

Translated from French

**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Ms. Samardzic

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before: Judge Jean Courtial, Presiding
Judge Sophia Adinyira
Judge Luis María Simón

Judgment No.: 2010-UNAT-072

Date: 29 October 2010

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Cristián Gimenez Corte

Judge Jean Courtial, Presiding

Synopsis

1. Ms. Aida Samardzic appealed to the United Nations Dispute Tribunal against the administrative decision to terminate her appointment as part of the drawdown plan of the United Nations Interim Administration Mission in Kosovo (UNMIK). She filed an appeal against the judgment by which the Dispute Tribunal rejected her application as not receivable on the grounds that Ms. Samardzic had failed to submit in a timely manner her request for a management evaluation of the administrative decision to terminate her appointment. The appeal reiterates the arguments on the merits of the application submitted to the Dispute Tribunal without contesting the grounds for the judgment. The Appeals Tribunal dismisses the appeal.

Facts and procedure

2. Ms. Samardzic, a Serbian national, entered the service of the United Nations in 1992 as a local staff member. On 1 July 2003, she was transferred from the former United Nations Mission in Bosnia and Herzegovina (UNMIBH) to UNMIK, while her duty station remained the United Nations Office in Belgrade.

3. Ms. Samardzic and four other UNMIK staff members were informed on 8 April 2009 that, as part of the UNMIK drawdown plan, the Secretary-General had decided to terminate their appointments with effect from 10 April 2009. Ms. Samardzic stated that she received the message on 9 April.

4. In an e-mail dated 21 July 2009, sent on behalf of all five staff members, Ms. Samardzic requested clarification from the Assistant Secretary-General for Human Resources Management regarding the decision to terminate their appointments.

5. In a letter sent to the Secretary-General on 18 September 2009, the five former staff members, including Ms. Samardzic, requested a management evaluation of said decision. Following consideration of the requests, the Management Evaluation Unit informed the five applicants by letter dated 6 November 2009 that they were not receivable because the time limit for filing a request for either administrative review or a management evaluation had expired.

6. On 29 November 2009, the five applicants, including Ms. Samardzic, filed applications with the Dispute Tribunal. The Dispute Tribunal combined the five applications and disposed of them in a single judgment, No. 2010/019, dated 29 January 2010. The Dispute Tribunal judge rejected the applications on the grounds that the initial requests for administrative review had not been submitted within the time limit of two months set out in former staff rule 111.2 in effect at the time. That time limit expired in June 2009. Consequently, according to the Dispute Tribunal judge, “the Applicants’ first written submission, dated 21 July 2009, was already late, and so was their formal request for management evaluation dated 15 and 16 September 2009”, which was submitted on 18 September 2009. The Dispute Tribunal judge refused to take into consideration the applicants’ argument that their ignorance of the time limits constituted an “exceptional circumstance” warranting a suspension, waiver or extension of the time limits.

7. On 12 February 2010, Ms. Samardzic filed an appeal against the judgment handed down by the Dispute Tribunal. Even though her appeal referred to her four former colleagues whose appointments had been terminated in the same circumstances, only Ms. Samardzic had signed the appeal form and only her name appeared at the bottom of the brief. However, the appeal did not fulfil the formal requirements set out in article 8 of the Appeals Tribunal's rules of procedure. After consulting with the Registry on several occasions, Ms. Samardzic submitted an appeal that complied with said requirements on 28 April 2010. It was transmitted that same day to the counsel for the Secretary-General of the United Nations, who submitted a respondent's brief on 14 June 2010.

Submissions

Ms. Samardzic's Appeal

8. Ms. Samardzic contends that UNMIK disregarded the United Nations Staff Rules and standard policy regarding the downsizing of a liquidating mission. In such cases, the order in which local staff are let go is determined on the basis of a selection process according to which those whose competencies are best suited to the posts are retained. UNMIK failed to take into consideration either the proposal submitted in February 2009 by the senior staff of the United Nations Office in Belgrade or its own policy on mission drawdown. When Ms. Samardzic contacted mediation services in May 2009, she was informed that the "geographical factor" had been the sole criterion applied. In fact, UNMIK should have taken into account Ms. Samardzic's seniority as well as her "efficiency, [her] competence and [her] integrity", pursuant to article 101, paragraph 3, of the Human Resources Handbook (document ST/SGB/2008/4), 1 January 2008 — Provisions relating to service of the staff.*

9. Ms. Samardzic contests the application of the "geographical factor", which dictates that, where two candidates have equal qualifications, preference is given to the candidate residing in the mission area. In the present case, its application had produced the opposite result: the United Nations Office in Belgrade had retained local staff who were originally from Kosovo and had been transferred to Belgrade, and had terminated the appointments of those staff members originally from Serbia.

10. Ms. Samardzic requests payment equivalent to six months' net base salary as compensation for the "mistreatment" she claims she suffered at the hands of UNMIK when her fixed-term appointment was terminated.

Secretary-General's Answer

11. The Secretary-General states that the arguments put forward by Ms. Samardzic in her appeal are not founded on any of the five grounds for appeal set out in article 2, paragraph 1, of the statute of the Appeals Tribunal. Whereas the Dispute Tribunal's judgment addressed only the issue of receivability, Ms. Samardzic's appeal largely reiterates the arguments on the merits that she brought before the Dispute Tribunal and does not criticize the reasons for the rejection of her application.

* *Translator's Note:* The article referred to here is in fact Article 101, paragraph 3, of the Charter of the United Nations and the document symbol refers to the Staff Regulations.

12. The Secretary-General maintains that the Dispute Tribunal correctly determined that Ms. Samardzic's application was not receivable, as she did not comply with the requirement to submit a request for administrative review within the time limits set out in former staff rule 111.2 (a). Ms. Samardzic was informed of the administrative decision to terminate her appointment by a note dated 8 April 2009, which was sent to her via e-mail. Former staff rule 111.2 (a) allowed her two months, as from 8 April 2009, within which to submit a request for a review of the decision. She submitted said request only on 18 September 2009.

13. The Secretary-General then argues that the Dispute Tribunal does not have the power to suspend or waive the deadlines imposed on any party with regard to administrative review. He maintains that the present case does not provide any grounds for departure from the Dispute Tribunal's jurisprudence in its judgment No. 2009/51 (*Costa*), concerning a similar case, according to which it had "no jurisdiction to extend the deadlines for the filing of requests for either administrative review or management evaluation". That holding was correct for several reasons: in the *Costa* case, the Dispute Tribunal interpreted the term "deadlines" in the first sentence of article 8, paragraph 3, of its statute as referring to the deadlines for filing an application with the Dispute Tribunal; during its review of the draft statute of the Dispute Tribunal, the Ad Hoc Committee on the Administration of Justice at the United Nations expressly precluded the Dispute Tribunal from suspending and waiving deadlines for management evaluation; in the *Costa* case, the Dispute Tribunal correctly noted that article 8, paragraph 3, does not make any distinction between deadlines for requesting a management evaluation and deadlines for completing a management evaluation; the statute of the Tribunal has no provision comparable to former staff rule 111.2 (f) providing it with a legal basis for waiving the deadlines for requests for administrative review; and the General Assembly, in paragraph 28 of its resolution 63/253, expressly affirmed that the Dispute Tribunal "[does] not have any powers beyond those conferred under [its]" statute. Lastly, the Appeals Tribunal has affirmed on a number of occasions the importance of giving effect to paragraph 28 of resolution 63/253, namely, in judgments No. 2009-UNAT-005 (*Tadonki*), No. 2009-UNAT-008 (*Onana*) and No. 2009-UNAT-011 (*Kasmani*).**

14. The Secretary-General also argues that should the Appeals Tribunal conclude that the Dispute Tribunal did have the power to waive the deadlines with regard to administrative review, Ms. Samardzic has not indicated any errors that would warrant reversing the impugned judgment.

15. Under former staff rule 111.2 (f), the time limit for the submission of a request for administrative review may be waived only in exceptional circumstances. Pursuant to the former Administrative Tribunal's jurisprudence, "exceptional circumstances" are "circumstances beyond the control of the appellant, which prevented the staff member from submitting a request for review and filing an appeal in time". In the present case, the Dispute Tribunal decided that there were no exceptional circumstances warranting the waiver of the time limit for the submission of a request for administrative review. In particular, it was found that Ms. Samardzic's "alleged ignorance of the time limits [did] not constitute an

** *Translator's Note:* The judgments should read "2010-UNAT-005 (*Tadonki*), 2010-UNAT-008 (*Onana*) and 2010-UNAT-011 (*Kasmani*)".

exceptional circumstance”. In that connection, the factors asserted by Ms. Samardzic in her appeal are not exceptional circumstances. Firstly, engaging in e-mail correspondence with mediation services about the termination of her fixed-term appointment was a strategic choice by the appellant in dealing with her dispute with the Organization. Such correspondence did not prevent her from filing a request for administrative review. Secondly, the changes in the system of administration of justice within the United Nations in 2009 took place after the time by which the appellant was required to have filed her request for administrative review. They in no way prevented her from submitting a timely request.

16. The Secretary-General requests the Tribunal to dismiss the Appeal in its entirety.

Considerations

17. Article 2, paragraph 1, of the statute of this Tribunal provides that:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has: (a) Exceeded its jurisdiction or competence; (b) Failed to exercise jurisdiction vested in it; (c) Erred on a question of law; (d) Committed an error in procedure, such as to affect the decision of the case; or (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

18. These provisions are supplemented by article 8, paragraph 2, of the rules of procedure, which provides that:

The appeal form shall be accompanied by: (a) A brief that explains the legal basis of any of the five grounds for appeal set out in article 2.1 of the statute of the Appeals Tribunal that is relied upon [...].

19. It follows from the above provisions that a party appealing a judgment of the United Nations Dispute Tribunal is unlikely to succeed in having the judgment reversed, modified or the case remanded to the Dispute Tribunal unless the appeal challenges the impugned judgment on one or more of the grounds referred to in article 2, paragraph 1 (a) to (e), of the statute of this Tribunal.

20. In the present case, all submissions by the appellant concern her treatment by the Administration and the merits of the decision to terminate her appointment with UNMIK. She does not explain how the Dispute Tribunal, in judging that her application was not receivable and rejecting it on that basis, exceeded or failed to exercise its jurisdiction or competence, erred on a question of law or procedure, or erred on a question of fact, resulting in a manifestly unreasonable decision.

21. In any event, the Appeals Tribunal recalls that in its judgment of 1 July 2010 (No. 2010-UNAT-036) of the *Costa* case, it interpreted article 8, paragraph 3, of the Dispute Tribunal's statute as precluding the Tribunal from suspending or waiving the deadlines for management evaluation. Given that Ms. Samardzic did not submit her initial request for administrative review within the time limit prescribed by former staff rule 111.2 (f), which expired prior to the entry into force on 1 July 2009 of the new legislation, the Dispute Tribunal could only conclude that her application was not receivable and reject it on that basis.

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2010-UNAT-072

Judgment

22. Ms. Samardzic's appeal is dismissed.

(Signed) Judge Courtial,
Presiding

(Signed) Judge Adinyira

(Signed) Judge Simón

Dated this 29th day of October 2010 in New York, United States.

Original: French

Entered in the Register on this 29th day of December
in New York, United States.

(Signed) Weicheng Lin, Registrar
