



UNITED NATIONS DISPUTE TRIBUNAL

Cases Nos.: UNDT/GVA/2012/030,
031, 032, 033, 035, 036,
037, 038, 039, 040, 041,
042, 043, 045
Order No.: 120 (GVA/2012)
Date: 26 June 2012
Original: English

Before: Judge Thomas Laker
Registry: Geneva
Registrar: René M. Vargas M.

MALMSTROM
BAIG
JARVIS
MARCUSSEN
GOY
REID
SUTHERLAND
NICHOLLS
EDGERTON
DYGEUS
LONGONE
SCHOONE
WIRTH
ADEMAGIC *ET AL.*

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:

UNDT/GVA/2012/030, 031, 032, 033, 035, 036, 037, 038, 039, 040, 041, 043: Self-represented
UNDT/GVA/2012/042: Bart Willemsen, OSLA
UNDT/GVA/2012/045: Jeffrey C. Dahl and Jonathan Goldin

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. In the course of April 2012, the Tribunal received applications filed by, or on behalf of, a total of 274 staff members or former staff members of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) to contest the decisions whereby the Assistant Secretary-General for Human Resources Management refused to grant them permanent appointments. These applications were registered under Cases Nos. UNDT/GVA/2012/030, 031, 032, 033, 035, 036, 037, 038, 039, 040, 041, 042, 043 and 045, the latter concerning 261 individual applications consolidated into one case.

2. Between 20 April and 8 May 2012, nine Applicants (UNDT/GVA/2012/030, 031, 033, 035, 036, 037, 038, 039, and 040) filed motions for production of documents.

3. In May and June 2012, the Respondent filed his replies to the applications.

Consideration

4. As matters stand, the Tribunal considers that an oral hearing is required. All cases raise identical issues save for Case No. UNDT/GVA/2012/042. However, the answers to these issues might also affect the outcome of Case No. UNDT/GVA/2012/042. Accordingly, the Tribunal finds it appropriate to hold a joint hearing for all the cases referred to in paragraph 1 above.

5. Concerning the motions for production of documents filed by the Applicants in Cases Nos. UNDT/GVA/2012/030, 031, 033, 035, 036, 037, 038, 039, and 040, the Tribunal notes that the Respondent attached some of the requested documents to his replies. As regards those documents which were not produced by the Respondent, the Tribunal considers that they either are irrelevant or lack probative value and decides accordingly to reject the Applicants’ motions.

6. In his replies, the Respondent claims that “[t]he ICTY Registrar was not granted discretionary authority to grant permanent appointments. The [Assistant Secretary-General for Human Resources Management] retained this authority”¹.

7. The Tribunal notes, however, that the delegation of authority dated 20 May 1994 from the Under-Secretary-General for Administration and Management to the Acting Registrar of ICTY, which was attached by the Respondent to his replies (except in Case No. UNDT/GVA/2012/042), stipulates that the Registrar is “delegated authority to appoint staff, in the name of the Secretary-General, up to the D-1 level, and to terminate appointments up to that level except for terminations under article X of the Staff Regulations, but including terminations for unsatisfactory services”.

8. Similarly, the memorandum dated 24 May 1994 from the Director of Personnel to the ICTY Registrar, transmitting the above-mentioned delegation of authority, states that the ICTY Registrar is delegated authority “to administer the Staff Regulations and Rules with respect to staff of the Tribunal” and that “the responsibility for the recruitment and appointment of staff up to the D-1 level will be exclusively [his] own”.

9. Based on the above and on the available records, it is unclear what the basis is for the Respondent to, essentially, make a distinction between the authority to appoint and the authority to grant permanent appointments to holders of fixed-term appointments who meet the requirements of former staff rule 104.12(b)(iii).

10. The Tribunal reviewed ST/AI/234/Rev.1 dated 22 March 1989 on the administration of the Staff Regulations and Rules but finds it to be of no assistance to address this issue.

11. The Tribunal further considers that another issue arises regarding the staff of the Office of the Prosecutor. The delegation of authority produced by the

¹ UNDT/GVA/2012/030, 031, 032, 035, 037, 039: see reply, para. 61 ; UNDT/GVA/2012/033, 036, 038, 040, 043, 045 : see reply, para. 60.

Respondent only concerns staff of the ICTY Registry and specifically refers to article 17.4 of the Statute of ICTY which provides that “[t]he staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar”. The Respondent has not produced any information regarding the authority to appoint staff of the Office of the Prosecutor, who in accordance with article 16.5 of the Statute of ICTY “shall be appointed by the Secretary-General on the recommendation of the Prosecutor”. The Tribunal notes in this respect that those Applicants who are members of the Office of the Prosecutor have letters of appointment signed on behalf of the Registrar. In addition to the issue mentioned in paragraph 9 above, this raises the issue of the delegated authority of the ICTY Registrar to appoint staff of the Office of the Prosecutor.

IT IS ORDERED THAT:

12. A joint hearing will be held on **Wednesday, 22 August 2012 at 3.30 p.m.** (Geneva time) regarding Cases Nos. UNDT/GVA/2012/030, 031, 032, 033, 035, 036, 037, 038, 039, 040, 041, 042, 043 and 045.

13. The Registry will in due course inform the parties of the logistical details in relation to the hearing.

14. The Applicants’ motions for production of documents in Cases Nos. UNDT/GVA/2012/030, 031, 033, 035, 036, 037, 038, 039, and 040 are rejected.

15. By **4 p.m. (Geneva time) on Thursday, 12 July 2012**, Counsel for the Respondent shall file and serve, in each of the cases mentioned in paragraph 12, additional submissions to address the issues raised in paragraphs 6 to 11 of the present Order.

(Signed)

Judge Thomas Laker

Dated this 26th day of June 2012

Cases Nos. UNDT/GVA/2012/030, 031,
032, 033, 035, 036, 037,
038, 039, 040, 041, 042,
043, 045

Order No. 120 (GVA/2012)

Entered in the Register on this 26th day of June 2012

(Signed)

René M. Vargas M., Registrar, Geneva