



**Before:** Judge Alessandra Greceanu

**Registry:** New York

**Registrar:** Hafida Lahiouel

NCHIMBI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Steven Dietrich, ALS/OHRM, UN Secretariat

Notice: This Judgment has been corrected in accordance with article 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

## **Introduction**

1. The Applicant, a former staff member of the International Criminal Tribunal for Rwanda (“ICTR”), contests the following decisions: (a) to withhold his final payments and the delay in submitting forms for his pension for over six months after checking out from ICTR on 31 December 2015; (b) to unlawfully deduct his final leave days; (c) not to provide him with a copy of the report of an investigation conducted against him; and (d) the failure of the Secretary-General and the Office of Internal Oversight Services (“OIOS”) to intervene in the matter.

2. In response, the Respondent contends that several of the Applicant’s claims are not receivable as he failed to request management evaluation for the relevant alleged contested decisions. Furthermore, the claim regarding the alleged failure to pay his final pay is moot. In any event, the Respondent submits that the application is without merit.

## **Factual and procedural history**

3. On 10 September 1998, the Applicant was initially appointed as a Records Clerk at the level of GL-4. At the time of his separation in December 2015, he was serving as an Information Network Assistant at the GL-6 level. The Applicant was paid his last month’s salary upon separation from service on 31 December 2015.

4. On 6 January 2015, the ICTR issued Information Circular No.1 to all its staff members setting forth frequently asked questions about the separation process. The circular explained, among other matters, the check-out process and the timeline for receiving final benefits, which for locally recruited staff like the Applicant, consisted of the last month’s salary and the payment for the balance of accrued leave days.

5. On 11 November 2015, the Property Control and Inventory Unit (“PCIU”) provided the Applicant with a list of all assets assigned to him from the ICTR asset database.

6. In emails sent during the period from 23 to 26 November 2015, the Applicant expressed his desire to purchase certain assets assigned to him. On 13 January 2016, the Applicant informed the Information Technology Services Section (“ITSS”) that some of the items that he had expressed an interest in purchasing were missing. The Applicant stated that, if the items could not be found, the ICTR should instruct the Finance Section to deduct the value of the missing items from his final pay and proceed with his check out.

7. On 20 January 2016, the PCIU informed the Applicant that, in accordance with the financial regulations and rules, he would be charged with the current depreciated value of the lost items assigned to him.

8. On 25 January 2016, the Applicant reiterated that he bore full responsibility for the missing items and that their value should be deducted from his final pay.

9. On 27 January, the ICTR requested the Safety and Security Unit (“SSU”) to conduct an investigation into the lost items that had been assigned to the Applicant.

10. On 24 February 2016, the Applicant filed a request for management evaluation before the Management Evaluation Unit (“MEU”).

11. On 16 March 2016, the SSU’s investigation report was submitted to the ICTR Coordinator, Liquidation Services, stating as follows:

**6. OBSERVATIONS. EVIDENTIAL AND FACTUAL SUMMARY**

6.1 From the information received the following facts can be established:

As per ICTR SAU [unknown abbreviation] Asset Record and Galileo UN Asset Record the following missing items were under the name and signature of [the Applicant]:

6.1.1 Video Cassette Recorder VHS or Multi System VCR, ITR-03658

6.1.2 DEL E1910 Monitor 19", Black Widescreen, TC003 DVI-D Flat Panel 1440x900, ITR-14158

6.1.3 EPSON Stylus R270, Printer Ink Jet, Photo Printer Color, ITR-12188

6.1.4 DEL E1910 Monitor 19", Black Widescreen, TC003 DVI-D Flat Panel 1440x900, ITR-14182

6.1.5 Studio Audio Recorder T ASCAM 202 MKIII, ITR-13411

6.1.6 Computer Notebook, DELL, LAP-TOP, ITR-O 1 062

6.1.7 Scanner Image, Pro - Canon, ITR-09267

6.1.8 Computer Desktop, Range 2-3 GHZ, ITR-13839

6.2 [The Applicant] signed the items for his office to be used for the organization for work purposes, not for his sole use but for other users also such as the interns and staff members who come in for TDY.

