



## Introduction

1. On 16 April 2012, 262 Applicants, staff members and former staff





human resources officers in ICTY are considering candidacies of staff members

[was] not in the position to endorse ICTY's recommendation for the granting of permanent appointment", as ICTY was "a downsizing entity and [was] expected to close by 2014 as set out in the latest report on the completion strategy of the

24. By memorandum dated 20 September 2011, the Assistant Secretary-General for Human Resources Management informed the ICTY Registrar that:

Pursuant to my authority under section 3.6 of ST/SGB/2009/10, I have decided in due consideration of all circumstances, giving full and fair consideration to the cases in question and taking into account all the interests of the Organization, that it is in the best interest of the Organization to ... accept the CRB's endorsement of the recommendation by OHRM on the non-suitability [for conversion of ICTY staff].

25. By letters dated 6 October 2011, the ICTY Registrar informed each of the Applicants of the decision of the Assistant Secretary-General for Human Resources Management not to grant them a permanent appointment. The letter stated that:

This decision was taken after review of your case, taking into account all the interests of the Organization and was based on the operational realities of the Organization, particularly the downsizing of ICTY following the Security Council Resolution 1503 (2003).

26. On 5 December 2011, the Applicants requested management evaluation of the above-mentioned decision.

27. By letters dated 17 January 2012, the Under-Secretary-General for Management informed each of the Applicants that the Secretary-General had decided to uphold the decision not to grant him/her a permanent appointment.

28. On 16 April 2012, the Applicants filed the applications which form the subject of the present Judgment.

29. On 19 April 2012, the Applicants filed a motion for consolidation of their individual cases.

30. By Order No. 80 (GVA/2012) dated 4 May 2012, the Tribunal decided to consolidate into one case and hear together the 262 individual applications. It further ordered Counsel for the Applicants to file a number of documents that were missing in the individual applications and it instructed the Respondent to submit his reply to the consolidated case by 4 June 2012.







d. The Assistant Secretary-General for Human Resources Management unlawfully pins its unequal treatment of

ICTY staff and advised the Assistant Secretary-General for Human Resources Management, as they did not have members nominated by the New York staff representative body.

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- d. As the mandate of ICTY does not form part of a core function of



m. OHRM and the New York CR bodies were the appropriate review bodies under, respectively, sections 3.2 and 3.5(c) of ST/SGB/2009/10. As section 3.5(c) does not refer to the ICTY duty station, The Hague, it was appropriate to refer the Applicant's case to the New York CR bodies. This decision is consistent with the limited delegation of authority of ICTY and the advisory nature of the CR bodies. The ICTY CR body is inherently limited to advising the ICTY Registrar on matters over which it has discretionary authority. The ICTY Registrar was not granted discretionary authority to grant permanent appointments. The Assistant Secretary-General for Human Resources Management retained this authority. Accordingly, the appropriate review body for reviewing recommendations for the conversion of ICTY staff was the body advising her on such cases;

n. The CR bodies were properly constituted, even without staff representatives, pursuant to section 3.2 of ST/SGB/2002/6. The Applicants put forward no evidence or credible legal argument in support of their

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establish boards whose composition and functions are generally comparable to those of the Appointment and Promotion Board to advise them in the case of staff members recruited specifically for service with those programmes, funds or subsidiary organs;

...

46. The Secretary-General's bulletin ST/SGB/2009/10 (Consideration for conversion to permanent appointment of staff members of the Secretariat eligible to be considered by 30 June 2009) was issued on 23 June 2009 and entered into force on 26 June 2009, prior to the abolition of permanent appointments. It provides in its relevant parts:

The Secretary-General, for the purposes of implementing staff rules 104.12(b)(iii) and 104.13 on consideration of staff members for permanent appointments who have become or will become eligible for such consideration by 30 June 2009, hereby promulgates the following:

...

#### Section 2

##### Criteria for granting permanent appointments

In accordance with staff rules 104.12(b)(iii) and 104.13, a permanent appointment may be granted, taking into account all the interests of the Organization, to eligible staff members who, by their qualifications, performance and conduct, have fully demonstrated their suitability as international civil servants and have shown that they meet the highest standards of efficiency, competence and integrity established in the Charter.

#### Section 3

##### Procedure for making recommendations on permanent appointments

3.1 Every eligible staff member shall be reviewed by the department or office where he or she currently serves to ascertain whether the criteria specified in section 2 above are met. Recommendations regarding whether to grant a permanent appointment shall be submitted to the Assistant Secretary-General for Human Resources Management.

3.2 A similar review shall also be conducted by the Office of Human Resources Management or the local human resources office.

3.3 In order to facilitate the process of conversion to permanent appointment under the present bulletin, recommendations to grant a permanent appointment that have the joint support of the department or office concerned and of the Office of Human Resources Management or local human resources office shall be submitted to the Secretary-General for approval and decision in



respect of D-2 staff, and to the Assistant Secretary-General for Human Resources Management for all other staff.

3.4 In the absence of joint support for conversion to permanent appointment ... the matter shall be submitted for review to the appropriate advisory body designated under section 3.5 below ...

...

3.6 The recommendations of the advisory body shall be submitted to the Secretary-General for decision in respect of staff at the D-2 level. Recommendations in respect of all other staff members shall be submitted for decision to the Assistant Secretary-General for Human Resources Management.

47. Finally, in line with the above-quoted staff rule 104.14(a)(i), by memorandum dated 20 May 1994 addressed to the Acting Registrar of ICTY, the Under-Secretary-General for Administration and Management delegated authority to the ICTY Registrar for the “recruitment and administration of staff”. The memorandum relevantly provides:

1. Consistent with the desire of the Security Council to establish a fully independent judicial body, as a subsidiary organ of the Security Council, the Statute of [ICTY] provides ... that the staff

7. For reasons of economy and practicality ... the Office of Human Resources Management at Headquarters will advise and assist you in such matters as ... interpretation of personnel policies, issuance of vacancy announcements should you so request ...

8. The administrative bodies established by the Secretary-General to advise him on staff matters, such as the Joint Appeals Board, the Joint Disciplinary Committee, and the Advisory Board on Compensation Claims, will have jurisdiction as regards staff serving with the Tribunal. The Secretary-General reserves his right to interpret the Staff Rules, and to take final decisions in appeals, disciplinary cases and compensation cases under Appendix D.

48. The cover memorandum dated 24 May 1994 from the Director of Personnel transmitting the above-quoted delegation of authority to the Acting Registrar of ICTY further states:

1. Please find attached a delegation of authority from the Under-Secretary-General, Department of Administration and Management, to you ,





60. The sentence “appointments should initially be made on a short or fixed-term basis, not exceeding one year” cannot be interpreted as limiting the

interpretation to apply to the situation present during the review exercise in 2009[,] some 15 years later”. Those “relevant subsequent developments” were, according to the OHRM Report, the Secretary-General’s bulletins ST/SGB/280 of 9 November 1995 (Suspension of the granting of permanent and probationary



would force the Secretary-General to implement the order for rescission [was] without any foundation” and that “compensation must be set by the UNDT following a principled approach and on a case-by-case basis” (see also Fradin de Bellabre 2012-UNAT-212).

73. In setting the appropriate amount of compensation in this case, the Tribunal must take into account the nature of the irregularity which led to the rescission, that is, a procedural irregularity as opposed to a substantive one, as well as the prohibition on the award of exemplary or punitive damages set out in article 10.7 of its Statute.

74. Further, it must bear in mind that staff members eligible for conversion have no right to the granting of a permanent appointment but only that to be considered for conversion. The outcome of such consideration is a discretionary decision and in its discretion, the Administration is bound to take into account “all the interests of the Organization” (see former staff rule 104.12(b) and section 2 of ST/SGB/2009/10), as well as “the operational realities” of the Organization (see General Assembly resolution 51/226). As already pointed out, it is established case law that the Tribunal, in conducting its judicial review, may not lightly interfere with the exercise of administrative discretion, nor substitute its judgment for that of the Secretary-General.

75. In light of the foregoing, the Tribunal sets at EUR2,000 the amount of compensation that the Respondent may elect to pay to each Applicant as an alternative to the rescission.

#### Other compensation

76. The Applicants have sought compensation under article 10.5(b) of the Tribunal’s Statute, for moral and/or material damages. As held by the Appeals Tribunal, “not every violation will necessarily lead to an award of compensation” (Kasyanov 2010-UNAT-076). In this case, the Tribunal considers that it would be highly speculative



77. Accordingly, the Applicants' claims for compensatio