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Case No.: UNDT/GVA/2012/051

Judgment No.: UNDT/2012/141

Date: 24 September 2012

English

## Introduction

1. The Applicant contests the decision of 17 January 2012 by which the United Nations High Commissioner for Refugees (“the High Commissioner”) modified her appointment so that it was no longer of indefinite duration.

2. She requests that the Tribunal rescind the contested decision and order the Respondent to grant her an indefinite appointment. In the alternative, she requests compensation equivalent to several months of her net salary. She also requests compensation equivalent to six months’ net salary for the moral damage incurred.

## Facts

3. The Applicant was recruited locally by the Office of the United Nations High Commissioner for Refugees (“UNHCR”) in Dublin, Ireland, in January 2002 as an Administrative Secretary, at the G-4 level. In March 2002, she was granted an indefinite contract. She was appointed to the post of Administrative/Finance Assistant, at the G-6 level, in January 2006. With effect from January 2007, the Applicant, who up until then held grade G-5, was promoted to the G-6 level.

4. By an email dated 23 June 2009, the Director of the Division of Human Resources Management (“DHRM”) informed the staff of UNHCR that, in view of the contractual arrangements resulting from the new Staff Regulations and Rules and in order to protect staff members’ acquired rights, the UNHCR would conduct a one-time review of staff members eligible for conversion from fixed-term to indefinite appointments.

5. On 1 July 2009, the provisional Staff Regulations and Rules entered into force.

6. On 21 July 2009, the Applicant was informed that she had been selected for an Administrative/Programme Assistant post, at the G-6 level, in the UNHCR Regional Office in Brussels, Belgium.



13. By an email dated 17 January 2012, the Personnel Ad



Translated from French

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c. Even if the letter of appointment could have led the Applicant to entertain certain hopes, it is null and void. Moreover, the letter of appointment did not induce the Applicant to undertake or refrain from undertaking any action that could have affected her rights, and it is therefore possible for the Administration to rectify its mistake by regularizing the Applicant's situation;

d. It is illogical to consider the candidacy of a staff member for an appointment that he or she already holds. Furthermore, even if an indefinite appointment had been granted to the Applicant retroactively







procedure whereby a staff member may request a management evaluation of an administrative decision that could confer rights upon a third party. Not only does this provision permit the Administration to reverse an administrative decision that it considers unlawful, it actually requires that the Administration do so.

29. Thus, for example, when the selection of a staff member for a post, a decision that confers rights upon that person, is contested by another staff member who submits a management evaluation request, the Administration must retract the decision if, upon re-examination, it deems it unlawful, even though the decision conferred rights upon the staff member selected. Moreover, this is the objective sought by the management evaluation process: to enable the Administration to reconsider its unlawful decisions without the need for recourse to the Tribunal. However, in order to guarantee legal certainty, very tight deadlines are se  
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unwarranted in cases where the Administration is reconsidering its decision on its own motion.

31. It follows from the above that the High Commissioner missed the prescribed deadline of 90 days when, on 17 January 2012, he rescinded the decision he had taken on 12 October 2011. While there is therefore no need to rule on the legality of the decision of 12 October 2011, the decision of 17 January 2012 should be rescinded.

32. Given that the effect of rescinding the decision, as noted above, is that the decision of 12 October 2011 is once again in effect, the Applicant has suffered no material damage.

33. The Applicant's moral damage consists solely of her disappointment with the Administration's unlawful retraction of a decision that was favourable to her, and, on this basis, she should be granted compensation in the amount of EUR1,000.

#### Conclusion

34. In view of the foregoing, the Tribunal DECIDES:

- a. The decision of 17 January 2012 is rescinded;
- b. The Respondent shall pay the Applicant compensation in the amount of EUR1,000;
- c. The aforementioned compensation shall bear interest at the US prime rate with effect from the date on which this Judgment becomes executable, plus five per cent 60 days from the date on which this Judgment becomes executable until payment of the said compensation.

(Signed)

Judge Jean-François Cousin

Entered in the Register on this 24<sup>th</sup> day of September 2012