6.3 [The Applicant] failed in complying with the UN Property Management Procedure by not keeping proper records of the items issued under his name nor keeping tabs on the movement of each item.

6.4 [The Applicant] failed in his responsibilities as the assignee of the items by failing to report the matter to SSU when he discovered that the items were missing in November 2016.

6.5 The ICTR PCIU appeared to have failed [the Applicant] in that it did not give him the time nor forewarn him regarding the items under his name considering the closing down of the ICTR and the Liquidation Team process. This is evidenced in the records, showing some of the items issued to [The Applicant] as last checked by the ICTR PCIU in 2011.

6.6 The total depreciation value for all the missing items was US \$1,006.21

**7. BACKGROUND**

7.1 Nil

**8. CONCLUSION**

8.1 All the missing [United Nations Owned Equipment, “UNOE”] were under the responsibility of [the Applicant]. He declared in his voluntary statement that he did not follow up to check on the items when they were relocated to another office even though he was informed about the relocation of the items.

8.2 [The Applicant] did not exercise proper care and caution on the items issued under his name. Hence the two different lists of items he submitted to the Investigator as the lists of missing items under his name. And he did not report the matter to SSU after he had discovered that the items under his name were missing.

8.3 The absence of updated property track records in the ICTR PCIU making it difficult to track the movement of the items and their locations.

8.4 Since most of the items signed by [the Applicant] were not for his sole use but for the organization and other ICTR Staff Members, it wouldn't do justice to [the Applicant] to be held solely responsible for the missing items.

8.5 Based on the findings the investigations cannot establish that there was any fraudulent activity such as theft of the UNOE involved. However the investigation can safely conclude that the UN Property Management Control Procedures were not properly adhered to by both parties involved, the Staff Member and the ICTR Property Management Unit.

**9. RECOMMENDATIONS**

Considering that each of the missing item's life expectancy have all expired, the unavailability of ICTR PCIU updated verification inspection records and the fact that all these items were headed for the ICTR Liquidation process, it is recommended that the appropriate written off process/disposal of missing UN Owned Equipment be applied to the missing items.

12. On 12 May 2016, the Applicant was paid the cash value of his annual leave balance, less USD 687. 97 as he was charged for depreciated value of the lost items assigned to him.

13. On 18 May 2016, the ICTR provided the United Nations Joint Staff Pension Fund (“UNJSPF”) instructions for payment of benefits to the Applicant.

14. On 30 June 2016, the Applicant filed an application to the Dispute Tribunal in Nairobi. The case was registered as Case No. UNDT/NBI/2016/047.

15. On 4 August 2016, the Respondent filed his reply.

16. Following the Plenary of Dispute Tribunal judges held in May 2016, to balance the Tribunal’s workload, the present case was selected to be transferred to the Dispute Tribunal in New York.

17. By Order No. 429 (NBI/2016) dated 9 September 2016, the parties were instructed to file their views, if any, on the transfer of the present case by 16 September 2016.

18. By Order No. 438 (NBI/2016) dated 21 September 2016, as neither party had objected to the transfer, the case was transferred to the Dispute Tribunal in New York. The case was registered under Case No. UNDT/NY/2016/043.

19. On 23 September 2016, the case was assigned to the undersigned Judge.

20. By Order No. 244 (NY/2016) dated 20 October 2016, the Tribunal instructed the parties as follows (emphasis in the original):

9. By **5:00 p.m. on Friday, 4 November 2016**, the Respondent is to file a copy of:

- a. The management evaluation response regarding those contested decision(s) which were subject to such a review;
- b. The security investigation report together with all the supporting evidence submitted by the United Nations Mechanism for International Criminal Tribunal Security Team to the ICTR Coordinator, Liquidation Services;
- c. The review of the security investigation report;

d. The list of the lost items and the corresponding calculation for each object, resulting in the recovered amount of USD687.97 from the Applicant's final payments as indicated in the "Check Out Separation" from 17 May 2016;

e. The list of all delayed payments, if any, including to the United Nation Joint Staff Pension Fund, until 17 May 2016.

10. By **5:00 p.m. on Friday, 4 November 2016**, the parties are instructed to file separate statements informing the Tribunal, if:

a. Any additional evidence is necessary to be produced in the present case and, if so, stating its relevance, or if the case may be decided on the papers;

b. If the parties are amenable for an informal resolution of the case either through the Office of the Ombudsman or through *inter partes* discussions.

11. In case the parties agree that no further evidence is requested and the Tribunal can decide the case on the papers before it, the parties are instructed to file their closing submissions, by **5:00 p.m. on Friday, 11 November 2016**.

21. On 3 November 2016, the Applicant filed his submission pursuant to para. 10 (a) and (b) of Order No. 244 (NY/2016) in which he, *inter alia*, stated that he "ha[d] no objection whatsoever as to whether this case [could] be decided on the papers provided that justice [was] not only done but seen to be manifestly done" and that the parties were "not amenable for an informal resolution".

22. On 4 November 2016, the Respondent filed his submission in accordance with Order No. 244 (NY/2016) and stated that he did "not wish to produce any additional evidence in this case" and that he would "file and serve his closing submissions on 11 November 2016 as directed in paragraph 11 of the Order". The Respondent further stated that all of the documents that the Tribunal had instructed him to submit had been appended to his submission.

23. On 10 November 2016 the Applicant filed his closing submissions.

24. On 11 November 2016 the Respondent filed his closing submissions.

25. On 13 November 2016, the Applicant filed a response to the Respondent's closing submission.

26. On 20 January 2017, the Applicant filed a submission regarding proceedings in a criminal case filed against him by the Respondent; a case which was dismissed on 6 December 2016.

### **Applicant's submissions**

27. The Applicant's principal contentions may be summarized as follows:

a. The delay in effecting the Applicant's final entitlements and payments for over six months was marred by irregularities, abnormality and lack of appreciation of facts. It constituted an abuse of discretionary powers in breach of the Charters of the Human Rights and the United Nations staff and financial regulations, rules and administrative instructions;

b. Despite several reminders and the Applicant's acceptance of liability to pay for all assigned items, all proved failure and no action was taken in time to rescue him from irreparable sufferings;

c. The Administration did not ensure that its decisions were proper and made in good faith, and the Administration's exercise of discretion is not unfettered. Also, the Respondent has not detailed its reasons for the delay. This makes it difficult to conclusively determine whether the unilateral decision to hold the Applicant's salaries for six months was lawful, including whether the delay was made in good faith and in the interests of the Organization and its staff members, thereby ensuring equity of treatment of all staff members;

d. The contested decision appears to be *prima facie* unlawful within the meaning of art. 2.2 of the Dispute Statute. In this connection, the Tribunal should hold that the condition of *prima facie* unlawfulness of the challenged decision does not require more than serious and reasonable doubts about its legality;

e. The ICTR administration sought to revenge against the former President of ICTR Staff Union for defending the interests of all ICTR staff members;

f. The delay in effecting the Applicant's final payments has caused him psychological and emotional harm and has tarnished his financial reputation and career prospects. Furthermore, it has had significant negative consequences to his pension rights, family obligations, bank loans, payments of house rent and other financial commitments;

g. The delay of the report of the investigation team of the United Nations Mechanism for International Criminal Tribunals ("MICT") was slanderous and aimed at defaming the Applicant, causing him psychologically and reputational harm. The Applicant requested the Secretary-General to intervene but he did not do so; a failure not done in in good faith;

h. The failure of the OIOS to investigate and update the Applicant on his request for investigation has meant that that ICTR management cannot be held accountable for mishandling United Nations' properties.

### **Respondent's submissions**

28. The Respondent's principal contentions may be summarized as follows:

a. The Applicant's claims relating to the deduction from his final pay, the failure to provide him a copy of the investigation report, and the failure of the Secretary-General or the OIOS to intervene, are all not receivable. The Applicant did not request management evaluation of any of these claims;

b. The Applicant may not file an application before the Dispute Tribunal without first exhausting the administrative remedies under staff rules 11.2 and 11.4 as reaffirmed by General Assembly in resolution 61/261 (Administration of Justice at the United Nations), adopted on 4 April 2007, para. 26;

