



Judgment No. 2017-UNAT-754



Counsel for Appellants: Nicole Washienko, OSLA
Michael Brazao, OSLA

Counsel for Respondent: Stéphanie Cartier

and an expiration date of 30 June 2015.⁴ When their appointments ended on 30 June 2015, they were not renewed on grounds of the abolition of posts. Their letters of appointment provided,

Submissions

Appellants' Submissions

8. The UNDT erred in law and in fact and failed to exercise its discretion by concluding that their applications were not receivable. The Appellants challenged the Secretary-General's non-renewal of their fixed-term appointments, not the General Assembly's decision. The UNDT conducted only a perfunctory review of the merits of the Secretary-General's recommendation to the General Assembly that led to the contested decision.

9. In concluding that the Appellants' claims were non-receivable, the UNDT erred in its reliance upon *Ovcharenko et al.*⁷ The non-renewal decisions in the Appellants' cases were based upon the Secretary-General's own recommendation to the General Assembly, not on that of a separate entity, as in *Ovcharenko et al.* Most importantly, when the General Assembly approved in June 2015 the Secretary-General's recommendation to abolish the 80 LA posts, it was not appraised of the plan to subsequently retain the staff members encumbering those posts on IC contracts to perform the same functions – a plan that was memorialized in a “note to file” prepared by the Director of Mission Support, MONUSCO in April 2015. No reference was made to this plan in the submissions to the General Assembly (i.e., the Secretary-General's 26 February 2015 report and the Advisory Committee on Administrative Budgetary Questions' 1 May 2015 report).

10. The UNDT's conclusion is also inconsistent with existing jurisprudence. It is within the competence of the Tribunals to review challenges to an administrative decision resulting from the abolition of posts, including those taken by the Secretary-General implementing the decision by the General Assembly to abolish the Appellants' posts.

11. The UNDT also erred when it concluded that ST/AI/2013/4 was not applicable on the grounds that it did not apply when a staff member's post was abolished. This assertion by the UNDT has no basis in law or jurisprudence. The Administrative Instructions were clearly meant to prohibit a situation like that which occurred here – where the Appellants' fixed-term appointments were unlawfully converted into IC contracts.

⁷ *Ovcharenko et al. v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-530.

THE UNITED NATIONS APPEALS TRIBUNAL

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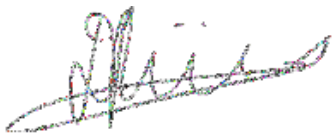
... The Appellants specifically contended that the General Assembly lacked information about the IC contracts when it reached its decision to abolish the LA posts. The Appellants have argued that the submission by the Secretary-General to the General Assembly proposing the abolishment of their posts omitted mention of the Administration's intent to rehire LAs on IC

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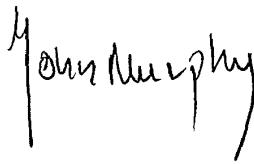
18. The appeals are dismissed and Judgment Nos. UNDT/2016/138, UNDT/2016/139, UNDT/2016/141, UNDT/2016/142, UNDT/2016/143, UNDT/2016/144 and UNDT/2016/145 are hereby affirmed.

Original and Authoritative Version: English

Dated this 14th day of July 2017 in Vienna, Austria.



Judge Raikos, Presiding



Judge Murphy



Judge Halfeld

Entered in the Register on this 5th day of September 2017 in New York, United States.



Weicheng Lin, Registrar