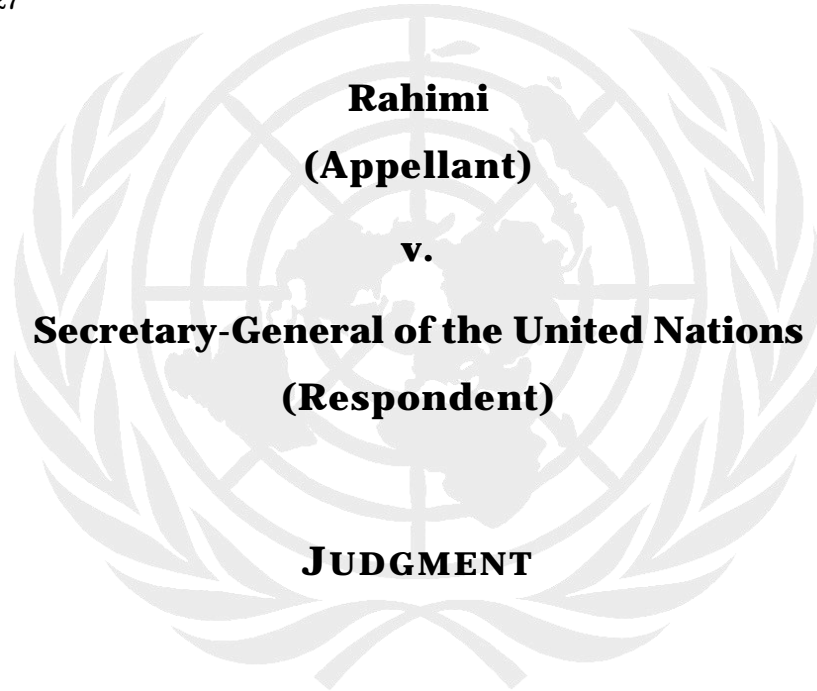




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2011-227



**Rahimi  
(Appellant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT**

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Before:	Judge Inés Weinberg de Roca, Presiding Judge Luis María Simón Judge Jean Courtial
Judgment No.:	2012-UNAT-217
Date:	16 March 2012
Registrar:	Weicheng Lin

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Counsel for Appellant: Najmia Rahimi

Counsel for Respondent: Rupa Mitra

**JUDGE INÉS WEINBERG DE ROCA, Presiding.**

**Synopsis**

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal by Ms. Asma Rahimi against Judgment No. UNDT/2011/089 issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 23 May 2011 in the case of *Rahimi v. Secretary-General of the United Nations*.
2. The Organization is liable for the consequences of unlawful decisions, omissions or negligence.
3. Ms. Rahimi has not produced any evidence that the invoked injury is the result of either negligence or fraud caused by a specific act or omission of the United Nations or one of its representatives, or that the Organization was aware of the fraud prior to Ms. Rahimi's allegations.

**Facts and Procedure**

4. Ms. Rahimi joined the United Nations Population Fund (UNFPA) in Afghanistan as an Advocacy and Information Management Officer on a fixed-term appointment in October 2007 until her separation from service in June 2010.
5. In March 2010, Ms. Rahimi was contacted regarding post openings in Geneva and applied to several posts in the Office for the Coordination of Humanitarian Affairs (OCHA). On 13 April 2010, Ms. Rahimi's aunt, and counsel on this matter, met with the Chief, Office of the Director-General, United Nations Office at Geneva (UNOG) and provided him with a copy of Ms. Rahimi's application materials so that he could pass them on to the Director, Geneva Office, OCHA.
6. On 2 May 2010, Ms. Rahimi accepted an offer of employment with, what she believed to be, OCHA and, on 4 May 2010, she informed UNFPA that she would be resigning from her current post effective 4 June 2010. As part of the application process for this position, Ms. Rahimi received an offer for accommodation in Geneva which she accepted on 26 May 2010 by transferring the sum of USD 5,150 to an entity named "OCHA's Housing/Welfare Unit".

7. A few days after transferring the requested funds, Ms. Rahimi discovered that the referred post never existed. Ms. Rahimi further learned that the whole application process, from the list of openings at OCHA to the offer of accommodation, was a fraud created for the sole purpose of deceiving her into transferring funds to a false entity and that none of the parties that Ms. Rahimi had dealt with at any stage during the application process were actual United Nations entities, staff members or representatives.

8. On 13 July 2010, in an attempt to resolve the fraud she that had suffered, Ms. Rahimi requested that the Management Evaluation Unit (MEU) review her case. On 3 August 2010, the MEU responded that, as a former UNFPA staff member, and due to the fact that there were no impugned United Nations decisions, the appropriate evaluation group for her cause of action should be UNFPA's management evaluation group. However, Ms. Rahimi responded that her request bared no relation to her UNFPA employment as it was related to a fraud that had been committed in the name of OCHA and she therefore considered that the MEU was the appropriate forum.

9. On 15 February 2011, Ms. Rahimi submitted an application to the UNDT contesting the MEU's decision and claiming that the Administration was in breach of its duty of care towards her. On 23 May 2011, the Dispute Tribunal issued Judgment No. UNDT/2011/089 in which it dismissed her application.

10. On 31 May 2011, Ms. Rahimi appealed the UNDT Judgment and, following a delay in the notification process, the Secretary-General filed his answer on 2 September 2011.

### **Submissions**

#### **Ms. Rahimi's Appeal**

11. Ms. Rahimi submits that, as a staff member under the United Nations common system, the United Nations owed her a duty of care and she therefore "has the standing to seek protection from its system of administration of justice". Consequently, Ms. Rahimi submits that the Dispute Tribunal erred in determining that there was no relationship between the parties.

12. Ms. Rahimi further submits that the Organization also owed her a duty of care due to the actions of its representative, namely the Chief, Office of the Director General, UNOG,

who accepted to review and pass her application along to the Director of OCHA. By accepting to review the documents that were provided to him, the Director of OCHA “engaged OCHA[’s] [responsibility] to treat [Ms. Rahimi] with care”. Consequently, any inaction that may have resulted from not reviewing these documents or not discovering the fraud that was being perpetrated resulted in the Administration failing its duty to protect “a staff member in the [United Nations] common system, from any material or moral injury”.

13. Ms. Rahimi also contends that under the principle of estoppel, the harm she suffered as a result of resigning from her post with UNFPA can be attributed to her reliance on the negligent representations that were made to her by representatives of the United Nations who, if as stated had reviewed her application, should have known that she was the victim of a scam.

14. Ms. Rahimi requests that the Organization produce to her a copy of any documents related to the scam she suffered, as well as any other similar scams. Following the production of the said documents, Ms. Rahimi reserves the right to amend her original appeal. Ms. Rahimi also requests that an oral hearing be held and that the scam in question be investigated independently. Finally, Ms. Rahimi requests that the Appeals Tribunal vacate Judgment No. UNDT/2011/089.

#### **Secretary-General’s Answer**

15. The Secretary-General submits that Ms. Rahimi incorrectly relies on *Iskandar*<sup>1</sup> to establish that there was a relationship between herself and OCHA seeing that, unlike the cited jurisprudence, no agreement was ever reached between the parties. In the absence of a relationship between the parties, Ms. Rahimi does not “have standing to contest administrative decisions of OCHA”.

16. The Secretary-General submits that “neither OCHA nor any other part of the Organization took any action that exposed [Ms. Rahimi] to fraud”. Consequently, a duty of care cannot be said to arise from the sole actions of Ms. Rahimi or the fact that at some point in time she had a contract with UNFPA. Furthermore, the United Nations cannot be held liable for actions of third parties over which it had no control or responsibilities.

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<sup>1</sup> *Iskandar v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-116.

17. The Secretary-General also notes that Ms. Rahimi repeats several of the arguments she previously presented to the UNDT. However, the Secretary-General recalls that it is “not sufficient for an appellant to state that he or she disagrees with the findings of fact or to repeat the arguments submitted before the UNDT. An appellant must identify the apparent error of fact in the Judgment and the basis for contending that an error was made”.<sup>2</sup>

18. The Secretary-Generals submits that the mere fact of being a current or former UNFPA staff member does not engage the responsibility of the Organization if there is no relation between the contested acts and the term or contract of appointment of the staff member. Consequently, the Dispute Tribunal correctly determined that Ms. Rahimi did not identify any administrative decision by either OCHA or UNFPA that fell within the jurisdiction of the Dispute Tribunal.

19. The Secretary-General submits that Ms. Rahimi neither explains the purpose of her request for the production of documents, nor does she meet the Appeals Tribunal requirement that exceptional circumstances be present for additional findings of facts to be presented at the appellate level.

20. The Secretary-General requests that the Appeals Tribunal reject Ms. Rahimi’s appeal and affirm Judgment No. UNDT/2011/089.

### Considerations

21. Article 2 of the Statute of the Appeals Tribunal states:

1. The Appeals Tribunal shall be competent to hear and pass judgment on an appeal filed against a judgment 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.

22. The Organization is liable for the consequences of its unlawful decisions, omissions or negligence.

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<sup>2</sup> *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123.

23. Ms. Rahimi contends that the Organization owed her a duty of care as a result of the actions of its representatives. However, there is no evidence of a link between the scam and the Organization.

24. Ms. Rahimi has not produced any evidence that the invoked injury is the result of negligence or fraud caused by a specific act or omission of the United Nations or one of its representatives, or that the Organization was aware of the fraud prior to Ms. Rahimi's allegations. Hence, Ms. Rahimi's claim for damages for the losses she incurred as a result of the fraud, including the payment of her legal expenses, cannot be entertained as there was no nexus between the fraud and the United Nations, nor was the Organization aware of the potential fraud.

25. Ms. Rahimi requests that she be reinstated into a position which she never held and for which she did not go through the actual applicable selection process. However, Ms. Rahimi never became, nor did she ever have the opportunity to become, a staff member of OCHA. Consequently, Ms. Rahimi does not have standing to seek protection from the system of administration of justice.

26. The Dispute Tribunal correctly determined that Ms. Rahimi did not identify any administrative decision by either OCHA or UNFPA that fell within the Dispute Tribunal's jurisdiction.

#### **Judgment**

27. The appeal is dismissed.

Original and Authoritative Version: English

Dated this 16<sup>th</sup> day of March, 2012 in New York, United States.

*(Signed)*

Judge Weinberg de Roca,  
Presiding

*(Signed)*

Judge Simón

*(Signed)*

Judge Courtial

Entered in the Register on this 7<sup>th</sup> day of May, 2012 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar