

Case No.:

Introduction

6. Also on 24 July 2012, the ICTY Human Resources Section sent to the selected candidate an offer of appointment for the post of Deputy Registrar. The selected candidate signed the offer of appointment on 31 July 2012, stating that she would take up her duties as from 1 October 2012.

7. By email dated 3 August 2012 the Applicant was informed by the ICTY Head of the Recruitment, Training and Examinations Unit that the above-mentioned job opening had been closed as the Head of Department had selected a rostered candidate for the position.

8. On 8 August 2012, the Applicant requested management evaluation of the decision to select an external rostered candidate for the position of Deputy Registrar, and she filed with the Tribunal her application for suspension of action on 15 August 2012.

9. On 15 August 2012, the Registry of the Dispute Tribunal in Geneva served the application on the Respondent, and ordered him to file and serve a reply together with documentary evidence on the status of the implementation of the contested decision.

10. As per the Tribunal's instructions, the Respondent submitted on 17 August 2012 his reply together with the requested documentary evidence.

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Urgency

c. The implementation of the contested decision will result in irreparable damage to her career prospects. The position of Deputy Registrar will not become available again before her reaching the mandatory retirement age;

d. Abandonment of the commitment to place internal candidates for vacant positions in accordance with the Revised Decision will affect ICTY staff members at all levels;

Irreparable damage

e. The irreparable harm caused by the implementation of the decision includes damage to her professional reputation and career prospects. Moreover, the selected candidate will become her first reporting officer;

f. ICTY staff members will be irreparably harmed if the Revised Decision becomes unenforceable.

12. The Respondent's primary contentions may be summarized as follows:

Receivability

a. An application for suspension of action may only be granted where the contested decision has not yet been implemented. In view of the fact that the successful candidate was informed on 24 July 2012 of her selection for the advertised position, and she accepted the offer of appointment on 31 July 2012, the selection decision must be considered as implemented and the application must be rejected as moot;

Prima facie unlawfulness

b. The Applicant has not established a serious and reasonable doubt about the lawfulness of the contested decision. The selected candidate was chosen from a valid roster, populated and utilized in accordance with

administrative instructions ST/AI/2006/3 (Staff selection system) and ST/AI/2010/3 (Staff selection system);

c. The Secretary-General has broad discretion in making decisions regarding appointments and the Dispute Tribunal has stressed that it is not in a position to substitute its own judgment for that of the Secretary-General;

d. The Applicant's contention that the selection decision violates the Revised Decision is without merit. The Revised Decision was issued as a guideline for the implementation of the downsizing process and it cannot override the staff selection system contained in ST/AI/2010/3, which does not provide for any priority of internal candidates. Moreover, further to General Assembly resolution 65/247, there is no requirement to justify the selection of an external candidate;

e. The Applicant has failed to prove that the actions of the Registrar constitute reprisals following her complaint for discrimination and abuse of authority, and there is no credible evidence that the selection process

17. It follows from the above that the contested decision was implemented on 31 July 2012, the date when the selected candidate expressed her unconditional acceptance of the offer of appointment. The application for suspension of action must therefore be rejected, and it is not necessary for the Tribunal to examine the other requirements for granting a suspension of action.

Conclusion

18. In view of the foregoing, the application for suspension of action is rejected.

(Signed)

Judge Thomas Laker

Dated this 23rd day of August 2012

Entered in the Register on this 23rd day of August 2012

(Signed)

René M. Vargas M., Registrar, Geneva