

Introduction

1. The Applicant, a former high-ranking official of the United Nations Interim Administration Mission in Kosovo (“UNMIK”), challenges the decision not to extend his fixed-term appointment beyond 31 December 2007.

Facts

2. The Applicant joined UNMIK in April 2006 as Principal Deputy to the Special Representative of the Secretary-General, at the Assistant Secretary-General level, under an appointment of limited duration, which was subsequently extended until 31 December 2007.

3. In the course of 2007, the Office of Internal Oversight Services (“OIOS”) conducted two investigations into allegations of misconduct and retaliation made against the Applicant. Additionally, the International Criminal Tribunal for the former Yugoslavia (“ICTY”) initiated on 24 August 2007 an investigation into allegations of contempt of court by the Applicant and, on 22 October 2007, a waiver of his immunity was granted by the Secretary-General in relation to that investigation.

4. On 26 September 2007, the Applicant held a press conference at the UNMIK headquarters in Pristina, stating among other things that he was aware that OIOS had begun an investigation into allegations of misconduct and protesting his innocence. On the following day, the Applicant was asked to return to the United Nations Headquarters in New York and on 2 October 2007, he met with the Under-Secretary-General for Peacekeeping Operations. He returned to UNMIK thereafter.

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7. On 3 January 2008, the Applicant met with the Chef de Cabinet of the Secretary-General. The parties differ as to the exact content of the meeting but it is common ground that the Applicant had requested that meeting in order to clarify why his appointment had not been renewed. In a note to the file appended to the Respondent's reply, it is stated that, during the meeting, the Chef de Cabinet "referred to the concerns over the negative publicity associated with the OIOS investigations and other issues, which, it was felt, may have unconstructive implications at this politically very sensitive moment in Kosovo", and he clarified that the Applicant's departure was due to the expiration of his appointment. The Applicant, who relies on his own handwritten notes of the meeting, contends that the Chef de Cabinet told him that his appointment had not been extended "because the Secretary-General did not want to answer questions about ... sexual exploitation, corruption, ethics violations and the ICTY indictment".

8. The Applicant was informed in March 2008 that OIOS had found no evidence of misconduct on his part in relation to the allegations of retaliation and, by letter dated 28 April 2008, that ICTY had concluded that the allegations of contempt of court made against him were unsubstantiated. OIOS also found that

17. On 21 April 2011, a hearing on the merits was held, during which the Applicant confirmed that the scope of the case is confined to the decision not to extend his appointment beyond 31 December 2007.

20. The Respondent's principal contentions are:
- a. The decision not to renew the Applicant's contract constituted a valid exercise of discretion. Former staff rule 304.4(a) states that appointments of limited duration do not carry any expectancy of renewal and it is established case law that the Administration is not required to provide justification for non-renewal. In the instant case, there were no circumstances giving rise to a legal expectancy of renewal and the record does not show that the decision was tainted by impropriety, procedural flaw or extraneous factors;
 - b. Since the actions of Under-Secretary-Generals and Assistant Secretary-Generals have a significant and direct impact on the delivery of the Organization's mandate, the Secretary-General must be vested with a broad discretion to determine who represents him at the highest levels;
 - c. The Applicant was informed during the meeting of 2 October 2007

established between the Applicant and a high official from Kosovo who had been indicted by ICTY, while noting that “critics ha[d] accused the UN mission in Kosovo of giving [that high official] special treatment, believing his considerable influence ha[d] helped stop hardliners from turning to violence in the diplomatic deadlock over Kosovo’s push for independence”. This connection also appeared in another article released on the same day. The headline of an article published on 27 September 2007 read: “Schook accused of evil deeds, does not resign”. Additionally, an article published on 28 October 2007 on a news website stated: “The UN’s administration of Kosovo has been fraught with controversy” while, at the same time, reporting on the Applicant’s press conference.

32. The Tribunal notes that the negative impact of the allegations against the Applicant is supported by the facts insofar as these allegations were indeed reported disparagingly by some media in Kosovo. Of course, not each and every negative media report on UN staff members may adversely affect the Organization. On the other hand, the picture may change in cases where the highest-ranking representatives of the Organization are involved. In Bertucci 2011-UNAT-121, the Appeals Tribunal expressly stated that, as a matter of principle, it did not deny the Secretary-General the possibility to take into consideration the effect of press articles in cases of selection of an Assistant Secretary-General. Accordingly, it is within the Secretary-General’s discretion to take action to address the negative impact of allegations which could jeopardize the reputation and proper functioning of the Organization where those allegations concern the most senior officials of a United Nations body, like UNMIK, which is so exposed not only to local public opinion but also to international attention.

33. In his application, the Applicant emphasizes that, at the relevant time, he was the second most senior United Nations official in UNMIK. At the directions hearing on 24 November 2010, he also explained that his functions as Principal Deputy to the Special Representative of the Secretary-General included senior

34. Concerning the Applicant's contention that the allegations made against him were subsequently proven untrue, it must be emphasised that the decision not to renew the Applicant's appointment was not based on the accuracy of these allegations but on their being publicly echoed and, more specifically, on their suspected impact on the future of, in the Applicant's own words, "an extremely complex and politically sensitive mission".

35. Consequently, in view of the Applicant's particular responsibilities as the second-highest official of UNMIK, the decision not to renew his contract constituted a proper exercise of the Secretary-General's discretion. It should be recalled at this juncture that, where the Secretary-General is entitled to use his discretionary power, the Tribunal's role is restricted to examining whether this discretion has been abused within the meaning of th

