



**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** René M. Vargas M.

GEHR

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**SUMMARY JUDGMENT**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**

## **Introduction**

1. On 27 June 2012, the Applicant, a former staff member of the United Nations Office on Drugs and Crime (“UNODC”), filed with the Tribunal an application in which he challenged the “decision not to proceed with [the] rebuttal” process in relation to his performance appraisal for the period from 1 April to 31 December 2011 (“2011 performance appraisal”).

2. He asks the Tribunal to award him compensation for the violation of his due process rights and the moral injury he suffered. He also seeks compensation for the Administration’s failure to protect him from his reporting officer’s “unfair dealings”. He further asks the Tribunal to order that all adverse material be expunged from his official status file. Lastly, he asks that the case of several named UNODC staff members be referred to the Secretary-General for possible action to enforce accountability.

## **Facts**

3. The Applicant joined UNODC in 2002. With effect from 1 November 2007, he was appointed in the Terrorism Prevention Branch within the Division of Treaty Affairs (“DTA”). He was given several contract extensions, the last of which was for a period of 11 months until 31 December 2011, when he was separated from service.

4. On 3 January 2012, the Director of DTA signed off on the Applicant’s 2011 performance appraisal as both his first and second reporting officer.

5. On 15 January 2012, the Applicant submitted a rebuttal statement to the Director of the Division for Management of UNODC and, while challenging several aspects in relation to the performance appraisal and rebuttal process, he indicated the names of the three D-1 staff members whom he had selected to serve on the rebuttal panel.

6. On 3 February 2012, the Chief of the Human Resources Management Service (“HRMS”) of UNODC wrote to the Applicant, noting that the Director of

DTA held grade D-2 and that, according to section 15 of administrative instruction ST/AI/2010/5 (Performance Management and Development System), the rebuttal panel members had to be equal in grade or higher than the reporting officer whose evaluation was being rebutted. He further noted that there was only one individual on the UNODC list of rebuttal panel members whose grade was D-2 and none at a higher level, and he explained that guidance was being sought from the United Nations Secretariat Headquarters in New York as to how to proceed.

7. Further correspondence ensued and, under cover of an email of 19 April 2012, the Applicant received a new list of rebuttal panel members, and he was asked to select members for the rebuttal panel which was to review his 2011 performance appraisal.

8. The Applicant responded on 23 April 2012, maintaining that the performance appraisal and rebuttal process were tainted by irregularities and, while indicating the names of the three D-2 staff members whom he had selected to serve on the rebuttal panel, he stressed that one of them, Ms. O., should recuse herself in particular because of the positions she had adopted in relation to other cases filed by the Applicant before the Tribunal.

9. On 17 June 2012, the Applicant was informed that, following referral of the issue of replacement of Ms. O. to the Office of Human Resources Management in New York, it had been decided to give him the option to either agree to an exceptional inclusion in the UNODC list of rebuttal panel members of staff members from other offices, or to select in that list another UNODC staff member, whose promotion to grade D-2 would be effective from 1 August 2012.

10. The Applicant responded on the same day that he did not accept these proposals.

11. By an email of 19 June 2012, the Chief of the Staff Administration Unit, HRMS, informed the Applicant that the alternative proposed on 17 June reflected the only two possible options and she asked him how he wished to proceed.

12. On 27 June 2012, the Applicant sought management evaluation of the decision, “communicated to [him on 19] June 2012” not to proceed with the rebuttal process in relation to his 2011 performance appraisal.

13. Also on 27 June, he filed with the Tribunal the application which forms the subject of the present Judgment.

14. On 28 June 2012, the Applicant sent to the Tribunal the response which he had received on the same day from the Management Evaluation Unit and he asked that it be added to the case file.

15. By motion dated 2 July 2012, to which an amended version of the application was annexed, the Applicant sought leave to resubmit his application “[i]n view of his submission of 28 June 2012”.

### **Consideration**

16. As a preliminary matter, the Tribunal grants the Applicant’s motion of 2 July 2012 requesting that the amended version of the application replace the original version. However, for filing purposes, the date of filing will remain 27 June 2012.

17. According to article 9 of its Rules of Procedure, the Tribunal may determine, on its own initiative, that summary judgment is appropriate. This usually would happen when there is no dispute as to the material facts of the case and judgment is restricted to a matter of law. It may be even more appropriate for issues related to the admissibility of an application (see, *inter alia*, *Samardzic et al.* UNDT/2010/019 as confirmed by *Samardzic* 2010-UNAT-072; *Shakir* UNDT/2010/028 as confirmed by *Shakir* 2010-UNAT-056). In the present case, the facts are clear and the only issue—whether the contested decision is capable of being appealed—is such a matter of law.

18. Article 2.1 of the Tribunal’s Statute provides that the Tribunal is competent to hear and pass judgment on an application appealing “an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment”. Further, both the Appeals Tribunal

and the Dispute Tribunal have endorsed the definition provided by the former UN Administrative Tribunal in Judgment No. 1157, *Andronov* (2003):

[A]n “administrative decision” is a unilateral decision taken by the Administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order ... Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences. (see *Schook* 2010-UNAT-013 and *Tabari* 2010-UNAT-030; see also *Planas* UNDT/2009/086 and *Elasoud* UNDT/2010/111)

19. Further, in *Elasoud*, the Dispute Tribunal held that to be contestable, a decision must be final as it will only be able to affect an applicant’s legal rights once the decision is actually made (see also *Ishak* 2011-UNAT-152).

20. In challenging what the Applicant describes as “the decision not to proceed with the rebuttal” process in relation to his 2011 performance appraisal, he actually impugns the alternative offered by the Administration to replace a rebuttal panel member whose recusal had been sought by the Applicant. The Administration’s proposed alternative does not in any way qualify as a “final decision”. Nor can it be considered as a decision “not to proceed” with the rebuttal process in relation to the Applicant’s 2011 performance appraisal.

21. In challenging the Administration’s proposed alternative, the Applicant submits that the Administration erred in relying on administrative instruction ST/AI/2010/5 (Performance Management and Development System) and that the Director of DTA unlawfully completed his 2011 performance appraisal both as first and second reporting officer.

22. In *Gehr* UNDT/2011/211 as reiterated in *Gehr* UNDT/2012/071, the Tribunal stated that it would be inconsistent with its standard of review to allow the Tribunal to interfere with the review of a performance appraisal before a final rating resulting from the rebuttal process has been given.

23. The choice of an appropriate basis for a staff member’s performance appraisal or the fact that an individual could sign off on a performance appraisal

as both first and second reporting officer can only be reviewed within the context of the assessment of the final decision, that is, the outcome of the staff member's performance appraisal. In this case, the rebuttal process regarding the Applicant's 2011 performance appraisal is ongoing and his application is therefore premature.

**Conclusion**

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

The Application is rejected.

*(Signed)*

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Judge Thomas Laker

Dated this 3<sup>rd</sup> day of July 2012

Entered in the Register on this 3<sup>rd</sup> day of July 2012

*(Signed)*

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René M. Vargas M., Registrar, Geneva