



Case No.: UNDT/GVA/2012/063

Judgment No.: UNDT/2012/203

Date: 21 December 2012

Introduction

1. The Applicant, a former staff member of the International Criminal Tribunal for the former Yugoslavia (“ICTY”), “assert[s] that the procedures in referring [a fact-finding Panel Report] to the Assistant Secretary-General for Human Resources Management were incorrect and challenge[s] the decisions taken by the Registrar of ICTY.”

2. The Applicant requests the Tribunal:

a. To determine that the Registrar of ICTY (“the Registrar”) failed to apply the provisions of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) when referring the matter concerning her to the Assistant Secretary-General, Office of Human Resources Management (“OHRM”), without conducting a separate formal investigation with due notice to her and without considering alternative methods of solution provided for in ST/SGB/2008/5;

b. To determine that the Registrar acted improperly and failed to exercise his discretion as he referred the matter concerning her to the Assistant Secretary-General, OHRM, without observing her right to due process provided for in ST/SGB/2008/5;

c. To order the production of documents on which the decision to refer the matter concerning her to the Assistant Secretary-General, OHRM was based;

d. To award her compensation for emotional anxiety and moral distress.

Facts

3. In June 2011, the Registrar appointed a fact-finding panel (“the Panel”), under ST/SGB/2008/5, to investigate a third-party complaint on alleged prohibited conduct by a staff member under the Applicant’s supervision.

4. The Panel submitted its investigation report to the Registrar, as the responsible officer, on 13 September 2011; it found, inter alia, that the Applicant may have failed to fulfill her obligations as a manager pursuant to section 3.2 of ST/SGB/2008/5 by not taking all appropriate measures to promote a harmonious work environment.

5. On 21 October 2011, the Registrar informed the Applicant about the Panel's findings concerning her, and his determination that her conduct amounted to possible misconduct. He further advised her that he had referred the matter to the Assistant Secretary-General, OHRM for disciplinary action.

6. Subsequently and at several occasions, the Applicant asked the Registrar for further information and documents concerning the allegations against her, in particular, a copy of the initial complaint of the third party in June 2011, the investigation report, the memorandum referring the matter to the Assistant Secretary-General, OHRM, and the response from the United Nations Headquarters.

7. By memorandum dated 1 March 2012, the Registrar informed the Applicant that the Assistant Secretary-General, OHRM, decided not to pursue disciplinary proceedings against her on the basis of the investigation report. The Registrar confirmed to the Applicant that the matter was closed and that no related information was contained in her ICTY Human Resources file.

8. On 30 April 2012, the Applicant requested management evaluation of the decisions taken by the Registrar reflected in his 1 March 2012 memorandum to her, namely confirming to her that the matter was closed and that no related information related to it was contained in her ICTY Human Resources file, and "implicitly ... denying ... [her] repeated oral and written requests for

10. On 30 July 2012, the Applicant filed the present application.

11. On 11 October 2012, the Tribunal held an oral hearing that the Applicant attended in person, and Counsel for the Respondent by videoconference.

Parties' submissions

12. The Applicant's principal contentions are:

- a. The challenged decisions are subject to judicial review by the Dispute Tribunal under its Statute. The procedural errors of the Registrar and the ensuing referral to the Assistant Secretary-General, OHRM, affect the Applicant's rights by entailing possible disciplinary measures. These rights include the right to due process during the conduct of the proceedings. e e etooh en

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[T]he UNDT has no jurisdiction to waive deadlines for management evaluation or administrative review. Tim

did not, however, address the Applicant's requests

