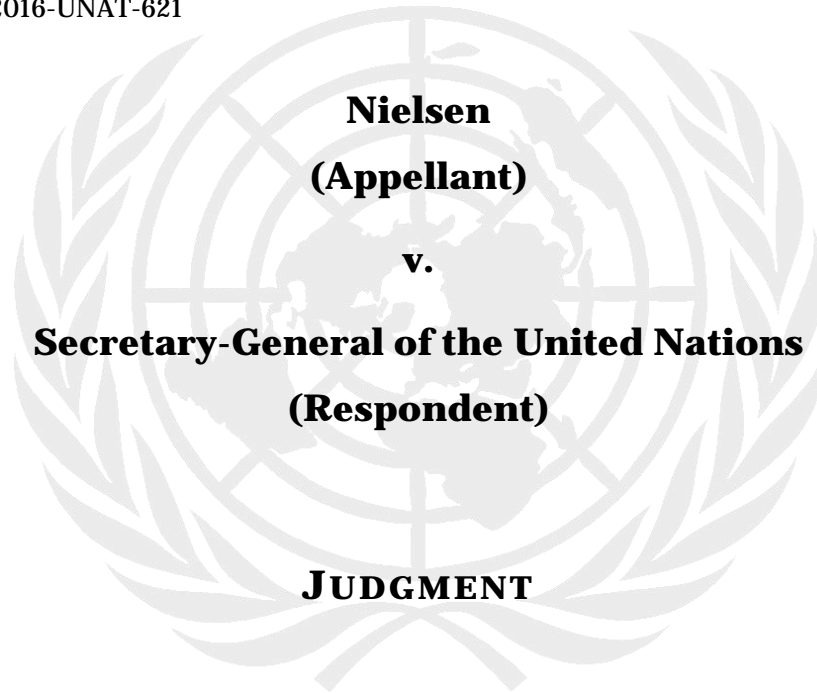




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2016-UNAT-621



Before: Judge Mary Faherty, Presiding
Judge Deborah Thomas-Felix
Judge Richard Lussick

Case No.: 2015-724

Date: 24 March 2016

Registrar: Weicheng Lin

Counsel for Ms. Nielsen: Self-represented

Counsel for Secretary-General: Zarqaa Chohan

JUDGE MARY FAHERTY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Olga Nielsen against Summary Judgment No. UNDT/2015/039, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 19 May 2015 in the case of *Nielsen v. Secretary-General of the United Nations*.

Facts and Procedure

2. The facts as found by the Dispute Tribunal read as follows:¹

... On 28 January 2013, the Applicant entered the service of [the United Nations Population Fund (UNFPA)] in the Africa team, [Procurement Services Branch (PSB) based in Copenhagen], on a one-year temporary appointment (“TA”). Effective 23 September 2013, she was placed on Special Leave with Full Pay, and was separated from UNFPA upon the expiration of her TA on 26 January 2014.

...

... By email of 2 October 2014, the Applicant addressed to an Investigations Analyst, Office of Audit and Investigation Services (“OAIS”), UNFPA, a 4-page complaint against the Chief, [Department of Human Resources (DHR)], UNFPA, for incorrect behaviour and possible abuse of authority; she further asked OAIS to let her know whether an investigation would be launched into her complaint. The Investigations Analyst acknowledge[d] receipt of the complaint on the same day, and informed the Applicant that OAIS would “assess and revert back to [her]”.

... On 8 October 2014, the Applicant sent another email to OAIS, to file a “complaint on conflict of interests”, regarding the manner in which UNFPA, through its Executive Director, was dealing with requests for management evaluation she had previously filed.

... By email of 10 December 2014, the Applicant submitted additional documents to OAIS, together with a “complaint on UNFPA Legal Council”, alleging a possible misconduct and conflict of interest in the review made of her requests for management evaluation.

... On 23 December 2014, the Applicant submitted to OAIS a 7-page “complaint on harassment and abuse of authority from UNFPA Executive Director”. She received an acknowledgment receipt the following day from OAIS, by which she was informed that OAIS would “conduct a preliminary review of the information ... provided ... and revert back to [her]”.

¹ Impugned Judgment, paras. 2-13.

... By email of 7 February 2015, the Applicant submitted a request for management evaluation (“the first request”) that she described, in the title of her email, as concerning, inter alia, “the DHR managers”. In the request for management evaluation form, under the section “Administrative decision to be evaluated”, the Applicant indicated the following:

The decision of UNFPA Investigation Office not to trigger the investigation in regards to harassment and abuse of authority from UNFPA DHR and DHR Chief ... and DHR Deputy Chief ... toward me about which I was notified on February 1, 2015 by the Investigation Office.

... On 8 and 11 March 2015, the Applicant submitted additional documents in the context of her request for management evaluation, which she described as proof of the improper actions of DHR towards her, “showing the harassment and abuse[...] of authority ... from the DHR Chief”.

... By email of 13 February 2015, the Applicant addressed to OAIS a “complaint on harassment and abuse of authority from UNFPA Executive Director”, “in addition to [her] earlier complaints on [him]”. She ended her message in the following terms:

I kindly request the Investigation Office to review my complaints soonest and to notify me if the investigation will be triggered and if you admit the fact of harassment and abuse of authority toward me from the UNFPA Executive Director, DHR and Legal Office by the end of February 2015. If I will not receive the reply from you by COB February 28, 2015 I will assume that the Investigation Office doesn’t want to trigger the investigation as there was sufficient time for reviewing my complaints and doing necessary actions.

... On 1 March 2015, the Applicant submitted another request for management evaluation (“the second request”), this time regarding “the harassment, discrimination and abuse of authority toward [her] from UNFPA Executive Director Office as well as the Legal Office”. In the request for management evaluation form, under the section “Administrative decision to be evaluated”, the Applicant indicated the following:

The decision of UNFPA Investigation Office not to trigger the investigation in regards to harassment, discrimination and abuse of authority from UNFPA Office of Executive Director as well as the Legal Office toward me.

... On 14 March 2015, the Applicant submitted “additional proofs/requests” in the context of her second request for management evaluation, as evidence of the improper behaviour towards her from UNFPA Executive Director Office as well as from the Legal Office.

... Since she did not receive any reply to her two requests for management evaluation, the Applicant filed an incomplete application with the [Dispute] Tribunal on 19 April 2015, which she completed on 21 April 2015. Annex 45 to the application was filed *ex parte*, and Annexes 50 to 55 were filed under seal.

3. In her UNDT application of 19 April 2015, Ms. Nielsen challenged UNFPA's inaction on her complaints of "improper behaviour ..., harassment and abuse of authority toward [her]" by UNFPA's DHR, Executive Director and Legal Offices, respectively.

4. In Summary Judgment No. UNDT/2015/039 now under appeal, the Dispute Tribunal rejected Ms. Nielsen's application as not receivable. It found that Ms. Nielsen had filed her first complaint to OAIS, almost nine months after her separation, beyond the six-month time limit set forth in Section 9.3.1 of UNFPA's Policy on Harassment, Sexual Harassment and Abuse of Authority (2013 UNFPA Policy). The Dispute Tribunal also found that Ms. Nielsen had no legal standing to file complaints with OAIS because, at the time of her filing, she was neither a staff member of UNFPA nor an individual independent contractor associated with UNFPA within the meaning of "Personnel" of the 2013 UNFPA Policy.

5. Ms. Nielsen appealed the UNDT Judgment on 31 May 2015, and the Secretary-General filed an answer on 4 September 2015.

6. On 7 September 2015, Ms. Nielsen filed a motion "to request [the Appeals Tribunal] to extend [her] rights as a staff member or to admit that they were extended by the [Executive Director, UNFPA]", to which the Secretary-General filed an objection. On 14 September 2015, Ms. Nielsen filed another motion "to protest against the Respondent's statement", to which the Secretary-General filed an objection. On 5 October 2015, the Registry informed the parties of the decision of the President of the Appeals Tribunal to add Ms. Nielsen's motions and the Respondent's observations thereon to the case file for consideration by a panel at the time of its deliberations on the present case.²

² The Panel deliberated on the present case on 15 March 2016. On 22 March 2016, Ms. Nielsen filed another motion "to request [the Appeals Tribunal] to admit the fact of a torture of me by UNFPA". This Panel did not deem it appropriate to accept this new motion as it did not raise any new facts relevant to the issues which the Appeals Tribunal deemed it necessary to adjudicate upon.

Submissions

Ms. Nielsen's Appeal

7. Ms. Nielsen states that she does not have a legal background and that the Appeals Tribunal should not use this fact as an “excuse/justification” to reject her appeal.

8. Ms. Nielsen contends that the Dispute Tribunal erred in fact or exceeded its jurisdiction in not asking her directly whether she had received any extension of the time limit for filing her harassment complaint. Had the UNDT asked, she would have provided the evidence showing that such was the case. In this regard, Ms. Nielsen proffers a letter from the Director of OAIS to her dated 31 March 2015 as part of annex 2 on an *ex parte* basis and asks the Appeals Tribunal to admit it as “evidence of the existence of the extension of the deadline by the UNFPA Investigation Office Director”.³ She did not provide the letter to the Dispute Tribunal, partly because the UNDT had not requested it and also because the letter was marked as “strictly confidential” and she did not know that it was important to provide evidence that she had received an extension of the time limit for filing her harassment complaint.

9. Ms. Nielsen proceeds to discuss the actions and/or inactions of the UNFPA Administration including: failure of the Investigation Office to take required actions or admit its own wrongdoing; refusal by UNFPA management to accept her attempts at informal resolution; failure of UNFPA management to provide her with a corrected performance evaluation report and respond to her queries regarding the tax implication for USD 1,000 awarded by the Dispute Tribunal to her in another case as moral damages arising from her placement on Special Leave With Full Pay (SLWFP);⁴ failure by UNFPA's Executive Director to review the behaviour of the involved PSB staff members despite her 27 requests for management evaluation; failure to extend her temporary appointment

³ Annex 2 includes a letter from the Director of OAIS to Ms. Nielsen dated 31 March 2015, in which the Director informed Ms. Nielsen of the completion and the outcome of the preliminary assessment of her complaints filed on 2 October 2014 and 10 December 2014, respectively, against the Director of DHR and the Legal Specialist. While OAIS concluded that a *prima facie* case of misconduct did not exist in both instances and that Ms. Nielsen's allegations did not warrant further investigation, “the closing of the case does not preclude OAIS from re-opening the case and initiating an investigation, if further details and/or information are subsequently disclosed”. The Director also informed Ms. Nielsen of the referral of the latter's complaints filed on 29 November 2014 and 23 December 2014, respectively, against the UNFPA Executive Director and the Office of the UNFPA Executive Director “to an investigative office of another UN agency/organization for assessment and/or investigation”.

⁴ See *Nielsen v. Secretary-General of the United Nations*, Judgment No. UNDT/2014/139, para. 50.

while her performance report rebuttal was on-going; her unlawful placement on SLWFP; the intolerant attitude towards her culture smacking of national or racial discrimination; and her mistreatment by her PSB colleagues and UNFPA management.

10. Ms. Nielsen clarifies that she is “not asking for any financial compensation in this case”. However, she requests that the Appeals Tribunal admit annex 2 to her appeal on an *ex parte* basis and declare she was a victim of harassment, abuse of authority and discrimination by the UNFPA DHR, Legal Office and the Office of the Executive Director so as to “help restore [her] reputation”.

The Secretary-General’s Answer

11. The UNDT Judgment concerns receivability issues only. Therefore, Ms. Nielsen’s arguments on the merits should not be considered, as the UNDT did not rule on these issues. Similarly, her arguments on other matters not related to the present case should not be considered.

12. The Secretary-General further requests that this Tribunal exclude parts of Ms. Nielsen’s appeal which clearly exceeds the 15-page limit as set forth in the Appeals Tribunal’s Rules of Procedure. Her nine-page appeal form contains four pages of arguments. In addition, she has provided a 15-page appeal brief and attached arguments of four pages each to several annexes including annexes 2 and 6.

13. The Dispute Tribunal correctly determined that Ms. Nielsen’s application was not receivable as it was untimely. It appropriately disposed of the application by summary judgment. The record indicates that Ms. Nielsen filed her complaint on 2 October 2014, nine months after her separation from service with UNFPA. When she lodged her complaint, Ms. Nielsen was not a “personnel” of UNFPA. Furthermore, there was no indication of any extension of the deadline by OASIS. Moreover, on the basis of the clear facts in the present case, the UNDT appropriately determined that the case was suitable for disposal by summary judgment under Article 9 of its Rules of Procedure.

14. Ms. Nielsen has failed to establish any errors warranting a reversal of the Judgment. In respect of Ms. Nielsen’s assertion that the letter included in annex 2 to her appeal contains the extension of the time limit for her to file a complaint, the Secretary-General states that the said letter of 31 March 2015 does not contain any reference to an extension

of the time limit under the 2013 UNFPA Policy. Rather, it was a response from OAIS to Ms. Nielsen, in which OAIS informed Ms. Nielsen of the outcome of its preliminary assessment of her complaints against the DHR and the UNFPA Legal Office. When she filed an application with the UNDT on 19 April 2015, Ms. Nielsen had already received that OAIS communication. Thus, this is not “new information” and should therefore not be accepted.

15. The Secretary-General requests that the Appeals Tribunal affirm the Judgment and dismiss the appeal in its entirety.

Considerations

Preliminary issue - request for an oral hearing

16. Ms. Nielsen has requested an oral hearing. The Tribunal does not find that an oral hearing is necessary or would assist in the expeditious and fair disposal of the case within the meaning of Article 18(1) of the Appeals Tribunal’s Rules of Procedure. Accordingly, the request is denied.

Ms. Nielsen’s motions

17. On 9 September 2015, Ms. Nielsen filed a motion “to request [the Appeals Tribunal] to extend [her] rights as a staff member or to admit that they were extended by [UNFPA’s Executive Director]”. The Secretary-General requests that the Appeals Tribunal deny the motion, as Ms. Nielsen has failed to provide any exceptional circumstances justifying the inclusion of this motion as an additional pleading. He submits that Ms. Nielsen has filed the motion in order to supplement her earlier appeal brief with pleas wholly outside the present appeal. Regarding Ms. Nielsen’s request to extend her staff rights, the Secretary-General stresses that the Appeals Tribunal has not been accorded the authority to extend a staff member’s appointment and only the recruiting organization has such authority.

18. With regards to the motion to extend Ms. Nielsen’s rights as a staff member, the Appeals Tribunal has concluded that there are no exceptional circumstances which would warrant the granting of the motion. We take the view that the thrust of the motion, insofar as any matter contained therein can be said to be relevant to the issues in this

appeal, is essentially an attempt by Ms. Nielsen to supplement arguments already made in the course of her appeal submissions. The motion is denied.

19. On 14 September 2015, Ms. Nielsen filed a “Motion to protest against the Respondent’s statement”, effectively taking issue with a number of submissions made by the Respondent in his answer to the appeal which was filed on 4 September 2015.

