

Introduction

1. The Applicant is a former staff member of the United Nations Office on Drugs and Crime (UNODC) who contests the decision not to renew his fixed-term appointment upon its expiry on 31 December 2011.

2. The main basis for adequate compensation for the unpaid, full non-renewal of his contract is the lack of due process and for the moral and emotional distress he has suffered as a consequence.

Facts

3. The Applicant joined the UNODC in Vienna in 2002 and in 2004 he was appointed as Crime Prevention and Criminal Justice Policy Specialist (P.6) on a fixed-term contract (TP7) for a duration of 12 months (DTA) on a fixed-term basis.

8. Following a restructuring exercise in the TP7 in April 2005 the Applicant's functional title changed to Chief, Counter-Terrorism Section. In this regard, he was the first being offered of five staff members in the full

A !"#ant , as to &e late%a!!/ %eass"gned to the os"t"on of =en"o% <ega! Ad5"se%\$, h"#h fun#"ons , e%e)"n !"ne , "th the o5e%a!! %est%u#tu%"ng of TP7.*

4. ' n 12 Janua%/ 2010\$ the Ch"ef\$ TP7\$ sent an ema"! to TP7 staff mem&e%\$ atta#h"ng the d%aft te%ms of %efe%en#e fo% the ne , st%u#tu%e and as1"ng fo% the%" "n ut. The A !"#ant %e !"ed on 18 Janua%/ 2010\$ suggest"ng that someone e!se shou!d de5e!o the te%ms of %efe%en#e fo% the os"t"on of =en"o% <ega! Ad5"se%\$ s"n#e he had ne5e% as "%ed to the os"t"on.

:. 7/ an ema"! of 20 Janua%/ 2010\$ the ' ff"#e%. "n. Change\$ DTA\$ "n5"ted the A !"#ant to %om t!/ e- %ess h"s %ese%5at"ons\$ "f an/\$ and sought #onf"%mat"on that he ,shed to ta!e on the os"t"on of =en"o% <ega! Ad5"se%. >n %es onse to these 2ue%"es\$ the A !"#ant stated that he ma"nta"ned the 5"e , , h"#h he had %e5"ous!/ #on5e/ed "n ,%"t"ng to the Ch"ef\$ TP7\$ and as!ed , heth% an/ adm"n"st%at"5e de#"s"on had &een o% , as to &e ta!en #on#e"n"ng h"s %o!e "n UN ' DC.

9. 9u%the% e-#hanges ensued &et , een the Ch"ef\$ TP7\$ the Ch"ef of the 0uman ?esou%#es Danagement =e%5"#e ()0 ? D=*+ and the A !"#ant\$ "n , h"#h the !atte% en2u"%ed , heth% an adm"n"st%at"5e de#"s"on had a!%ead/ &een ta!en , "th %es e#t to h"s %eass"gnment.

10. 7/ an ema"! of 24 Janua%/ 2010 to the A !"#ant\$ the Ch"ef\$ TP7\$ statedE

BTche manage"a! de#"s"on to !ate%a!!/ %eass"gn /ou A , as ta!en as a%t of the %est%u#tu%"ng of TP7\$ as %e2uested and a %o5ed &/ the BUN ' DCC FB-e#ut"5eC DB"%e#toC A BTche adm"n"st%at"5e "m lementat"on of the een ta

13. On a letter dated 31 January / 2010 sent to the F-#ut"5e D"#e#to%\$ UN ' DC\$ the A !"#ant e- !a"ned that\$ "n h"s 5"e , \$ the de#"s"on to a&o!"sh h"s ost and to %eass"gn h"m to the os"t"on of =en"o% <ega! Ad5"se% , as mot"5ated &/ e-t%aneous #ons"de%at"ons. Oe fu#the% e- !a"ned that the de#"s"on had &een %e#eded &/ %e o%ts of %oh"&"ted #ondu#t\$ "n#!ud"ng ha%ssment\$ aga"nst the Ch"ef\$ TP7\$ and the 'ff"#e%.n.Cha%ge\$ DTA\$,ho ,e%e h"s 9"%st and =e#ond ?e o%t"ng 'ff"#e%\$ %es e#t"5e!/.

18. 'n 1 9e&%ua% / 2010\$ the A !"#ant;s #ont%a#t ,as e-tended to 31 January / 2011 and &/ memo%andum dated 11 9e&%ua% / 2010\$ the 'ff"#e%.n. Cha%ge\$ DTA\$ sent an amended 5e%\$on of the #ha%t togethe% , "th the te%ms of %efe%en#e fo% TP7 to the F-#ut"5e D"#e#to%\$ UN ' DC\$ %e#ommend"ng that the ne , st%u#tu%e &e#ome effe#t"5e %et%oa#t"5e! / as f%om 1 9e&%ua% / 2010.

16. 'n 12 9e&%ua% / 2010\$ the Ch"ef\$ TP7\$ "nfo%med TP7 staff that the F-#ut"5e D"#e#to%\$ UN ' DC\$ had fo%ma!!/ a %o5ed the ne , st%u#tu%e and the ne-t ste , ou!d &e the d%a , "ng u of the te%ms of %efe%en#e fo% "nd"5"dua! os"t"ons , "th"n the st%u#tu%. =ho%t! / the%eafte%\$ she sent to the A !"#ant d%aft te%ms of %efe%en#e fo% the os"t"on of =en"o% <ega! Ad5"se% and as!ed fo% h"s #omments and suggest"ons.

16. 'n 22 9e&%ua% / 2010\$ the A !"#ant su&m"tted a %e2uest fo% management

harassment or a use of authority. Regarding his former agent against the #1 of the case from the D#to DTA UN ' DC the AG/ ' 0 ? D noted that it had some moot cause & the time of the AG/ ' 0 ? D decision the Agent had #5ed a case from the D#to DTA and that an/ dela/ 'n case , would not constitute harassment. The AG/ ' 0 ? D #hed the #on#lusion that the Agent's former agents did not satisfy the requirements under se# 6.18 of =T/=G7/200:/6 to , a#ant the #ondu#t of a fact-finding "investigation".

28. ' n 13 De#em&e 2011\$ the Agent #uested management #a!uat"on of the #ontested decision and on 31 Janua%/ 2012\$ he #e#5ed a case onse\$ &/ , h"#h the decision , as u held. ' n 10 A %! 2012\$ the Agent f"led the #u%ent a "#at"on &fo#e the T%"&una! and on 11 Da/ 2012\$ the T%"&una! #e#5ed the ?es ondent;s %e !/.

26. ' n 8 No5em&e 2012\$ the Agent f"led a motion fo% #e#usa! of the unde#signed Judge and &/ ' %de% No. 92 (N7>/2013+\$ dated 2 Da/ 2013\$ the then P#es"dent of the D's ute T%"&una! #e#ted the a "#at"on fo% #e#usa!.

26. The T%"&una! &/ ' %de% No. 169 (GVA/2013+\$ "ssued on 8 No5em&e 2013\$ o#de#ed the a#t"es to f"le an/ o&#e#t"ons to a Judgment &e"ng #ende#ed , "thout hold"ng an o#a! hea"ng. ' n 6 No5em&e 2013\$ the Agent #e#uested the T%"&una! to hold a hea"ng "n the matte to #!a%f/ matte#s es e#a!!/ , "th #ega#d to the a!legat"on #ega#d"ng the #e#uest &/ the F-e#ut"5e D"#to UN ' DC\$ to the Aust"an go#e#nment.

24. The T%"&una! held a hea"ng of the su&stant"5e a "#at"on on 26 No5em&e 2013\$, h"#h &oth a#t"es attended 5"deo#onfe#en#e.

