Introduction

1.   By application filed on 13 March 2013, the Applicant, a Senior Appeals Counsel (P.4) at the International Criminal Tribunal for the former Yugoslavia ("ICTY"), contests the decision dated 29 August 2012 by which her first reporting officer had her reassigned from the Appeals Division of the International Tribunal to other functions, including providing support to a number of teams in managing tasks related to a project for giving accused persons access to confidential trial materials (the Access Project), and carrying out other duties for the Office of the Prosecutor.

2.   The requests:

a.   Rescission of the above-mentioned decision of 29 August 2012 and the award of material and moral damages;

b.   Referral of the dispute to mediation and suspension of the procedure during the mediation;

c.   Removal of her name from the text of the judgment.

Facts

3.   The Applicant entered the service of ICTY in 2006 and was appointed to the post of Senior Trial Attorney (P.4) on 19 May 2006 for a one-year contract. In May 2007, her contract was extended and her job title was changed in her letter of appointment to Senior Appeals Counsel. Her appointment was regularly extended from that time onward, and she is currently serving agains1.33292(n)-0.295585

13. By email dated 28 March 2013, the Prosecutor informed the Applicant that the contested decision would not be implemented and that she would remain in her post in the Appeals Division, but would nonetheless remain assigned to assist with the access work.

14. That same day, 28 March 2013, the reply to the Applicant's management evaluation request stated that the request was moot, as the contested decision had not been implemented.

15. On 2 April 2013, the Respondent filed a motion requesting authorization from the Tribunal to reply only to the question of the receivability of the application, given the most recent communications to the Applicant dated 28 March 2013.

16. By email dated 8 April 2013, the Applicant replied to the Prosecutor, asking him to give full effect to his decision by permitting her to resume her work as Senior Appeals Counsel and to return to appellate work.

17. By email dated 12 April 2013, the Prosecutor replied to the Applicant that her assignments would continue to be determined based on the operational needs

Performance Management and Development System; nor was the rebuttal process that followed it.

b. The decision to remove her from the Appeals Division and relieve her of her duties was based on the invalid performance assessment. A decision based on a performance rating that is later rebutted is unlawful.

c. The decision caused irreparable harm to her professional reputation and career aspirations.

d. Contrary to the Respondent's contentions, the contested decision was implemented, even though the Prosecutor stated that it would not be. The change in her functions and tasks was not like other temporary loans of appeals counsel to the Front Office or the Trial teams so that they did not stand idle.

e. She is carrying out duties that are appropriate neither to the Appeals Division nor to a P.5 staff member. Since the contested decision, she has been assigned no appellate work, and continues to carry out only those duties related to the management of the Access Project.

26. The Respondent's contentions are:

a. The application is not receivable because on 26 March 2013, the Prosecutor informed the Applicant that the contested decision would not be implemented. The Applicant considers herself to be a member of the Appeals Division.

b. Moreover, the contested decision is not an administrative decision that can be challenged before the Tribunal, as it in no way infringes upon the rights conferred by the Applicant's contract or by her status as a staff member. The Applicant still occupies the same post as before. She has the same title, grade, step and compensation, and the date of expiration of her contract has not changed.

that she would remain in her post in the Appeals Division. Thus, as of the date of the present judgment, the contested decision has been withdrawn and there is no need for the Tribunal to rule on the legality of a decision that has been rescinded.

31.   However, the Applicant maintains that the contested decision has in fact been partially implemented, as the duties assigned to her since the date of the decision are not consistent with those of a Senior Appeals Counsel in the Appeals Division, the post for which she was recruited in her letter of appointment. While, as noted above, the contested decision has been officially rescinded, given that the Applicant is still serving against the same post, at the same grade and compensation, and she is administratively still a member of the Appeals Division

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Conclusion

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Judge Jean.-"an⁄o‰s Cous‰n

Dated t&‰s 16^{t&} da7 of De em!e" 2013

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