



Case No.: UNDT/GVA/2009/56

Judgment No.: UNDT/2010/070

Date: 28 April 2010

## Introduction

1.

7. On 8 May 2007, the applicant wrote an email to the Special Representative, UNDP, Jerusalem, requesting a written explanation for the decision to terminate his ALD with immediate effect. He stressed that he had been told orally that the reason behind the decision was the above-referenced email of 2 May 2007. The Deputy Special Representative, who was copied on the email, responded the same day, noting that in view of the nature of his appointment, UNDP had the right to terminate it and that they had respected the contract details.

8. On 20 May 2007, the applicant wrote to the Associate Ombudsperson from the Office of the Joint Ombudsperson with respect to the termination of his appointment. He was informed by email dated 21 May 2007 that someone from the Office could look into the matter and contact him shortly.

9. By email dated 26 July 2007, a Consultant Ombudsperson from the Office of the Joint Ombudsperson confirmed to the applicant that he was entitled to submit a request for administrative review and that with respect to the applicable time limits, he should contact the Panel of Counsel (PoC). He noted that the intervention of the Office of the Joint Ombudsperson was concluded and that the applicant would now begin the formal process.

10. On 24 August 2007, the Coordinator of the PoC responded to an email of the applicant, noting “that the Office of the Joint Ombudsman informed [him] on 26 July 2007 that their informal intervention [was] concluded and therefore [his] time limit for starting the formal process ... for submitting a request for review pursuant to [s]taff [r]ule 111.2 (a) [was] 26 September 2007”.

11. On 26 September 2007, the applicant submitted a request for administrative review of the decision of 7 May 2007 to the Secretary-General, copied to the Assistant Administrator and Director, Bureau of Management, UNDP. The latter responded to the applicant’s request for review on 21 November 2007, stressing that in view of former staff rule 311.1 his letter to the Secretary-General was time-barred and that there was no legal basis to overturn the decision to terminate the applicant’ appointment.

12. The applicant submitted a statement of appeal to the JAB in New York on 21 December 2007.

13. The JAB issued its report on 28 February 2009, concluding unanimously that the respondent violated the applicant's right to due process in terminating his contract without observing former staff regulation 9.1 and ST/AI/292. It therefore recommended that the applicant receive compensation in the amount of USD 1,000 and "that the termination letter in his official record be amended in conformity with the Staff Regulation (sic) and that, should the letter contain any material adverse to him, that he be allowed to file a written rebuttal, as per ST/AI/292".

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that they had not been able to arrive at a mutual agreement and that they agreed that the case would need to now proceed on the merits.

#### Parties' contentions

19. The applicant's principal contentions are:

- a. In reference to staff regulation 9.2 (c) then in force the applicant questions if the Secretary-General's discretionary authority in assessing what constitutes "the interest of the Organization" was properly exercised. He notes that it is "hard to understand how the Secretary-General could have considered that an abrupt termination of a contract without justified reasons and while a staff member was delivering to his best ... was an action 'in the interest of the Organization'";
- b. Invoking "administrative related issues" to terminate the appointment with immediate effect is arbitrary and misleading and impacts on the applicant's rights to fair and transparent conditions of service, including his performance evaluation; also, there is no room to equate the term "administrative related issues" with that of "in the interest of the Organization";
- c. The applicant should at least have been given a warning and/or the issues concerning the "interest of the Organization" should have been discussed with him. The applicant considers that the actual reason for the termination of his appointment was the email entitled "Challenges and suggestions for successful implementation of DEEP" the applicant wrote to his supervisor's manager five days before he was terminated;
- d. Both UNAT and UNDT have decided that if the Administration provides a reason for the non-renewal of a fixed-term appointment, that reason must be supported by the evidence; this reasoning must also be applied to cases of termination;

e. The applicant's performance during his tenure with UNDP was Uh-kz vO Shzyby,bHO

21. The respondent's arguments can be summarized as follows:
  - a. The application is time-barred since the applicant failed to submit his request for review to the Secretary-General within the time limits prescribed by the Staff Rules then in effect and he did not provide evidence of any exceptional circumstance beyond his control preventing him to comply with those time limits;
  - b. The applicant's ALD was terminated in accordance with the

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sensitive issues; in any case, the applicant was not entitled under the applicable Staff Regulations and Rules to receive a detailed explanation or justification for the decision;

f. The decision contained in the termination letter does not intend to reflect upon the applicant's character, reputation, conduct or performance and the respondent is willing to put a clarification to this effect on the applicant's Official Status File;

g. Former staff rule 309.3 provided that holders of ALDs are entitled to written notice of termination but the Secretary-General may authorize payment in lieu of notice and they are entitled to a termination indemnity equivalent to the amount of the applicant's salary for the period of notice.



23. The Tribunal has already stated that, during the transition to the new system of administration of justice, it has jurisdiction to waive time limits imposed by the former Staff Rules (see UNDT/2009/052, paragraph 15; UNDT/2010/019, .., paragraph 31).

24. With respect to the concept of exceptional circumstances, the Tribunal follows the definition developed by the former United Nations Administrative Tribunal, according to which exceptional circumstances “consist of events beyond the applicant’s control that prevent the applicant from timely pursuing his or her appeal” (see Judgment No. 372, (1986); No. 713, (1995); No. 868, (1998); see also UNDT/2010/019, UNDT/2010/031, ).

25. In the case at hand, the applicant started his efforts to get explanations with respect to the decision to terminate his appointment immediately after having been notified of that decision. Within the time limits provided for in former staff rule 111.2 (a) with respect to a request for review, the applicant also contacted the Office of the Joint Ombudsperson. The Office of the Joint Ombudsperson finally advised the applicant to send his request to the PoC “in order ... to clarify the issue of 60 days deadline”. One day later, the applicant turned to the PoC where

27. The application is successful on the merits. The decision of 7 May 2007 to terminate the applicant's contract effective the same day is in not in compliance with the terms of appointment laid down in the applicant's letter of appointment (see article 2.1 (a) of the statute of UNDT).

28. According to this letter of appointment, a termination of the ALD prior to its expiration requested from both parties to give thirty days written notice. In case of termination by UNDP, in addition to the thirty days notice, compensation in lieu of notice period would be provided. Only in cases of summary dismissal for serious misconduct was there no entitlement to a period of notice or an indemnity

the applicant could only have been obtained in the framework of an amicable settlement, which, in the case at hand, unfortunately failed.

32. The Tribunal has already stated that, as a general rule, it is necessary to rescind the contested decision once the Tribunal has established its illegality (see

3) All other pleas are rejected.

( )

Judge Thomas Laker

Dated this 28<sup>th</sup> of April 2010

Entered in the Register on this 28<sup>th</sup> day of April 2010

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Víctor Rodríguez, Registrar, Geneva