20. In his observations on this motion, the Secretary-General requests that the Appeals Tribunal deny the motion in light of Ms. Nielsen’s failure to provide any exceptional circumstances justifying the inclusion of this motion as an additional pleading. He contends that Ms. Nielsen has filed the motion in order to supplement her earlier appeal brief with pleas wholly outside the present appeal. Regarding her assertion that harassment continued even during her SLWFP, the Secretary-General states that Ms. Nielsen’s assertion is without merit and she simply expresses her disagreement with the Respondent’s answer and repeats the same allegations against various former colleagues that she made in her separate cases against them. He further submits that Ms. Nielsen’s reference to the UNDT’s finding that there was no contact between her and her PSB colleagues during her SLWFP is entirely misplaced as the Dispute Tribunal did not allude to this issue in the UNDT Judgment.

21. We agree with the Secretary-General’s submission that there is no basis upon which to admit Ms. Nielsen’s motion and the relief she seeks by way of this motion is denied.

Ms. Nielsen’s appeal of Judgment No. UNDT/2015/039

22. In this case, Ms. Nielsen appeals Judgment No. UNDT/2015/039 rendered by way of summary judgment on 19 May 2015 following a full application filed by her on 21 April 2015. Based on Ms. Nielsen’s submissions, the Dispute Tribunal distilled that what was properly before it for adjudication was Ms. Nielsen’s claim of “OAIS inaction” with respect to her complaints of the “improper behaviour, harassment and abuse of authority” against “UNFPA Chief, DHR, UNFPA Legal Office and UNFPA Executive Director” variously filed by Ms. Nielsen with OAIS between 2 October 2014 and 13 February 2015.

23. In the course of her voluminous appeal submissions, Ms. Nielsen does not take issue with the Dispute Tribunal's identification of the decisions that were before it for adjudication and we are satisfied that Ms. Nielsen's core complaints were adequately identified by the Dispute Tribunal.

24. Insofar as it can be gleaned from her submissions on appeal to this Tribunal, Ms. Nielsen takes issue with the Dispute Tribunal's finding that her complaints to OAIS were not receivable by OAIS and additionally she requests, *inter alia*, the Appeals Tribunal "to admit the fact of harassment, abuse of authority and discrimination of [her] from UNFPA, UNFPA Offices: DHR, Legal, and Office of the Executive Director (ED)". She further asks this Tribunal "to admit the fact of unacceptabl[y] poor work of the OAIS".

25. Ms. Nielsen's plea that the Appeals Tribunal would step into the shoes of OAIS and conduct a merits-based review of her complaints is entirely misconceived. Pursuant to Article 2(1) of our Statute, the Appeals Tribunal's function is to ascertain whether it has been established that the Dispute Tribunal in finding that Ms. Nielsen's complaints were not receivable by OAIS:

- (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.

26. The UNDT rejected Ms. Nielsen's application on the basis that her filings with OAIS were not receivable on two grounds, namely, that at the time she lodged her various formal complaints with OAIS she had no legal standing to do so as she "was neither a UNFPA staff member nor an individual independent contractor".⁵ The Dispute Tribunal also found that her complaints to OAIS were untimely. It found that her first complaint was filed on 2 October 2014 in circumstances where, as determined by the UNDT, "the date of the last incident" had to be taken as 26 January 2014 this being the date of Ms. Nielsen's separation from service. The UNDT thus concluded that any complaint under the 2013 UNFPA Policy should have been filed by the end of July 2014. The Dispute Tribunal

⁵ Impugned Judgment, para. 21.

further noted that there was “no indication on file that any extension of time limits was exceptionally granted to [Ms. Nielsen] by the Director, [OAIS]”.

27. We hold that that insofar as the UNDT rejected the application which was before it on the basis that Ms. Nielsen’s complaints to OAIS were not receivable by OAIS by reason of her status as a former staff member of UNFPA, the UNDT erred in law in so concluding. In arriving at its conclusion in this regard, the Dispute Tribunal relied on Section 3.1 of the 2013 UNFPA Policy which provides effectively that the scope of the policy applies to “Personnel”, being either “UNFPA staff members” or “Individual independent contractors”. However, the UNDT failed to have regard to Section 9.1 of the 2013 UNFPA Policy which provides that “[a]ny Personnel and/or former Personnel may file a complaint of Harassment, Sexual Harassment or Abuse of Authority with the Director, [OAIS]”. Thus as a former staff member of UNFPA, Ms. Nielsen had an entitlement to file a formal complaint with the Director of OAIS.

