



Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

ADEMAGIC

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

April L. Carter

Robbie Leighton, OSLA

Counsel for Respondent:

ALS/OHRM, UN Secretariat

Introduction

1. On 22 September 2017, the Applicant, an employee of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) filed an incomplete application before the Tribunal, challenging the decision of the Office of Human Resources Management dated 31 July 2017 which she termed as “discrimination in relation to the denial of a permanent appointment”.
2. The Applicant requested management evaluation on 23 August 2017 and on 18 September 2017, received a response, upholding the contested decision.
3. In her complete application, the Applicant also sought to file a motion for joinder, however the motion was not filed with the Tribunal. Following communication with the Registry, the Applicant on 2 October 2017, filed a motion for joinder which was amended on 6 October 2017.
4. In the motion for joinder, the Applicant seeks to join the present application with 19 others yet to be instituted by current and former ICTY staff members affected by decisions of the same nature, issued in the context of the same reconsideration process, and to provide a common brief on the merits with supporting annexes.
5. It follows from the motion that the contested decisions regarding each of the applicants to be are essentially identical, and that each of their matters arise from the same context and raise similar factual and legal issues.
6. In the motion for joinder, the Applicant relies on art. 11, 19, and 36 of the Tribunal’s Rules of Procedure citing that the Applicants will rely on a common brief on the merits with supporting annexes since the decisions being contested are identical and raise similar issues of facts and law.
7. The Applicant and the 19 other applicant’s-to-be are represented by the same Counsel.

Consideration

8. The Tribunal notes that no rule exists in its Statute or its Rules of Procedure currently regulating situations like the present one. An amendment is envisaged to fill this *lacuna* in law. In the meantime, the Tribunal needs to take a practical approach to address the matter before it and, in so doing, it must give due consideration to judicial economy and to an efficient and sound administration of justice.

9. The Tribunal has reflected upon the requirements for a case to be validly instituted before it, particularly under art. 3 of its Statute. In this respect, the Tribunal notes that there is a precedent¹ where a common application form and brief were presented concerning the challenge of numerous applicants, and all subsequent exchanges took place under one single case, albeit including individualised annexes and, as needed, submissions for each of the concerned staff members.

10. Pursuant to art. 19 of the Tribunal's Rules of Procedure:

The Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

11. On this basis, and in view of the above, the Tribunal is prepared to grant leave to the Applicant's Counsel to file one common brief in Case No. UNDT/GVA/2017/071 on behalf of all current and former ICTY staff members that Counsel for the Applicant is instructed to represent regarding the challenge of substantially identical decisions and raising similar issues of law and fact.

12. Notwithstanding this authorisation for an initial joint filing, the Tribunal may, on its own motion or upon request of any of the Applicants, separate one or more of the cases in this joint filing at a subsequent point in the proceedings, in order to consider such cases individually or otherwise.

¹ UNDT/2015/115 *Ademagic et al*, 2016 UNAT-684 *Ademagic et al*. and Case No. UNDT/GVA/2017/016

13. In this connection, each and every one of the litigants concerned may move at any stage of the proceedings for such individualization of their case without providing reasons for it. In addition, the Tribunal retains, as part of its inherent powers, the prerogative of reviewing whether or not the cases of the different Applicants are sufficiently analogous to warrant a joint consideration. The Tribunal shall make its own determination of which matters remain in Case No. UNDT/GVA/2017/071.

Conclusion

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

- a. Counsel for the Applicant has been granted leave to file a common brief within this case, that is, Case No. UNDT/GVA/2017/071, on behalf of the 19 other current and former ICTY staff members who have instructed Counsel to represent each of them regarding the challenge of substantially identical decisions and raising similar issues of law and fact;
- b. Without prejudice to para. 14.a, the case of one or more of such forthcoming applicants can be separated at a later stage of the proceedings, in accordance with paras. 12 and 13 above and
- c. The common brief shall be filed by **Wednesday, 15 November 2017**.

(Signed)

Judge Rowan Downing

Dated this 31st day of October 2017

Entered in the Register on this 31st day of October 2017

(Signed)

René M. Vargas M., Registrar, Geneva