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## Introduction

1. On 11 December 2014, 24 staff members and former staff members of the International Criminal Tribunal for the former Yugoslavia (ICTY), CT-12, tested the Assistant Secretary-General for Human Resources Management (A3G/856712) decisions of June 2014 denying each of them a promotion to the first four (4) permanent assignments.

2. As remedies, they requested the Tribunal to:

a. Cancel the denial of permanent assignment

b. Award them the Assistant Secretary-General promotion to permanent assignment

c. Grant them the interest on the amount of permanent assignments owed in the interim period and award compensation and/or damages to the Assistant Secretary-General for Human Resources Management and award interest on the amount of permanent assignments owed

d. Award moral damages in the amount of USD 20,000 for the substantial delay (expenses of due process and bias against them) and the undue delay (element of the material used to extend the deadline of a non-acted case).

## Facts

On 25 January 2014, the Secretary-General (SG) (resolution 827/1AA(2)) to establish the ICTY, CT-12, an ad hoc International Tribunal for the former Yugoslavia (ICTY) for the serious violations of international humanitarian law committed as of 1 January





14. On 11 July 2010, the Committee transmitted to the Office of the High Commissioner for Human Rights a report on the management of the United Nations Security Council (UNSC) (A/HRC/12/12).

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should not be granted because the mandate is finite and there is no  
extension of the mandate. Article 11(1) of the  
Statute of the Commission for the International  
Tribunal for the former Yugoslavia

1. Article 10 of the Convention provides that the Commission shall have the right to investigate and to hear the parties in person and to call witnesses and to examine them in person and to take such other measures as it may deem appropriate in order to establish the facts. The Commission shall also have the right to request the States Parties to furnish it with all the information and documents which it may consider necessary for its investigation, and to examine in person or by other appropriate means the witnesses and documents which it may require.

2. Article 11 of the Convention provides that the Commission shall have the right to hold public hearings in which the parties and witnesses shall have the opportunity to be heard, and to examine witnesses and experts in person or by other appropriate means, and to receive oral or written testimony. The Commission shall also have the right to request the States Parties to furnish it with all the information and documents which it may consider necessary for its investigation, and to examine in person or by other appropriate means the witnesses and documents which it may require.

3. Article 12 of the Convention provides that the Commission shall have the right to hold public hearings in which the parties and witnesses shall have the opportunity to be heard, and to examine witnesses and experts in person or by other appropriate means, and to receive oral or written testimony. The Commission shall also have the right to request the States Parties to furnish it with all the information and documents which it may consider necessary for its investigation, and to examine in person or by other appropriate means the witnesses and documents which it may require.

4. The Commission shall have the right to hold public hearings in which the parties and witnesses shall have the opportunity to be heard, and to examine witnesses and experts in person or by other appropriate means, and to receive oral or written testimony. The Commission shall also have the right to request the States Parties to furnish it with all the information and documents which it may consider necessary for its investigation, and to examine in person or by other appropriate means the witnesses and documents which it may require.

5. The Commission shall have the right to hold public hearings in which the parties and witnesses shall have the opportunity to be heard, and to examine witnesses and experts in person or by other appropriate means, and to receive oral or written testimony. The Commission shall also have the right to request the States Parties to furnish it with all the information and documents which it may consider necessary for its investigation, and to examine in person or by other appropriate means the witnesses and documents which it may require.

6. The Commission shall have the right to hold public hearings in which the parties and witnesses shall have the opportunity to be heard, and to examine witnesses and experts in person or by other appropriate means, and to receive oral or written testimony. The Commission shall also have the right to request the States Parties to furnish it with all the information and documents which it may consider necessary for its investigation, and to examine in person or by other appropriate means the witnesses and documents which it may require.





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Consideration

Legal framework of the contested decisions

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\*5. In sum, the Commission's assessment of the eligibility conditions set forth in section 1 of 3T/3G /200A/10H#e.) further leads to the conclusion that the applicant's qualifications (including the age of 50 years) do not meet the requirements of the suitability test as set forth in section 2 of the same statute.

\*\*3. In addition, the Commission's assessment of the applicant's qualifications (including the applicant's age of 50 years) does not meet the requirements of the suitability test as set forth in section 2 of 3T/3G /200A/10H#e.) as well as for the staff (under 104.10 and 104.11) of the Guidelines on the suitability test for staff members (as assessed against the applicant's qualifications).

a. The Commission's assessment of the applicant's qualifications (including the applicant's age of 50 years) does not meet the requirements of the suitability test as set forth in section 2 of 3T/3G /200A/10H#e.) as well as for the staff (under 104.10 and 104.11) of the Guidelines on the suitability test for staff members (as assessed against the applicant's qualifications).

b. The Commission's assessment of the applicant's qualifications (including the applicant's age of 50 years) does not meet the requirements of the suitability test as set forth in section 2 of 3T/3G /200A/10H#e.) as well as for the staff (under 104.10 and 104.11) of the Guidelines on the suitability test for staff members (as assessed against the applicant's qualifications).

\*7. The Commission's assessment of the applicant's qualifications (including the applicant's age of 50 years) does not meet the requirements of the suitability test as set forth in section 2 of 3T/3G /200A/10H#e.) as well as for the staff (under 104.10 and 104.11) of the Guidelines on the suitability test for staff members (as assessed against the applicant's qualifications).

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Reasoning (reason to exclude the loss of the A3G/8567 to the extent of the assignment of the assets on the basis of section 11.1/2 of 3T/A./2010/2) e.g. the case of a 'outstanding' (lost. A&O(ding!) a 'toug' the T('una' unde(stands t+at t+s (u'e >as &on&#.ed to 'e a\$\$#ed on an e9&e\$#ona' 'as#s) and e.en &on&ed#ng t+at %o&a% (e&(u#ted staff a(e su'"e&t to s\$e&f#& geog(a\$+#&a% (est(#&t#ons) #t a\$\$ea(s t+at) &ont(a(! to the 6es\$ondentEs &ontent#on) t+e(e #s no a'so%ute %ega' 'a( fo( t+e A3G/8567 to mo.e an! of t+e A\$\$#&ants) >+o +e'd a\$\$o#ntments %m#ted to ,CT-) to a d#ffe(ent ent#t! on t+e 'as#s of t+e a'o.e4(efe(en&ed \$(o.#s#on #f t+e#( \$osts >e(e to 'e a'o#s+ed.

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A2. The #m#tat#on of se(.#&e to ,CT - /7 ,CT >as t+e(efo(e #n&o((e&t%! asse(ted

A7. Against these 'background' the Tribunal tends to accept the Admnistration's position on the final mandate of ,CT- as well as of 7 ,CT) is a fact (that an 'e .ad! &ons#de(ed #n de&d#ng on the &on.e(s#on of the A\$\$%#&antsE a\$\$o#ntment to \$e(manent. 5o>.e.) a#t+oug+ #t #s a&&e\$ta' to g#.e ade:uate >e#g+t to the o\$(at#ona% (ea#t#es of ,CT-) #n&%ud#ng #ts f#n#te mandate) the A\$\$eas T(#'una%) ne.e(t+e%ess) s\$e&f#&a%%! (used #n Judgment Ademagic et al. 201@4UNAT4@5A that (e!#ng e#clusi!ely on these &#(&umstan&e amounts to an a' use of d#s&(et#on.

A8. On these &(u#a% \$o#nt) the Tribunal has determined that the motive to (refuse to &on.e(t to \$e(manent the a\$\$o#ntments of ea&+ of the 24\* A\$\$%#&ants >as #n.a(#a'! the same and &ame do>n to the f#n#te mandate of ,CT- and #ts do>ns#f#ng /\$(as. 84 to A@ a'o.e2) and) add#t#ona%%!) that no ot+e( (e.e.ant &#(&umstan&es) s\$e&f#& to ea&+ #nd#.#dua%%) >e(e &ons#de(ed /\$(as. 7A to 8@ a'o.e2. ,t t+us a\$\$eas(e #dent that the \$(edom#nant fact( 'e+#nd the #m\$ugned de&s#ons >as) !et agan) the f#n#te mandate of ,CT- .

AA. These are the same facts (on >+&+) as \$e( the A\$\$eas T(#'una%Es (u#ng) the Admnistration +ad >(ongfu%%! (e#ed u\$on to the e9&%us#on of an! ot+e( &ons#de(at#ons. 5en&e) ' ! agan so#e%! (e!#ng on these facts and o.e((d#ng a%% ot+e(s) the 8(gan#fat#on fa#ed to a'#de ' ! the &%ea( and ' #nd#ng #nst(u&t#ons &onta#ned #n Judgment Ademagic et al. 201@4UNAT4@5A.

100. In summary(!) the #m\$ugned de&s#ons a(e un%a>fu% on se.e(a% a&&ounts) 'ut \$(#ma(#! on the fo%%o>ng t>o;

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...the determination of the grounds for awarding moral damages and held that a fundamental right of a staff member is infringed to the extent that he is subjected to a treatment that is not in accordance with the provisions of the Staff Regulations.

117. The Tribunal found that the award of moral damages is not subject to the provisions of article 10.5 of the Staff Regulations. The Tribunal held that the award of moral damages is not subject to the provisions of article 10.5 of the Staff Regulations.

118. The Tribunal found that the award of moral damages is not subject to the provisions of article 10.5 of the Staff Regulations. The Tribunal held that the award of moral damages is not subject to the provisions of article 10.5 of the Staff Regulations.

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/s/

Judge Thomas LaBe

Dated this 17<sup>th</sup> day of December 2015

Witnessed by the Registrar on this 17<sup>th</sup> day of December 2015

/s/

Gen. Valgas Reg. Geneva