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EMPLOYMENT TRIBUNALS

Claimant

AND

Respondent

Mr M Simmons

Foreign and Commonwealth Office

Heard at: London Central

On: 8-14 November 2017

Employment Judge: Ms A Stewart
Members: Ms K Dent
Ms M Jaffey

Representation

For the Claimant: Mr S Cheetham of Counsel
For the Respondent: Mr B Collins of Her Majesty's Counsel
Ms C Palmer of Counsel

REASONS

Introduction:

1. The Claimant, Mr Malcolm Simmons, came before this Tribunal seeking a declaration under **Regulation 9 of the Fixed Term (Prevention of less favourable treatment) Regulations 2002** that he is permanent employee, by virtue of **Regulation 8**, because he has worked under successive fixed term contracts for a period of more than four years.
2. The Respondent contends that its use of a series of fixed term contracts in relation to the Claimant, having particular regard to the last such renewal on 13 October 2016, was justified on objective grounds.
3. The Tribunal heard evidence from the Claimant himself and from the following witnesses called by the Respondent; Thomas Adams, Deputy Head of Mission at the British Embassy in Pristina, Kosovo, by way of video link; Peter Bainbridge, Deputy Head of the Western Balkans department for the Respondent in London and David McIlroy, Head of Operations and Deputy Head of the Stabilisation Unit.

The Issues:

4. It is common ground that there is a single issue which the Tribunal has had to determine in this case, namely; whether the Respondent has satisfied the Tribunal, on a balance of probabilities, that its renewal of the Claimant's contract on a fixed term basis on 13 October 2016 was justified on objective grounds.

The Facts:

5. Perhaps unusually, in cases before this Tribunal, virtually all of the material facts are not in dispute.

6. The Respondent is a Government department, broadly responsible for implementing the UK's overseas relations, including the provision of UK support towards international initiatives to prevent violent conflict and encourage conflict resolution and peace-building in overseas post-conflict situations, where these initiatives accord with current Government overseas policy at the material time.

7. Following a period of conflict in the Western Balkans, during which Kosovo was administered by a UN mission, Kosovo declared independence in 2008 and the UN handed administrative power over to the Kosovan authorities. However, the international community deemed that the rule of law was an area which should continue to be administered by the international community until such time as Kosovo was ready to undertake responsibility alone.

8. Accordingly, as the UN withdrew, the European Union set up the EU Rule of Law Mission, Kosovo, (EULEX), as a vehicle for continuing the UN's work. EULEX was established by the Council of the EU by way of a Council Joint Action 2008/124/CFSP. This Joint Action created the legal mandate for EULEX for an initial period of 28 months, its purpose being to assist Kosovan institutions, judicial authorities and law enforcement agencies in establishing an independent justice system and police service in conformity with the rule of law to the highest international standards.

9. EULEX is supported by all 28 EU member states plus 5 other contributing states, and is largely staffed by secondees of EU member states or institutions. It is for each supporting state to decide the extent of its support, including the funding and seconding of staff. EULEX's mandate has been extended for periods of 2 years consecutively since 2008, on each occasion following EU decisions and negotiations with the Kosovan authorities.

10. The UK Government's strategy and policy objectives in respect of the Western Balkans includes "projecting our influence" by helping to tackle entrenched issues preventing long-term stability in the region, such as endemic corruption, terrorism, organised crime and failure to uphold the rule of law. Accordingly, the UK, from the inception of EULEX has funded and contributed secondees, for example judges and prosecutors who are embedded into Kosovan institutions and work according to Kosovan law, who investigate and adjudicate on cases involving war crimes, serious organised crime and corruption. Many of these cases are high-profile and politically sensitive. UK funding for these

secondees is decided on an annual basis in keeping with budgets set on an annual basis. At the height of its support, the UK was contributing £3 million, supporting 55 secondees, in the financial year 2013-2014. This has been downsizing since that peak and is currently reduced to 6 secondees.

11. Perhaps the most direct and succinct expression of the UK rationale for the support of EULEX Kosovo is to be found in a detailed Review of UK support dated April 2016, where the conclusions include: that support should be continued, in a limited but considered manner, particularly by seeking to place UK secondees at the higher levels of the mission, with the aims of “avoiding a return to widespread instability and the consequent need for costly intervention; increasing resilience to Russian influence and extremism in the heart of Europe; reducing the threat to the UK from Balkan organised crime and illegal migration ... impact on the UK is potentially high ... UK brand is strong and direct influence is high ... The UK can, if it makes the best use of its seconded resources, gain valuable insights into influences within the region that may have an eventual impact on the security of the UK, principally in the areas of organised crime, illegal migration, money laundering and other cross-border activities.”

12. EULEX judges, as at 6 January 2015, had rendered 566 verdicts, of which 423 involved criminal charges on corruption, organised crime and war crimes.

13. The recruitment process for secondees to EULEX is carried out in the UK by the Stabilisation Unit, a cross-Government civil/military/police unit, funded by the Conflict, Stability and Security Fund. It is governed by the National Security Council and sits within the Department of International Development operational platform. Mr McIlroy told the Tribunal that the Prime Minister herself is responsible for the Stabilisation Unit (SU).

14. The recruitment process for EULEX was as follows: The EU called for the contribution of secondees; the SU asked the Respondent whether or not it wished to support the post in question; once told that there was support, the SU advertised the post as a fixed-term contract, for the purpose of being seconded to work for an overseas entity. Applicants had a first interview, by telephone, with the SU and then applications were sent to the Respondent, which sifted and decided who it wished to nominate for the post and the SU then put that candidate forward to the EU for sifting and interview. If a UK candidate is successful, the SU then provides the necessary hostile environment training, briefing, induction and placement overseas practicalities.

15. The Claimant applied for a judicial position in EULEX in early 2008 having been an international judge of the Court of Bosnia and Herzegovina, hearing war crime and serious organised crime cases, since 2004. His application followed the procedure outlined above and, following an interview with the Chief EULEX judge and two other international judges on 6 February 2008, he was offered a secondment to the role of Criminal Judge at District Court Level at EULEX Kosovo to commence on 28 April 2008. His contract with the Respondent was for a fixed term of one year at a salary of £7,500 per month plus a daily allowance from the EU of a £100 per day towards the cost of subsistence and accommodation. He was to be line managed by EULEX Kosovo but subject to the Respondent's

disciplinary and grievance procedures; the post was stated to be without pension and a material clause of the contract provided as follows: "This contract is issued on the express understanding that this is a temporary appointment. There is absolutely no guarantee that it will be renewed or extended and neither party should expect that it would be, regardless of any previous extensions or renewals or of any subsequent extension which you may be offered." The Claimant signed the contract on 13 April 2008.

16. On 21 April 2008 the Respondent promised to review favourably the Claimant's salary after one year, "on the assumption that your contract will be renewed after one year and that you will accept an extension". It is not in dispute between the parties that the Claimant's employment has been renewed on the same material terms without any break in service since 28 April 2008 to date and continuing, by way of extension of his fixed term contract annually (although occasionally for lesser periods depending on the outcome and timing of the annual budgetary approval). Each time, the Claimant has made a reasoned request that his contract be extended.

17. In April 2011, where the proposed renewal would have taken the Claimant beyond four years continuous service, the Respondent initially offered only six months extension due to 'the four year rule', no doubt based on an awareness of **Regulation 8 of the 2002 Fixed Term Regulations**. Alternatively, he was offered the possibility of resigning, taking a break of at least seven days and then applying for another role.

18. In January 2011 the Claimant had asked the Respondent if it had any objection to his being appointed to the Kosovo Judicial Council. The Respondent was wholeheartedly supportive, from the point of view of influence on future developments in Kosovo. During March 2011 a wide-ranging and detailed internal debate therefore took place between Respondent management, HR and internal legal advisers about the 'four year rule' and the potential acquisition of permanent employee status. This included personal input from the ambassador in Pristina in July 2011. There was extensive canvassing of views and internal discussion which took place at this time. The upshot was that the Respondent would only very exceptionally renew a fixed term contract taking an employee over the four year threshold and only where there was a very good objective reason/strong operational need for doing so, the overwhelming norm and optimum period of appointment being two to three years.

19. On 4 August 2011 the decision to continue the Claimant beyond four years had been taken and on 31 August the Claimant's contract was renewed from April 2012 to April 2013, on the same terms and conditions.

20. On 30 September 2011 the Claimant wrote to the Respondent saying that he already had sufficient continuity of employment to be a permanent FCO employee under **Regulation 8 of the 2002 Regulations** and asking whether or not the Respondent agreed to this. This memo was not answered by the Respondent for some time as discussions apparently continued behind the scenes.

21. On 13 December 2011 the Respondent sent a memo to all secondees clarifying the Respondent's position on (i) whether or not there was a four year maximum contract policy for seconded experts and, (ii) if the four year period was to be exceeded, whether or not this would qualify a person for permanent employment status; the Respondent's answer being 'no' to both questions. The grounds offered in relation to the latter question included a possible challenge on grounds of territorial jurisdiction, the issue of objective justification and the argument that they were only 'technically' employed by the Respondent because their work was being carried out for the EU. It was stated that there was no 'four year rule' as such but that fixed term contracts would continue to be offered for one year only in order to allow "flexibility to react to changing political, financial and strategic priorities and to adapt to the short term nature of crisis missions" and stating that the remuneration package offered "generously accommodates this insecurity of tenure". The memo also stated that "where finance was available and the mission in question remains of top priority and the secondee is performing well and providing excellent strategic input", then the renewal of such a contract would be offered.

22. Also on 13 December an internal memo, including to the SU, was circulated clarifying the above policy for internal stakeholders, setting out the reasoning and including setting out **Regulation 8** and the need for a strong objective reasons for exceeding four years in any given case.

23. On the following day, 14 December 2011 the Respondent replied to the Claimant's letter of 30 September saying that he was not regarded as a permanent employee because of territorial jurisdiction issues, that he was only 'technically' an employee and because there was objective justification for renewing his fixed term contract.

24. The Tribunal accepted the Claimant's evidence that he raised his assertion that he was entitled to be regarded as a permanent employee at each subsequent extension of his fixed term contract, which he stated that he had to sign in order to get paid. In February 2012 the Claimant expressed an interest in another seconded role in another country but was told by the Respondent that it would not support such an application because it would be to the detriment of his existing mission in Kosovo.

25. On 2 October 2014 the Claimant was appointed President of EULEX Judges in Kosovo and received a new contract as such, to run from 2 October 2014 to 1 October 2015, materials terms remaining the same.

26. On 25 November 2014 the Claimant wrote a letter of grievance to Mr Bainbridge about his employment status, asking for written confirmation that he was now a permanent employee under the Regulations, asking for redeployment to a European location commutable home at weekends or a long posting in the UK, for family reasons, and requesting an urgent salary review.

27. On 28 November the Respondent replied that there was objective justification for his continued fixed term status, that as a fixed term specialist secondee to the EU, the Respondent was not obliged to deploy him to a UK

based position, that the Respondent's Civil Service pay structure was used to determine secondees' salaries but at higher rates to account for non-deduction of pension contributions and for judicial roles the Ministry of Justice comparable pay structure was used. The letter acknowledged that the higher President of EULEX Judges' salary had not been paid to the Claimant because of budgetary constraints, the Claimant having agreed to a cost-neutral move.

28. On 5 January 2015 the Claimant replied saying that he was not satisfied with the Respondent's response and that he must consider bringing Employment Tribunal proceedings in order to enforce his employment rights. He reiterated his position regarding his permanent status in a role which had now lasted some 11 years.

29. On 1 June 2015 the Claimant's fixed term contract was renewed, back-dated for the period from 2/10/14 to 1/10/15, at an increased salary of £10,370.42 per month, plus the EU daily allowance, and his contract continued to be extended at regular intervals thereafter on the same material terms and conditions, including for a three month period to 31 March 2016. The EU's mandate continued to be renewed every two years although from 2014 the EULEX presence was downsizing as Kosovo's own institutions were strengthening.

30. In April 2016 the SU carried out an in-depth review into UK support to EULEX Kosovo, referred to in paragraph 11 of these Reasons, concluding that the EU mandate was likely to be renewed to 2018 and recommending continued support in placing UK secondees at high levels during the rundown period envisaged. The Claimant's fixed term contract was again renewed on 13 October 2016 for a period of five months starting from 14 October 2016. He presented his complaints to the Tribunal on 21 January 2017 and there has since been a further extension of his fixed term contract from 25 March 2017 to end on 31 March 2018. It is envisaged that the EU mandate for EULEX Kosovo may be renewed for a further two years until 2020, potentially in an amended or smaller form.

The Law:

31. As to the law, the Tribunal directed itself as follows:

(i) **Regulation 8(1) of the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002** provides that this Regulation applies where an employee is employed under a contract purporting to be a fixed term contract and that this contract has previously been renewed.

(ii) **Regulation 8(2)** provides that: where this Regulation applies, then with effect from the date specified in **sub-rule (3)** (in this case from the date of last renewal) the provision of the contract restricting its duration shall be of no effect and the employee shall be a permanent employee if – (a) the employee has been continuously employed under the current contract as extended, or under the contract taken with a previous fixed term contract, for a period of four years or more, and (b) the employment of the employee under a fixed term contract was not justified on objective grounds at the time when it was last renewed.

(iii) **Regulation 9** provides that an employee who considers that by virtue of **Regulation 8** he is a permanent employee, may present an application to an Employment Tribunal for a declaration to that effect.

(iv) The following authorities were cited in argument before the Tribunal. **Cerro Alonzo -v- Osakidetsa [2008] ICR 145 ECJ**; **Kucuk -v- Land Nordrhein-Westfalen [2012] ICR 682 ECJ**; **Duncombe -v- Secretary of State for Children Schools and Families [2011] ICR 495 UK SC** and the **Chief Constable of West Yorkshire Police -v- Homer [2012] ICR 714 UK SC**.

(v) **Clause 8 of the Fixed Term Workers Directive 1999/70/EC** was also cited before this Tribunal but it is not contended that the **UK 2002 Regulations** have failed properly to implement the EC Directive.

Conclusions

32 In order to determine the issue of objective justification, it is common ground that there are three elements requiring scrutiny: Was there a legitimate aim, a real genuine need? Was the Respondent's action, in this case the renewal of the Claimant's fixed term contract, an appropriate or proportionate means of achieving that legitimate aim? Was it reasonably necessary in order to do so?

33 The Tribunal is mindful that it is for the Respondent to satisfy it on a balance of probabilities as to each of the above elements and that this justification must be done by showing evidence of "precise and concrete factors characterising the employment conditions to which it relates in the specific context in which it occurs and on the basis of objective and transparent criteria" (**the Del Cerro Alonzo case**). The Respondent defines the legitimate aim here as providing the flexibility necessary to support a time-limited international mission on a time-limited basis and contends that given that the only alternative would be to treat the Claimant as a permanent Civil Servant, notwithstanding that his services would not be needed in the Foreign and Commonwealth Office more widely, that the decision to renew a fixed term contract was both necessary and proportionate.

32 The Claimant accepts the Respondent's definition of the legitimate aim but argues that the Respondent would equally have achieved its aim of keeping the Claimant at EULEX if he was a permanent employee and that there was no good reason why the Claimant could not have been made a permanent employee after four years service in accordance with **Regulation 8**, particularly since the role that the Claimant has occupied has now been continuing for over eight years.

33 The Tribunal examined each of the component parts of the test in turn, taking first issue of the legitimate aim. The Tribunal unanimously accepted, on the basis of all the evidence before it, that there was a legitimate aim in this case, of providing support to EULEX by way of funded secondees to posts in Kosovo which was clearly aligned with the UK Government's policy of post conflict stabilisation and strengthening the rule of law in the Western Balkans at the material time. This was the case in 2008 and remains a legitimate aim to date.

32. The Tribunal is obliged by **Regulation 8(2)(b)** to examine the question of objective justification as at the date of the latest renewal of the Claimant's fixed term contract prior to his lodging of his Claim Form and the relevant date therefore in this case is 13 October 2016. The Tribunal has, however, had regard to the entire history of renewals and all of the other relevant circumstances in setting about its task.

33. Turning to the second limb of the test: - the appropriate/proportionate limb - the Tribunal was unanimously satisfied that the Respondent's renewal of a fixed term contract for the Claimant on 13 October 2016 was an appropriate and proportionate means of achieving its legitimate aim of keeping the Claimant in role in Kosovo for the following reasons:

(i) The post itself is, by its very nature of supporting Bosnia until that country is able fully to undertake its own judicial function, a time limited role. Eventual handover was, and is, the entire *raison d'être* of the EU joint action mandate. Again, in the nature of things there was, and is, no fixed end date capable of discernment in advance for the achievement of that long term objective, although from the evidence, it now appears to be in the rundown phase.

(ii) Secondly, at the outset in 2008 the Tribunal accepted the Respondent's evidence that the appointment pathway of secondees via the SU was quicker and less cumbersome than the mainstream Civil Service recruitment process, although of course this was no longer the case at the date of later renewals, for example in particular in 2016.

(iii) Thirdly, the EU mandate creating EULEX lasts two years at a time and is renewable every two years, following live negotiations between Kosovo itself and the EU.

(iv) Fourthly, the UK Government's willingness to support the post by way of provision of funding and secondees was, and is, dependent on Government policy at any given time, in other words, does it continue to align with Government Foreign Policy objectives under successive governments elected in the UK?

(v) Fifthly, the UK Government's support for EULEX also depends on annually taken budgetary prioritising decisions.

(vi) Therefore, the Claimant's secondment and continuance of his role depends on multiple contingencies, re-examined every year or two, only relatively few of which are within the Respondent (as employers) control. This in the Tribunal's view remain just as precarious in 2016 as it was in 2008, dependent upon political change, both at a national and a European level, budget priorities as well as the EU's bi-annual mandate decision in consultation with the Kosovan authorities themselves.

34. It may well be said that the Brexit vote in June 2016 may have its own repercussions. In any event, by 2016, EULEX Kosovo was in its rundown period from the height of involvement in 2014 and UK secondees have now been reduced to six. The evidence showed that the Respondent had a tough internal debate about the justification of renewing the Claimant's secondment in 2016. It was decided that he was doing a very good job in this high profile and very influential role as President of EULEX Judges and he was one of the very few secondees whom the Respondent decided should be kept in post, despite budget cuts

across Whitehall over several years and no doubt other competing priorities and the Claimant's salary rise in 2015.

35. It was contended on behalf of the Claimant that the twin factors that his seconded role had gone on for so long and that there was no fixed end date very much weakened the Respondent's argument that this was a time-limited role appropriate to the renewal of a fixed term contract.

36. The Claimant contended that the **Duncombe** case, concerning as it did a primary nine year fixed term contract with an end date, was therefore distinguishable upon its facts. However the Tribunal concluded that the actual length of time a secondment has lasted is not the determinative issue. **Regulation 8** provides for a single or succession of fixed term contracts lasting "for a period of four years or more". The Regulation does not provide for an overall length of renewals beyond which objective justification cannot be made out. The contract in **Duncombe** was a fixed term of nine years, a notion itself under attack in that case. However, the Supreme Court judgment, notably that of Lady Justice Hale, made very clear that **Regulation 8(2)** requires that the latest renewal of the fixed term contract be justified and she said; "the teachers were employed to do a particular job in the European schools which could only last for nine years and no longer, they were not employed to do any alternative work because there was no available work for them to do". This in the Tribunal's view showed certain parallels with the present case in that the Claimant was appointed for the particular job of a criminal judge seconded to Kosovo.

37. The Tribunal concluded that the fact that this was on a succession of annual renewals predicated upon all of the contingencies set out earlier in these reasons, which may or may not amount, in total length, to more than the nine years fixed contract in the **Duncombe** case, does not affect the principle set out in **Regulation 8** and the test which it falls to this Tribunal to apply in this case to the renewal in 2016.

38. Each case turns on its own particular facts. The total length of time in this case, from April 2008 and continuing, under the Claimant's present contract up to 31 March 2018 - in other words a potential period of 10 years, is simply one of the factors among others which the Tribunal has taken into account. It is not alleged here that the Respondent has cynically, in bad faith, or with deliberate ulterior purpose, set about abusing a series of fixed term contracts in order to deprive the Claimant of his employment rights in what was in reality an indefinite period of employment.

39. The Tribunal's unanimous conclusion is that the uncertain continuance of the role, depending as it did on renewal of EU mandate biennially, on-going UK review of policy, priorities and annual decisions regarding the availability of funding for the post, rendered it precarious and not reasonably capable of long-term commitment. It was therefore appropriate and proportionate, given this precarious set of contingencies and yet the increasing importance of the Claimant's role in Bosnia, as President of the Judges, to renew his fixed term contract in 2016. This is irrespective of the overall length of time which the role has in fact continued or

the absence of a fixed end date. Justification of a series of fixed term contracts is not confined only to short-term emergency situations.

40. Turning now to the third limb of the test, that of reasonable necessity: The Tribunal is mindful that 'necessary' does not mean that the fixed term contract was the only means of achieving the objective. The Respondent apparently operates two models of employment: permanent Civil Service employment, for which there is a regulated open-competition recruitment process and fixed-term contracts for experts or specialists to be seconded to specific external roles, for example in the Claimant's case. These experts are selected for their specific skills and are matched to these external roles by the SU. It is also the case that certain permanent employees of the Respondent, notably those in the diplomatic service, are regularly seconded to embassy posts overseas under a mobility clause in their contracts and may indeed be loaned out, whilst remaining permanent employees, to other departments or organisations. Mr McIlroy, for example, is an employee of the Respondent loaned to the SU, as he told the Tribunal.

41. The Claimant urged the Tribunal not to feel constrained in its deliberations on the issue of 'reasonable necessity' by either the Respondent only operating these two particular models of employment or the potential impact or wider consequences which a declaration in the Claimant's favour may have. The Tribunal has not felt in the least constrained in its scrutiny of the Claimant's individual circumstances and the Respondent's contentions of objective justification, in accordance with **Regulation 8** and the case authorities, and has applied these to all of the evidence before it.

42. In considering the 'necessity' aspect of justification, the Tribunal itself considered the following possible alternatives to renewing the Claimant's fixed-term contract in 2016: Firstly, making him a permanent employee as a civil servant in the Respondent department. The Claimant was recruited as a criminal judge, already working abroad from 2004-2008 in the Bosnia Herzegovina courts. He was therefore a specialist criminal judge with specialist knowledge and experience relevant to the EULEX seconded role in Bosnia. The Tribunal accepted that his recruitment by SU by-passed the normal route of recruitment into the permanent Civil Service and the Tribunal could therefore envisage that parachuting the Claimant into a Government department from his current position may create difficulties amongst existing staff. However, this per se was a relatively minor inconvenience or potential disruption or consequence.

43. But the Claimant has been a skilled and specialist criminal judge working abroad under the Bosnia Hertzogovina and latterly the Bosnian Legal System since 2004. He has not practiced in the UK as a solicitor for some 16 years. The Tribunal is mindful that the Respondent does not employ Judges. That is the province of the Ministry of Justice, following a rigorous transparent and open appointments process in the UK, conducted now by the Judicial Appointments Commission. The Tribunal did not accept that it was feasible to simply subsume the Claimant into a permanent post within the department, for example as a legal adviser in the Foreign and Commonwealth Office, even should such a vacancy

exit. The skills of a judge and those of other roles, including legal adviser, are, on the face of it, very different.

44. The second alternative would be to create a third category of employment i.e. a permanent employee of the Respondent, but not part of the Respondent's main stream department, in other words to make the Claimant permanent in his post as an ex-patriate judge with a view to other similar roles overseas, including possibly that of prosecutor. However, there are two difficulties with this way of doing things. Firstly, the Tribunal was told that the Claimant's current role is unique, there are no other international judicial roles into which the Claimant could be transferred at the end of EULEX and secondly, the Claimant wishes now for a UK or near UK placement, for family reasons. It could be argued that the Respondent could make the Claimant permanent in his present role or could have done so in 2016 and then simply make him redundant when it comes to an end. In the circumstances however this would be a pointless exercise

45. His current role is recurrently precarious and since 2014 is running down towards its natural end. There was no evidence of any other judicial or prosecutor roles abroad before the Tribunal and in any event the Claimant has stated his wish to return home, where there is no obvious role fitting his skills and experience hitherto and almost certainly not at a level of remuneration which he would be prepared reasonably to accept.

46. The Tribunal is mindful that the Claimant is currently on a salary of £129,489.36 per annum plus a further £36,500 per annum in daily allowances from the EU. Of all three alternatives, namely; permanency within the main stream Civil Service; permanency in role in Kosovo or overseas somewhere; or renewal of a fixed-term contract in 2016 the Tribunal concluded unanimously that the fixed-term contract renewal was the only feasibly practicable path to take and therefore reasonably necessary in order to achieve the aim of keeping the Claimant in post in Kosovo on an annually renewable basis.

47. The Tribunal did note that albeit under protest, in the sense of reserving his right to argue for his permanent employee status, as he was entitled to do, the Claimant has signed each and every extension of his fixed-term contract renewal since 2008, that is at least 10 such contracts, having on each occasion himself requested the renewal. The Tribunal is very mindful that employees can feel that they have little choice about agreeing to their employers terms and does not attribute great weight to this factor amongst others, although in this case it cannot be said that the Claimant, with his level of skills and status did not understand what he was signing. The level of remuneration which he received' and continues to receive' is designed, in at least some measure, to make up for the lack of job security which his fixed-term contract entailed.

48. The Tribunal has weighed the prejudice to the Claimant in denial of his presumptive directive rights to permanency of employment after four years, as expressed in the **2002 Regulations**, in its scrutiny of the Respondent's contention that the fixed-term contract renewal was objectively justified. The Tribunal is unanimously satisfied that the Respondent has shown, on a balance of probabilities and taking account of all of the circumstances and the history of the

matter, that it had a legitimate aim and that the renewal of the Claimant's fixed-term contract on 13 October 2016 was both a necessary and proportionate means of achieving that aim. Accordingly, the Claimant's complaint is not well-founded and fails.

49. Although, strictly speaking, the Tribunal has no jurisdiction to consider or to make a determination regarding the further extension of the Claimant's fixed-term contract which took place on 25 March 2017 extending his secondment from 1 April 2017 to 31 March 2018, because it post dates the Claimant's presentation of his complaint to the Tribunal on 21 January 2017, both parties have requested that the Tribunal comment upon this further extension. Without in anyway seeking to bind any future Tribunal regarding this issue, this Tribunal would make the following comment; that there was no evidence before us which would tend to alter our conclusion on the objective justification issue in relation to the 2017 renewal. In fact perhaps tending to the contrary, since the EULEX project appears now to be that much closer to its natural ending.

Employment Judge Stewart on 10 December 2017