clearly seeks suspension of the decision ensuing from the selection process in relation to job opening No. 046.

24. However, the Respondent indicated in his reply that this process is now complete as the decision to select candidates deemed to be qualified was taken on 29 December 2010, offers of appointment were sent to them on 19 January 2011 and the successful candidates have already accepted such offers.

25. Article 2.2 of the Tribunal's Statute states as follows:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision...

26. It follows from this provision that a request for suspension of action may be granted where the contested decision has not yet been implemented. As has been previously held by this Tribunal, the latter "may only order suspension of action if the implementation of the contested decision is still possible and at stake" (*Abdalla* Order No. 4 (GVA/2010)). In the present case, irrespective of whether the Applicant sought suspension of the decision not to select her in relation to job opening No. 012 or in relation to job opening No. 046, the decision in question has already been implemented and its suspension can no longer be ordered.

27. Without it being necessary to examine whether the three statutory prerequisites specified in article 2.2 of the Tribunal's Statute and article 13.1 of its Rules of Procedure are met, the Tribunal dismisses the application for suspension of action, notwithstanding the possibility for the Applicant to file an application on the merits before the Dispute Tribunal at a later stage.

### **Decision**

28. The application is hereby rejected.

*(Signed)*

Judge Thomas Laker

Dated this 25<sup>th</sup> day of January 2011

Entered in the Register on this 25<sup>th</sup> day of January 2011

*(Signed)*

Víctor Rodríguez, Registrar, Geneva