

# **UNDT/2019/068, Colati**

## **UNAT Held or UNDT Pronouncements**

The Tribunal found the first application receivable because a response to the Applicant's request for implementation of the award of the continuing appointment of which he was notified by Inspira on 3 November 2016 was only made by the MICT on 31 May 2017. The Applicant was still within the prescribed time limits of 60 days under staff rule 11.3(c) when he sought management evaluation on 11 July. On the merits, the Tribunal noted that the Applicant transferred from DPKO, which is part of the Secretariat, to the MICT. Before the said transfer, the Applicant had been invited by OHRM to participate in the 2015 continuing appointment review established through ST/AI/2012/3. The Tribunal also noted that when a notification was sent by OHRM through Inspira to the Applicant on 3 November 2016 that he had been awarded a continuing contract, that notification was done in error and was consequently withdrawn. With respect to the first application, the Tribunal concluded that: (i) the MICT is a non- Secretariat entity and its staff members are not staff of the United Nations Secretariat (ii) the Applicant, as a staff member of the MICT, was not entitled to the award of a continuing contract because the MICT had no capacity to grant any of its staff a continuing appointment (iii) MICT's decision to not grant the Applicant a continuing appointment in spite of the erroneous notification from OHRM on 3 November 2016 was lawful and OHRM's action in withdrawing the Inspira notification of 3 November 2016 to the Applicant was not unlawful because he had left DPKO and transferred to the MICT. The Organization retained the discretion to correct an error. The Tribunal found that the second application did not challenge a new administrative decision because OHRM's letter of 12 December 2017 only reiterated the administrative decision already made by the MICT on 31 May 2017. Accordingly, the principle of *lis pendens* was found to be applicable to the second application because the Applicant was trying to re-litigate the same cause of action that was already pending before the Tribunal.

## **Decision Contested or Judgment/Order Appealed**

The Application filed two applications contesting: (i) The decision by MICT to deny him a letter of appointment and a personnel action to effect the conversion of his fixedterm appointment to a continuing appointment and (ii) the Administration's illegal withdrawal of his continuing appointment.

## Legal Principle(s)

Staff rule 11.3(c) provides that a request for management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested. The MICT is a successor of the ICTY and ICTR and is a subsidiary organ of the Security Council. It was created by the Security Council under chapter VII of the United Nations Charter while the Secretariat was created under Chapter XV of the Charter. The MICT is a non-Secretariat entity and its staff members are not staff of the United Nations Secretariat.

## Outcome

Dismissed on merits

## Outcome Extra Text

The Tribunal dismissed the first application on the grounds that MICT's decision not to grant the Applicant a continuing appointment was lawful and the second one based on the principle of *lis pendens*.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Colati

## Entity

IRMCT

## Case Number(s)

UNDT/NBI/2017/102

UNDT/NBI/2018/038

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

29 Apr 2019

## Duty Judge

Judge Izuako

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Appointment (type)

Continuing appointment

## Applicable Law

Administrative Instructions

- ST/AI/2012/3

## Information Circulars

- [ST/IC/2015/23](#)

## Staff Rules

- [Rule 11.3\(c\)](#)

## Related Judgments and Orders

[2020-UNAT-980](#)