



## Introduction

1. By an application filed on 30 September 2011, registered under Case No. UNDT/GVA/2011/064, the Applicant challenges the decision of the Ethics Office not to respond to his complaint of retaliation.

2. By way of relief, he seeks compensation for the violation, by the Ethics Office, of its obligations under the Secretary-General's bulletin ST/SGB/2005/21 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations) and for the continuous retaliation he suffered. He also asks the Tribunal to order that the cases of those officials who engaged in retaliation against him be referred to the Secretary-General for possible action to enforce accountability.

## Facts

3. The Applicant joined the United Nations Office on Drugs and Crime ("UNODC") in Vienna in 2002 and, in 2007, he was appointed in the Terrorism Prevention Branch ("TPB") within the Division of Treaty Affairs ("DTA"). His fixed-term appointment was extended several times until 31 December 2011, when he was separated.

4. In early November 2009, the Chief of TPB and the Officer-in-Charge of DTA, respectively the Applicant's first and second reporting officers, conducted with the Applicant his mid-point review for the performance cycle from 1 April 2009 to 31 March 2010 ("2009-2010 performance appraisal").

5. In the fall of 2009, they announced to TPB staff that the Branch was to be reorganized and, on 8 December 2009, they informed the Applicant that his post would be abolished and that he would be reassigned to the position of Senior Legal Adviser which was to be created within the Office of the Chief of TPB.

6. In a document dated 31 January 2010 sent to the UNODC Executive Director, the Applicant explained that, in his view, the decision to abolish his post and reassign him to the position of Senior Legal Adviser was motivated by

extraneous considerations. He further explained that the decision in question had been preceded by prohibited conduct, including harassment, on the part of his first and second reporting officers.

7. By a letter dated 1 December 2010 addressed to the

13. On 28 July 2011, the Applicant again enquired with the Ethics Office as to when he would be informed of the outcome of its preliminary review. Having received no reply to his query, on 5 August 2011 he sought management evaluation of the Ethics Office's decision not to respond to his complaint of retaliation.

14. By a letter dated 25 August 2011, the Applicant was informed that his request for management evaluation had been deemed irreceivable.

15. By an email of 6 September 2011, the Ethics Office official apologized for the delay and assured the Applicant that he would be informed of the outcome of the review by the end of the week. On the following day, the official enquired with the Applicant about the status of his cases before the Tribunal and requested further information.

16. On 23 September 2011, the Ethics Office official informed the Applicant that he would be notified about the outcome of the review upon the return from mission of the Director of the Office, that is, within one week.

17. On 30 September 2011, the Applicant filed with the Tribunal the



independent status and the manner in which it carries out its operational responsibilities lies outside the effective control of the Secretary-General. The application is therefore not receivable;

b. The application is moot since the decision of the Ethics Office was communicated to the Applicant on 18 October 2011.

#### Consideration

25. In UNDT/2011/211, the Tribunal considered :

In cases where the Administration rescinds the contested decision during the proceedings before the Tribunal, the applicant's allegations may become moot. This is normally the case if the alleged unlawfulness is eliminated and, unless the applicant can prove that he or she still sustains an injury for which the Tribunal can award relief, the case should be considered moot.

26. In this case, the Applicant challenges the decision of the Ethics Office not to respond to his complaint of retaliation. Yet, after he filed this application with the Tribunal, the Ethics Office notified him of the outcome of its preliminary review of his complaint, and the Applicant then filed another application to challenge that outcome and complain about the Office's delay in responding to his complaint (Case No. UNDT/GVA/2011/090). The Tribunal observes that, in that latter application, the Applicant "refer[red] to the summary of facts provided under Case Number UNDT/GVA/2011/064" and that the pleas put forward in that application include those made in the former application. The application which forms the subject of the present Judgment is thus moot because the issue raised by the Applicant in this case, i.e., the Ethics Office's failure to respond to his complaint, is no longer at stake. Whether the delay in this process has caused a significant injury to the Applicant, is an issue to be treated within the context of Case No. UNDT/GVA/2011/090.

27. At the hearing, the Applicant requested that Cases Nos. UNDT/GVA/2011/064 and UNDT/GVA/2011/090 be joined.

28. According to article 19 of its Rules of Procedure, the Tribunal "may at any time, either on an application of a party or on its own initiative, issue any order or

give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties”.

29. Given that the application is irreceivable, the Tribunal does not co3béYYHBnLhék3béYYHBaLh-