UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/GVA/2015/106 UNDT/GVA/2015/107 UNDT/GVA/2015/108 UNDT/GVA/2015/109 UNDT/GVA/2015/110 UNDT/GVA/2015/111 UNDT/GVA/2015/112
Order No.:	82 (GVA/2015)
Date:	10 April 2015
Original:	English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

GUEBEN

LAMB

LOBWEIN

MATAR

PASTORE STOCCHI

REXHEPI

VANO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

Counsel for Applicant:
Miles Hastie, OSLA

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat
Elisabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. By applications filed on 4 March 2015, the Applicants, seven staff members of the United Nations Assistance to the Khmer Rouge Trials ("UNAKRT"), contest the decisions to deny a conversion of their fixed-term appointments into permanent ones, as notified by respective letters from the Officer-in-Charge ("O-I-C") Assistant Secretary-General, Office of Human Resources Management ("ASG/OHRM") dated 24 November 2014.

Background

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 were considered for conversion of their contracts to permanent appointments.

3. Having sought to be considered for conversion, on 31 January 2012, each of the Applicants was informed that:

> [F]ollowing the decision of the Assistant Secretary-General for Hu man Resources Management pursuant to ST/SGB/2009/10, you will not be granted a permanent appointment.
>
> This decision was taken after a review of your case, taking into account all the interests of the Organization and was based on the operational realities of the Organization, particularly that UNAKRT is a downsizing entity.

4. On 11 June 2012, the Applicants filed applications against these decisions. These cases were registered under Case Nos. UNDT/NY/2012/45 to UNDT/NY/2012/51 and processed at the New York Registry of the Tribunal. By Judgment No. UNDT/2014/114 of 26 August 2014, the Tribunal "rescind[ed] the decision of the ASG/OHRM and remand[ed] the UNAKRT conversion exercise to the ASG/OHRM for retroactive consideration of the suitability of each applicant", and awarded the equivalent of EUR3,000 in non-pecuniary damages.

5. On 16 October 2014, the Applicants filed a "Motion to Enforce Judgment UNDT/2014/114" under the aforementioned cases, motion which remains pending with the New York Registry.

6. On 24 November 2015, each of the Applicants was advised that, after reconsideration, the O-i-C, ASG/OHRM, had decided not to retroactively convert their appointments to permanent ones.

7. After requesting management evaluation, on 4 March 2015, the Applicants filed the present applications against the decisions to deny retroactive conversion of their appointments as notified on 24 November 2015. These applications were registered under Case Nos. UNDT/GVA/2015/106 to UNDT/GVA/2015/112 and processed at the Geneva Registry of the Tribunal.

8. On 31 March 2015, the Applicants filed concurrent motions requesting:

a. Consolidation of all UNAKRT permanent appointment cases (i.e., Case Nos. UNDT/NY/2012/45 to UNDT/NY/2012/51 and Case Nos. UNDT/GVA/2015/106 to UNDT/GVA/2015/112) in New York; and

b. Appointment of a panel of three judges to hear all the UNAKRT permanent appointment cases.

Consideration

Consolidation of 2012 and 2015 cases

9. The cases filed by the Applicants in 2012 concerned decisions made on 31 January 2012 by the then ASG/OHRM, whereas the cases filed in 2015 appeal a subsequent new decision taken by a different official—the current O-i-C, ASG/OHRM—on 24 November 2015.

10. While these two sets of decisions are similar in nature and the latter resulted from the reconsideration of the former, there is no doubt that they constitute distinct and separate administrative decisions. As such, each of them may and should be reviewed on its own merits.

11. Furthermore, it must be stressed that a judgment on the substance has already been rendered regarding the 2012 cases. The only aspect under litigation at this point with regard to these cases are the applications for execution of said Judgment.

12. Given that the examination of the legality of the 2012 decisions was already conducted in Judgment No. UNDT/2014/114, and this pronouncement has by now become *res judicata*, it is not appropriate for the Tribunal to proceed to a joint consideration of the legality of the 2012 and the 2014 decisions which, respectively, form the basis of the above-referenced 2012 and 2015 cases.

13. For these reasons, there is no room for consolidating the Applicants' cases initiated in 2012 and those filed in 2015.

Consolidation of all 2015 cases

14. It is worth recalling that Cases Nos. UNDT/GVA/2015/106 to UNDT/GVA/2015/112 were filed merely weeks ago. A reply by the Respondent is still outstanding. To this extent, it is unclear at this stage what the issues and the contours of the dispute will be and, hence, if they will be identical for all seven or some of the cases. It is therefore premature to determine if it will be preferable, in terms of efficiency and procedural economy, to join said cases.

15. The Tribunal shall, if and as appropriate, reconsider at a later stage whether or not to join the above-mentioned 2015 cases, without prejudice to its prerogative to request separate filings and submissions for each or some of them and to dispose of each case by individual judgments.

Change of venue

16. Although not clearly formulated, the motions of 31 March 2015 imply a request for change of venue of the seven 2015 cases to New York.

17. However, once determined that there is no need to consolidate the cases pending in New York (2012) and those pending in Geneva (2015) and, in fact, that both sets of cases involve separate decisions and matters, there is no reason warranting such a change of venue.

Three-judge panel

18. The Tribunal has held that the authority to decide on a motion for the establishment of a three-judge panel such as the one at hand rests with the Judge who has been assigned to hear the case(s) in question (*Ademagic et al.* Order No. 63 (GVA/205) of 17 March 2015).

19. On this basis, beyond the question whether the case is of "particular complexity or importance", the Tribunal has taken into account the practical, logistical and due process implications of a referral to a panel of three judges.

20. The Tribunal is established at three duty stations with two sitting judges at each of them; additionally, two half-time judges rotate between these locations according to the Tribunal's workload and their deployment is for two to three months. As a result, none of the Tribunal's locations, including New York, has three judges serving for a significant length of time. Consequently, and all the more since sec. 7 of Practice Direction No. 1 on Three-Judge Panels requires all panel members to be "physically present during the oral hearing on the merits and subsequent deliberation", the referral would necessarily entail not only extensive exchanges between judges in different parts of the world, but also the extraordinary deployment of at least one judge.

21. Further, establishing and entertaining a three-judge panel would unavoidably lead to non-negligible delays in the procedure; this cannot be in the interest of the parties to a matter which has been pending—at different procedural stages—already for more than three years.

22. Finally, the Tribunal is mindful that it is not unlikely that its judgment will be brought before the Appeals Tribunal, as the second and highest instance in the Organization's justice system. Moreover, given the nature of the matters and certain precedents presenting obvious parallelisms with the cases at hand (see *Longone* 2013-UNAT-358, *Ademagic et al. and MacIlwraith*, 2013-UNAT-359, *MacIlwraith* 2013-UNAT-360), there are significant chances that their appeals, if any, are heard in full bench at the level of the Appeals Tribunal.

23. This must be considered in conjunction with the unusual and unfortunate requirement, laid down in art. 10.9 of this Tribunal's Statute and art. 2.3 of the Appeals Tribunal's Statute, that the referral to a three-judge panel be authorised by the President of the Appeals Tribunal. Therefore, it is well possible that the President of the Appeals Tribunal might have to consider a case that he had already reviewed, at least to a certain extent, for the purposes of deciding if it should be heard by a three-judge panel at the first instance level. In such event, it cannot be excluded that this prior review by the Appeals Tribunal President may impact his ability to participate in the appeals proceedings.

24. For all the foregoing reasons, and without entering in whether the cases at hand are of particular complexity or importance, the Tribunal is of the view that a referral to a panel of three judges would not be in the interest of the parties, and will not conform to the guiding principles of the Organization's internal justice system set out by the General Assembly, such as avoidance of unnecessary delay. Accordingly, the Tribunal shall not raise a request to its President seeking to have this case referred to a three-judge panel.

Conclusion

25. In view of the foregoing, it is ORDERED that:

The Applicants' motions be rejected in their entirety.

(*Signed*)
Judge Thomas Laker
Dated this 10th day of April 2015

Entered in the Register on this 10th day of April 2015
(*Signed*)
René M. Vargas M., Registrar, Geneva