



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Shamilla Unnikrishnan, Officer-in-Charge

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Bettina Gerber, UNOG

Introduction

1. The Applicant is a former staff member of the Office of the High Commissioner for Human Rights (OHCHR) in Geneva where he served on a temporary assignment as a Human Rights Officer at the P-3 level. He filed an Application on 22 July 2012 contesting a decision taken by the Human Resources Management Service (HRMS), United Nations Office in Geneva (UNOG) to determine his nationality as German instead of Tunisian for United Nations purposes.

2. The Respondent filed a Reply on 27 August 2012 and argued that the contested decision was taken lawfully and was consistent with the applicable rules. It was argued that while the Applicant held both Tunisian and German nationalities, he was more closely associated with Germany than with Tunisia and that therefore the Administration was right to determine his nationality as German. The Respondent submitted that the decision to determine the Applicant's nationality as German was a valid exercise of discretionary power.

Facts

3. The Applicant holds both German and Tunisian nationalities. He was born, bred and educated until post-secondary level in Germany. He has ancestral ties to Tunisia.

4. His Personal History Profile (PHP) indicates his place of birth as Germany, he holds a German High School diploma and studied at three different German Universities and also gained some of his professional experience in Germany. Between 1991 and 1993, the Applicant spent a cumulative period of three months at two summer universities in Tunisia.

5. From 20 September 1999 and 20 December 1999, the Applicant held a "Special Service Agreement" with the United Nations Development Programme (UNDP) in Geneva. For this appointment, his nationality was listed by the UNDP as Tunisian and he held the status of a consultant.

6. From July 2010 to December 2010, the Applicant worked as a consultant for OHCHR during which period he was granted a Swiss legitimation card indicating his nationality as Tunisian and his status as “consultant.”

7. Another legitimation card was issued to the Applicant in January 2011 as a dependent spouse of an international civil servant and indicated his nationality as German.

8. On 23 October 2011, the Applicant received an offer letter for a temporary appointment with OHCHR, UNOG. The letter which was signed by Elisenda Martinez, Human Resources Officer (HRO), HRMS, UNOG stated in part:

We take note of your dual nationality (Tunisian and German). A

13. The HRO, HRMS, UNOG agreed to this in writing on 4 January 2012 and stated, “Yes. Bearing in mind *inter alia* that the candidate has signed the [offer letter] indicating German as his UN nationality without reservation.” The PA was thus completed to reflect his German nationality.

14. The Applicant was informed that a correction of his PA for his initial appointment had been done since the nationality field had been left blank when the PA was first generated.

15. On 31 January 2012, the Applicant wrote to Ms. Mafoudhi informing her that a wrong nationality had been inserted in his PA since he was a Tunisian at birth and had been recognized as such in his work with the United Nations since 1999. He thus requested her to correct the PA to reflect his Tunisian and not German nationality and submitted supporting documents regarding his previous employment with UNFPA and with OHCHR as a consultant.

16. By an email dated 28 February 2012, Ms. Mafoudhi wrote to the Applicant stating that his nationality had been recognized previously for UN purposes as German and that she would check the issue again with the responsible HRO. The Applicant responded by an email dated 29 February 2012 reiterating that his nationality had always been recorded as Tunisian in his previous appointments with the United Nations.

17. The UNOG Administration however maintained that it had ascertained the Applicant’s nationality as German and not Tunisian.

18. The Applicant requested a management evaluation of the decision to determine his nationality as German for United Nations purposes on 2 March 2012. The Management Evaluation Unit responded on 23 April 2012 having determined that HRMS, UNOG had correctly exercised its discretionary power and upheld the contested decision.

19. Just before this judgment was issued, on 16 December 2013, the Applicant filed a Motion in which he requested for anonymity and also requested the Tribunal, in the event that his Motion was denied, that he be allowed to withdraw

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Respondent's case

26. The Respondent's case is that the Administration correctly exercised its discretionary power based on reasonable criteria in determining the Applicant's nationality as German for UN purposes based on the information contained in his PHP.

27. The Applicant did not submit any evidence that he is more closely associated with Tunisia than with Germany.

28. When he was recruited earlier as Tunisian national, the Applicant was a consultant and not a staff member and was therefore not covered by the staff rules.

29. The fact that precedent consultancy contracts with UNDP and OHCHR as well as Swiss legitimation cards reflected the Applicant's Tunisian nationality are of no significance for the determination of the Staff member's nationality by HRMS, UNOG.

30. The Respondent prays that the Application be rejected.

Issues

31. The Tribunal has framed the following question as the singular legal issue arising out of this case thus:

- a. Was the Secretary-General's discretion properly exercised in deciding to ascertain the Applicant's nationality as German for purposes of his employment with the United Nations Organization?

Consideration

Whether the Secretary-General's discretion was properly exercised in deciding

mother and siblings continue to reside in Tunisia and he has travelled there whenever time permitted.

37. The Tribunal is of the view that where a staff member possesses dual nationality, a number of criteria must go into the determination of which

especially in light of the fact that all the information relied upon, as presented in the PHP, are provided by the Applicant himself. The Applicant also did not submit other documentation that show Tunisia to be his closest country of nationality.

42. The Applicant's argument that his acquisition of Tunisian nationality at birth coupled with his ancestral ties to the country form part of the relevant criteria is correct, but is not the sole or exclusive determinative criterion or one carrying greater weight than the other factors.

43. The Applicant cited Judgment No. 1300 (2006) decided by the former Administrative Tribunal of the United Nations to support his case. In that case, the

not relevant here by reason of the fact that in his previous appointments he was not a staff member but a consultant. Different rules apply to the appointment of consultants and staff members. The Applicant had never been a UN staff member before 2011 and was therefore not covered by the Staff Rules during those periods.

47. The Staff Rules are only applicable to staff members and demand that the country of nationality to be recognized by the United Nations is that which one is most closely associated with. At the time that his nationality was ascertained as Tunisian, he was a consultant and not covered by the Staff Rules.

48. Contrary to the Applicant's argument, this is not a case in which the Applicant is being forced to renounce his German nationality. Indeed staff rule 4.3 has been held to be one whose purpose is not to bring indirect pressure on staff members to renounce any one of their nationalities.³ The Applicant's dual nationality has not been challenged by the Organization and the decision to recognize his German nationality for UN purposes does not impact on his right to hold a dual nationality.

49. An exercise of discretion by the Secretary-General will not be interfered with provided the discretion has not been exercised in an arbitrary or abusive manner.⁴ There is no evidence in the instant case that this discretion was exercised in an arbitrary or abusive manner and neither did the Administration make a mistake regarding the Applicant's nationality; there is also no evidence of any improper motive on the part of UNOG HRMS in determining the Applicant's nationality as German.

50. In the circumstances therefore, the Tribunal finds and holds that UNOG HRMS officials had correctly applied the staff rules with regard to determining the Applicant's nationality for UN purposes and does not see any prejudice or harm that is caused to the Applicant in any way.

³ Former Administrative Tribunal of the United Nations, Judgment No. 62 (1955).

⁴ Judgment No UNDT/2011/024.

