



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

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Case No. 2011-207

**Comerford-Verzuu  
(Appellant/Respondent on Cross-Appeal)**

**v.**

**Secretary-General of the United Nations  
(Respondent/Appellant on Cross-Appeal)**

**JUDGMENT**

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Before:	Judge Kamaljit Singh Garewal, Presiding Judge Luis María Simón Judge Mary Faherty
Judgment No.:	2012-UNAT-203
Date:	16 March 2012
Registrar:	Weicheng Lin

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Counsel for Appellant/Respondent on Cross-Appeal: Andrew Granger

Counsel for Respondent/Appellant on Cross-Appeal: Amy Wood

**JUDGE KAMALJIT SINGH GAREWAL, Presiding.**

**Synopsis**

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal by Ms. Deborah Comerford-Verzoo against Judgment No. UNDT/2011/005 rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 10 January 2011 in the case of *Comerford-Verzoo v. Secretary-General of the United Nations*.

2. Ms. Comerford-Verzoo is the widow of the late Joseph Comerford, a staff member of the United Nations Development Programme (UNDP), who was found hanged in his hotel room in Kisangani, Democratic Republic of Congo (DRC) on 18 August 2000, while on mission.

3. In Judgment No. 1388 rendered on 25 July 2008, the former Administrative Tribunal awarded Ms. Comerford-Verzoo USD 250,000 as compensation for the Administration's serious mishandling of her claims in breach of the duty of good faith and for its recklessness and callous treatment of Ms. Comerford-Verzoo.

4. The present case relates to the failure of the Office of Internal Oversight Services (OIOS) to investigate her complaint against the former Administrator of UNDP and the Director, Office of Legal and Procurement Support (OLPS), UNDP, for intimidation, harassment, etc. in violation of the United Nations standards of conduct. Her case is that the UNDP Administrator and the OLSP Director were spreading rumours about the cause of her husband's death in a hope of undermining her claim for compensation under the Malicious Act Insurance Policy (MAIP).

5. OIOS refused to entertain Ms. Comerford-Verzoo's complaint dated 25 June 2005, and notified her of its decision on 2 August 2005. Instead of challenging this negative administrative decision, Ms. Comerford-Verzoo started correspondence with OIOS and ultimately filed her request for administrative review on 16 February 2006.

6. The UNDT found that Ms. Comerford-Verzoo's request for administrative review was filed six months after she had been notified of the contested decision, and therefore rejected her appeal as out of time. We dismiss this appeal and affirm the UNDT Judgment.

**Facts & Procedure**

7. On 25 June 2005, Ms. Comerford-Verzuu filed a complaint with the Reporting Facility of OIOS. In this complaint, she accused the former UNDP Administrator and the OLPS Director, UNDP of “[v]iolations of the UN Standards of Conduct and of professional Codes of Conduct”, intimidation, harassment, retaliation, and inappropriate and unprofessional behaviour. Ms. Comerford-Verzuu requested that OIOS open a full and independent investigation into her allegations. She was specifically concerned by what the UNDP Administrator had told the High Commissioner, UNHCR, about the cause and circumstances of her husband’s death.

8. By e-mail dated 2 August 2005, Ms. Joyce Tolley, Investigations Division, OIOS, informed Ms. Comerford-Verzuu:

Your complaint has been evaluated. Since the substance of your complaint is the same as that of your prior complaint and has been the subject of consideration in the appropriate UN fora, the matter remains closed.

9. In a reply e-mail dated 9 August 2005, Ms. Comerford-Verzuu asked Ms. Tolley for clarification. She wrote: “As I have not complained about the conduct of [the UNDP Administrator and the Director of OLPS] before, I have no idea which prior complaint you are referring to and hence how and on what basis you state that the matter remains closed.” She stressed that her prior complaint concerned the security assessment on which a security clearance had been provided to her husband prior to his travel to and inside the DRC, but that her new complaint concerned the misconduct of the UNDP senior officials. In her view, her new complaint was linked to her prior complaint, “but the two matters [were] obviously quite different”, and her new complaint deserved “a new and independent investigation”.

10. In an e-mail dated 6 September 2005, Ms. Tolley advised Ms. Comerford-Verzuu as follows:

I reiterate, your complaint has been evaluated. Since the substance of your complaint is the same as that of your prior complaint and has been the subject of consideration in the appropriate UN fora, the matter remains closed.

