



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

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Case No. 2011-260



**Muratore  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Kamaljit Singh Garewal, Presiding Judge Luis María Simón Judge Inés Weinberg de Roca
Judgment No.:	2012-UNAT-241
Date:	29 June 2012
Registrar:	Weicheng Lin

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Counsel for Appellant: Self-Represented

Counsel for Respondent: Wambui Mwangi

**JUDGE KAMALJIT SINGH GAREWAL**, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Mr. Enrico Muratore against Judgment No. UNDT/2011/125 rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in the case of *Muratore v. Secretary-General of the United Nations* in Geneva on 11 July 2011. Mr. Muratore appealed on 28 September 2011, and the Secretary-General answered on 28 November 2011.

### **Synopsis**

2. The Appellant challenged the decision of the Ethics Office dated 30 June 2006, rejecting his request for an ethics inquiry. But he filed his request for administrative review only on 4 September 2006. The Dispute Tribunal held that the case was not receivable. We find no reason to disagree. Appeal is dismissed.

### **Facts and Procedure**

3. Mr. Muratore joined the Office of the United Nations High Commissioner for Human Rights (OHCHR) at the P-3 level on 19 July 2004. He was initially a Human Rights Officer with the Africa Unit, Capacity Building and Field Operations Branch (CBB) and, as of 15 May 2005, a desk officer for Russia, Belarus and Ukraine, with the Europe, North America and Central Asia Unit (ENACA). His contract was extended on several occasions until it expired on 30 June 2006.

4. In December 2004 and March 2006, Mr. Muratore complained to the Chief of CBB, alleging that he had been subject, initially to discrimination and harassment by the Africa Team Coordinator and subsequently to retaliation by the ENACA Coordinator.

5. On 15 May 2006, Mr. Muratore requested that the Chief of CBB explain the decision to extend his contract for the last time only to the end of June 2006, but according to Mr. Muratore, he received no response.

6. On 23 May 2006, Mr. Muratore filed a complaint relating to these events with the Ethics Office.

7. On 30 June 2006, the Ethics Office informed Mr. Muratore that it did not consider that the events he reported demonstrated any professional misconduct for the purposes of

bulletin ST/SGB/2005/21 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations). The Ethics Office also noted that he had not availed himself of the internal mechanisms such as the Joint Appeals Board (JAB) or the Office of the Ombudsman. Mr. Muratore disagreed with this decision and subsequently asked the Ethics Office on two occasions that it review its conclusions.

8. In response to his requests, the Ethics Office informed Mr. Muratore on 13 July 2006 and 9 August 2006 that it maintained the same view, and that while he might feel that his rights had been violated, his complaint did not lie within the purview of the Ethics Office.

9. On 4 September 2006, Mr. Muratore sent a letter to the Secretary-General requesting administrative review of the Ethics Office's decision. On 14 December 2006, the Administrative Law Unit responded by stating that the decision was being upheld.

10. On 2 January 2007, Mr. Muratore filed an appeal with the JAB and, on 13 February 2008, the JAB recommended that the Secretary-General reject the appeal on the merits. The Secretary-General endorsed the JAB's recommendation.

11. Mr. Muratore's subsequent application with the former Administrative Tribunal was transferred to the UNDT on 1 January 2010. On 10 June 2011, the UNDT requested that the parties provide additional input on the receivability *ratione temporis* of Mr. Muratore's application.<sup>1</sup>

12. In Judgment No. UNDT/2011/125, the UNDT concluded that Mr. Muratore's application was not receivable *ratione temporis*, as he had failed to submit his request for administrative review within the two-month time limit.

### **Submissions**

#### **Mr. Muratore's Appeal**

13. Mr. Muratore submits that the UNDT erred in fact by incorrectly referring to certain events and also by not discussing in its Judgment the misconduct that he had reported in 2006 to

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<sup>1</sup> Order No. 99 (GVA/2011).

OHCHR regarding the post regularization process or the fact that he had requested a justification of the decision not to extend his contract.

14. Mr. Muratore submits that the UNDT erred in considering that time started to run on 30 June 2006, as, in his view, the only decision at stake in this case is the one taken on 9 August 2006 by the Special Adviser to the Secretary-General on the establishment of the Ethics Office, who informed him that it was not “within the purview of the Ethics Office to make [the] determination that [his] rights were violated”. Mr. Muratore submits that even assuming 30 June 2006 to be date of a decision, the later decision was made by a more senior staff member and is therefore a “new decision by an administrative appeal authority and not the simple confirmation of another decision”.

15. Mr. Muratore submits that the UNDT should have taken into consideration the inordinate delays incurred by the unreasonable time it took for the Ethics Office to respond to his requests and the fact that the Ethics Office then proceeded to provide him with misleading advice. Mr. Muratore submits that in addition to the fact that the Appeals Tribunal has found that decisions from the Ethics Office are administrative decisions, the former Administrative Tribunal found that the misleading advice provided by the Administration constituted exceptional circumstances with regards to the time limits to file an appeal.<sup>2</sup>

16. Mr. Muratore further submits that the UNDT erred in law in raising the question of time limits *sua sponte* as that issue had not been considered by either party during the prior stages of the proceedings either before the JAB or during the administrative review process.

17. Mr. Muratore also submits that the prolonged delays in processing his request has resulted in him and his family incurring exceptional emotional distress and that these delays in the administration of justice are akin to a denial of justice.

18. Mr. Muratore requests that the Appeals Tribunal reinstate him to a position of Human Rights Officer at the P-5 level; pay him his salary and emoluments from the date of separation to that of reinstatement; one week of salary per elapsed month from 30 June 2006 to the date of the Judgment of the Appeals Tribunal; and a total of seven years' salary for damages including but not limited to physical and emotional distress, loss of chance and professional reputation.

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<sup>2</sup> Former Administrative Tribunal Judgment No. 868, *Bekele* (1998).

**Secretary-General's Answer**

19. The Secretary-General submits that there is no dispute over the fact that Mr. Muratore was first notified of the administrative decision of the Ethics Office on 30 June 2006. Consequently, the Secretary-General submits that the UNDT did not err in finding that Mr. Muratore did not comply with the requirements of former Staff Rule 111.2(a) that, as a first step, a letter be sent to the Secretary-General requesting administrative review of the decision within two months from the date of receipt. Furthermore, the fact that Mr. Muratore repeatedly sought a revision of the decision did not suspend the deadline for contesting it or give rise to a new contestable administrative decision.<sup>3</sup>

20. The Secretary-General submits that Mr. Muratore has not identified any of the grounds under Article 2(1) of the Appeals Tribunal's Statute that would warrant a reversal of the UNDT's findings. The Secretary-General recalls that the Appeals Tribunal has regularly held that it is not sufficient to disagree with the outcome of a case or, as in the present case, to just state that the Judgment was "wrong in fact and in law" without further identifying any of the alleged defects.<sup>4</sup>

21. The Secretary-General requests that the Appeals Tribunal affirm the UNDT Judgment and dismiss Mr. Muratore's appeal in its entirety.

**Considerations**

22. Mr. Muratore is the Appellant before this Tribunal in an appeal against the Judgment of the Dispute Tribunal dismissing his appeal in its entirety.

23. The Appellant joined OHCHR at the P-3 level on a short-term appointment on 19 July 2004. His contract expired on 30 June 2006, after several extensions.

24. Prior to his separation, the Appellant had alleged threats and retaliation to which he had been subjected. He complained to the OiC of CBB in December 2004 and to the Chief of CBB in March 2006. On 23 May 2006, the Appellant complained to the Ethics Office.

25. On 30 June 2006, the Ethics Office informed the Appellant that it did not consider that the events demonstrated any professional misconduct requiring protection from retaliation. The

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<sup>3</sup> See *Sethia v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-079.

<sup>4</sup> See *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051.

Appellant then asked the Ethics Office to review its decision but his request was declined. The Appellant sought administrative review of the Ethics Office's decision on 4 September 2006. The impugned decision was upheld. The appeal to the JAB was dismissed.

26. The decision of the Ethics Office declining to entertain the Appellant's request for an ethics enquiry is the administrative decision we are concerned with. This decision was taken on 30 June 2006. The request for administrative review was made on 4 September 2006, beyond the 60-day time limit. Therefore, the Dispute Tribunal rightly concluded that the case was not receivable. We find no reasons to disagree.

### **Judgment**

27. Appeal is dismissed.

Original and Authoritative Version: English

Dated this 29<sup>th</sup> day of June 2012 in Geneva, Switzerland.

*(Signed)*

Judge Garewal, Presiding

*(Signed)*

Judge Simón

*(Signed)*

Judge Weinberg de Roca

Entered in the Register on this 12<sup>th</sup> day of September 2012 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar