

Case No.: UNDT/GVA/2009/54

Judgment No.: UNDT/2010/007

Date: 19 January 2010

English

Application

1. The applicant, a former staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR), submitted an application to the United Nations Dispute Tribunal on 26 August 2009 in

"post was needed elsewhere". By a letter dated 21 December 2006, the applicant was formally notified that her contract would not be renewed beyond 31 December 2006.

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taken when she informed her superiors of her pregnancy with a view to receiving maternity leave. She claims that she had legitimate reasons to expect her employment to be renewed and that she was notified at a very late stage, on 21 December 2006, of the non-renewal of her contract;

- c. An internal UNHCR report drafted in 2006 had recognized the need to maintain the post that she had occupied. She had been replaced in her functions by United Nations volunteers, which demonstrated that the real reason for the contested decision was her pregnancy;
- d. Furthermore, despite being a UNHCR employee, she had not received any health care or social coverage and the Organization had refused to grant her maternity leave. She claims that these working conditions are contrary to Turkish labour law and to international law.

Respondent's observations

14. The main submissions of the respondent are as follows:
 - a. The application is late and therefore not receivable. The Administrative Law Unit received the request for review from the applicant on 23 January 2007 and in accordance with rule 111.2(a)(ii) of the Staff Rules then in force, the applicant was required to file an appeal with the JAB by 23 April 2007 at the latest. However, the appeal was filed by a letter dated 25 September 2008. The respondent submits that the circumstances mentioned by the applicant do not justify the late submission of her appeal;
 - b. Although she was informed by the Administrative Law Unit of the JAB appeal procedure, the applicant hired a lawyer in December 2006 and filed a lawsuit against UNHCR before an Ankara court;
 - c. The position occupied by the applicant was abolished because it was financed from funds assigned for other posts, a situation that

was unsustainable. Thus the applicant, who was not entitled to have her contract renewed even if she was pregnant, has not established that the reason for the contested decision was her condition.

Judgment

15. The applicant, who was employed as a legal clerk with UNHCR in Ankara, comes before the Tribunal to challenge the decision not to renew her contract beyond 31 December 2006.

16. Although she claims that the contested decision is contrary to Turkish legislation and international law, it is clear that the internal regulations of the United Nations alone are applicable to disputes involving its staff members.

17. Provision 104.12(b)(ii) of the Staff Rules then in force stipulated that "the fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment" and rule 109.7(a) provides that "a temporary appointment for a fixed term shall expire automatically and without prior notice on the expiration date specified in the letter of appointment."

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that date the applicant had been pregnant for 26 weeks. Accordingly, the date of expiry of her contract was more than six weeks before the expected date of delivery. She therefore cannot claim that she was entitled to maternity leave under the above rule.

21. Chapter 6.3.18 of the SAMM provides that expectant staff members will be considered for extension or conversion of their appointment under the same criteria as other staff. When consideration is being given as to whether an appointment is to be extended or converted to another type of appointment, the fact that the staff member is or will be on maternity leave should not be a factor in that consideration. The same chapter stipulates that if, on the basis of other considerations, a decision is made not to renew an appointment which is due to expire during the period of maternity leave, the appointment will be extended solely to cover the full duration of the maternity leave. Finally, if an appointment which is not to be renewed expires before the beginning of the six weeks prior to the expected delivery date, chapter 6.3.18 specifies that the appointment need not be extended as there is no entitlement to maternity leave.

22. In the light of the above cited provisions, the fact that the applicant had been pregnant gave her no particular right to have her contract extended, in view of the estimated number of weeks prior to the delivery.

23. Although the applicant claims that the refusal to renew her contract deprived her of all social and health care coverage, that circumstance, however unfortunate it may be, would not be sufficient to establish that the contested decision was unlawful.

24. The applicant claims that in view of the previous renewals of her contract, the quality of the work she performed and the needs of the service, she had every reason to expect that her contract would be extended. Even if those allegations were correct, only an actual promise from the Administration, which is not apparent in this case, could create a right for a staff member's contract to be renewed.

25. However, it is established jurisprudence that, even if a staff member is not entitled to contract renewal, the decision must not be taken for

unlawful reasons. The Tribunal must therefore consi