Parties' submissions

2.: The Agent's #ontent"ons a#e E

- a. Oe , as)ma#hed to the doo%* though the #ont"nuous &#e#hes of h's #ont#a#t\$ harassment\$ a use of authority\$ a&"ta"ness and tal"ng of un!a , fu! de#"s"ons o5e% the !ast t , o /eas #e#ed"ng the end of h's #ont#a#tH

30. The respondent's submissions are:

a. The respondent's submissions do not establish that the respondent, as a member of the Board of Directors, acted in a manner that is not in accordance with the provisions of the Charter of the United Nations and the Statute of the International Tribunal for the former Yugoslavia, as not the case.

b. The respondent's claim that the Tribunal's decision is not tainted and is not void ab initio is not supported by the evidence.

c. The Tribunal's finding that the respondent acted in a manner that is not in accordance with the provisions of the Charter of the United Nations and the Statute of the International Tribunal for the former Yugoslavia is not supported by the evidence.

d. The Tribunal's finding that the respondent acted in a manner that is not in accordance with the provisions of the Charter of the United Nations and the Statute of the International Tribunal for the former Yugoslavia is not supported by the evidence.

e. Given the respondent's claim that the Tribunal's decision is not tainted and is not void ab initio, the respondent's claim that the Tribunal's decision is not tainted and is not void ab initio is not supported by the evidence.

f. The Tribunal's finding that the respondent acted in a manner that is not in accordance with the provisions of the Charter of the United Nations and the Statute of the International Tribunal for the former Yugoslavia is not supported by the evidence.

3. The A !"#ant a##used and d%agged un , "tt"ng staff mem&e%\$ "nto h"s
nume%ous !"gat"ons &efo%e the T%"&una! ,h"#h had a %ofound!/
/

the DTA UN ' DC informed the Applicant that the Board of Directors of the Company, should not be held liable for the actions of the Company on 31 December 2011 pursuant to article 8.6 and article 8.13.* This case, as a result of the fact that the Applicant's complaint, which is the subject of the present Judgment.

38. In assessing the liability of the Applicant, as stated in the conclusions of the Board of Directors, the Applicant's complaint, as stated in the conclusions of the Board of Directors, is not valid.

34. The Tribunal also notes that the Applicant did not object to the designation of the designated, ongoing relationship and, even him and his managers. Neither did he submit an argument regarding the fact that there was no loss of trust to the relationship that designated relationship.

35. On 2012.UNAT.266 the Appeals Tribunal held that in the circumstances, here the ongoing relationship and the relationship had some unsustainable for the designation not to be, a contract made and reasonable and it is, "that the Administration's designation of the relationship into account in the present case is the designated relationship, of the Tribunal that it is established that the Applicant's relationship, "that the relationship had from the beginning and there was mutual loss of trust and, even him and the senior managers of UN ' DC. This is not itself constitutes a valid ground for the non-termination of the Applicant's contract. Given the essential nature of the relationship the Tribunal finds it more than unlikely that there would have been an ongoing relationship in the circumstances of the case." (a)3.84766(n)-10(/)20(-10(#))3.84767(continued)

A !"#ant f"led a %e2uest fo% %ote#"on f%om %eta!"at"on , "th the Fth"#s ' ff"#e aganst h"s su e%5"so"s and , hen the Fth"#s ' ff"#e de!a/ed "n "ssu"ng a %es onse to h"s %e2uest\$ the A !"#ant &%ought a #!a"m &efo%e the T%"&una! aganst the Fth"#s ' ff"#eH th"s matte% , as d"s osed off "n Judgment UNDT/2012/069.

83. Ghen the Fth"#s ' ff"#e f"na!!/ "ssued a de#"s"on den/"ng the A

Conclusion

8: In 5^e, of the foregoing, the Tribunal finds that the applicant's dismissal is not justified.

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Judge Thomas

Dated this 11th day of December 2013

Entered in the register on this 11th day of December 2013

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En I D. Vargas D. Regista Gene5a