28. However, our finding that the Dispute Tribunal erred in law with regard to Ms. Nielsen’s legal standing to file complaints with OAIS is not dispositive of this appeal in Ms. Nielsen’s favour. It also falls to be determined whether the UNDT erred in finding that Ms. Nielsen’s complaints to OAIS were outside of the six months’ time limit for filing a formal complaint of harassment, as provided for in Section 9.3.1 of the 2013 UNFPA Policy. As already referred to, part of the Dispute Tribunal’s rationale for its finding was that there was no indication that the Director, OAIS, had extended the six months’ time limit which it is open to the Director to do “in exceptional cases” pursuant to Section 9.3.1 of the relevant policy.

29. Ms. Nielsen takes issue, *inter alia*, with the UNDT’s finding that an exception to the six months’ time limit had not been made in her case. She contends that the UNDT erred in fact and “exceeded its jurisdiction” by not asking her if she had an extension of time from the Director OAIS in which to bring her complaints.

30. In support of her contention that she was granted an extension of time by the Director, OAIS, Ms. Nielsen relies on a letter dated 31 March 2015 to her from the Director. The letter is part of annex 2 of Ms. Nielsen’s appeal to this Tribunal. When filing her appeal she requested, *inter alia*, that annex 2 be received *ex parte* by the

Appeals Tribunal, a request which was rejected by the President of the Appeals Tribunal in Order No. 230 dated 2 July 2015.

31. The letter of 31 March 2015 reads as follows:

Re: Conclusion of preliminary review of allegations by the UNFPA Office of Audit and Investigation Services

Dear Ms. Nielsen,

The Office of Audit and Investigations Services (OAIS) has completed its preliminary assessment into your complaints, filed with OAIS on 02 October 2014 and 10 December 2014, respectively, against ... Director, Division for Human Resources (DHR), and ..., Legal Specialist.

Having completed its preliminary assessment into the above-mentioned complaints, OAIS concluded that a *prima facie* case of misconduct did not exist in both instances, and that these allegations therefore did not warrant further investigation. Please note that the closing of the case does not preclude OAIS from re-opening the case and initiating an investigation, if further details and/or information are subsequently disclosed.

With regard to your complaints against the Executive Director and the Office of the Executive Director, filed with OAIS on 29 November 2014 and 23 December 2014 respectively, kindly note that these matters will be referred to an investigative officer of another UN agency/organization for assessment and/or investigation, seeing as OAIS is not mandated to investigate either the person/office in question. OAIS will keep you abreast of further developments in this regard in due course.

32. In the view of the Appeals Tribunal, this letter is of critical importance for the purposes of this appeal. In particular, the date of the letter is not of insignificant relevance for the purposes of the Appeals Tribunal's consideration as to whether there is merit in Ms. Nielsen's submissions to this Tribunal regarding the Dispute Tribunal's determination that her complaints to OAIS were not receivable by OAIS because of their untimely nature.

33. We have already found that the Dispute Tribunal correctly determined that what lay at the heart of Ms. Nielsen's application of 21 April 2015 to the UNDT was her complaint of alleged "inaction" by OAIS with respect to the series of complaints she filed between 2 October 2014 and 13 February 2015. When she filed her full application with the

UNDT on 21 April 2015 Ms. Nielsen had in her possession the letter of 31 March 2015 from the Director, OAI, yet notwithstanding filing some 66 annexes with that application she failed to attach the said letter or make mention of it in the course of her 29-page application to the UNDT.

34. The 31 March 2015 letter had a direct relevance to the substantive content of the application she filed on 21 April 2015, not least in light of the following submission as contained in part V of her UNDT application:

As UNDT can see from my [request for management evaluation's] