

2016-UNAT-684, Ademagic et al.

UNAT Held or UNDT Pronouncements

UNAT considered the Secretary-General's appeal and Ademagic's cross-appeal. UNAT upheld UNDT's determination that the Assistant Secretary-General for Office of Human Resources Management did not give meaningful individual consideration to the staff members' requests for conversion to permanent appointments. UNAT noted that it gave a clear directive to the Administration that, upon remand, it should consider the staff members' suitability for conversion to permanent appointments "by reference to the relevant circumstances as they stood at the time of the first impugned refusal to convert their appointments" and that the Administration failed to comply with this directive. Moreover, UNAT found no merit in the Secretary-General's argument that UNDT improperly substituted its discretion for that of the Assistant Secretary-General for Office of Human Resources Management. UNAT noted that although UNDT recognised that the Assistant Secretary-General for Office of Human Resources Management was entitled to take into consideration ICTY's limited mandate and "all the interests of the Organisation", when considering staff members' suitability for permanent appointments, the said consideration shall encompass the interests of ICTY, as an institution established by the General Assembly, not merely as a downsizing entity. UNAT upheld UNDT's finding that the Administration's decisions not to grant permanent appointments to the staff members were flawed and, thus, upheld UNDT's rescission of the flawed decisions. With respect to Ademagic et al. 's cross-appeal, UNAT did not find that UNDT erred in remanding the cases to the Assistant Secretary-General for Office of Human Resources Management. UNAT upheld this remand, noting that it was the most effective and equitable of the remedies and ordered strict adherence to UNAT's directives and guidance to consider, on an individual and separate basis, each staff member's respective qualifications, competencies, conduct and transferrable skills when determining each of Ademagic et al. 's applications for conversion to a permanent appointment rather than the finite mandate of ICTY/MICT, so as to fetter or limit the exercise of discretion in deciding whether to grant a permanent appointment to any individual staff member. Further, both the Secretary-General

and Ademagic et al. appealed UNDT's award of moral damages. UNAT vacated the awards of moral damages, concluding that UNDT erred in law by not applying the amended UNDT Statute as it existed at the time the UNDT rendered its judgment, which requires Ademagic et al. to present evidence to sustain an award of moral damages. UNAT dismissed the Secretary-General's appeal of the merits and granted the Secretary-General's appeal of the awards of moral damages. UNAT dismissed both Ademagic et al. 's appeal of UNDT's remedy of remand to the Assistant Secretary-General for Office of Human Resources Management and appeal of the quantum of the awards of moral damages.

Decision Contested or Judgment/Order Appealed

Ademagic et al. contested the decisions denying them the conversion of their fixed-term appointments to permanent ones. UNDT held that these decisions were unlawful and found that the Applicants had not been given sufficient consideration. UNDT rescinded the contested decisions and remanded the matter to the Assistant Secretary-General for Office of Human Resources Management for "retroactive individualized consideration of Ademagic et al. 's suitability for conversion of their appointments to a permanent one," in conformity with the instructions in the UNAT judgment among others, within 90 days of the issuance of the impugned judgment. UNDT further awarded moral damages in the sum of EUR 3,000 to each of Ademagic et al.

Legal Principle(s)

The Assistant Secretary-General for Human Resources Management shall have the authority to place in a suitable position the following staff members when in need of placement outside the normal process: (a) Incumbents, other than staff members holding a temporary appointment, of positions reclassified upward for which an applicant other than the incumbent has been selected; (b) Staff, other than staff members holding a temporary appointment, affected by abolition of posts or funding cutbacks, in accordance with Staff Rule 9. 6 (c) (i); (c) Staff members who return from secondment after more than two years when the parent department responsible concerned has made every effort to place them. Where the appointment of a staff member is limited to a particular department/office, the staff member may be granted a permanent appointment similarly limited to that department/office. If

the staff member is subsequently recruited under established procedures including review by a central review body for positions elsewhere in the United Nations Secretariat, the limitation is removed.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Ademagic et al.

Entity

ICTY

Case Number(s)

2016-900

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Jun 2016

President Judge

Judge Chapman

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Permanent appointment

Compensation

Non-pecuniary (moral) damages

Applicable Law

Administrative Instructions

- ST/AI/2010/3/Section 11.1

Secretary-General's bulletins

- ST/SGB/2009/10

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

UNDT/2015/115

2013-UNAT-359

2013-UNAT-357