c. The Applicant's claim regarding the alleged failure to pay his final pay is moot and should be rejected as such. The Applicant was paid his final monthly salary upon separation from service in December 2015. The payment of the balance of his annual leave was delayed due to the investigation of the missing items assigned to the Applicant. However, upon completion of the investigation and review of the report, the Applicant was paid his annual leave balance on 12 May 2016;

d. The payment of the Applicant's annual leave balance was delayed due to an ongoing investigation of the eight lost items that were assigned to him. Once that investigation was completed and the report reviewed, the Applicant was paid his leave balance on 12 May 2016 less USD687.97 charged for the depreciated value of the lost items assigned to him. The UNJSPF was also notified of the Applicant's separation and all required documentation was forwarded to the Fund on 18 May 2016;

e. The deduction from the Applicant's leave balance payment was lawful and in accordance with the financial rules and regulations. Rule 106.7(a) provides that the Under-Secretary-General for Management may, after

investigation, authorize the writing-off of losses of assets, including cash, receivables, property, plant and equipment, inventories and intangible assets. Rule 112.3 provides that United Nations personnel may be held financially liable for financial losses suffered as a result of negligence or violation of any regulation, rule or administrative instruction;

f. The Applicant acknowledges that he lost United Nations property that was assigned to him and accepted full responsibility for that loss. The ICTR conducted an investigation in accordance with the financial rules and regulations, and deducted the depreciated cost of the lost items from the Applicant's annual leave payment. He did not contest the amount that was deducted from his pay until the filing of this application and he never requested management evaluation;

g. The Applicant has not identified any staff rule or regulation that entitles him to receive the investigation report. It is undisputed that the Applicant has accepted full responsibility for the loss of the items in question. Finally, the Applicant has not demonstrated any staff rule or regulation was violated by the failure of OIOS or the Secretary-General to intervene in this matter or that such intervention was appropriate under the circumstances.

## **Considerations**

### *Applicable law*

29. Of relevance to the present case, Information Circular No. 1 dated 6 January 2015 on "Response to frequently asked questions by participants of the October 2014 ICTR Separation Orientation Sessions" provides that:

#### **Purpose:**

The purpose of this information circular is to respond to the most frequently raised questions by participants of the recently concluded “Separation Orientation Sessions”, from 28-30 October 2014. This IC does not cover all the questions raised, but instead only attempts to address the most common ones.

### **Specific Provisions**

1. What separation actions can I carry out to save time even before the separation letter is issued?
  - a. Check with HRPS [unknown abbreviation] whether you have submitted and updated your beneficiary designation forms, copy of marriage certificate, your own birth certificate and birth certificates of your dependents.
  - b. Check that you have submitted all your Inspira e-performance documents.
  - c. Contact your Human Resources Assistant to check whether you have submitted the proof of travel of all your official travel.
  - d. Ensure your name in the personnel action, birth certificate and marriage certificate, and your passports are spelled the same.
  - e. Check with PCIU (Property Control and Inventory Unit) to do an inventory of the items assigned to you,
  - f. Get prepared in advance about how soon you can return the CD plate of your car.
  - g. Contact Finance Section for Education Grant advance if you have taken any.
2. When do I need to inform my Human Resource Assistant about my planned travel dates? As per the new UN travel rules, ICTR travel unit needs to receive the travel authorization from HRPS 30 days before the travel date. For this to be possible, you need to inform your HRA [unknown abbreviation] about your travel plans at least 37 days before the travel date.
3. What happens if I have accumulated CTO (compensatory time off at the time of my separation? Accrued annual leave (up to 60 days for fixed-term contract holders and up to 18 days for temporary contract holders) is encashed on separation, but CTO cannot be encashed and has to be used during the service period.

4. What is the difference between Repatriation Grant and Relocation Grant?
  - a. Repatriation Grant is meant to assist internationally recruited staff on Fixed-term Appointment with establishing residence away from the last duty station upon separation from the UN.
  - b. Relocation Grant is the lump sum paid in lieu of the shipment of personal effects.
5. How much will I be paid on separation from ICTR? The entitlements for separating ICTR staff are as follows:
  - a. Final month's salary:
  - b. Payment against accrued annual leave. For estimate, please contact the leave monitor in Personnel Records Unit HRPS.
  - c. Relocation grant (international staff on fixed term appointment only). USD 10,000 for staff without dependents and USD 15,000 for staff with dependents. The grant is USD 1,200 for temporary contract holders.
  - d. Repatriation grant (international staff only) who served at least one year or more outside the home country. Amount depends on duration of continuous service. For estimate, please contact your Human Resource Assistant.
  - e. Pension benefits. Amount depends on duration of service and age. For estimate, please check the UNJSPF website ([\\www.unjspf.org](http://www.unjspf.org)) and contact your Human Resource Assistant for more details.
6. What actions do I need to take upon reaching my home country (international staff)?
  - a. Return UNLP, boarding passes and proof of travel.
  - b. After leaving the duty station, obtain notarized affidavit of relocation and forward to HR, if you had served one year or more.
  - c. Confirm the receipt of your final pay including pension payment to HR.
  - d. Submit to UNJSPF (Pension Fund) an annual entitlement certificate if you are in receipt of pension benefits. This needs to be done every year for your entire life.

- e. Apply for AFICS (Association of Fonner International Civil Servants) membership (Optional).
7. What happens if I can't return the CD plate before traveling on separation? Returning the CD plate is one of the mandatory steps in checkout for international staff. If it is not returned, the checkout is suspended and no entitlements can be released until it is submitted.
8. How long will it take for me to receive my final benefits from ICTR? This depends on how soon you complete the checkout process and submit all the required documents. If both requirements are completed, the final benefits can be processed and released in 3-4 months from that time.
9. If I am retiring, when can I expect to start receiving my pension benefits? This depends on how soon you complete the checkout process and submit all the required documents. Once the pension fund receives the completed documents, pension payments can start within 6 months.
10. What happens if I am re-employed by a UN office after separation from the ICTR? This situation is governed by two provisions in the UN staff rules:
  - Rule 4.17 Re-employment
    - a. A former staff member who is re-employed under conditions established by the Secretary-General shall be given a new appointment unless he or she is reinstated under staff rule 4.18.
    - b. The terms of the new appointment shall be fully applicable without regard to any period of former service. When a staff member is re-employed under the present rule, the service shall not be considered as continuous between the prior and new appointments.
    - c. When a staff member receives a new appointment in the United Nations common system of salaries and allowances less than 12 months after separation, the amount of any payment on account of termination indemnity, repatriation grant or commutation of accrued annual leave shall be adjusted so that the number of months, weeks or days of salary to be paid at the time of the separation after the new appointment, when added to the number of months, weeks or days paid for prior periods of service, does not exceed

the total of months, weeks or days that would have been paid had the service been continuous.

• Rule 4.18 Reinstatement

- d. A former staff member who held a fixed-term or continuing appointment and who is re-employed under a fixed-term or a continuing appointment within 12 months of separation from service may be reinstated if the Secretary-General considers that such reinstatement would be in the interest of the Organization.
- e. On reinstatement the staff member's services shall be considered as having been continuous, and the staff member shall return any monies he or she received on account of separation, including termination indemnity under staff rule 9.8, repatriation grant under staff rule 3.19 and payment for accrued annual leave under staff rule 9.9. The interval between separation and reinstatement shall be charged to the extent possible, to annual leave, with any further period charged to special leave without pay. The staff member's sick leave credit under staff rule 6.2 at the time of separation shall be reestablished; the staff member's participation, if any, in the United Nations Joint Staff Pension Fund shall be governed by the Regulations or the Fund.

11. This is not an exhaustive list, and you may contact your Human Resource Assistant (BRA) for any other concerns or queries related to separation or other HR issues.
12. For your assistance, please see the Personal Separation Checklists (separate ones for international and national staff) attached with this IC.

30. Information Circular No. 61 from ICTR dated 15 December 2015 regarding "Sale of items to staff members – prices", stated in relevant part, that:

**Purpose**

13. The purpose of this information circular is to convey to staff members prices of selected items assigned to them which they may purchase if they so wish. This is part of the exercise to dispose items by accelerating and streamlining the procedures and at the

same time making sure that the Organization benefits from the sale of items.

