



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2013-UNAT-313

Gehr
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before:	Judge Mary Faherty, Presiding Judge Luis María Simón Judge Sophia Adinyira
Case No.:	2012-349
Date:	28 March 2013
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Stéphanie Cartier

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Walter Gehr against Summary Judgment No. UNDT/2012/103, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 3 July 2012 in the case of *Gehr v. Secretary-General of the United Nations*. Mr. Gehr appealed on 19 July 2012, and the Secretary-General answered on 20 September 2012.

Facts and Procedure

2. Mr. Gehr joined the United Nations Office on Drugs and Crime (UNODC) in Vienna in 2002. With effect from 1 November 2007, he was appointed under a fixed-term appointment to the post of Senior Terrorism Prevention Officer at the P-5 level in the Terrorism Prevention Branch (TPB) within the Division of Treaty Affairs (DTA).

3. Mr. Gehr was separated from service effective 31 December 2011 upon expiry of his fixed-term appointment.

4. On 3 January 2012, the Director of DTA signed off on Mr. Gehr's 2011 performance appraisal system (ePAS) in the capacity of both the first and the second reporting officer. Mr. Gehr filed a rebuttal statement and selected the names of three D-1 staff members to serve on the ePAS rebuttal panel.

5. On 3 February 2012, the Chief of the Human Resources Management Service (HRMS) of UNODC advised Mr. Gehr that the three staff members whom he had selected to serve on the ePAS rebuttal panel were not eligible to serve, as the rebuttal panel members had to be equal in grade or higher than the reporting officer whose appraisal was being rebutted and the DTA Director held grade D-2. The Chief of HRMS further advised Mr. Gehr that guidance was being sought from the headquarters in New York as to how to proceed, as there was only one individual on the UNODC list of rebuttal panel members whose grade was D-2 and none at a higher level.

6. On 19 April 2012, Mr. Gehr received a new list of rebuttal panel members. He selected three staff members at the D-2 level from the new list, but stressed that one of them, Ms. O., should recuse herself.

7. On 17 June 2012, HRMS offered Mr. Gehr two options to either agree to the inclusion of staff members from other offices on the list of rebuttal panel members or to select from the existing list another staff member who would be promoted to D-2 in August 2012. Mr. Gehr

rejected HRMS' proposal. On 19 June 2012, HRMS asked Mr. Gehr how he wished to proceed with his ePAS rebuttal now that he had rejected the only two possible options.

8. On 27 June 2012, Mr. Gehr submitted a request for management evaluation of what he claimed to be a "decision" which was communicated to him on 19 June 2012. On the same day, he also filed an application with the Dispute Tribunal. On 28 June 2012, Mr. Gehr sent to the UNDT the response from the Management Evaluation Unit rejecting his request and asked that it be added to his case file. On 2 July 2012, Mr. Gehr sought leave to submit an amended application.

9. In Summary Judgment No. UNDT/2012/103, the Dispute Tribunal rejected Mr. Gehr's application as not receivable, as he had failed to identify any appealable decision. In the view of the Dispute Tribunal, the alternative proposed by HRMS did not qualify as a "final decision", nor could it be considered as a decision not to proceed with the rebuttal process. The Dispute Tribunal concluded that the rebuttal process regarding Mr. Gehr's 2011 ePAS was ongoing and his application was therefore premature.

10. At the request of Mr. Gehr, the Tribunal held an oral hearing on 22 March 2013, with Mr. Gehr attending by video-link and the Secretary-General's representative participating in person.

Submissions

Mr. Gehr's Appeal

11. The UNDT failed to exercise the jurisdiction vested in it by concluding that the decision to offer him two options could only be reviewed within the context of the assessment of the final decision. By deciding not to review his application, the UNDT erred in procedure. It is the role of the Dispute Tribunal to determine if an administrative decision is procedurally correct. In his view, the signing of his performance appraisal by one person as both the first and second reporting officer was procedurally incorrect.

12. Mr. Gehr maintains that he had no legal obligation to make the choice at the request of the Administration under existing procedures. It amounted to denying him the right to rebut his ePAS, in violation of his terms of appointment.

13. Mr. Gehr submits that the UNDT exceeded

19. We are satisfied that the Dispute Tribunal, in assessing whether the actions of the Administration vis-à-vis the rebuttal process concerning Mr. Gehr's 2011 ePAS constituted an administrative decision for the purpose of Article 2(1) of the UNDT Statute, correctly determined that no appealable administrative decision was identified by Mr. Gehr. We are further satisfied that the Dispute Tribunal, in reaching its decision, correctly assessed the complained-of actions and/or omissions against the definition of an administrative decision provided by the former United Nations Administrative Tribunal in Judgment No. 1157, *Andronov* (2003). Accordingly, the Dispute Tribunal was correct in law when it stated, at paragraph 20 of its Judgment, that "[t]he Administration's proposed alternative does not in any way qualify as a 'final decision'. Nor can it be considered as a decision 'not to proceed' with the rebuttal process in relation to [Mr. Gehr's] 2011 performance appraisal."

20. There is nothing in Mr. Gehr's written or oral submissions to persuade this Tribunal that the UNDT, given the particular facts of the present case, made any error of law or fact in rejecting the application as premature.

21. In the course of this appeal, Mr. Gehr sought to engage the Appeals Tribunal on the question of the merits of his claim against the Administration. He maintains that administrative instruction ST/AI/2010/5 was unlawfully applied to his ePAS process and that, once applied (albeit, he claims, unlawfully), the Administration did not then comply with the provisions of the aforementioned administrative instruction. Mr. Gehr raises this issue before this Tribunal in circumstances where the Dispute Tribunal, for the reasons already stated, has declined at this time to entertain the merits of his application. An

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Original and Authoritative Version: English

Dated this 28th day of March 2013 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Simón

(Signed)

Judge Adinyira

Entered in the Register on this 24th day of May 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar