



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/GVA/2010/022  
(UNAT 1609)  
Judgment No.: UNDT/2011/039  
Date: 25 February 2011  
English  
Original: French

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**Before:** Judge Jean-François Cousin

**Registry:** Geneva

**Registrar:** Víctor Rodríguez

LIVERAKOS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**  
George G. Irving

**Counsel for Respondent:**  
Adele Grant, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant contests the decision not to renew beyond 31 December 2005 his appointment under series 200 of the Staff Rules as Chief Technical Adviser for the United Nations Thessaloniki Centre for Public Service Professionalism (“UNTC”).

2. He seeks reinstatement to the post he occupied, compensation for damage suffered, and an award against the Respondent of USD10,500 for the costs of the proceedings.

3. The case, which was pending before the former UN Administrative Tribunal, was transferred to the United Nations Dispute Tribunal on 1 January 2010 pursuant to the transitional measures set forth in General Assembly resolution 63/253.

## **Facts**

4. Between June 2003 and March 2004, before the Applicant was hired, the Office of Internal Oversight Services (“OIOS”) conducted an audit of UNTC. The Centre was part of the Division for Public Administration and Development Management (“DPADM”), Department of Economic and Social Affairs (“DESA”), and was financed from contributions by the Greek Government to a trust fund.

5. The final audit report, submitted in August 2004, described the management by DESA of the Centre’s project as unsatisfactory, stating that it was especially concerned by the seeming reluctance of DESA to establish responsibility of its managers for inadequate monitoring of the project’s activities, and recommended, among other things, that DESA provide the Greek Government with regular reports on the completion of tasks and the Centre’s finances. Lastly, OIOS highlighted the lack of monitoring of the performance of the employees and partners.

6. The Applicant was recruited as Chief Technical Adviser for UNTC by DESA under the 200 series with effect from 11 October 2004. His contract was extended to 31 December 2005.

7. After numerous of attempts by the Greek authorities to obtain details of the use being made of the funds provided to the Centre, on 16 September 2005, the Greek Minister of Interior, Public Administration and Decentralisation (“Minister of Interior”) made a written request to the Director, DPADM, for an external audit of the Centre’s accounts; that audit was made a precondition of discussion of Greece’s financing of UNTC under the next five-year plan (2006-2010).

8. By letter of 5 December 2005 to the Minister of Interior, the Director, DPADM, declined to hold an audit and pointed out that, given the uncertainty about future financing and the fact that only one month remained before the project came to an end, DPADM had to be prepared for the possibility that the project be not extended. He added that the Applicant’s appointment, which was to expire at the end of 2005, would, as a result, not be renewed, while the Centre’s three other staff members would be maintained in their posts until their appointments expired on 31 March 2006, stating that there were only sufficient reserves in the trust fund to pay their salaries up to the end of March 2006.

9. By letter also dated 5 December 2005, which the Applicant maintains he received on 9 December 2005, the Director, DPADM, forwarded to the Applicant a copy of the letter to the Minister of Interior.

10. On 16 December 2005, the Minister of Interior asked the Director, DPADM for accounts showing how the funds were managed.

11. The Applicant’s appointment came to an end on 31 December 2005.

12. On 18 January and 27 February 2006, the Applicant wrote to the Under-Secretary-General, Office of Internal Oversight Services, to protest against the timing and manner of his separation.

13. On 29 March, 5 April and 19 May 2006, the Applicant wrote to the Assistant Secretary-General for Human Resources. On 17 May 2006, he submitted a request for review to the Under-Secretary-General for Management.

14. On 22 May 2006, OIOS informed the Applicant that an audit of UNTC would take place.

15. On 21 July 2006, the Applicant wrote to the Office of Human Resources Management (“OHRM”), United Nations Secretariat, informing it that OIOS had received a performance evaluation report on him dated 16 January 2006, of which he had had no knowledge.

16. On 21 August 2006, the Applicant filed an incomplete statement of appeal with the New York Joint Appeals Board (“JAB”), followed, on 28 September 2008, by a complete appeal.

17. UNTC was closed on 31 October 2006.

18. On 23 February 2007, OIOS sent an audit report to the Under-Secretary-General for Economic and Social Affairs, pointing out major weaknesses in the management of the Centre’s human resources and the attainment of its agreed objectives. The report furthermore emphasised that DESA had rejected all the recommendations made by OIOS in its preliminary report.

19. The JAB adopted its report on the Applicant’s appeal on 5 December 2007, and on 29 February 2008 the Deputy Secretary-General notified the Applicant of the decision to follow the JAB’s recommendation and reject his appeal.

20. On 1 July 2008, the Applicant submitted his application to the former UN Administrative Tribunal. The case was transferred to the United Nations Dispute Tribunal on 1 January 2010, pursuant to General Assembly resolution 63/253.

21. The parties were informed by letter of 23 April 2010 that the Judge assigned to the case intended to decide by summary judgment under article 9 of the Rules of Procedure, which meant that there would be no hearing. Neither of them raised objections.

**Parties' contentions**

22. The Applicant's principal contentions are:

a. The reason given by the Administration for refusing to renew his contract was false, the real reason being retaliation against him for not having opposed the repeated demands of the Greek Government for accountability by the managers of the Centre. While the decision whether or not to renew a fixed-term appointment is a matter for the discretionary power of the Secretary-General, such power may not be abused, as for instance where such a decision is based on unlawful grounds. Moreover, the mere fact that false reasons were given is enough to render the Organization liable;

b. The non-renewal of his appointment was the result of the maladministration at UNTC. Malpractices had not been remedied despite the two OIOS audit reports;

c. The statement by the Director, DPADM, that there was only enough left in the trust fund to cover the salaries of staff until 31 March 2006 was false, as the Centre remained open until November 2006. The advertisement of a vacancy announcement to recruit another Chief Technical Adviser is evidence of this. The behaviour of the Organization after the Applicant left shows that the true intention of the Director, DPADM, was to keep the Centre open without the Applicant, instead placing at its head an employee perceived as more loyal to the Director;

d. The contested decision was taken without notice and was prejudicial to the proper functioning of the service. The Applicant was entitled to be treated fairly and with due respect for the principle of good faith;

e. He could have a legitimate expectation that his contract would be renewed because, two months before its expiration date, he was asked to

work on an 18-month plan for the Centre, and prepare a major regional conference to take place in March 2006;

f. Proof of irregularities can be found in the production, after his departure, of a performance evaluation for him dated 16 January 2006, drawn up in breach of the rules;

g. The decision challenged was not motivated by the financial state of the Centre, which remained open for almost a further year, and which the Greek Government did not want to close but was prepared to continue financing;

h. The non-renewal of his contract without any notice has caused him moral prejudice for which he must be compensated.

23. The Respondent's principal contentions are:

a. The Applicant had no right, under staff rule 204.3(d) in force at the time of the facts, to have his contract renewed, as it was a 200 series contract. Staff members recruited under such contracts do not have the same guarantees as those with 100 series contracts;

b. Staff rule 209.2(c) in that series provides that the contract expires automatically without prior notice;

c. It is up to the Applicant to prove that the reason given by the Administration for not renewing his contract is incorrect, or that there has been an abuse of power, which he has failed to do. On the contrary, the record shows not only that the financing of UNTC was no longer assured at the end of 2005, but also that relations between DESA and the Greek Government were strained. The Applicant therefore could have no legitimate expectation that his contract would be renewed. The reason for the decision not to renew the contract was the planned closure of UNTC, which was an exercise of discretionary management power, and it was not for the staff member to assess the opportunity of such measure;

d. If UNTC remained open beyond March and then April 2006, this was at the insistence of the Greek Government. The Applicant made his allegations of mismanagement only after he learned of the decision not to renew his contract. The contested decision could not, therefore, have been taken as a retaliatory measure;

e. There is no connection between the Applicant's performance evaluation in 2006 and his departure in 2005. The Applicant was asked on 14 February 2005 to complete a standard performance evaluation form, and, if he had not delayed in doing so, the report would have been finalised before his departure. The Applicant had not drawn up his work plan, as he had been repeatedly asked to do. DESA therefore gave him a written evaluation;

f. The Applicant is not entitled to recover his legal costs.

### **Consideration**

24. In seeking to contest the decision refusing to renew his appointment, the Applicant complains, first, that by informing him approximately one month in advance, the Administration failed to give him adequate notice of its decision.

25. According to the applicable staff rule 204.3(a):

(i) Temporary appointments shall be for a fixed term and shall expire without notice on the date specified in the respective letter of appointment.

...

(iv) A temporary appointment does not carry with it any expectancy of renewal.

26. According to former staff rule 209.2(c) of that series:

A separation as a result of expiration of a fixed-term appointment shall take place automatically and without prior notice on the expiration date specified in the letter of appointment.

27. The Applicant cannot, therefore, maintain that the decision not to renew his appointment is unlawful on the grounds that it was taken without adequate notice.

28. In contesting the refusal to renew his appointment, the Applicant moreover contends that the reason given by the Administration is false, and that the real reason was the desire of the Director, DPADM, to be rid of him because he had criticised the mismanagement of the Centre.

29. It is not disputed that the Centre for which the Applicant had been recruited as Chief Technical Adviser was not funded by the Organization but from a trust fund financed by the Greek Government. The documents on the record also show that at 5 December 2005, the date on which the Applicant was informed that his contract would not be renewed, it was not certain that the Centre would be funded for the year 2006 and no agreement had been reached on the programme of work between the Greek Government and DESA. It follows that the reason given by the Administration for non-renewal of the Applicant's contract, namely the strong likelihood that there would be no funding for 2006, and thus no possibility of paying the salaries of the staff, is borne out by the record.

30. The Applicant disputes the genuineness of the Administration's reason, stating that while the Centre was to have closed in March 2006 for lack of financing, it in fact remained open until November 2006, and that his former post was advertised on 28 February 2006; those circumstances, however, arose after the disputed decision, and do nothing to contradict the validity of the Administration's reason, based on the forecast, made in December 2005, that the Centre would not be funded after March 2006, the more so because no appointment was ever made to the said post.

31. The Applicant's argument that the importance of his post was such that he should have been the last, not the first, to be discharged is not one the Tribunal can entertain, as it is not for the Tribunal to decide, once the Administration decides to close one of its services, the order in which the staff members will be affected.



32. While the Applicant maintains that the closure of the Centre, and thus the decision not to renew his contract, are the result of mismanagement by DESA, which mismanagement is clear from the record, so damaging were its consequences for the situation of the staff members, the Tribunal must limit its examination to the question whether the planned closure of the Centre was the real reason for the non-renewal, and not to the issue of responsibility for that closure.

33. Even assuming that the Applicant's performance evaluation dated January 2006 was not carried out by his supervisors before the end of his appointment, that fact has no bearing on the refusal to renew the Applicant's contract, as poor performance was not given as a ground for that refusal.

34. Lastly, there is nothing in the record to corroborate the Applicant's allegations that the decision not to renew his contract was a retaliatory measure for having criticised the way DESA managed the Centre.

35. It follows from all of the foregoing that the application must be dismissed.

### **Conclusion**

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

The application is dismissed.

*(Signed)*

Judge Jean-François Cousin

Dated this 25<sup>th</sup> day of February 2011

Entered in the Register on this 25<sup>th</sup> day of February 2011

*(Signed)*

Victor Rodríguez, Registrar, Geneva