11. By e-mail dated 16 September 2005 to the Under-Secretary-General of OIOS (USG/OIOS), Ms. Comerford-Verzuu expressed her dissatisfaction with Ms. Tolley’s replies

and requested a “clear answer” to her questions. Ms. Comerford-Verzoo stressed that if the USG/OIOS agreed with Ms. Tolley she “will have no other choice than to pursue this in other appropriate fora which may well result [i]n a wider distribution of [her] complaint”. She did not receive any reply.

12. By e-mail and registered mail dated 11 January 2006, Ms. Comerford-Verzoo gave the USG/OIOS 14 days within which to respond to her mail of 16 September 2005 and her formal complaint of 25 June 2005, failure of which she would treat as an administrative decision detrimental to the terms of her appointment and therefore appealable to the Secretary-General.

13. On 16 February 2006, Ms. Comerford-Verzoo wrote to the Secretary-General requesting administrative review of “the administrative decision of [the USG/OIOS] (the date of which decision [she] consider to be 25 January 2006) to refuse to investigate [her] complaint or to answer [her] correspondence”.

14. On 1 May 2006, the Administrative Law Unit that undertook the administrative review informed Ms. Comerford-Verzoo that the allegations made in her request arose from the same facts and circumstances that had been considered during the investigation into her husband’s death and that consequently, it would not be in the interest of the Organization to conduct an investigation into those allegations.

15. On 8 June 2006, Ms. Comerford-Verzoo submitted an appeal to the Geneva Joint Appeals Board (JAB/GVA). In its report dated 11 July 2007, the JAB/GVA found that the substance of Ms. Comerford-Verzoo’s two complaints “was entirely different”, contrary to the Administration’s assertions. It concluded that the decision not to investigate Ms. Comerford-Verzoo’s allegations against the UNDP senior officials violated her rights, and that OIOS had failed to handle Ms. Comerford-Verzoo’s complaint with due diligence. Nonetheless, the JAB/GVA considered that, given the lapse of time, an adequate investigation would not be realistic, and that its finding constituted appropriate satisfaction for Ms. Comerford-Verzoo.

16. On 28 August 2007, the Under-Secretary-General for Management notified Ms. Comerford-Verzoo of the Secretary-General’s decision to reject the JAB/GVA’s recommendations and to take no further action in respect of her complaint. The

Secretary-General rejected the JAB/GVA's finding that there was a substantive difference between Ms. Comerford-Verzoo's 2001 complaint and her 25 June 2005 complaint. In the view of the Secretary-General, it would be prejudicial to take a decision on the issues raised in Ms. Comerford-Verzoo's 25 June 2005 complaint when her 2001 complaint was pending before the former Administrative Tribunal.

17. Ms. Comerford-Verzoo's application to the former Administrative Tribunal was transferred to the UNDT. In Judgment No. UNDT/2011/005, the UNDT found that the contested decision by the USG/OIOS was an appealable administrative decision. Despite the finding by the JAB/GVA that Ms. Comerford-Verzoo's appeal was admissible *ratione temporis* and the fact that the Secretary-General did not raise any receivability issue, the UNDT raised the issue of receivability of Ms. Comerford-Verzoo's application on its own motion. The UNDT determined that OIOS took the decision to refuse an investigation and notified Ms. Comerford-Verzoo of that decision on 2 August 2005. The UNDT also determined that Ms. Comerford-Verzoo's further requests of 9 August, 5 September, 16 September and 23 September of 2005 and 11 January 2006 raised no new matters that were capable of being the subject of a fresh request for administrative review. The UNDT thus found that Ms. Comerford-Verzoo's request for administrative review of 16 February 2006 was filed more than six months after she had received notification of the contested decision and had to be rejected as out of time.

18. The UNDT Judgment was rendered in French on 10 January 2011. According to Ms. Comerford-Verzoo, an English translation of the Judgment was transmitted to her on 16 February 2011. On 1 April 2011, Ms. Comerford-Verzoo appealed the UNDT Judgment. On 23 May 2011, the Secretary-General submitted an answer and a cross-appeal. After receiving an extension, Ms. Comerford-Verzoo submitted an answer to the cross-appeal on 14 July 2011.

### **Submissions**

#### **Ms. Comerford-Verzoo's Appeal**

19. Ms. Comerford-Verzoo submits that the UNDT Judge was not competent to hear her case as he was not fluent in English. When all of the pleadings and documents were in English, Ms. Comerford-Verzoo's business language is English and the professional language

of the parties' counsel is English, it is manifestly irrational to appoint a judge whose language is French and who is not fluent in English. It was prejudicial to the parties and contrary to the interests of justice to do so. It is not clear why the UNDT Judge decided that it was not necessary to have the key correspondence and pleadings translated into French for his better understanding of the case.

20. The UNDT Judge misunderstood the meaning of important background documents and those misunderstandings appeared to have influenced his decision. It was reasonable and proper for Ms. Comerford-Verzoo not to activate the review process within the statutory two months' time limit, but to seek to rectify the opinion of a junior official by engaging with her in correspondence and finally raising the matter with a higher level.

21. The UNDT failed to explain the legal basis for its discretion to raise the issue of receivability on its own motion. That was unnecessary and mistaken, especially since neither the former Administrative Tribunal nor even the Secretary-General had raised the issue of jurisdiction.

22. The UNDT's decision on the question of receivability *ratione temporis* constitutes an error in law and is manifestly unfair to Ms. Comerford-Verzoo. Ms. Comerford-Verzoo never regarded Ms. Tolley's e-mail of 2 August 2005 as constituting a final administrative decision. In view of the junior level of the official concerned, the mistakes in fact and the paucity of explanations, it was reasonable for Ms. Comerford-Verzoo to continue the discussion with OIOS in the hope of obtaining a more definite response from a more senior member of the Administration. It was unfortunate that the UNDT declined to deal with the correct findings of the JAB/GVA that Ms. Comerford-Verzoo had complied with the time limit and her appeal was admissible *ratione temporis*.

#### **Secretary-General's Answer**

23. The UNDT properly concluded that Ms. Comerford-Verzoo's application was not receivable as it was time-barred because she had failed to request administrative review within two months after she had received notification in writing of the determination by OIOS not to investigate her 25 June 2005 complaint.

24. Ms. Comerford-Verzuu fails to identify how the appointment of a francophone judge constituted an error in relation to any provision of the UNDT Statute or its Rules of Procedure.

25. The UNDT's decision to raise the issue of receivability on its own motion is bolstered by the consistent jurisprudence of the Appeals Tribunal and that of the administrative tribunals of other international organizations.

26. The Secretary-General submits that Ms. Comerford-Verzuu merely reiterates the same claims that have already been found by the UNDT to be unconvincing

#### **Secretary-General's Cross-Appeal**

27. The Secretary-General submits that the UNDT erred in law in concluding that the Secretary-General may be held liable for acts and omissions of OIOS notwithstanding the latter's operational independence. Liability for acts and omissions is premised on the Secretary-General having effective control over the party undertaking such acts or omissions. Since OIOS enjoys operational independence, the Secretary-General has no effective control over OIOS in the performance of its operational functions. Consequently, the Secretary-General cannot be held liable for acts and omissions over which he does not have effective control, though he may be held liable for unlawful managerial acts and omissions of OIOS, such as issues relating to staff selection and promotion.

28. The UNDT erred in law in concluding that the determination made by OIOS not to investigate Ms. Comerford-Verzuu's allegations of 25 June 2005 affected her rights and thereby carried direct legal consequences. The mandate and legal framework governing OIOS establish that OIOS has discretionary authority in evaluating requests for investigation; it does not confer on a staff member a right to an investigation by OIOS; a staff member enjoys only a right to have his or her complaint fairly evaluated.

29. The UNDT erred in law in concluding that OIOS was not expressly exempted from scrutiny under the new system of administration of justice and therefore its acts and omissions fall within the UNDT's jurisdiction. The UNDT's conclusion appears to be based on the assumption that the General Assembly would have explicitly done so if it had intended to exempt the acts and omissions of OIOS from scrutiny by the UNDT. It is equally fair to assume that the General Assembly saw no need to expressly exclude the acts and omissions

of OIOS from the jurisdiction of the UNDT since acts and omissions of independent entities are not taken by the Administration and as such they do not constitute administrative decisions.

30. The UNDT erred in law and exceeded its competence in construing the scope of its jurisdiction beyond the parameters set forth in the UNDT Statute on the basis of equity.

**Ms. Comerford-Verzoo's Answer to Cross-Appeal**

31. The cross-appeal is not receivable. The Secretary-General is raising the arguments that he first raised in 2006 and then abandoned in 2008.

32. The UNDT correctly concluded that the conduct of OIOS during 2005 and 2006 constituted an administrative decision capable of being appealed, because it clearly had legal consequences for Ms. Comerford-Verzoo, was applied to her individually and was taken by a member of the Administration.

33. Plainly, OIOS, an important part of the administration and one which can have such a profound influence on staff rights and welfare, should not be above the law and exempt from judicial scrutiny.

**Considerations**

34. The question before us is whether the UNDT was correct in holding that the contested decision was dated 2 August 2005 and that the request for administrative review was time-barred.

35. We have minutely examined Ms. Comerford-Verzoo's complaint of 25 June 2005. This complaint was filed when she was preparing to take her MAIP claim to the former Administrative Tribunal. In brief, Ms. Comerford-Verzoo's complaint was that the former Administrator of UNDP had taken "a hostile, adversarial and unhelpful stance" regarding her grievances. According to Ms. Comerford-Verzoo, the former UNDP Administrator, during a conversation on 24 April 2004 with the then High Commissioner of the Office of the United Nations High Commissioner for Refugees (High Commissioner), said something inappropriate and unacceptable about the cause of her husband's death. Two days later the High Commissioner told Ms. Comerford-Verzoo that the former UNDP Administrator had



told him that a rumour was circulating at the United Nations that the cause of death might have been suicide. The evidence of what the former UNDP Administrator had actually said was the crux of the complaint. But as the complaint was not accompanied by a signed statement of the High Commissioner, what the former UNDP Administrator had allegedly told the High Commissioner remains hearsay and is of no evidentiary value.

36. We still have to determine if the OIOS' reply of 2 August 2005 received by Ms. Comerford-Verzuu was the administrative decision which would be the starting point of the cause of action. Ms. Comerford-Verzuu takes it as something to be replied by her and not challenged by her through the mechanism of administrative review. We do not think that commencing correspondence with the Administration on whether the contentions were correct or not and ultimately giving a 14-day time limit to reply failing which Ms. Comerford-Verzuu would presume the commencement of the time limit to seek administrative review was the right way forward. The OIOS' reply of 2 August 2005 was the administrative decision of which the Appellant was seeking a review. The subsequent correspondence was unwarranted and did not extend the time limit for seeking administrative review of the first administrative order. As no administrative review was sought within the prescribed time limit, the UNDT correctly held that the case was not receivable *ratione temporis*.

37. As one of her grounds of appeal, Ms. Comerford-Verzuu maintains that it was an error for a francophone judge to preside over her UNDT proceedings. In this regard, we quote paragraph 33 of our Judgment in *Molari*:

It is not always possible to conduct hearings in an applicant's language. Judges are required to speak one of the United Nations Secretariat's working languages—French is one of those two languages. If interpretation is provided, there can be no error in conducting a hearing in either English or French.<sup>1</sup>

As we find that the afore-mentioned quotation fully addresses the Appellant's concern. The Panel wishes to note that the present appeal has been heard by a panel of three judges who are well conversant in the English language.

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<sup>1</sup> *Molari v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-164, para. 33.

38. In the cross-appeal, the Secretary-General challenges the UNDT's finding that he may be held liable for the acts or omissions of OIOS, and that OIOS is not exempt from the scrutiny under the new system of administration of justice. We note that these arguments were made before our Judgment in *Koda* was rendered. We reaffirm what we stated in *Koda*:

OIOS operates under the 'authority' of the Secretary-General, but has 'operational independence'. As to the issues of budget and oversight functions in general, the General Assembly resolution calls for the Secretary-General's involvement. Further, the Secretary-General is charged with ensuring that 'procedures are also in place' to protect fairness and due-process rights of staff members. It seems that the drafters of this legislation sought to both establish the 'operational independence' of OIOS and keep it in an administrative framework. We hold that, insofar as the contents and procedures of an individual report are concerned, the Secretary-General has no power to influence or interfere with OIOS. Thus the UNDT also has no jurisdiction to do so, as it can only review the Secretary-General's administrative decisions. But this is a minor distinction. Since OIOS is part of the Secretariat, it is of course subject to the Internal Justice System.<sup>2</sup>

### Judgment

39. The appeal and the cross-appeal are dismissed. We uphold the UNDT Judgment.

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<sup>2</sup> *Koda v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-130, para. 41 (footnotes omitted).

Original and Authoritative Version: English

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

*(Signed)*

Judge Garewal, Presiding

*(Signed)*

Judge Simón

*(Signed)*

Judge Faherty

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

*(Signed)*

Weicheng Lin, Registrar