

---

Case No.: UNDT/GVA/2010/082

## Introduction

1. By an application filed on 27 April 2010, the Applicant challenges the decisions to abolish his post and to reassign him to the position of Senior Legal Adviser.

2. By way of relief, the Applicant requests the Tribunal to rescind these decisions and order that he be reinstated in his former post. He seeks compensation for the harassment, stress, anxiety, humiliation, unequal treatment and moral injury he suffered and for the breach of his right to due process.

## Facts

3. The Applicant joined the United Nations Office on Drugs and Crime (“UNODC”) in 2002. With effect from 12 November 2003, he was appointed as Project Coordinator of the Office for Prevention of International Terrorism, under an appointment governed by the 200 series of the Staff Rules which was subsequently extended.

4. With effect from 1 November 2007, the Applicant’s appointment was converted into a one-year fixed-term appointment under the 100 series of the Staff Rules. Also, as at that date, the Applicant was appointed to the post of Senior

8. On 8 December 2009, the Applicant was informed orally by the Chief of TPB and the Officer-in-Charge of DTA that his post would be abolished and that he would be reassigned, at the same level, to the position of Senior Legal Adviser which was to be created within the Office of the Chief of TPB. In the exchange which ensued with the Chief of TPB, the Applicant pointed out that the position of Senior Legal Adviser would not involve any supervisory functions, and he asked to be provided with a written “proposal ... [in order for him to] make a fully informed decision”. The Chief of TPB responded in an email of 11 December 2009, confirming that he was to be laterally reassigned to the position of Senior Legal Adviser, whose functions were “in line with the overall restructuring of TPB”.

9.

12. By an email of 20 January 2010, the Officer-in-Charge of DTA invited

February 2010, together with terms of reference, advising that those documents had just been submitted to the Officer-in-Charge of DTA for review and would thereafter be submitted to the Executive Director for approval.

19. By memorandum dated 11 February 2010, the Officer-in-Charge of DTA sent to the Executive Director an amended version o

- Initiate, maintain and develop partnerships and undertake joint activities in the area of countering nuclear, biological and chemical terrorism with relevant organizations and other stakeholders...;

- Design, organize and execute expert working group meetings on specific subjects in the area of nuclear, biological and chemical terrorism;

Provide continuing advice to the Chief of the Branch relating to UNODC/TPB issues in the area of countering nuclear, biological and chemical terrorism;

Provide, upon request, specialized policy, strategy, programme and legal advice and technical input to UNODC senior management and the Chief of TPB upon management request more specifically on complex legal and related substantive issues of

7pwifl7cc-pbFi,le

Counter-Terrorism Legal Services Section I and to laterally reassign him to the position of Senior Legal Adviser.

22. By a letter dated 22 April 2010, the Applicant was informed that the Secretary-General had found that the decision to abolish the litigious post had been duly motivated and taken in accordance with the relevant rules. He further considered that the decision to reassign the Applicant to the position of Senior Legal Adviser constituted a proper exercise of discretion and decided to uphold the decision, subject to a reclassification exercise.

23. On 27 April 2010, the Applicant filed his application with the Tribunal.

24. In April and May 2010, draft generic job profiles for all individual positions within the new TPB structure were sent for approval to HRMS.

25. On 15 March 2011, a classification notice was issued for the post of Senior Legal Adviser and sent to the Applicant. The notice stated that the classification had taken effect retroactively as from 1 April 2010.

26. On 7 June 2011, a hearing was held on the merits in the present case, to which the Applicant and Counsel for the Respondent attended. During the hearing, three witnesses were heard, namely the Chief of TPB, the Officer-in-Charge of DTA, and a Senior Coordinator within TPB.

#### Parties' contentions

27. The Applicant's contentions are:

a. The contested decisions are tainted with procedural irregularities.

The aec7Y7YielislY,cYHb-fFc7Yyp,yHb-HFirl-cb7,,Yirbn--YiilíwclíHcwb7w-inlwc,wwywi,lpc7pw









Applicant had shown an interest in the new position

## Issues

29. According to article 2.1(a) of its Statute, the Tribunal is competent to hear and pass judgment on applications filed by staff members contesting an administrative decision that is alleged to be in non-compliance with their terms of appointment or contract of employment.

30. In this case, the Applicant challenges in his application the abolition of his post of Chief of the Counter-Terrorism Legal Services Section I and his reassignment to the position of Senior Legal Adviser. These decisions of 12 February 2010 define and limit the scope of the Tribunal's review.

31. The Applicant puts forwards several pleas. He first questions the effectiveness of and motivation for the restructuring. He also submits that the abolition of his former post and the decision to reassign him to the position of Senior Legal Adviser are tainted by irregularities and improper motives. Lastly, he claims that he has been subjected to harassment, discrimination and humiliation. The Tribunal will examine each issue in turn.

## Consideration

### Restructuring of TPB

32. In Rosenberg UNDT/2011/045, the Tribunal identified a general principle of law according to which “[a]n employer is entitled to re-organise the work or





in the context of the restructuring, one of the three TPB section chiefs was assigned to the UNODC Regional Centre in Bangkok.

42. In the report of the Joint Inspection Unit on “Review of Management and Administration in ... UNODC” issued in 2010, it was noted:

UNODC has implemented an organizational restructuring in April 2010 that was triggered not only by financial difficulties requiring some streamlining of the structure but also by previous oversight recommendations that pointed out duplications, overlaps/gaps of substantive or administrative functions as well as a lack of coordination and the existence of internal competition. The guiding principle of the realignment exercise was to consolidate thematic expertise to increase substantive integration of themes by redeploying sections and units of two divisions, namely the Division for Operations and the Division for Treaty Affairs.

43. Among the several recommendations made in the report, it was suggested that UNODC “redefine the strategic approach of its field presence and reconfirm its deployment principles, in particular the strategy to strengthen its regional presence and/or its country deployment”.

44. From the foregoing, it is clear to the Tribunal that the restructuring of TPB was undertaken in the broader context of the reorganization of UNODC and that it was warranted by the need to allow greater cost-effectiveness and fund mobilization by redistributing TPB staff and responsibilities from headquarters to the field. Therefore, in the view of the Tribunal, the restructuring of TPB constituted a valid exercise of the Respondent’s discretionary authority, in line with what he genuinely believed was an appropriate management decision to meet its needs and obligations in a context of financial crisis.

Abolition of the Applicant’s 5 yft

material time defining a “post”. However, some provisions do provide relevant elements to clarify the notion.

47. Paragraph 2.2 of administrative instruction ST/AI/1998/9 (System for the classification of the posts) states, *inter alia* (emphasis added):

2.2 [R]equests [for classification of posts] shall include:

...

(c) A valid and available post number confirming the existence of a post approved at the appropriate level in the budget, unless the request is submitted for advice prior to a budget submission...

48. In addition, section 1.2(b) of administrative instruction ST/AI/1999/17 (Special post allowance) and section 1 of administrative instruction ST/AI/2006/3/Rev.1 (Staff selection system) define in very close terms what a vacant post is:

a post approved for one year or longer which is not blocked for the return of a staff member...

49. According to the International Civil Service Commission (“ICSC”), a “post represents financial authorization given for the job to be performed” (see the ICSC website). The Tribunal accepts this definition and considers that a “post” may be defined as the financial authorization given for a job to be performed, irrespective of the fact that it may be funded through budgetary or extra budgetary sources.

50. Applying this framework to the instant case, the Tribunal observes that the Applicant’s post was not abolished. The Respondent explained—and the Applicant recognized—that, even though the abolition of the post of Chief of the Counter-Terrorism Legal Services Section I had initially been contemplated, the Applicant was in fact reassigned against the same budgeted post, and that his functional title and responsibilities were eventually changed to those of Senior Legal Adviser. The Tribunal accordingly dismisses the Applicant’s plea in respect of the abolition of his post.







Adviser. According to these terms of reference, the duties of the Senior Legal Adviser included the elaboration and implementation of a programme of work in the field of nuclear, chemical and biological terrorism, the provision of legal advice, specialized expertise and technical assistance to UNODC and TPB management and countries, the mobilization of extra-budgetary resources, the development of partnerships and the organization of working group meetings in the field of nuclear, chemical and biological terrorism.

60. The Tribunal considers that the description of the duties of the position of Senior Legal Adviser as contained in the above draft terms of reference is sufficiently precise.

61. The Applicant submits that the decision to reassign him to the position of Senior Legal Adviser contravened his right to be heard. But it is sufficient to recall that there is no requirement to obtain the consent of the concerned staff member to reassign him/her to different functions. Moreover, the Tribunal notes that the Applicant was invited on 1Hwi l-i líYFFcyYFiolíHcw,H--YinlíHcw,H--Yi líYFFcyYFi1líHcupidlí

supervisory responsibilities and that two of them, namely developing a work programme and raising funds, are not the “usual functions of a Legal Adviser”. In his view, his reassignment constitutes a “

68. The Tribunal is of the view, based on the evidence on file, that the Applicant has not shown that the functions of the position of Senior Legal Adviser did not match his skills, qualifications and experience. It further observes that, when comparing these functions to the duties of the post of Chief of the Counter-Terrorism Legal Services Section I, it is clear that, in both positions, the Applicant was mainly entrusted with providing advisory services and specialized expertise to the UNODC and TPB management, assisting in programme planning and delivering technical assistance to requesting countries.

69. With particular respect to the contention that the raising of funds does not correspond to the usual functions of a Legal Adviser, the Tribunal notes that the Applicant u

responsibilities from headquarters to the field constituted a legitimate reason for the restructuring of TPB. Based on the preceding paragraphs, the Tribunal is satisfied that the Applicant's reassignment was justified by the restructuring of TPB, which entailed a redistribution of functions.

Entered in the Register on this 12<sup>th</sup> day of August 2011

(Signed)

Víctor Rodríguez, Registrar, Geneva