UNDT/2018/089, Maystre

UNAT Held or UNDT Pronouncements

Receivability The Respondent challenged the receivability ratione materiae of the application, arguing that the final administrative decision was notified to the Applicant on 24 November 2016. The Tribunal found that no final decision had been taken on 24 November 2016, and that the matter was being further reviewed, on the basis of new elements and discussions, inter alia, with the President of ICTY. Therefore, by filing her request for management evaluation on 21 January 2017, against the communication of 29 November 2016 denying her release, the Applicant respected the statutory deadline of 60 days. Consequently, the application was found receivable ratione materiae. Merits The Tribunal identified the following legal issues: a) Whether the contested decision was ultra vires The Tribunal noted that in the institutional setting of ICTY, decisions with respect to human resources and staff careers fall within the authority of the Registrar, who can and did further delegate it to the Deputy Registrar. In the case at hand, the Tribunal noted that it was the Deputy Registrar, within her delegated authority, who took the contested decision. The Tribunal found that the consultation of the ICTY President was reasonable and did not constitute an abrogation of power on behalf of the Deputy Registrar in the decisionmaking process. It therefore found that the decision was not ultra vires. b) Whether the Administration properly exercised its discretion in not releasing the Applicant. The Tribunal noted that the fact that ICTY was a downsizing entity reasonably entailed balancing two competing challenges: on the one hand, the duty of ICTY to ensure it had the necessary resources to finalize its mandate by the end of 2017 and, on the other hand, the particular duty of ICTY to allow staff members who knew that their assignment with ICTY was equally expiring and, hence, who might face unemployment upon completion of the mandate, to find new career opportunities. The Tribunal considered that in light of all the elements of the present case and particularly the fact that ICTY had to finalize its remaining cases before its closure at the end of 2017, it was not unreasonable to refuse the Applicant’s release shortly after she had come back from a previous release in 2016. The Tribunal also found that the evidence showed that the Applicant’s case was considered

individually, and that the Deputy Registrar took steps to take a fully informed decision by talking to the relevant stakeholders, and duly weighting, inter alia, the views of the President and that of Judge P. She did thus not blindly apply a (unwritten) policy, without giving due consideration to the particular circumstances of the Applicant's case. Finally, the Tribunal found that any political considerations, notably the President's commitment vis-à-vis the Security Council and a potential perception of the release, were not the determining factors that led to the refusal to release the Applicant. Rather, the determining factor lied in the impact the Applicant's release might have had at the time on the operations of ICTY and on the timely completion of its mandate by 31 December 2017.

Decision Contested or Judgment/Order Appealed

Decision not to release on reimbursable loan to a P-4 post with the United Nations Commission of Inquiry on Human Rights in Burundi through the UN Entity for Gender Equality and the Empowerment of Women ("UN Women") and the UN High Commissioner for Human Rights ("OHCHR").

Legal Principle(s)

Staff members do not have a right to be released on loan since release requests are subject to the Organization's discretionary evaluation of the circumstances of each case. Nonetheless, the Organization has the duty to make a reasonable, balanced and rational decision and to provide reasons in case it denies the release.

Outcome

Dismissed on merits

Full judgment

Full judgment

Applicants/Appellants

Maystre

Entity

ICTY

Case Number(s)

UNDT/GVA/2017/038

Tribunal

UNDT

Registry

Geneva

Date of Judgement

19 Sep 2018

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Reassignment or transfer
Discretion

Applicable Law

Agreements, conventions, treaties (etc.)

- Inter-Organization Agreement Concerning Transfer, Secondment or Loan of Staff among Organizations applying the United Nations Common System of Salaries and Allowances

Secretary-General's bulletins

- ST/SGB/2015/1

Related Judgments and Orders

2010-UNAT-084