



**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

DETTORI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON RECEIVABILITY**

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**Counsel for Applicant:**

Omar Yousef Shehabi, OSLA

**Counsel for Respondent:**

Matthias Schuster, UNICEF

Chinonyelum Esther Uwazie, UNICEF

## **Introduction**

1. On 5 February 2020, the Applicant appealed the Administration’s decision not to take any action following her report of abuse of authority concerning a United Nations Children's Fund (“UNICEF”) official. The Applicant requested damages and the referral of several UNICEF officials for accountability.

2. The Respondent replied on 6 March 2020 stating, *inter alia*, that the application was not receivable *ratione materiae* because the Administration had rescinded the contested administrative decision in favor of the Applicant.

3. For the reasons stated below, the Tribunal grants the application in part.

4. On 29 September 2020, the Applicant filed a request for leave to amend the application and include additional submissions on damages and request for accountability of UNICEF officials. The Respondent opposed this request.

## **Relevant Facts**

5. On 4 July 2018, the Applicant filed a report of misconduct under UNICEF’s Administrative Instruction CF/EXD/2012-2007 Amend.1 with UNICEF’s Office of Internal Audit and Investigations (“OIAI”) with allegations of misconduct against a UNICEF official.

6. On 26 March 2019, OIAI notified the Applicant that her complaint fell outside of OIAI’s jurisdiction and had been forwarded to the United Nation’s Office of Internal Oversight Services (“OIOS”) and the Executive Office of the Secretary-General (“EOSG”) for handling.

7. On 25 September 2019, the Director of Investigations of OIAI informed the Applicant that OIOS had informed OIAI that it had referred her complaint to EOSG for their attention and appropriate action. Thereafter, EOSG informed OIAI that given

that the allegations concerned a UNICEF official under the supervision of UNICEF's Executive Director, EOSG would not be taking any further action and OIOS would not investigate the complaint. In light of this information, OIAI concluded that it was unlikely that the complaint would result in any disciplinary action and decided not to investigate the matter.

8. On 3 October 2019, the Applicant requested management evaluation of the decision not to take any action on her complaint of abuse of authority.

9. On 7 November 2019, UNICEF's Deputy Executive Director, Management, *ad interim*, informed the Applicant that her complaint had been remanded to OIAI for a "new and thorough assessment" by officials other than those who had originally handled the matter. The Applicant was also awarded a one-month net salary payment in compensation for OIAI's undue delay in handling her complaint.

### **Consideration**

*The 25 September 2019 decision not to take any action following the Applicant's complaint of abuse of authority*

10. The Respondent states that the application is not receivable because the Administration has already rescinded the 25 September 2019 decision by remanding the Applicant's complaint to OIAI for a fresh assessment and has awarded her compensation for the undue delays in the handling of her complaint.

11. In *Crotty* 2017-UNAT-763, para. 15, the Appeals Tribunal concluded that the Dispute Tribunal has no jurisdiction to review an administrative decision that has been rescinded by the Administration before the applicant has filed the application.

12. In the present case, the Tribunal finds that the 7 November 2019 management evaluation rescinds the 25 September 2019 decision not to investigate the Applicant's complaint of abuse of authority. Therefore, in application of *Crotty*, the Applicant's request for an order directing UNICEF to comply with its obligations with respect to the complaint is not receivable.

13. The Applicant further states that despite the strong language of the 7 November 2019 decision, no action has been taken to process her complaint. The Applicant claims that this inaction constitutes a continued implied decision not to take any action with respect of her complaint.

14. The Tribunal notes that as the 25 September 2019 decision was rescinded, further actions or inactions taken following the 7 November 2019 decision constitute fresh administrative decisions, actual or implied. Therefore, in application of art. 8.1(c) of the Tribunal's statute, the Applicant must seek management evaluation before appealing these decisions before the Tribunal. There is no evidence that the Applicant sought management evaluation of these decisions. Consequently, the Tribunal lacks jurisdiction to address this part of the application.

*Referral for accountability*

15. The Applicant's request for referral of several UNICEF officials for accountability argues, in essence, that said officials purposefully mishandled her complaint in order to protect the subject of the Applicant's complaint.

16. The Tribunal notes that it took OIAI almost eight months to complete the initial review of the complaint and decide its referral to OIOS and EOSG without having interviewed the Applicant as complainant. Moreover, after OIOS referred the matter back on 16 July 2019, OIAI only notified the Applicant on 25 September 2019 that it would not take any further steps given that it appeared "unlikely" that the complaint would result in any disciplinary action.

