Case No. UNDT/GVA/2013/069 Judgment No. UNDT/2014/026

- 11. 2# ! (de(No. 269 3N ' /20134 of 23 ! ,to1e(2013\$ t%e T(+1una/ ,on-o)ed t%e 0a(t+es to a ,ase management d+s,uss+on to add(ess\$ inter alia\$ t%e t(ansfe(of t%e ,ase to Gene-a. T%e ,ase management %ea(+ng &as %e/d on 13 No-em1e(2013 and 1# ! (de(No. 314 3N ' /20134 of 1 No-em1e(2013\$ t%e T(+1una/ d+(e,ted t%e 0a(t+es to f+/e a <o+nt su1m+ss+on on a// outstand+ng matte(s\$ +n,/ud+ng &%et%e(t%e# %ad an# o1<e,t+ons to a t(ansfe(of t%e ,ase to t%e Gene-a *eg+st(#.
- 12. 6n a <o+nt su1m+ss+on f+/ed 1# t%e 0a(t+es on 9 De,em1e(2013\$ t%e *es0ondent d+d not o1<e,t to t%e t(ansfe(of t%e ,ase to t%e Gene-a *eg+st(#. T%e A00/+,ants noted t%at t%e# &e(e not ,onf+dent t%at t%e t(ansfe(to Gene-a &ou/d e.0ed+te t%e ,ase g+-en t%e ant+,+0ated need fo(%ea(+ngs on te,%n+,a/ +ssues\$ s+n,e most 0otent+a/ &+tnesses &e(e +n Ne& 'o() and 2ang)o). T%e# st(essed\$ %o&e-e(\$ t%at t%e# &ou/d %a-e no o1<e,t+on +n 0(+n,+0/e\$ s%ou/d t%e T(+1una/,ons+de(t%at t%e (e9uest fo(e.0ed+t+on ,ou/d 1e 1est ensu(ed 1# t%e t(ansfe(. 2# ! (de(No. 333 3N '/20134 of t%e same da#\$ t%e T(+1una/ o(de(ed t%e t(ansfe(of t%e ,ase to t%e Gene-a *eg+st(#\$ &%e(e +t &as (eg+ste(ed unde(,ase No. UNDT/GVA/2013/069\$ and ass+gned to t%e unde(s+gned Judge.

Proceedings in Geneva

- 13. 2# ! (de(No. 14 3GVA/20144 of 22 Janua(# 2014\$ t%e T(+1una/ +nfo(med t%e 0a(t+es t%at t%e Judge no& +n ,%a(ge of t%e ,ase %ad de,+ded to (a+se at %+s o&n mot+on t%e +ssue of t%e a00/+,at+onAs (e,e+-a1+/+t# ratione materiae> +t t%e(efo(e (e9uested t%e 0a(t+es to su1m+t ,omments t%e(eon 1# C ednesda#\$ 12 8e1(ua(# 2014. 6n t%at ! (de(\$ t%e T(+1una/ a/so +nfo(med t%e 0a(t+es t%at t%e ,ase &ou/d 1e de,+ded on t%e 0a0e(s\$ &+t%out an o(a/ %ea(+ng.
- 14. 2 ot% 0a(t+es su1m+tted t%e+(,omments on t%e +ssue of t%e a00/+,at+onAs (e,e+-a1+/+t# ratione materiae on 12 8e1(ua(# 2014.
- 1 . ! n @ 8e1(ua(# 2011\$ t%e f+(st meet+ng of t%e Do,a/ 7a/a(# 7u(-e# Comm+ttee 3;D77C=4\$,om0(+s+ng 60 mem1e(s a00o+nted 1# 1ot% staff))

(e0(esentat+-es and management too) 0/a, e +n 0(e0a(at+on of the 2011 Com0(ehens+-e Do, a/ 7a/a(# 7u(-e#.

