



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

PARAYIL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM

Introduction

1. By application filed on 24 November 2015, the Applicant, a former Vice-Rector (D-2) of the United Nations University (“UNU”), contests the decision by the Assistant Secretary-General, Office of Human Resources Management (“ASG/OHRM”) of 24 July 2015 dismissing his complaint of “discriminatory treatment during [his] service at the [UNU]”.

Facts

2. The Applicant joined the UNU in Tokyo, Japan, on 8 August 2008, as a Vice-Rector (D-2) on a fixed-term appointment of four years. His appointment was subsequently extended for one-year periods, first until 28 July 2013 and then until 28 July 2014.

3. On 1 March 2013, a new Rector took office at UNU.

4. After consultation with the UNU Council, in May 2013, the new Rector decided to merge the two UNU Institutes in Japan (UNU-IAS in Yokohama and UNU ISP in Tokyo). As a part of the restructuring exercise a new position as Director of the new merged institute, namely the UNU Institute for Advanced Study of Sustainability (“UNU-IAS”), was created. According to the Respondent, the post occupied by the Applicant consequently ceased to be funded after the end of July 2014.

5. The new position of Director of UNU-IAS was advertised at the D 1-level in autumn 2013. The Applicant did not apply for it.

6. The Applicant was separated from the Organization on 28 July 2014, following the non-renewal of his fixed-term appointment.

7. By letter of 22 January 2015 to the ASG/OHRM, the Applicant alleged that he was subject to discriminatory treatment during his service at the UNU, notably on the part of the Rector of UNU regarding the non-renewal of his appointment in July 2014.

8. The ASG/OHRM provided the Rector with a copy of the complaint and requested him to provide comments, which he did on 24 June 2015, denying the allegations of discrimination and explaining the restructuring process that the UNU underwent.

9. By letter of 24 July 2015, the ASG/OHRM, informed the Applicant that after a “careful review” of the Applicant’s complaint of discrimination, she found “nothing improper”.

10. On 20 August 2015, the Applicant requested management evaluation of the decision of the ASG/OHRM not to open an investigation into his complaint of discrimination.

11. By letter of 5 October 2015, the Under-Secretary General for Management (“USG for Management”) informed the Applicant that the Secretary-General had decided to uphold the response of the ASG/OHRM to his petition for discrimination.

12. On 24 November 2015, the Applicant filed his application before the Tribunal.

13. The Respondent filed his reply on 28 December 2015.

14. On 2 March 2017, the Respondent provided additional information and documents concerning the Applicant’s contractual relationship with the Organization, the organizational status of the UNU, and the application (or not) of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) to the present case, as directed by the Tribunal in its Order No. 50 (GVA/2017) of 22 February 2017. The Applicant did not respond to these.

15. Both parties agreed that the present case be decided on the papers.

Parties’ submissions

16. The Applicant’s principal contentions are:

- a. The ASG/OHRM and the USG for Management decided that the Applicant had not been the subject of discrimination without conducting an impartial investigation into his allegations;
- b. The Applicant, an Indian national, was discriminated against in the non-renewal of his contract on the basis of his nationality. He was the only one of the three Vice-Rectors whose contract was not renewed for another period of four years and ultimately not extended beyond July 2014; The new Rector is biased against him and discriminates people coming from “the developing world and the Global South” as there is no senior official from these countries in UNU central administration;
- c. The non-renewal of the Applicant’s appointment was not triggered by the restructuring exercise, as the Rector told him beforehand that his post would not be extended beyond July 2014 and a new Vice-Rector has now been appointed to his former post;
- d. Following the UNU restructuring, the Applicant decided not to apply for the new post of Director of the newly merged Institute, because the Rector had told him to find another post;
- e. Consequently, the Applicant’s requests:
 - i. An apology from the Rector of the UNU; and
 - ii. Material damages for loss of salary from August 2014 until April 2017, at which point the Applicant will reach retirement age.

17. The Respondent’s principal contentions are:

- a. The response of the ASG/OHRM to the Applicant’s correspondence does not constitute an administrative decision; It does not carry any direct legal implications to the Applicant’s terms of appointment as his complaint of discrimination did not fall within the authority of the Secretary-General of the United Nations and the procedures set out in ST/SGB/2008/5 did not apply;

b. The decision of the ASG/OHRM was lawful and reasonable because the Applicant's complaint did not provide sufficient grounds to establish discrimination; and

c. The Applicant is time-barred from challenging his separation from service.

Consideration

Scope and standard of review

18. At the outset, the Tribunal recalls that the application, as well as the Applicant's prior request for management evaluation, challenge the decision of the ASG/OHRM not to trigger a fact-finding investigation into his complaint of discrimination against the UNU. Although the Applicant raised a number of arguments related to the non-renewal of his fixed-term appointment and seeks remedies consequent to this decision, the decision not to renew the Applicant's fixed-term appointment is not properly put before the Tribunal and does not fall within the ambit of the judicial review in the present case.

19. In any event, the Applicant is time-barred from challenging his separation from service. He was separated from service on 28 July 2014 and he did not submit a request for management evaluation of that decision within the 60-day time limit set forth in staff rule 11.2(c). The Applicant solely requested management evaluation of the decision not to trigger an investigation into his complaint of discrimination, and he did so on 20 August 2015, that is more than a year after his separation from service. Any challenge against the decision to separate him from service would be irreceivable *ratione materiae* under art. 8(1)(c) of the Tribunal's Statute (*Eggesfield* 2014-UNAT-402).

20. Consequently, the Tribunal will limit its considerations to the decision of the ASG/OHRM to refuse to trigger a fact-finding investigation into the Applicant's complaint of discrimination.

21. It is well established that "[a]s a general principle, the investigation of disciplinary charges against a staff member is the privilege of the Organization

itself, and it is not legally possible to compel the Administration to take disciplinary action” (*Oummih* 2015-UNAT-518, para. 31, referring to *Abboud* 2010-UNAT-100, para. 34). The Appeals Tribunal further held in *Oummih* that “[t]he Administration has a degree of discretion as to how to conduct a review and assessment of a complaint and may decide whether to undertake an investigation regarding all or some of the allegations”.

22. A decision not to open an investigation, however, may be subject to judicial scrutiny (*Nwuke* 2010-UNAT-099). In reviewing such decision, the Dispute Tribunal shall examine if the Administration’s act or omission in response to a request for investigation was taken in accordance with the applicable law (*Nwuke* 2010-UNAT-099, paras. 36 and 40). In this process, the Dispute Tribunal may examine whether the applicable procedure was followed, whether the decision-maker committed a manifest error in the exercise of his or her discretion and whether the decision not to initiate the investigation was tainted by ulterior motives (*Staedtler* UNDT/2014/123, para. 60).

23. The Tribunal notes that, most unusually, the Respondent impugns his own decision by arguing that the correspondence of the ASG/OHRM in respect of the Applicant’s complaint of discrimination did not produce any legal consequence for the Applicant, as the ASG/OHRM did not have authority to decide on his complaint and the procedures set out in ST/SGB/2008/5, which she used, did not apply. The Respondent argues that, consequently, the correspondence of the ASG/OHRM does not constitute an administrative decision under art. 2.1(a) of the Dispute Tribunal’s Statute, but it is unclear what legal consequences he wishes the Tribunal to draw from his arguments.

24. Insofar as the Respondent argues that the correspondence from the ASG/OHRM did not constitute an administrative decision under art. 2.1(a) of the Dispute Tribunal’s Statute, the Tribunal understands that the Respondent seeks to challenge the application’s receivability *ratione materiae*. The Tribunal will therefore consider the Respondent’s arguments from this perspective first. In addressing the merits of the case, the Tribunal will also examine whether these arguments raised by the Respondent constitute procedural flaws affecting the

legality of the contested decision. Finally, the Tribunal will examine whether the ASG/OHRM committed a manifest error in the exercise of her discretion in finding that there were insufficient grounds to trigger a fact-finding investigation into the Applicant's complaint of discrimination.

Receivability

25. Pursuant to art. 2.1(a) of its Statute:

The Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual, as provided in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuance in force at the time of the alleged non-compliance.

26. It is settled law that an "administrative decision" is "a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order" (United Nations Administrative Tribunal Judgment No. 1157, *Andronov* (2003)).

27. The Tribunal finds that the correspondence of the ASG/OHRM refusing to open a fact-finding investigation into the Applicant's complaint of discrimination constitutes an administrative decision. A decision rejecting the Applicant's claim of discrimination was taken, applying the procedure set forth in ST/SGB/2008/5. This decision brought the Applicant's complaint of discrimination to a closure and, as such, produces direct legal consequences on his terms of employment, irrespective of the fact that the ASG/OHRM may not have had authority to take this decision or that the wrong procedure was followed. The Applicant is therefore entitled to challenge such decision under art. 2.1(a) of the Dispute Tribunal's Statute. Whether or not the ASG/OHRM indeed had authority to take the decision and ST/SGB/2008/5 applies to the present case are issues that could potentially affect the legality of the decision, and which shall be addressed when examining the merits of the case. They do not affect the receivability of the application.

28. In any event, the Administration led the Applicant to believe that the ASG/OHRM had authority to review his complaint of discrimination, as did the MEU. Even if this was an error, the Applicant was legitimate to rely on this information provided to him by senior representatives of the Secretary-General. Therefore, the application should not be dismissed as irreceivable on the sole ground that the Applicant filed his complaint of discrimination with an authority that the Respondent alleges today was incompetent to decide upon it.

29. In view of the foregoing, the Tribunal finds that the application is receivable.

Application of ST/SGB/2008/5 and authority to take the contested decision

30. The Respondent claims in his reply that ST/SGB/2008/5 was not applicable to the present case and that the ASG, OHRM, did not have authority to take the contested decision, as the UNU is not part of the Secretariat of the United Nations. The Respondent's argument is two-fold: firstly, the UNU is not among those "major organizational units" that form part of the Secretariat listed in ST/SGB/2015/3 (Organization of the Secretariat of the United Nations); and, secondly, the chief administrative officer of the UNU is the Rector, not the Secretary-General. According to the Respondent, the Applicant had to address his complaint to the "UNU focal point", following the UNU Personnel Policy.

31. At the outset, the Tribunal is concerned by the fact that the Respondent initially sought to rely on Personnel Policy of the UNU as amended in May 2015, which was not in force at the relevant period. The applicable policy at the time the Applicant filed his complaint of discrimination was only filed upon order by the Tribunal. Significantly, the provisions dealing with prohibited conduct are different, and the Respondent's filing and reliance upon the new version of the policy shows at the very best, negligence on the part of Counsel.

32. The UNU Personnel Policy, as amended in November 2013 and in force at the relevant period, contained no provision to address issues of discrimination. It provided a grievance mechanism to generally deal with "a conflict of any nature related to employment by the University", which "is to be construed in the

broadest sense and includes, *inter alia*, matters pertaining to ... professional and personal relations matters” (sec. 11.1). This mechanism involves first a referral of the matter to the staff member’s immediate supervisor and, if it cannot be resolved, to “the supervisor’s direct supervisor” (sec. 11.1). It then envisages a complaint to the Rector or to the UNU Grievance Panel (sec. 11.2). In all cases, the final decision on a complaint is made by the Rector (secs. 11.2 and 11.3).

33. It is clear in the present case that the grievance mechanism provided for in the UNU Personnel Policy was not fit to resolve the Applicant’s complaint, which was essentially alleged prohibited conduct on the part of the Rector himself. The Respondent’s argument that the Applicant had to file his complaint of discrimination in accordance of the UNU Personnel Policy is misguided.

34. The Tribunal notes that there is a lacuna in the UNU rules to deal with complaints against the Rector, who is the chief administrative officer of the UNU (see art. V(3) of the UNU Charter). In turn, the Respondent argues that the rules applicable to the Secretariat of the United Nations, notably ST/SGB/2008/5, which specifically addresses complaint of discrimination, is not applicable, as the UNU is not part of the Secretariat.

35. Having considered the arguments raised by the Respondent in this respect and the relevant legal provisions, the Tribunal finds that the legal status of the UNU is most unclear, as there are elements indicating that it is an autonomous entity and others suggesting that it is closely linked with the UN Secretariat, if not part of it.

36. On the one hand, the following suggests that the UNU is an autonomous entity:

- a. Art. XI(1) of the UNU Charter provides that the UNU “is an autonomous organ of the General Assembly of the United Nations”;
- b. Art. V(3) of the UNU Charter also provides that “[t]he Rector shall be the chief academic and administrative officer of the University”;

c. Art. VIII(5) of the UNU Charter provides that the UNU personnel “shall be solely responsible to the Rector in the exercise of their functions”; and

d. The UNU is not listed among those “major organizational units” which explicitly form part of the Secretariat in sec. 3.2 of ST/SGB/2015/3 (Organization of the Secretariat of the United Nations), although this may not be determinative in light of the definition of the Secretariat contained in the United Nations Charter, as will be more amply discussed below.

37. On the other hand, there are other indications that staff members of the UNU fall within the purview of the Secretary-General’s authority:

a. The Rector is appointed by the Secretary-General (art. V(1) of the UNU Charter);

b. Likewise, art. VIII(4) of the UNU Charter states that academic personnel such as the Applicant “shall be appointed by the Rector *on behalf of the Secretary-General*”;

c. The Secretary-General explicitly delegated authority to the Rector to administer the UNU staff members in an agreement of 16 July 1986, which confirmed that he had ultimately authority over these staff members in the first place;

d. Both the Rector and the academic personnel “shall be covered by the provisions of the Staff Regulations of the United Nations and Staff Rules, subject to such arrangements for special rules or terms of appointment as may be agreed upon by the Rector and the Secretary-General (art. VIII(4) of the UNU Charter). The introductory paragraph of the Staff Regulations clearly indicate that “they embody the fundamental conditions of service and the basic rights, duties and obligations of *the United Nations Secretariat*” (emphasis added) and Staff Regulation 1.2(c) states that “[s]taff members are subject to the authority of the Secretary-General”;

e. Pursuant to the UNU Personnel Policy, UNU staff members are subject to the UN internal justice system (art. XI of the UNU Personnel Policy as amended in May 2015) and are required to request management evaluation to the Secretary-General per staff rule 11.2, after having first submitted a request for “internal evaluation” to the Rector.

38. The fact that the UNU personnel ultimately fall under the authority of the Secretary-General would indicate that they fall under the broad definition of staff members of the Secretariat as set out in the United Nations Charter. In this connection, art. 97 states that “[t]he Secretariat shall comprise a Secretary-General and such staff as the Organization may require.” Art. 101 of the UN Charter further provides that:

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.
2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. *These staffs shall form a part of the Secretariat.* (emphasis added)

39. That being said, the Tribunal finds that this issue is not determinative in the present case. Irrespective of the UNU’s status, it is clear that the Rector, who is the subject of the Applicant’s complaint, is appointed by the Secretary-General pursuant to art. V(1) of the UNU Charter, is subject to the UN Staff Rules and Regulations (art. VIII(4) of the UNU Charter) and falls within the purview of the Secretary-General’s authority for alleged misconduct or disciplinary matters, which are closely linked with complaints of discrimination as they can lead to disciplinary measures.

40. In this connection, it is noted that the Secretary-General delegated authority to the UNU Rector to administer the staff of the UNU under the UN Staff Rules and Regulations in an agreement of 16 July 1986, subject to a number of exceptions which remained within the purview of the Secretary-General’s authority. As acknowledged by the Respondent, a number of matters which had previously been delegated reverted back to the Secretary-General on 9 April 2015, with the issuance of ST/SGB/2015/1 (Delegation of authority in the

administration of the Staff Regulations and Staff Rules), including decisions to launch an investigation into allegations of misconduct of staff at the ASG and USG levels under staff rule 10.1(c) and decisions to impose disciplinary measures on staff at the ASG or USG levels under staff regulation 10.1. Given that the Rector's position was at the ASG level, the authority to address the Applicant's complaint of discrimination fell within the purview of the Secretary-General's authority.

41. It follows that the Applicant was legitimate to address his complaint to the ASG/OHRM, who represents the Secretary-General for human resources matters and who is the designated official to deal with formal complaints of discrimination under ST/SGB/2008/5 lodged against the head of the department, office or mission concerned (see sec. 5.11 of ST/SGB/2008/5).

42. As to the applicability of ST/SGB/2008/5 to the present case, the Tribunal notes that it applies to "all staff of the Secretariat" (sec. 2.4), which raises again the thorny question as to whether the Rector of the UNU is a "staff of the Secretariat". Again, the Tribunal does not consider it necessary to determine this question in the context of the present case. The Respondent confirmed in his reply and submissions in response to Order No. 50 (GVA/2017) that the ASG/OHRM followed the procedure set forth in ST/SGB/2008/5, although this was not clear from the contested decision. It is uncertain whether the ASG/OHRM elected to follow the procedure set forth in this bulletin to address the Applicant's complaint as she deemed that the Rector fell under the scope of its application or whether she simply sought guidance in it, in the absence of any other available procedure. In both cases, the Tribunal finds that this approach was a sensible one as it is certainly the best instrument to address the matter at stake.

43. Consequently, the Tribunal finds that the ASG/OHRM had authority to review the Applicant's complaint of discrimination, and finds no procedural error in her applying the procedure set forth in ST/SGB/2008/5.

Decision not to initiate a fact-finding investigation into the Applicant's complaint of discrimination

44. The Tribunal now has to examine whether the decision of the ASG/OHRM not to initiate a formal investigation into the Applicant's complaint of discrimination was taken in compliance with ST/SGB/2008/5.

45. The term "discrimination" is defined in sec. 1.1 of ST/SGB/2008/5 as follows:

Discrimination is any unfair treatment or arbitrary distinction based on a person's race, sex, religion, nationality, ethnic origin, sexual orientation, disability, language, social origin or other status.

46. Pursuant to sec. 5.13 of ST/SGB/2008/5:

The complaint or report should describe the alleged incident (s) of prohibited conduct in detail and any additional evidence and information relevant to the matter should be submitted. The complaint or report should include:

- (a) The name of the alleged offender;
- (b) Date (s) and location (s) of incident(s);
- (c) Description of incident(s);
- (d) Names of witnesses, if any;
- (e) Names of persons who are aware of incident(s), if any;
- (f) Any of other relevant information, including documentary evidence if available;
- (g) Date of submission and signature of the aggrieved individual or third party making the report.

47. Sec. 5.14 then provides that:

Upon receipt of a formal complaint or report, the responsible official will promptly review the complaint or report to assess whether it appears to have been made in good faith and whether there are sufficient grounds to warrant a formal fact-finding investigation. If that is the case, the responsible office shall promptly appoint a panel of at least two individuals from the department, office, or mission concerned who have been trained in investigating allegations of prohibited conduct or, if necessary, from the Office of Human Resources Management roster.

48. It follows that the complainant has the burden of alleging the whole set of factual circumstances that may reasonably lead to the conclusion that prohibited conduct has been committed. It is essentially on this basis that the responsible official will decide whether there are sufficient grounds to warrant a formal fact-finding investigation. That being said, the responsible official may also seek to obtain additional information before taking a decision under sec. 5.14, notably by requesting the comments from the alleged offender. In this connection, the Appeals Tribunal held in *Benfield-Laporte* 2015-UNAT-505:

In our view, the ASG/OHRM has a degree of discretion as how to conduct a review and assessment of a complaint and may decide whether an investigation regarding all or some of the charges is warranted. Where there is no risk of undermining the investigation, it is good practice to hear both sides in order to decide whether there are sufficient grounds to warrant establishing a formal fact-finding investigation and assigning a case to a panel.

49. In the present case, the Applicant claims that he was subject to discriminatory treatment at the UNU. More particularly, he asserts in his complaint of 22 January 2015 to the ASG/OHRM, that:

- a. In 2012, his contract was only extended for one year instead of four, whereas the other's Vice-Rectors appointments were extended for four years;
- b. After taking office in March 2014, the Rector advised him that his contract would not be extended beyond July 2014, whereas the other two Vice-Rectors were not told the same and actually had their contracts extended;
- c. The decision not to renew his contract was motivated by discrimination against people from the developing world and the Global South on the part of the Rector, as evidenced by the fact that following his departure, "UNU senior administration became made up of white males from Western Europe and North America"; and
- d. In his capacity as Chair of the UNU's Central Review Board, he raised concerns about improper recruitments by the Rector, who favoured

individuals who had worked for him or with him, but his objections were not heeded.

50. The ASG/OHRM provided the Rector with a copy of the complaint and asked for his comments.

51. The Rector provided his comments on 24 June 2015, denying the allegations of discrimination and explaining that the non-renewal of the Applicant's contract was a result of the restructuring process that the UNU underwent from 2013. He notably asserted that:

a. The Applicant did not challenge the extension of his appointment of one year only in 2012, which was done by the former Rector, in accordance with the rule, and placed the Applicant in the same situation as the other Vice-Rector at the UNU in Tokyo;

b. Upon his entry in duty in March 2013, the Rector initiated a restructuring process of the UNU to merge its two institutes in Japan. In this process, the Applicant's post was funded only through 31 July 2014 in the 2014-2015 biennium budget and a new post of Director of the merged institute was created, at the D-1 level; The Applicant did not apply for this newly created post;

c. Whilst the Applicant was the only senior staff member in Japan who came from a developing country, a number of other senior staff in the UNU system, serving for example as directors of UNU research and training centres and programmes, are from developing countries. In any event, appointments are made on a competitive basis by selection committees comprising members of the advisory boards/committees of the research and training centres and programmes, in consultation with the UNU Council; and;

d. While serving as Chair of the UNU Central Review Board, the Applicant never raised any impropriety of recruitment processes involving

the Rector in the minutes of the Board's meetings, nor to the Rector personally.

52. Based on the information provided by the Applicant and the Rector, the ASG/OHRM found that:

A careful review showed nothing improper. In particular, [she] note[d] the following: i) the duration of the first renewal of [the Applicant's] appointment was equal to that of the colleagues [he] had mentioned received favourable treatment; ii) a restructuring exercise led to a cessation of funding, in July 2014, for the post [the Applicant] had encumbered and iii) [the Applicant] did not apply for the related position which was created as a result of the restructuring.

53. Although the ASG/OHRM did not explicitly say it, the Tribunal understands that she found that there were insufficient grounds to trigger a fact-finding investigation under sec. 5.14 of ST/SGB/2008/5.

54. The Tribunal, whose role is limited to control the legality of the decision of the ASG/OHRM, as recalled above, finds that the conclusion reached is reasonable in the circumstances.

55. At the outset, it stresses that a complaint of discrimination shall be addressed against a specific individual. The Tribunal understands that the Applicant's complaint is essentially directed at the Rector of the UNU, and will treat it as such.

56. The Tribunal also recalls that discrimination involves more than a difference of treatment. It must be established that this difference was made on a prohibited ground. In this connection, Bamforth et al. explain in their treaty *Discrimination Law: Theory and Context* (Sweet and Maxwell, 2008, at pp. 17-18) that:

“To discriminate” means to make a selection between options, whatever they are, or to draw some type of distinction ... In consequence, the concern of discrimination law is not to prohibit all selections or distinctions as a matter of principle. Instead, it is to counter those selections or procedures that are regarded as invidious: for example, those made on the basis of race, sex, sexual orientation, age, disability or religion.

57. The complaint makes a broad assertion that the non-renewal of the Applicant's contract was motivated by prejudice on the part of the Rector against individuals from developing countries, without referring to any specific fact or event to support this conclusion. The fact that the Applicant was the only staff member at the UNU in Tokyo from a developing country does not constitute evidence, even on a prima facie basis, that this is the reason why his contract was not renewed. Rather, the Rector provided credible explanations about the non-renewal of the Applicant's contract, following the restructuring of the UNU. He further explained why the Applicant's post in particular, among the Vice-Rectors, was the one which ceased to be funded in the context of the restructuring. In particular, the Rector stated that the other position of Vice-Rector for Europe was funded by a separate five-year contribution by the Government of Germany and that the other position of Vice-Rector in Tokyo was at a different level of ASG. It cannot be derived from the mere fact that the Applicant was the only Vice-Rector whose contract was not renewed that this decision was made based on an unfair treatment or arbitrary distinction based on his nationality.

58. As to the Applicant's allegation that he was subject to an unfavourable treatment compared to his colleague when he was renewed for one year only in 2012, the Tribunal finds that this assertion seems not to be supported by the facts. Most importantly, it does not concern the Rector, who was not in office at the time. Further, this decision was not in breach of the UNU Personnel Policy, which provides in its art. IV that "Vice-Rectors ... shall normally be appointed for a period of four years and shall be eligible for reappointment for one more term of up to four years".

59. Likewise, the Applicant's allegation that he raised concerns as Chairman of the Central Review Board about favourable treatment proffered by the Rector in recruitment processes involving people with whom the Rector previously worked does not appear to be supported by the evidence. Even if it was, this assertion of favouritism exercised by the Rector towards acquaintances in recruitment processes where the Applicant was not involved, has no bearing on the Applicant's complaint. It does not establish in any way evidence that the

Applicant was himself subject of a discriminatory treatment by the Rector based on his nationality.

60. It was incumbent upon the Applicant to provide specific facts in his complaint to support his claim of discrimination, which he failed to do. It is noted that the Applicant provided additional submissions in respect of his complaint to the Management Evaluation Unit and before this Tribunal. While these submissions purportedly challenge some of the factual allegations made by the Rector in his comments to the ASG/OHRM of 24 June 2015, they do not bring any additional grounds to support his claim of discrimination. In any event, in reviewing the decision of the ASG/OHRM, the Tribunal shall focus on the facts that were before her at the time she made her decision and these additional factual elements raised by the Applicant were not before her.

61. In view of the foregoing, the Tribunal finds no discernible error in the decision of the ASG/OHRM not to trigger a fact-finding investigation into the Applicant's complaint of discrimination. It was not enough for the Applicant to support an allegation of discrimination to produce evasive and generic allegations, without referring to any supporting facts to substantiate it.

Conclusion

62. In view of the foregoing, the Tribunal DECIDES that the application is rejected.

(Signed)

Judge Teresa Bravo

Dated this 13th day of July 2017

Entered in the Register on this 13th day of July 2017

(Signed)

René M. Vargas M., Registrar, Geneva