

UNDT/2017/055, Parayil

UNAT Held or UNDT Pronouncements

Scope and standard of review 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. 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). 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. Receivability The correspondence of the ASG/OHRM refusing to open a fact-finding investigation into the Applicant's complaint of discrimination constitutes an administrative decision. 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. 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. Thus, the application is receivable. Application of ST/SGB/2008/5 and authority to take the contested decision At the outset, the Tribunal was 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. In the present case 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 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. 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. 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. 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). Consequently, the ASG/OHRM had authority to review the Applicant's complaint of discrimination, and there is 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 Discrimination involves more than a difference of treatment. It must be established that this difference was made on a prohibited ground. 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. It was incumbent upon the Applicant to provide specific facts in his complaint to support his claim of discrimination, which he failed to do. Accordingly, the Tribunal found 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.

Decision Contested or Judgment/Order Appealed

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 of 24 July 2015 dismissing his complaint of "discriminatory treatment

during [his] service at the [UNU]”.

Legal Principle(s)

The 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. A decision not to open an investigation, however, may be subject to judicial scrutiny. 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. 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. 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”. 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. The ASG/OHRM has a degree of discretion as to 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.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Parayil

Entity

UNU

Case Number(s)

UNDT/GVA/2015/175

Tribunal

UNDT

Registry

Geneva

Date of Judgement

13 Jul 2017

Duty Judge

Judge Bravo

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Investigation

Jurisdiction / receivability (UNDT or first instance)

Personal (ratione personae)

Applicable Law

Laws of other entities (rules, regulations etc.)

- UNU Charter

Other UN issuances (guidelines, policies etc.)

- UNU Personnel Policy

Secretary-General's bulletins

- ST/SGB/2008/5
- ST/SGB/2015/1

Staff Regulations

- Regulation 1.2(c)
- Regulation 10.1

Staff Rules

- Rule 10.1(c)
- Rule 11.2(c)

UN Charter

- Article 101
- Article 97

UNDT Statute

- Article 8.1(c)

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

2014-UNAT-402

2015-UNAT-518

2010-UNAT-100

2010-UNAT-099

UNDT/2014/123

2015-UNAT-505