17. The Tribunal finds that the appalling manner in which this matter was handled by UNICEF denotes, to the very least, negligence on the part of the responsible officials.

18. Even if the Administration finally acknowledged its failure to properly handle the complaint and remanded the matter to OIAI for a fresh evaluation, none of the officials responsible for reviewing the complaint in OIAI appear to have been held accountable.

19. As a matter of principle, the Tribunal is of the view that the Administration's rescission of a faulty administrative decision, while barring the Tribunal's jurisdiction to review the lawfulness of said decision, cannot result in the shielding of the responsible officials from accountability, particularly when the decision has, as in this case, caused harm. Indeed, art. 10.8 of the Statute of the Dispute Tribunal does not condition a referral for accountability to a finding of unlawfulness.

20. In the present case, the Applicant requests the referral for accountability of UNICEF's Executive Director and other UNICEF officials for the mishandling of her complaint.

21. The Tribunal does not find that the Executive Director is shown to have had any influence in the handling of the Applicant's complaint by OIAI, which is an internal oversight office independent from management.

22. The Tribunal further acknowledges that the Chief of Investigations of OIAI who took the 25 September 2019 was only appointed to his post sometime in early 2019 while the complaint was received by OIAI in July 2018. However, the Chief of Investigations was responsible for reaching the decision not to pursue the matter despite the length of time elapsed since the filing of the complaint and the procedural errors that were admittedly committed.

23. In these circumstances, the Tribunal deems it appropriate to refer the Chief of Investigations of OIAI for accountability under art. 10.8 of its Statute.

*Request for damages*

24. While the Applicant requests compensation for damages in her application, she makes no submissions as to how the compensation awarded in the 7 November 2019 management evaluation decision is insufficient. The Applicant further provides no evidence to substantiate a claim for compensation for damages.

25. The Tribunal is therefore bound to reject this claim.

*Request for leave to amend the application*

26. The Applicant filed a submission requesting leave to amend the application raising additional claims on damages and additional requests for referral of UNICEF officials for accountability.

27. With respect to her additional submissions on damages, the Applicant argues that the amount of compensation awarded in the 7 November 2019 management evaluation decision is inadequate as it did not consider all the harm suffered by the Applicant as a result of the mismanagement of her complaint.

28. The Tribunal notes that the facts relied on by the Applicant to support her additional request for damages were known to the Applicant at the time of the application. The Applicant, who has been represented by professional counsel from the outset of these proceedings, fails to justify why these pleadings were not included in the application. Therefore, the additional submissions are untimely.

29. In any event, while the Applicant states that the procedural violation justifying the remand of the complaint was admitted by the Administration to be prejudicial, she fails to explain what was not properly compensated. Moreover, the Applicant provides no evidence to substantiate the untimely request.

30. The Applicant further claims that due to her filing of the complaint, she was “forced out” of her position and later reassigned.

31. The Tribunal notes that none of these decisions were submitted for management evaluation and are therefore not receivable under art. 8.1(c) of the Tribunal's Statute. Even if, *arguendo*, as the Applicant contends, these decisions were connected to the originally contested administrative decision, they constitute distinct administrative decisions whose appeal is governed by the procedures established by the Tribunal's Statute and Rules of Procedure.

32. With respect to the Applicant's further request for referral for accountability of additional UNICEF officials, she claims that some individuals not previously named in the application were involved in the mismanagement of her complaint.

33. The Tribunal notes that the facts alleged by the Applicant in support of her additional request for referral for accountability predate the filing of the application. The Applicant fails to justify these pleadings were not included in the application. The Tribunal therefore rejects these pleadings as untimely.

### **Conclusion**

34. In light of the foregoing, the application is granted in part;

35. The motion for leave to amend the application is rejected.

36. The Applicant's request for "an executable [o]rder from the Tribunal requiring the Respondent immediately to comply with its obligations [...] with regard to the

Applicant's complaint of abuse of authority against [a UNICEF official] is rejected as non-receivable;

37. The Applicant's request for compensation is rejected;

38. The Applicant's request for the referral of UNICEF's Executive Director for accountability is rejected;

39. The Tribunal refers the Chief of Investigation of OIAI to the Secretary-General for possible action to enforce accountability pursuant to art. 10.8 of the Tribunal's Statute.

*(Signed)*

Judge Joelle Adda

Dated this 21<sup>st</sup> day of December 2020

Entered in the Register on this 21<sup>st</sup> day of December 2020

*(Signed)*

Nerea Suero Fontecha, Registrar, New York