



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/087

Judgment No.: UNDT/2012/016

Date: 30 January 2012

English

Original: French

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## **Introduction**

1. The Applicant contests the decision by which the Office of the United Nations High Commissioner for Refugees (“UNHCR”) considered that she was not eligible for consideration for conversion of her fixed-term appointment to an indefinite appointment.

2. She requests rescission of the contested decision.

## **Facts**

3. The Applicant was recruited by UNHCR in Croatia in December 1992 on a short-term contract in the General Service category. She was granted a fixed-term appointment in August 1996, followed by an indefinite appointment in January 2000. In January 2005, her contract was terminated following the abolition of her post.

4. In February 2005, the Applicant was reappointed at the Professional level under a fixed-term contract in Kuala Lumpur, Malaysia, an A duty station.

5. In an internal memorandum of 21 January 2011 entitled “One-Time Review for the Granting of Indefinite Appointments” (IOM/04-FOM/05/2011), the High Commissioner for Refugees informed UNHCR staff that in view of the entry into force of the new Staff Regulations and Rules on 1 July 2009, a one-time review would be initiated in order to consider candidates who met the eligibility requirements as of 30 June 2009 for consideration for conversion from a fixed-term appointment to an indefinite appointment. Paragraph 12(b) of the memorandum also stated that in order to be eligible, Professional staff must have served a minimum of two years in a D or E duty station.

6. Pursuant to this memorandum, by email dated 23 February 2011, the Director of the Division of Human Resources Management indicated that the staff members who met the eligibility requirements for consideration for conversion to an indefinite appointment had been informed through individual mail. Staff members who had not received such notification but considered that they met the

requirements were invited to contact the Recruitment and Appointments Service, which the Applicant did on 1 March 2011.

7. By email dated 28 February 2011, the Applicant was advised that, owing to non-compliance with the requirement of at least two years of service in a D or E duty station, she was not eligible for consideration for conversion of her fixed-term appointment to an indefinite appointment.

8. On 13 April 2011, the Applicant submitted a request for management evaluation of the decision communicated on 28 February 2011.

9. By letter dated 7 July 2011, sent to the Applicant on 15 July 2011, she was notified by the Deputy High Commissioner for Refugees that the decision not to consider her eligible for consideration for conversion of her fixed-term appointment to an indefinite appointment would stand.

10. The Applicant submitted her application to the Tribunal Registry in New York on 13 October 2011, and the Respondent filed his reply on 16 November 2011. The same day, the Respondent also requested a change of venue from New York to Geneva because, *inter alia*, three similar cases were before the Tribunal in Geneva.

11. By Order No. 282 (NY/2011) of 1 December 2011, the Tribunal decided to transfer the case to the Geneva Registry.

12. By Order No. 8 (GVA/2012) of 6 January 2012, the Tribunal raised, on its own motion, the issue of the lawfulness of the conversion procedure provided for in the internal memorandum of 21 January 2011 in view of the fact that the Staff Rules with effect from 30 June 2009 precluded the granting of indefinite appointments.

13. Counsel for the Respondent and Counsel for the Applicant submitted their observations on 12 and 13 January 2012, respectively.

14. On 24 January 2012, the Tribunal held a hearing in which Counsel for the Respondent and Counsel for the Applicant participated in person.



the Applicant was a General Service staff member and therefore not subject to rotation;

e. Concerning the issue raised by the Tribunal on its own motion, she concurs with the Respondent's observations.

16. The Respondent's contentions are:









26. Lastly, while the Applicant maintains that staff members who did not meet the criterion of service in D or E duty stations were nevertheless granted indefinite appointments, she provides no evidence in support of her allegations. Although the High Commissioner, in his defense, admits that exceptions were made for medical reasons, it appears that internal memorandum IOM/04-FOM/05/2011 of 21 January 2011 refers to the Procedural Guidelines for Appointments, Postings and Promotions, promulgated by internal memorandum IOM/FOM/75/2003, which provide for medical exceptions to the rotation requirement for staff members.

27. Thus, the Applicant, who was not in the same situation as the staff members for whom medical exceptions were warranted, cannot claim that the Administration did not meet its obligation to treat staff in similar situations alike.

28. It is clear from the foregoing that none of the Applicant's contentions establish the unlawfulness of the contested decision.

### **Conclusion**

29. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

*(Signed)*

Judge Jean-François Cousin

Dated this 30<sup>th</sup> day of January 2012

Entered in the Register on this 30<sup>th</sup> day of January 2012

*(Signed)*

Anne Coutin, Officer-in-Charge, Geneva Registry