- 16. !n 26 A0(+/ 2011\$ t%e $4B^{t\%}$ meet+ng of t%e Un+ted Nat+ons !0e(at+ons "anagement Team 3; ! "T=4 too) 0/a,e +n 2ang)o)\$ at &%+,%+t &as +nd+,ated t%at ;t%e Nat+ona/!ff+,e(s,a/e a00ea(ed to 1e on t%e %+g% s+de= and t%at ;t%e Gene(a/7e(-+,es,a/e a/so a00ea(ed %+g%=.
- 1@. The 2011 Com0(ehens+-e Do,a/ 7a/a(# 7u(-e# &as ,ondu,ted f(om June to De,em1e(2011.
- 1B. !n 10 Janua(# 2012\$ an D77C meet+ng &as %e/d\$ to ,ons+de(and s+gn t%e D77C (e0o(t 0(e0a(ed 1# t%e sa/a(# su(-e# s0e,+a/+sts\$ 1# 11 Janua(# 2013\$ fo(0(esentat+on to t%e Eead9ua(te(s 7a/a(# 7tee(+ng Comm+ttee. T%e (esu/ts of t%e su(-e# +nd+,ated t%at Un+ted Nat+ons sa/a(+es fo(t%e Gene(a/ 7e(-+,e and Nat+ona/!ff+,e(,atego(+es &e(e %+g%e(t%an t%ose of t%e (eta+ned ,om0a(ato(s\$ 1# 2@.2F and 41.4F (es0e,t+-e/#.
- 19. !n 13 Janua(# 2012\structure f+nd+ngs of t\structure sa/a(# su(-e\structure s0e,+a/+sts &e(e 0(esented to t\structure Eead9ua(te(s 7a/a(\structure 7tee(+ng Comm+ttee\structure \&\structure +,\structure unan+mous/\structure +)

t%e su(-e# &as ,ondu,ted 1# ,e(ta+n "anagement (e0(esentat+-es &+t% t%e 0(e \mathbb{H} dete(m+ned agenda to (edu,e t%e sa/a(# s,a/e fo(staff +n t%e Gene(a/ 7e(-+,e and Nat+ona/!ff+,e(,atego(+es.

- 22. ! n 29 8e1(ua(# 2012 and 2 " a(,% 2012\$ to&n %a// meet+ngs too) 0/a, e &+t% t%e Unde(7e,(eta(#!Gene(a/\$ De0a(tment of " anagement\$ and t%e Ass+stant 7e,(eta(#!Gene(a/ fo(Euman *esou(,es " anagement\$ (es0e,t+-e/#\$ at &%+,% t%e 2011 Com0(e%ens+-e Do,a/ 7a/a(# 7u(-e# &as d+s,ussed.
- 23. 7ome mem1e(s of the D77C &(ote to the Assistant 7e,(eta(##Gene(a/ fo(

of the 0(o,ess) for dete(m+n+ng /o,a//# (e,(u+ted staff sa/a(# s,a/es at nonHEead9ua(te(s dut# stat+ons=.

2@. The A00/+, ants A = 0 + n + 0a, ontent+ons a(e:

- a. The *es0ondent %as not ,ontested the T(+1una/As <u(+sd+,t+on to ,ons+de(,/a+ms &+t% (es0e,t to the a00/+,at+on of the 6C7C met%odo/og# 1# the 7e,(eta(#HGene(a/ &-wen esta1/+s-w+ng sa/a(# s,a/es fo(the A00/+,ant and the T(+1una/ +n Shaia UNDT/2013/096 was ,onf+(med +ts ,om0eten,e to ,ons+de(the matte()
- 1. The following followin
- ,. 59ua//#\$ t%e Adm+n+st(at+-e T(+1una/ of t%e 6nte(nat+ona/ Da1ou(! (gan+sat+on 3;6D ! AT=4 found +tse/f ,om0etent to ,ons+de(a00ea/s f(om staff o-e(t%e a00/+,at+on of 6C7C met%odo/og# to /o,a/ sa/a(# su(-e#s\ u0\%o/d+ng t\%e staff mem1e(s\)A (+g\%t fo(t\%e fu// and fa+(a00/+,at+on of t\%e 8/emm+ng 0(+n,+0/e 3Judgment No. 1@13 re oretta et al4. T\%e 6D ! AT found t\%at s+n,e t\%e a00/+,at+on of t\%e met\%odo/og# (e9u+(es some d+s,(et+on\)\\$ t\%e T(+1una/ &as on/# ,om0etent to ,ons+de(an aluse of aut\%o(+t\# +n t\%e e.e(,+se of su,\%d+s,(et+on\)

- The dual sa/a(# s, a/e a/so +m0a, ts the A00/+, ants +n that the a(e 0a+d a /o&e(de0enden, # a//o&an, e fo(the+(de0endents 1o(n afte(1 " a(, % 2012 a,, o(d+ng to the se, onda(# sa/a(# s, a/e))
-). The methodolog# does not 0(o-+de fo(a d+s0ute (eso/ut+on me, %an+sm+n), ase of d+s0ute un/ess a ne& ,om0(ehens+-e su(-e+ehens+s), ondu, ted\$ the the condition of the sum of d+s0ute un/ess a ne& ,om0(ehens+-e su(-e+ehens+s), ondu, ted\$ the condition of the sum of d+s0ute (eso/ut+on me, %an+sm+n), ase of d+s0ute un/ess a ne& ,om0(ehens+-e su(-e+ehens+s), ondu, ted\$ the condition of the sum of d+s0ute (eso/ut+on me, %an+sm+n), ase of d+s0ute vullet vu
- /. 6n -+e& of t%e +m0o(tant 0o/+, # +m0/+, at+ons\$ t%e /a(ge num1e(of staff affe, ted and t%e ,onse9uen, es of t%e 0(esent s+tuat+on on t%e <01 se, u(+t# and f+nan,+a/ &e// 1e+ng of /o,a/ staff\$ t%e A00/+, ants (e9uest an e.0ed+ted %ea(+ng of t%e ,ase> t%e# (e9uest t%e T(+1una/ to o(de(t%e +mmed+ate +n-a/+dat+on of t%e sa/a(# s,a/es (esu/t+ng f(om t%e 2011 su(-e# a

! n the me(+ts) the *es0ondent notes that the s,00e of the T(+1una/As (e-+e& +s /+m+ted) s+n,e the 7e,(eta(#HGene(a/ has d+s,(et+on to f+. the sa/a(+es of staff mem1e(s) and the T(+1una/ hand), annot su1st+tute +ts <udgment to that of the 7e,(eta(#HGene(a/. 6t +s /+m+ted to e.am+ne +f the de,+s+on & as

- %. The (e-+sed sa/a(# s,a/es fo(2ang)o) Tha+/and as 0(omu/gated on 6 8e1(ua(# 2012 (es0e,t the 8/emm+ng P(+n,+0/e) &%+,% +m0/+es that the sa/a(+es %a-e to 1e among the 1est) &+thout 1e+ng the also/ute 1est at the dut# stat+on the (e-+sed sa/a(# s,a/es fo(2ang)o) (ema+n among the 1est of the /o,a/+t#>
- +. The a00/+, at+on should 1e d+sm+ssed +n +ts ent+(et#.
- 29. The A00/+, ants (e9uest the (es,+ss+on of the (esu/ts of the 2011)

- 31. The su1<e,t of the a1o-eH(efe(en,ed de,+s+on +s) on the one hand the f(eeGe of sa/a(# s,a/es of staff mem1e(s +n the Gene(a/ 7e(-+,e and Nat+ona/!ff+,e(s,atego(# (e,(u+ted 1efo(e 1 "a(,% 2012 and) on the othe(hand) the +ssuan,e of se,onda(# sa/a(# s,a/es fo(staff mem1e(s +n the Gene(a/ 7e(-+,e and Nat+ona/!ff+,e(,atego(# (e,(u+ted on o(afte(1 "a(,% 2012.
- 32. The strong of the T(\pm 1 una/As <u(\pm 5 strong + str
- 33. The T(+1una/, ons+de(s that &hen the A00ea/s T(+1una/ has dete(m+ned +ts

&+t%+n adm+n+st(at+-e /a& s#stems $\$ as implied adm+n+st(at+-e de,+s+ons.

!ssuance o" secondar# salar# scales "or sta"" recruited on or a"ter \$ %arch & '\$&

3 . The de,+s+on to +ssue se, onda(# sa/a(# s,a/es fo(staff mem1e(s (e,(u+ted on o(afte(1 " a(,% 2012 ,/ea(/# does not amount to an adm+n+st(at+-e de,+s+on unde(a(t. 2.13a4 of the T(+1una/As 7 tatute) as 0e(the te(ms of the alo-eH9uoted def+n+t+on ado0ted 1# the A00ea/s T(+1una/. At the moment of the+(+ssuan,e) the se, onda(# sa/a(# s,a/es &e(e to a00/# e.,/us+-e/# +n the futu(e) fo(an undef+ned 0e(+od) to a g(ou0 of 0e(sons &+, % at the and as at toda# ,ou/d and ,annot 1e +dent+f+ed. As su, % the +ssuan,e of se, onda(# sa/a(# s,a/es fo(Gene(a/ 7e(-+,e staff and Nat+ona/! ff+,e(s (e,(u+ted on o(afte(1 " a(,% 2012 +s not of +nd+-+dua/a00/+,at+on and does not 0(odu,e d+(e,t/ega/,onse9uen,es. 6t does ,onst+tute an adm+n+st(at+-e a,t &+the (egu/ato(# 0o&e() 1ut not an adm+n+st(at+-e de,+s+on as 0e(the a1o-e ,(+te(+a ado0ted 1# the A00ea/s T(+1una/. The(efo(e)) the soa(t of the a00/+,at+on +s not (e,e+-a1/e) ratione materiae and % as to 1e d+sm+ssed.

(reeze o" existing salar# scales in e""ect since \$ August & '\$'

36. The T(+1una/ no& has to hons0(a)3.84766(h)3.84766(4(68(e)3.84766(a)3.84766()3.00781(7(()3 s6.68he a and hand)) t(1766(h)-60(gh)3.64766(h)3.8476(h)3.8476(h)3.84766(h)3.84766(h)3.84766(h)3.84766(h)3.84766(h)3.84766(h)3.84766(h)3.8476(

staff mem1e(s &%o %ad 1een on st(+)e on t&o s0e,+f+, da#s\$ &ou/d 1e ,o-e(ed 1# a 0F 0a#(o// dedu,t+on f(om t%e ne.t 0a#(o// and a 0F dedu,t+on f(om annua//ea-e\$ and t%at 100F 0a#(o// dedu,t+on &ou/d 1e made fo(a// staff &%o &e(e a1sent f(om &o() on anot%e(s0e,+f+, da# I ,onst+tutes an a00ea/a1/e adm+n+st(at+-e de,+s+on. T%e A00ea/s T(+1una/ found t%at t%e C+(,u/a(,onta+ned ;a// t%e ne,essa(# ,om0onents (efe((ed to +n Andronov to g+-e (+se to /ega/,onse9uen,es fo(t%e st(+)+ng staff= and t%at ;+t ,onta+ned +nfo(mat+on &%+,% affe,ted t%e (+g%ts of t%e staff mem1e(s +n 9uest+on\$ g+-en t%at +t &as 1e+ng ,/ea(/#,ommun+,ated to t%e (e/e-ant staff mem1e(s t%at dedu,t+ons &e(e go+ng to 1e made f(om t%e+(sa/a(+es=\$ %en,e\$;-+sHLH-+s t%e st(+)+ng staff mem1e(s +t %ad +nd+-+dua/ a00/+,at+on=.

- 39. 6t +s t%e ,ons+de(ed -+e& of t%+s T(+1una/ t%at t%e s+tuat+on +n t%e ,ase at %and d+ffe(s f(om t%e ,ase of Al Surkhi et al. T%e C+(,u/a(+n Al Surkhi et al) &as add(essed and a00/+ed to a ,e(ta+n and ,/ea(/# def+na1/e g(ou0 of staff mem1e(s &%o %ad 1een on st(+)e on t&o o(t%(ee s0e,+f+, da#s\$ and &%o\$ t%e(efo(e\$ 1# t%e+(o&n ,on,(ete a,t+on\$ &e(e su1<e,ted to a ,e(ta+n de,+s+on 1# t%e Adm+n+st(at+on I to &+t\$ a dedu,t+on f(om 0a#(o///annua/ /ea-e on t%e 1as+s of t%e 0(+n,+0/e of no 0a# fo(da#s not &o()ed. T%us\$ t%e de,+s+on\$ t%oug% ,o//e,t+-e\$ &as of +nd+-+dua/a00/+,at+on\$ and +ts a00/+,at+on &as ,/ea(/# def+ned +n s,o0e and t+me. 6n t%e 0(esent ,ase\$ %o&e-e(\$ t%e sa/a(# f(eeGe a00/+es to a g(ou0 of staff mem1e(s def+ned e.,/us+-e/# 1# t%e+(status and ,atego(# &+t%+n t%e ! (gan+Gat+on\$ and\$ as noted a1o-e\$ +ts a00/+,at+on +n t+me and du(at+on ,annot 1e dete(m+ned. A,,o(d+ng/#\$ t%e T(+1una/,on,/udes t%at +n a00/#+ng t%e test of Andronov\$ t%e de,+s+on to f(eeGe e.+st+ng sa/a(# s,a/es unt+/ t%e ;ga0 +s,/osed=\$ as ,onta+ned +n ! E* " ,a1/e of 6 8e1(ua(# 2012\$ does not ,onst+tute an adm+n+st(at+-e de,+s+on fo(t%e 0u(Oose of a(t. 2.13a4 of t%e T(+1una/As 7tatute.
- 40. T%+s 0a(t of t%e a00/+,at+on +s t%e(efo(e e9ua//# not (e,e+-a1/e\$) and %as to 1e) d+sm+ssed.
- 41. "o(eo-e(\$ t%e T(\pm 1una/ (e,a//s t%at de, \pm 5+ons 1# &% \pm ,% t%e 7e,(eta(\pm 1Gene(a/ f \pm .es sa/a(\pm 5,a/es \pm 1n a,,o(dan,e & \pm 1% t%e a1o-eH9uoted

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0(o-+s+ons of t%e 7taff *egu/at+ons\$ a(e measu(es &+t% (egu/ato(# 0o&e(&%+,% t%e T(+1una/ %as no ,om0eten,e to (es,+nd.

42. 6t +s on/# at t%e o,,as+on of +nd+-+dua/ a00/+,at+ons aga+nst t%e mont%/# sa/a(#/0a#s/+0) of a staff mem1e(t%at t%e /atte(ma# susta+n t%e +//ega/+t# of t%e de,+s+on 1# t%e 7e,(eta(#HGene(a/ to f+. and a00/# a s0e,+f+, sa/a(# s,a/e to #+m/%e(#+n &%+,%, ase t%e T(+1una/,ou/d e.am+ne t%e /ega/+t# of t%at sa/a(# s,a/e &+t%out (es,+nd+ng +t. As su,%\\$ t%e T(+1una/,onf+(ms +ts usua/ <u(+s0(uden,e a,,o(d+ng to &%+,%\\$ &%+/e +t ,an +n,+denta//# e.am+ne t%e /ega/+t# of de,+s+ons &+t% (egu/ato(#+0o&e(#+t does not %a-e t%e aut%o(+t# to (es,+nd su,% de,+s+ons.

43. 6n -+e% of the fo(ego+ng) the T(+1una/ D5C6D57:

T%e a00/+, at+on +s (e<e, ted.

Signed

Judge Jean H8 (an Mo+s Cous+n

Dated t%+s $^{t\%}$ da# of " a(,% 2014

5nte(ed +n t%e *eg+ste(on t%+s $^{t\%}$ da# of " a(,% 2014

Signed

*enN ". Va(gas ".\$ *eg+st(a(\$ Gene-a