

Case No.:

UNITED NATIONS DISPUTE TRIBUNAL

Introduction

1. The Applicant filed on 28 December 2014 the Appeal against a (retired staff member) of the International Civil Service Tribunal for the former Yugoslavia (ICTY) contests the Assistant Secretary-General for Human Resources Management (A2G/745601) decision of 17 June 2014 denying a promotion of the Applicant into a permanent appointment.

2. The Applicant's requests;

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g. An! ot*e((e#\$ef t*at t*e T(\$'una# deems ?ust and "(o"e(.

Facts

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4. ! memo(andum dated 20 6a! 1&&4 add(essed to t*e A%t\$ng 5eg\$st(a(of +CT,) t*e Unde(32e%(eta(!3Gene(a# ./U2G01 fo(Adm\$n\$st(at\$on and 6 anagement def\$ned t*e a((angements fo(t*e (e%(u\$tment and adm\$n\$st(at\$on of +CT, staff) and de#egated to t*e +CT, 5eg\$st(a(t*e aut*o(\$t! to a""o\$nt staff u" to t*e D31 #e-e# on 'e*a#f of t*e 2e%(eta(!3Gene(a#.

5. +n a%%o(dan%e 9\$t* t*e te(ms of t*e a'o-e3ment\$oned de#egat\$on of aut*o(\$t!) staff mem'e(s 9e(e (e%(u\$ted s"e%\$f\$a##! fo(se(-\$%e 9\$t* +CT, . T*e\$(#ette(s of a""o\$ntment "(o-\$ded t*at t*e\$(a""o\$ntments 9e(e /st(\$t#! #m\$ted to se(-\$%e 9\$t* B+CT, CO.

6. +n No-em'e(1&&5) ' ! 2e%(eta(!3Gene(a#>s 'u##et\$n 2T/2G /2@0 .2us"ens\$on of t*e g(ant\$ng of "e(manent and "(o'at\$ona(! a""o\$ntments!) t*e 2e%(eta(!3Gene(a# announ%ed *\$s de%\$s\$on) effe%t\$-e 1= No-em'e(1&&5) to sus"end t*e g(ant\$ng of "e(manent a""o\$ntments to s

7. The Tribunal, in its decision of 15 October 2014, dated 20 August 2014, found that the Council had acted in violation of article 10 of the Staff Regulations and Rules, and ordered the Council to take appropriate measures to remedy the situation (see paragraph 90 of the decision of 15 October 2014).

8. In June 2006, the Tribunal found that the Council had acted in violation of article 10 of the Staff Regulations and Rules, and ordered the Council to take appropriate measures to remedy the situation (see paragraph 105 of the decision of 15 October 2014).

12.

10. based on its (e-se9 of +CT , su 'm\$ss\$ons of 12 Ju#! and 16 August 2010)

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=7. +n 6 a! and June 2014) t*e (e#-ant Ne9, o(A C5 'od\$es (e-\$e9ed a## t*e f#\$es of t*e A""#\$%)ants. T*e C5 Comm\$tee .staff at t*e P32 to P34 #e-e#sl (eommented t*at none of t*e A""#\$%)ants 'e g(anted "e(manent a""o\$ntments) 9*(eas t*e C5 oad (eommented t*at n\$ne staff mem'e(s at t*e P35 and a 'o-e #e-e#) amongst 9*om 9as t*e A""#\$%)ant) 'e g(anted a "e(manent a""o\$ntment not #m\$ted to +CT, .

=@. Afte(t*e C5 'od\$es> (eommentat\$on) t*e A2G/7 4 5 6 %ons\$de(ed 9*et*(e(o(not to g(ant t*e A""#\$%)ant %on-esson to a "e(manent a""o\$ntment. +n do\$ng so) t*e ent\$(e g(ou" of +CT, staff mem'e(s t*at 9as (eons\$de(ed fo(%on-esson "u(suant to t*e d\$(e)t\$ons of t*e A""ea#s T(\$'una# 9as d\$-\$ded \$n s\$8 g(ou"s of staff %ons\$de(ed to 'e \$n s\$m\$#a(s\$tuat\$ons \$n te(ms of em"#o!ment status) to 9\$t;

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UNDT/GVA/2014/116

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assessments) as a result of the Geneva Assembly and C2C) you should not
have been selected for granting the Applicant a permanent assessment

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Consideration

Preliminary matter

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a. ICT, staff member(s) appointed to full and full (onsideration of the suitability for promotion to permanent appointment." (a. 22 and at "age 22 :oting "(as. 66 and 67 of Judgment Malmström et al. 2013UNAT3=571)

'. The promotion exercise was intended for retroactive consideration of the suitability of the Applicant." (a. 22)

%. The date to be determined for a permanent appointment was assigned to an individual and (considered assessment) of to the full and full (onsideration at "age 22 :oting "(as. 66 and 67 of Judgment Malmström et al. 2013UNAT3=571) and (doing so) (reasonable consideration) had to be given to ICT, staff member(s) demonstrating the "proficiencies" competencies and transferrable skills (including the suitability for (achieving) the (conditions) of the (position) at "age 22 :oting "(a. 72 of Judgment Malmström et al. 2013UNAT3=571) and

d. The A2G/7456 was not appointed to (either) on the (first) mandate of the ICT, (H) (B) (C) (D) (E) (F) (G) (H) (I) (J) (K) (L) (M) (N) (O) (P) (Q) (R) (S) (T) (U) (V) (W) (X) (Y) (Z) (AA) (AB) (AC) (AD) (AE) (AF) (AG) (AH) (AI) (AJ) (AK) (AL) (AM) (AN) (AO) (AP) (AQ) (AR) (AS) (AT) (AU) (AV) (AW) (AX) (AY) (AZ) (BA) (BB) (BC) (BD) (BE) (BF) (BG) (BH) (BI) (BJ) (BK) (BL) (BM) (BN) (BO) (BP) (BQ) (BR) (BS) (BT) (BU) (BV) (BW) (BX) (BY) (BZ) (CA) (CB) (CC) (CD) (CE) (CF) (CG) (CH) (CI) (CJ) (CK) (CL) (CM) (CN) (CO) (CP) (CQ) (CR) (CS) (CT) (CU) (CV) (CW) (CX) (CY) (CZ) (DA) (DB) (DC) (DD) (DE) (DF) (DG) (DH) (DI) (DJ) (DK) (DL) (DM) (DN) (DO) (DP) (DQ) (DR) (DS) (DT) (DU) (DV) (DW) (DX) (DY) (DZ) (EA) (EB) (EC) (ED) (EE) (EF) (EG) (EH) (EI) (EJ) (EK) (EL) (EM) (EN) (EO) (EP) (EQ) (ER) (ES) (ET) (EU) (EV) (EW) (EX) (EY) (EZ) (FA) (FB) (FC) (FD) (FE) (FF) (FG) (FH) (FI) (FJ) (FK) (FL) (FM) (FN) (FO) (FP) (FQ) (FR) (FS) (FT) (FU) (FV) (FW) (FX) (FY) (FZ) (GA) (GB) (GC) (GD) (GE) (GF) (GG) 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one) made ' ! t*e A2G/7 4 5 6 \$n June 2014. T*\$s s"e%\$f\$% de%\$\$son \$s t*us t*e su' ?e%t of t*e T(\$' una#>s s%(ut\$!n!) not*\$ng mo(e and not*\$ng #ess.

54. T*\$s adm\$nst(at\$-e de%\$\$son must and does s"eaA fo(\$tse#. +n "a(t\$u#a() t*e "(e-\$ous (efusa#s of %on-e(\$son of t*e A ""#\$%ant>s a""o\$ntment \$n t*e fa## of 2011) a#t*oug* fa%tua## ! (e#ated) \$s 'e!ond t*e s%o"e of (e-\$e9 of t*\$s a""#\$%at\$on) as a(e an! post facto e8"#anat\$ons of t*e de%\$\$son at \$ssue. T*(e(fo(e) t*e fo%us of t*e T(\$' una#>s (e-\$e9 9 \$## 'e on as%e(ta\$ng 9*et*e(t*e \$m"ugned de%\$\$son) as \$t \$s %ou%*ed \$n t*e 17 June 2014 #ette(sent to t*e A ""#\$%ant) 9as made \$n %onfo(m\$t! 9\$t* t*e d\$(e)t\$ons g\$-en ' ! t*e A""ea#s T(\$' una# \$n Judgment Ademagic et al.

Substantive legality of the decision

2. Nature of the decision

57.

a. Com" #et\$on of f\$-e !ea(s of %ont\$nuous se(-\$%e on f\$8ed3te(m a""o\$ntments. +n fa%t) unde(t*\$s \$tem) t*\$e #ette(of t*\$e A2G/7 4 5 6 a#so add(esses 9*et*e(t*\$s (e:u\$(ement 9as met at t*\$e t\$me t*\$e A ""#\$%ant 9as unde(t*\$e age of 5=<

'. Demonst(at\$on of t*\$e *\$g*est standa(ds of eff\$%\$en%!) %om"eten%e and \$nteg(\$t! esta '#\$s*ed \$n t*\$e C*a(te<

%. Demonst(at\$on ' ! :ua#\$f\$%at\$ons) "e(fo(man%e and %ondu%t of su\$ta '\$\$t! as \$nte(nat\$ona# %\$-\$# se(-ants< and

d. Dete(m\$nat\$on t*at t*\$e g(ant\$ng of a "e(manent a""o\$ntment \$\$ \$n a%%o(dan%e 9\$t* t*\$e \$nte(ests of t*\$e 7(gan\$Dat\$on.

61. +n sum) %(\$te(\$on .al a'o-e en%om"asses t*\$e t9o eligibility %ond\$t\$ons s"e%\$f\$ed \$n se%. 1 of 2T/2G /200&/10G \$.e.) f\$-e !ea(s of %ont\$nu\$ng se(-\$%e on f\$8ed3te(m a""o\$ntments (ea%*ed 'efo(e t*\$e age of 5=G 9*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.

62. 2o st(u%tu(ed) t*\$e #ent

Case No.

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(et(ost"e%t\$-e#! \$s not suff\$%\$ent to meet 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 (e3 %ons\$de(at\$on e8e(%\$se oug*t to \$n%#ude ne9 %\$(%umstan%es t*at 9e(e on#! Ano9n 9*en t*e ne9 de%\$s\$on 9as (ea%*ed) \$.e.) m\$d3June 2014) and not 'e #m\$ted to t*ose Ano9n at t*e t\$me of t*e \$n\$t\$a# %on-e(s\$on e8e(%\$se.

6@. 2u%* an \$nte("etat\$on 9ou#d de-o\$d of an! mean\$ng t*e te(m /(et(oa%t\$-e0) t*at t*e A""ea#s T(\$'una# %ons%\$ous#! and "u("osefu##! %*ose to use. +n add\$on Judgment Ademagic et al. 201=3UNAT3=5& states t*at t*e ent\$t#ement to (e%e\$-e a "(o"e(su\$ta'\$#\$t! dete(m\$nat\$on fo((et(oa%t\$-e %on-e(s\$on) /a""#ses e:ua##! to an! #t\$gant staff mem'e(s 9*o 9e(e "a(t of t*e o(\$g\$na# %on-e(s\$on e8e(%\$se at \$ssue) 'ut *a-e s\$ne #eft t*e se(-\$%e of +CT, 0< t*\$s fu(t

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+CT ,) to a d\$ffe(ent ent\$t! on t*e 'as\$ of t*e a 'o-e3(efe(en%ed "(o-\$s\$on \$f t*e\$(
"osts 9e(e to 'e a 'o#\$s*ed.

@2. +n an! e-ent) "a(a. 10 of t*e Gu\$de#s\$nes "(o-\$des;

K*e(e t*e a""o\$ntment of a staff mem'e(\$s #s\$nted 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\$ms#a(#! #s\$nted 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-\$e9 ' ! a %ent(a# (e-\$e9 'od! fo("os\$t\$ons e#se9*(e
\$n t*e Un\$ted Nat\$ons 2e%(eta(\$at) t*e #s\$ntat\$on \$s (emo-ed.

@=. G\$-en t*e use of t*e 9o(d /ma!0) \$t \$s t*e T(\$'una#>s -\$e9 t*at t*\$s
"(o-\$s\$on a##o9s) 'ut does not o'#sge) t*e Adm\$n\$st(at\$on G 9*en %on-e(t\$ng a
f\$8ed3te(m a""o\$ntment #s\$nted to a %e(ta\$n off\$e/de"a(tment G to t(ansfe(su*
%ont(a%tua# #s\$ntat\$on to t*e .ne9#! g(anted! "e(manent a""o\$ntment. Nest*(e(t*e
Gu\$de#s\$nes no(ot*(e(a""#\$a'#e (u#es "(o*\$'\$t t*e g(ant\$ng of a non3#s\$nted
"e(manent %ont(a%t u"on %on-e(s\$on of a #s\$nted f\$8ed3te(m a""o\$ntment. +t
fo##o9s t*at "a(a. 10 of t*e Gu\$de#s\$nes %annot 'e \$nte("eted as to mean t*at fo(a
staff mem'e(9*o "(e-\$ous#! *e#d a #s\$nted f\$8ed3te(m a""o\$ntment t*e on#!
"oss\$'#\$t! to (e)e\$-e a "e(manent a""o\$ntment \$s t*at t*e #atte('e su'?'e%t to t*e
same #s\$ntat\$on. +f \$t 9e(e mandato(! to e:ua##! #s\$nt t*e "e(manent a""o\$ntment
to sa\$d de"a(tment/off\$e u"on %on-e(s\$on) t*e Gu\$de#s\$nes 9ou#d and s*ou#d *a-e
e8"#\$%t#! stated same.

@4. 4en%e) a#t*oug* t*e A""#\$%ant>s f\$8ed3te(m a""o\$ntment 9as #s\$nted to
+CT ,) t*e A2G/7 4 5 6 %ou#d *a-e e#e%ted to g(ant *(e(a "e(manent %ont(a%t not
#s\$nted to se(-\$e 9\$t* +CT , /6 +CT) and 9ou#d *a-e t*en 'een f(ee to (eass\$gn
*(e(9\$t*out an! \$m"ed\$ment.

@5. T*e #s\$ntat\$on of se(-\$e to +CT , /6 +CT 9as t*(e(fo(e \$n%o((e%t#! asse(ted
to 'e an o'sta%#e to t*e A""#\$%ant>s (eass\$gnment and) u#t\$mate#!) to t*e
%on-e(s\$on of *(e(a""o\$ntment to "e(manent.

&0. Against the 'a' ground the Tribunal tends to affirm the Administrative Commission's decision that the State mandate of ICT, as well as of ICT) is a factor that can be considered in determining on the one hand of the Applicant's commitment to the environment. 409e-e) although it is a matter to be adequately

*remedies

4. Article 10.5 of the Statute defines the Tribunal's functions regarding the award of remedies accordingly;

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Judgment No. UNDT/2015/117

101. The T(\$'una# *as %on%#uded) "(e%\$se#!) t*at t*e A2G/7 4 5 6 *ad at no "o\$nt

Case No. UNDT/GVA/2014/116

Judgment No. UNDT/2015/117

112. For the reasons outlined above, it follows that the relevant amendment to

Insitution of (e)ntson of a (e#e-ant "(o%edu(e /B"C(\$o(to t*e dete(m\$nat\$on of t*e me(\$ts of a %ase0 ' ! t*e T(\$'una#) 9*e(eas t*e matte(at *and) :u\$te to t*e o""os\$te) 9as de%\$ded u"on ' ! ?udgment \$n f\$(st \$nstan%e) and e-en) on a""ea#) ' ! t*e A""ea#s T(\$'una# \$n t*e afo(ement\$oned Judgment No. 201=3UNAT3=5&.

Inte(ed \$n t*e 5eg\$ste(on t*s 17^{t*} da! of De%em 'e(2015

.&igned!

5enN 6. Va(gas 6.) 5eg\$st(a() Gene-a