**Specific Provisions**

14. Many staff members are separating from the ICTR before 31 December 2015 and have expressed interest to purchase some of the items they have been using in their offices.
15. The Pricing Committee has held a number of meetings to determine the prices based on various factors such as age of the item, depreciated value, price of similar used item and new item in the local market and models or brands of the said items.
16. The list of items and their prices which staff members may purchase is attached to this circular. Staff members are reminded to adhere strictly to the payment procedure and processing of the items through the various stages up to the final stage of having Security & Safety Section checking and verifying the gate pass before any item leaves the ICTR premises.
17. The Management counts on your cooperation to make sure that all the procedures are followed and there is no abuse of this privilege.

*Receivability framework*

31. As established by the United Nations Appeals Tribunal, the Dispute Tribunal is competent to review *ex officio* its own competence or jurisdiction *ratione personae*, *ratione materiae*, and *ratione temporis* (*Pellet* 2010-UNAT-073, *O'Neill* 2011-UNAT-182, *Gehr* 2013-UNAT-313 and *Christensen* 2013-UNAT-335). This competence can be exercised even if the parties do not raise the issue, because it constitutes a matter of law and the Statute of the Dispute Tribunal prevents it from considering cases that are not receivable.

32. The Dispute Tribunal's Statute and the Rules of Procedure clearly distinguish between the receivability requirements as follows:

- a. The application is receivable *ratione personae* if it is filed by a current or a former staff member of the United Nations, including the United Nations

Secretariat or separately administered funds (arts. 3.1(a)–(b) and 8.1(b) of the Statute) or by any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered funds and programmes (arts. 3.1(c) and 8.1(b) of the Statute);

b. The application is receivable *ratione materiae* if the applicant is contesting “an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment” (art. 2.1 of the Statute) and if the applicant previously submitted the contested administrative decision for management evaluation, where required (art. 8.1(c) of the Statute);

c. The application is receivable *ratione temporis* if it was filed before the Tribunal within the deadlines established in art. 8.1(d)(i)–(iv) of the Statute and arts. 7.1–7.3 of the Rules of Procedure.

33. It results that, in order to be considered receivable by the Tribunal, an application must fulfil all the mandatory and cumulative requirements mentioned above.

Receivability *ratione personae*

34. The Applicant is a former staff member of the ICTR and therefore the application is receivable *ratione personae*.

Receivability *ratione temporis*

35. The Tribunal notes that the Applicant filed the present application on 30 June 2016, within 90 days from the date when he received the response from the MEU on 4 April 2016, and the application is receivable *ratione temporis*.

Receivability *ratione materiae*

36. The Applicant is challenging the following decisions: (a) to withhold his final payments and the delay in submitting forms for his pension; (b) to deduct his final leave days; (c) not to provide him with a copy of the report of an investigation conducted against him; and (d) the failure of the Secretary-General and the OIOS to intervene in the matter.

37. The Applicant filed a management evaluation request before the MEU on 26 February 2016 in which he contested the decisions to withhold his final payments and the delay in submitting forms for his pension which are administrative decisions subject to a management evaluation request. The Applicant indicated that these decisions were made on 31 December 2015, therefore the management evaluation request was filed within 60 days from the date of notification and the application is receivable *ratione materiae* regarding these two decisions.

38. Having carefully reviewed the content of the management evaluation request, the Tribunal notes that the Applicant made no request and/or reference to the following decisions: (a) to deduct his final leave days; (b) not to provide him with a copy of the report of an investigation conducted against him; and (c) the failure of the Secretary-General and the OIOS to intervene in the matter. The Tribunal further notes that the investigation report was finalized on 16 March 2016, and that the Applicant requested by email a copy of the investigation report on 2 May 2016. On the same day, his request was denied by the Head of SSU. It results that the decision not to provide him with a copy of the report of an investigation conducted against him was yet to be taken on 26 February when the management evaluation was submitted. Furthermore, the Applicant did not file any additional request to include these decisions as part of the 24 February 2016 management evaluation request, nor any separate request(s) for management evaluation after 16 March 2016. The Tribunal concludes that there was no management evaluation requested for any of these

decisions and that the application in this regard is to be rejected as non-receivable *ratione materiae*.

*The alleged delay in withholding the Applicant's final payments and submitting the forms for his pension*

39. The Tribunal notes that, as results from the uncontested facts, the Applicant at the time of his separation in December 2015 was serving as an Information Network Assistant at the level of GL-6 and that he was paid his last month's salary upon separation from service on 31 December 2015.

40. On 6 January 2015, the ICTR issued Information Circular No. 1 to all staff setting forth frequently asked questions about the separation process, which explained, among other things, the check-out process and the timeline for receiving final benefits, which for locally recruited staff consisted of the last month's salary and the payment for the balance of accrued leave days. The Tribunal notes that paras. 8 and 9 of Information Circular No. 1 state as follows:

8. How long will it take for me to receive my final benefits from ICTR? This depends on how soon you complete the checkout process and submit all the required documents. If both requirements are completed, the final benefits can be processed and released in 3-4 months from that time.
9. If I am retiring, when can I expect to start receiving my pension benefits? This depends on how soon you complete the checkout process and submit all the required documents. Once the pension fund receives the completed documents, pension payments can start within 6 months.

41. On 11 November 2015, the PCIU provided the Applicant with a list of all assets assigned to him in the ICTR asset database, and, by emails sent during the period from 23 to 26 November 2015, the Applicant expressed his desire to purchase certain of the assets assigned to him.

42. On 13 January 2016, the Applicant informed the ITSS that some of the items that he had expressed an interest in purchasing were missing. The Applicant stated that, if the items could not be found, the ICTR should instruct the Finance Section to deduct the value of the missing items from his final pay and proceed with his check-out. On 20 January 2016, the PCIU informed the Applicant that, in accordance with the financial regulations and rules, he would be charged with the current depreciated value of the lost items assigned to him. On 25 January 2016, the Applicant reiterated that he bore full responsibility for the missing items and that their value should be deducted from his final pay.

43. By email dated 26 January 2016 from Ms. SK, the then Coordinator, of the ICTR Liquidation Services (copying a wide range of other staff members, including Ms. DM, Logistic Assistant in the ITSS), the Applicant was informed as follows:

Since [the Applicant] has accepted responsibility if the lost items the cost should be communicated to him in order for him to make payment and have the items cleared from his records. This will enable him to check out of the ICTR.

44. On 27 January 2016, Ms. SK informed Ms. DM that:

In view of the various exchanges with different versions of what exactly happened to assets assigned to [the Applicant], I would like to have an investigation carried out by [the Mechanism for International Criminal Tribunals, "MICT"] security and report provided as soon as possible in order to enable [Ms. SK] to take a decision on this matter. It is very possible that some of the missing items might be located and in this case [the Applicant] does not have to be charged for it.

45. On 28 January 2016, at 10:39 a.m., Mr. YO, the Head of the SSU advised the staff members, including the Applicant, Ms. SK and Ms. DM that:

... the UN Security investigate stolen items, but not lost or missing items. All missing items are dealt with administratively in accordance with the existing UN rules and regulations governing property control management.

As such, unless you have proof of theft, the missing or lost items are to be dealt with as stated herein.

This will be the recommendation if after taking your statements we establish on the facts of the case that the items are missing or lost.

46. On the same day, at 11:20 a.m., Ms. SK sent an email to Mr. YO, stating that

How would we know if items reported as missing are not stolen without investigating and analyzing the circumstances that led to the disappearance of the items. I hope the investigation will not take long because whatever the outcome I need the report in order to be able to take the appropriate administrative decision.

47. As results from the 16 March 2016 investigation report, on 2 February 2016, the SSU investigator received an email from Mr. YO instructing him to prepare a report regarding “the alleged missing UNOE” and forwarding him all the email trails between Ms. SK, Ms. DM and the Applicant.

48. On 1 February 2016, the investigator requested the Applicant to submit a detailed statement regarding the eight UNOEs assigned to him during his time in the ICTR as included in the official list.

49. On 2 February 2016 the Applicant sent his detailed statement to the investigator, as requested, which included 13 items and, on 3 February 2016, the investigator requested the Applicant to confirm the list of items that were under his name and still unaccounted for or missing. On 3 February 2016, the Applicant sent a list of 11 items, including the eight items identified in the official list.

50. On 3 February 2016, Ms. DM sent the list of items under the Applicant’s name and yet to be accounted for to the investigator, which included eight items.

51. The Tribunal notes that the investigation report issued on 16 March 2016, *inter alia*, concluded that most of the items assigned to the Applicant were not for his sole use but rather for that of the Organization and other ICTR members. In the

absence of updated property track records in the ICTR, PCIU made it difficult to track the movement of the items and their location. Some of these items were last checked by the PCIU in 2011 and, based on its findings, the investigation did not establish that any “fraudulent activity, such as theft” of the relevant UNOEs, had occurred. The investigation concluded that the so-called “UN Property Management Control Proceedings” were not properly adhered to by the involved parties, namely the Applicant and the ICTR Property Management Unit. Considering that each of the missing items’ life expectancy had expired, the unavailability of the PCIU updated verification inspection records and the fact that all the items were headed for the ICTR liquidation process, it was recommended that the appropriate written off process/disposal for United Nations equipment were to be applied to the missing items.

52. The Tribunal considers that, on 27 January 2016, there was no indication of any illegal activity, such as a theft of the missing items which had been assigned to the Applicant, and no justification, therefore, existed to request and conduct an investigation to replace the unavailable PCIU inspection records. Moreover, the circumstances concerning the relevant UNOEs, as stated in the investigation report of March 2016, namely that each of the missing items’ life expectancy had expired and the fact that all these items were headed for the ICTR liquidation process, had not changed, at least, since January 2016. All relevant information thereon was available in January 2016 and should have been known by the ICTR administration, including Ms. KM who, without any further delay, could have processed the Applicant’s check-out at the end of January 2016 without an investigation because, on 25 January 2016, and to avoid any delays in processing his check-out, the Applicant had voluntarily expressed that he was willing to pay the value of any missing items. Furthermore, the Tribunal considers that there is no evidence that similar investigations were conducted for any other missing items assigned to other staff ICTR members during the liquidation process before their checkout was processed. On 12 May 2016, the

Applicant was paid the cash value of his annual leave balance and he was charged the amount of USD687.97 for depreciated value of the lost items assigned to him. On 18 May 2016, the ICTR provided the UNJSPF with instructions for payment of benefits to the Applicant.

53. The Tribunal concludes that the Administration unlawfully delayed the Applicant's check-out from the end of January 2016 until the middle of May 2016, including his final payments and the submission of the required forms for his pension, and the application is to be granted regarding these two receivable claims.

### **Relief**

54. The Tribunal notes that the Applicant requested damages for the delay in processing his check-out, including his final payments and the submission of the required forms for his pension.

55. In *Benfield-Laporte* 2015-UNAT-505, the Appeals Tribunal held that (see para. 41, footnote omitted):

... while not every violation of due process rights will necessarily lead to an award of compensation, damage, in the form of neglect and emotional stress, is entitled to be compensated. The award of compensation for non-pecuniary damage does not amount to an award of punitive or exemplary damages designed to punish the Organization and deter future wrongdoing.

56. Taking into consideration all circumstances of the present case, the Tribunal considers that the present judgment together with USD1,500 in compensation to the Applicant represents a reasonable and sufficient relief for the three months' procedural delay identified above (in comparison, in *Benfield-Laporte*, the Appeals Tribunal, for instance, upheld the Dispute Tribunal's award of USD 3,000 in compensation for a six-month delay).

## **Conclusion**

57. In the light of the foregoing the Tribunal DECIDES:

- a. The application is granted, in part, regarding the decisions to withhold his final payments and the delay in submitting forms for his pension;
- b. The Respondent is to pay USD1,500 in compensation to the Applicant for the three months' unlawful procedural delay in processing his final payments and the submission of the required forms for his pension;
- c. The Applicant's claims regarding the alleged decisions to deduct his final leave days; not to provide him with a copy of the report of an investigation conducted against him; and the failure of the Secretary-General and the OIOS to intervene in the matter are rejected as not receivable.

*(Signed)*

Judge Alessandra Greceanu

Dated this 16<sup>th</sup> day of June 2017

Entered in the Register on this 16<sup>th</sup> day of June 2017

*(Signed)*

Hafida Lahiouel, Registrar, New York