U

Introduction

1. ! "o#nt a$$%#&at#on f#%ed on 11 De&em'e(2014) 24* staff mem'e(s and fo(me(staff mem'e(s of t+e ,nte(nat#ona% C(#m#na% T(#'una% fo(t+e fo(me(-ugos%a.#a /0,CT-12 &ontest t+e Ass#stant 3e&(eta(!4Gene(a% fo(5uman 6esou(&es 7anagement /0A3G/8 5 6 7 12 de&#s#ons of June 2014 den!#ng ea&+ of t+em a &on.e(s#on of t+e#(f#9ed4te(m a$$o#ntments #nto $e(manent a$$o#ntments.

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   d. A>a(d mo(a% damages #n t+e amount of ?U620)000 $e(A$$%#&ant fo(su'stant#.e '(ea&+es of due $(o&ess and '#as aga#nst t+em) #n&%ud#ng t+e (e:u#(ement of e9tens#.e mate(#a%s used to e9tend t+e dead%#ne of a non4(et(oa&t#.e e9e(&#se.

Facts

@. 8n 25 7a! 1AA@) t+e 3e&u(#t! Coun&#% de&#ded) '! (eso%ut#on 827 /1AA@2) to esta'%#s+ ,CT-) an ad hoc #nte(nat#ona% t(#'una%) fo(t+e so%e $u($ose of $(ose&ut#ng $e(sons (es$ons#'%e fo(se(#ous .#o%at#ons of #nte(nat#ona% +uman#ta(#an %a> &omm#tted as of 1 Janua

14. 8n 11 7a! 2010) ,CT- t(ansm#tted to t+e 8ff#&e of 5uman 6esou(&es 7anagement /085672 12) at t+e Un#ted Nat#ons 3e&(eta(

1A. ,n No.em'e(and De&em'e(2010) t+e Ne> -o(B C6 'od#es (e.#e>ed t+e

28. 8n a$$ea%) t+e A$$ea%s T(#'una% .a&ated Judgment No. UNDT/2012/1@1)

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em$%o!ed '! ,CT- and/o(7,CT f#.e !ea(s afte(t+e f#(st &on.e(s#on $(o&ess. =u(t+e(mo(e) 7,CT) >+#&+ +as a &%ose #nst#tut#ona% (e%at#on >#t+ ,CT- and a >o(Bfo(&e made u$ %a(ge%! of fo(me(,CT- staff) #s not a do>ns#F#ng #nst#tut#on< #t +as on%! (e&ent%! sta(ted #ts o$e(at#ons and no &om$%et#on date +as 'een set. T+e a$$ea%s of ,CT- "udgments a(e not

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s+ou%d not 'e g(anted 0>+e(e t+e mandate #s f#n#te and t+e(e #s no e9$e&tat#on of o$en4ended em$%o!ment1 /&f. A/*1/@0) 6e$o(t of t+e ,nte(nat#ona% C#.#% 3e(.#&e Comm#ss#on fo(t+e !ea(

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9. ,ne%#g#'%e A$$%#&ants; T>o A$$%#&ants d#d not meet t+e &(#te(#on of f#.e !ea(s of &ont#nuous se(.#&e 'efo(e 200A) as t+e! +ad a '(eaB4 #n4se(.#&e afte((es#gn#ng to &+ange fun&t#ons. 8ne ot+e((es#gned on 1 Ju%! 2012 to taBe u$ a ne> $os#t#on at 5ead:ua(te(s) t+e(e'! end#ng +e((#g+t to &ons#de(at#on fo(a $e(manent a$$o#ntment<

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$. T+e A$$%#&antsE &%a#m t+at t+e &ontested de&#s#ons s+ou%d +a.e 'een e9&%us#.e%! 'ased on #nfo(mat#on a.a#%a'%e as at t+e date of t+e o(#g#na% &on.e(s#on e9e(&#se /August 20102 #s #n&ons#stent >#t+ t+e#($os#t#on t+at &e(ta#n su'se:uent de.e%o$ments s+ou%d +a.e 'een taBen #nto a&&ount) su&+ as t+e#(%engt+ of se(.#&e afte(t+e $u'%#&at#on of 3T/3G /200A/10. T+e A$$%#&antsE $os#t#on >ou%d #m$%! t+at t+e Adm#n#st(at#on &ou%d not taBe #nto a&&ount su'se:uent fa&ts t+at ma! 'e $os#t#.e fo(t+e A$$%#&ants) e.g.) at t+e o(#g#na% de&#s#onsE t#me) ,CT- >as $(o"e&ted to &%ose '! De&em'e(2014) >+e(eas) at t+e t#me of (ea&+#ng t+e de&#s#ons #n 2014) t+e ne> $(o"e&ted &%os#ng date >as 7a! 2017<

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Consideration

Legal framework of the contested decisions

4A. Un%#Be most of t+e de&#s#ons made '! t+e Adm#n#st(at#on) t+ose &+a%%enged #n t+#s &ase stem d#(e&t%! f(om an o(de('! t+e A$$ea%s T(#'una% #n Judgment Ademagic et al 201@4UNAT4@5A. ! t+#s Judgment) t+e +#g+est #nstan&e of t+e #nte(na% "ust#&e s!stem (emanded t+e de&#s#ons on t+e &on e(s#on of t+e A$$%#&antsE f#9ed4te(m a$$o#ntments to $e(manent) to t+e A3G/8567 fo((e4 &ons#de(at#on. ,n do#ng so) #t $(o.#ded t+e 8(gan#Fat#on >#t+ a num'e(of $(e&#se 229(t)0.87304 6(#)11.53teA 2.58141(e)23(d)-0.959 A26(8)-2.79219(()2. (#)0.87304 6(o)-0.95892(4..1

#)0.873046( )-176.349( )-0.95892.

Procedural legality of the decisions

55. T+e 3e&(eta(!4Gene(a%Es 'u%%et#n 3T/3G /200A/10 #s t+e Be! %ega% #nst(ument go.e(n#ng t+e &on.e(s#on e9e(&#se %aun&+ed #n 200A. ,ts se&. @.2 /P(o&edu(e fo(maB#ng (e&ommendat#ons on $e(manent a$$o#ntments2 (e:u#(es t+at 0t+e 8ff#&e of 5uman 6esou(&es 7anagement o(t+e %o&a% +uman (esou(&es off#&e1 &ondu&t a (e.#e> of t+e &and#dates fo(&on.e(s#on. 3u($(#s#ng%!) ne#t+e(t+e 'u%%et#n) no(t+e Gu#de%#nes su'se:uent%! #ssued as a &om$%ement to t+e fo(me() &onta#n an! #nd#&at#on of >+#&+ ent#t#es o(staff mem'e(s s+ou%d 'e (e.#e>ed '! 8567 and >+#&+ fa%% unde(t+e (em#t of t+e#(%o&a% +uman (esou(&es off#&es. 7an#fest%!) t+e &+o#&e >as made t+at 8567 >ou%d fu%f#% t+#s fun&t#on fo(,CT- staff. K+#%e t+#s ma! >e%% 'e an ade:uate &+o#&e) #t (ema#ns not founded on an! &%ea(%ega% 'as#s.

5*. 3#m#%a(%!) se&. @.5. of 3T/3G /200A/10 fo(esees t+at) >+en t+e (e&ommendat#ons of an e%#g#'%e staff mem'e(Es off#&e o(de$a(tment and t+at of t+e +uman (esou(&es off#&e #n &+a(ge do not &o#n&#de) t+e &ase #s to 'e (efe((ed to 0t+e a$$(o$(#ate ad.#so(! 'od!1 fo((e&ommendat#on. T+#s $(o.#s#on /at su'$a(ag(a$+ /a22 dete(m#nes t+e (e%e.ant C6 'od#es fo(P45 and D41 staff mem'e(s;

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*5. ,n sum) &(#te(#on /a2 a'o.e en&om$asses t+e t>o eligibility &ond#t#ons s$e&#f#ed #n se&. 1 of 3T/3G /200A/10H#.e.) f#.e !ea(s of &ont#nu#ng se(.#&e on f#9ed4te(m a$$o#ntments (ea&+ed 'efo(e t+e age of 5@H>+e(eas t+e %ast t+(ee &o((es$ond to d#ffe(ent &om$onents of t+e suitability test as set fo(t+ #n se&. 2 of t+e same 'u%%et#n.

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*7. T+e fo(ego#ng not>#t+stand#ng) #t s+ou%d 'e noted t+at t+e #nte(est of t+e 8(gan#Fa.8 7 3046(s)-59T46(s)-5.3 7 229(#)0.8 7 3046(o)-9.69849(&595.28 7 7 2()6.99218(e)-3.663

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of fo(me(staff (u%e 104.1@ and se&. 2 of 3T/3G /200A/10. At no $o#nt d#d t+e#((es$e&t#.e %ette(s a%%ude to t+e a%%eged #ne%#g#'#%#t! of an! of t+em.

7@. Unde(t+e &#(&umstan&es) t+e 8(gan#Fat#on #s $(esent%! esto$$ed f(om &%a#m#ng t+e #ne%#g#'#%#t! of t+e s#9 &on&e(ned A$$%#&ants.

6et(oa&t#.#t!

74. A%t+oug+ Judgment Ademagic et al. 201@4UNAT4@5A (efe(s on se.e(a% o&&as#ons to (et(oa&t#.e 0&on.e(s#on1 o((et(oa&t#.e 0effe&t1 of a $otent#a% &on.e(s#on) at $a(a. @AHt+e Be! $assage of t+e 0Judgment1H#t unam'#guous%! o(de(s t+e 0(et(oa&t#.e &ons#de(at#on1 of t+e su#ta'#%#t! of t+e A$$%#&ants. Cont(a(! to >+at t+e 6es$ondent +o%ds) #m$%ement#ng t+e (esu%t#ng de&#s#ons (et(os$e&t#.e%! #s not suff#&#ent to meet#ng t+e (e:u#(ement of (et(oa&t#.e consideration. ased on t+#s %anguage) t+e T(#'una% #s not sat#sf#ed t+at t+e (e4 &ons#de(at#on e9e(&#se oug+t to #n&%ude ne> &#(&umstan&es t+at >e(e on%! Bno>n >+en t+e ne> de&#s#ons >e(e (ea&+ed) #.e.) m#d4June 2014) and not 'e %#m#ted to t+ose Bno>n at t+e t#me of t+e #n#t#a% &on.e(s#on e9e(&#se.

75. 3u&+ an #nte($(etat#on >ou%d de.o#d of an! mean#ng t+e te(m 0(et(oa&t#.e1) t+at t+e A$$ea%s T(#'una% &ons&#ous%! and $u($osefu%%! &+ose to use. ,n add#t#on) Judgment Ademagic et al. 201@4UNAT4@5A states t+at t+e A$$%#&antsE ent#t%ement to (e&e#.e a $(o$e(dete(m#nat#on of t+e#(su#ta'#%#t! fo((et(oa&t#.e &on.e(s#on) 0a$$%#es e:ua%%! to an! %#t#gant staff mem'e(s >+o >e(e $a(t of t+e o(#g#na% &on.e(s#on e9e(&#se at #ssue) 'ut +a.e s#n&e %eft t+e se(.#&e of ,CT-1< t+#s fu(t+e(su$$o(ts t+at #t >as t+e A$$ea%s T(#'una%Es #ntent#on t+at t+e &+anges #n em$%o!ment status t+at o&&u((ed 'et>een t+e f#(st and se&ond e9e(&#se do not #m$a&t on t+e A$$%#&antsE (#g+t to 'e &ons#de(ed fo(&on.e(s#on.

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&om$e%%#ng (eason to e9&%ude t+e $oss#'#%#t! fo(t+e A3G/8567 to $otent#a%%! (eass#gn t+e A$$%#&ants on t+e 'as#s of se&. 11.1/'2 of 3T/A,/2010/@) e.g.) #n &ase of a'o%#t#on of t+e#($ost. A&&o(d#ng%!) a%t+oug+ t+e T(#'una% unde(stands t+at t+#s (u%e >as &on&e#.ed to 'e a$$%#ed on an e9&e$t#ona% 'as#s) and e.en &on&ed#ng t+at %o&a%%! (e&(u#ted staff a(e su'"e&t to s$e&#f#& geog(a$+#&a% (est(#&t#ons) #t a$$ea(s t+at) &ont(a(! to t+e 6es$ondentEs &ontent#on) t+e(e #s no a'so%ute %ega% 'a(fo(t+e A3G/8567 to mo.e an! of t+e A$$%#&ants) >+o +e%d a$$o#ntments %#m#ted to ,CT-) to a d#ffe(ent ent#t! on t+e 'as#s of t+e a'o.e4(efe(en&ed $(o.#s#on #f t+e#($osts >e(e to 'e a'o%#s+ed.

8A. ,n an! e.ent) $a(a. 10 of t+e Gu#de%#nes $(o.#des;

> K+e(e t+e a$$o#ntment of a staff mem'e(#s %#m#ted to a $a(t#&u%a(de$a(tment/off#&e) t+e staff mem'e(ma! 'e g(anted a $e(manent a$$o#ntment s#m#%a(%! %#m#ted to t+at de$a(tment/off#&e. ,f t+e staff mem'e(#s su'se:uent%! (e&(u#ted unde(esta'%#s+ed $(o&edu(es #n&%ud#ng (e.#e> '! a &ent(a% (e.#e> 'od! fo($os#t#ons e%se>+e(e #n t+e Un#ted Nat#ons 3e&(eta(#at) t+e %#m#tat#on #s (emo.ed.

A0. G#.en t+e use of t+e >o(d 0ma!1) #t #s t+e T(#'una%Es .#e> t+at t+#s $(o.#s#on a%%o>s) 'ut does not o'%#ge) t+e Adm#n#st(at#on H>+en &on.e(t#ng a f#9ed4te(m a$$o#ntment %#m#ted to a &e(ta#n off#&e/de$a(tment H to t(ansfe(su&+ &ont(a&tua% %#m#tat#on to t+e /ne>%! g(anted2 $e(manent a$$o#ntment. A%so) ne#t+e(e t+e Gu#de%#nes no(ot+e(a$$%#&a'%e (u%es $(o+#'#t t+e g(ant#ng of a non4%#m#ted $e(manent &ont(a&t u$on &on.e(s#on of a %#m#ted f#9ed4te(m

A2. T+e %#m#tat#on of se(.#&e to ,CT-/7,CT >as t+e(efo(e #n&o((e&t%! asse(ted

A7. Aga#nst t+#s 'a&Bg(ound) t+e T(#'una% tends to a&&e$t t+e Adm#n#st(at#onEs $os#t#on t+at t+e f#n#te mandate of ,CT- as >e%% as of 7 ,CT) #s a fa&to(t+at &an 'e .a%#d%! &ons#de(ed #n de&#d#ng on t+e &on.e(s#on of t+e A$$%#&antsE a$$o#ntment to $e(manent. 5o>e.e() a%t+oug+ #t #s a&&e$ta'%e to g#.e ade:uate >e#g+t to t+e o$e(at#ona% (ea%#t#es of ,CT-) #n&%ud#ng #ts f#n#te mandate) t+e A$$ea%s T(#'una%) ne.e(t+e%ess) s$e&#f#&a%%! (u%ed #n Judgment Ademagic et al. 201@4UNAT4@5A t+at (e%!#ng e#clusi!ely on t+#s &#(&umstan&e amounts to an a'use of d#s&(et#on.

A8. 8n t+#s &(u&#a% $o#nt) t+e T(#'una% +as dete(m#ned t+at t+e mot#.e to (efuse to &on.e(t to $e(manent t+e a$$o#ntments of ea&+ of t+e 24* A$$%#&ants >as #n.a(#a'%! t+e same and &ame do>n to t+e f#n#te mandate of ,CT- and #ts do>ns#F#ng /$a(as. 84 to A@ a'o.e2) and) add#t#ona%%!) t+at no ot+e((e%e.ant &#(&umstan&es) s$e&#f#& to ea&+ #nd#.#dua%) >e(e &ons#de(ed /$a(as. 7A to 8@ a'o.e2. ,t t+us a$$ea(s e.#dent t+at t+e $(edom#nant fa&to('e+#nd t+e #m$ugned de&#s#ons >as) !et aga#n) t+e f#n#te mandate of ,CT-.

AA. T+#s #s t+e .e(! same fa&to(on >+#&+) as $e(t+e A$$ea%s T(#'una%Es (u%#ng) t+e Adm#n#st(at#on +ad >(ongfu%%! (e%#ed u$on to t+e e9&%us#on of an! ot+e(&ons#de(at#ons. 5en&e) '! aga#n so%e%! (e%!#ng on t+#s fa&to(and o.e((#d#ng a%% ot+e(s) t+e 8(gan#Fat#on fa#%ed to a'#de '! t+e &%ea(and '#nd#ng #nst(u&t#ons &onta#ned #n Judgment Ademagic et al. 201@4UNAT4@5A.

100. ,n summa(!) t+e #m$ugned de&#s#ons a(e un%a>fu% on se.e(a% a&&ounts) 'ut $(#ma(#%! on t+e fo%%o>#ng t>o;

a. T+e A$$%#&ants >e(e not &ons#de(ed #nd#.#dua%%! #n %#g+t of t+e#($(of#&#en&#es) :ua%#f#&at#ons) &om$eten&#es) &ondu&t and t(ansfe((a'%e sB#%%s< and

'. T+e de&#s#ons >e(e e9&%us#.e%! 'ased on t+e %#m#ted mandate of ,CT-) to t+e e9&%us#on of a%% ot+e((e%e.ant fa&to(s.

su&+ a >a! as to on%! +a.e one %ega%%! &o((e&t out&ome. T+#s #s not t+e &ase #n t+e a$$%#&at#on at +and.

108. T+e T(#'una% +as &on&%uded) $(e&#se%!) t+at t+e A3G/8567 +ad at no $o#nt &ondu&ted an #nd#.#dua%#sed (e.#e> of ea&+ of t+e 24* A$$%#&antsE &om$eten&#es and me(#ts. As a (esu%t) s+e +as not) to date) $ut ea&+ A$$%#&antEs #nd#.#dua% &om$eten&#es and me(#ts #n t+e 'a%an&e toget+e(>#t+ a%% ot+e((e%e.ant fa&to(s) #n&%ud#ng t+e ,CT-/7,CT o$e(at#ona% (ea%#t#es. Unt#% t+#s e9e(&#se +as 'een $(o$e(%! $e(fo(med) #ts out&ome (ema#ns o$en fo(ea&+ of t+e A$$%#&ants. ,f t+e T(#'una% >e(e to g(ant a%% of t+em a $e(manent a$$o#ntment) #t >ou%d 'e tantamount to $(e"udg#ng t+e out&ome of t+e#(#nd#.#dua% &ons#de(at#on fo(&on.e(s#on and su'st#tut#ng #ts (e.#e> to t+at of t+e 3e&(eta(!4Gene(a%) somet+#ng t+at t+e T(#'una% #s ne#t+e(a%%o>ed no($(e$a(ed to do.

10A. 6at+e() a>a(e t+at >#t+ t+e (es&#ss#on of t+e &ontested de&#s#ons) t+e

#nte($(etat#on of t+e g(ounds fo(a>a(d#ng mo(a% damages) and +e%d t+at a fundamenta% '(ea&+ of a staff mem'e(Es (#g+ts suff#&ed to "ust#f! su&+ an a>a(d >#t+out fu(t+e($(oof of +a(m.

11*. ,t #s) t+e(efo(e) not tena'%e to a(gue t+at a(t. 10.5 of t+e 3tatute) #n #ts .e(s#on $(#o(to t+e a'o.e4(efe(en&ed amendment) d#d not %ea.e (oom fo(g(ant#ng mo(a% damages 'ased on t+e so%e g(ound of a .#o%at#on of t+e (u%es.

117. =o(t+e (easons out%#ned a'o.e) #t fo%%o>s t+at t+e (e&ent amendment to a(t. 10.5 of t+e T(#'una%Es 3tatute #s not a$$%#&a'

120.

/%igned2
Judge T+omas LaBe(
Dated t+#s 17t+ da! of De&em'e(2015

?nte(ed #n t+e 6eg#ste(on t+#s 17t+ da! of De&em'e(2015
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6en0 7. Va(gas 7.) 6eg#st(a() Gene.a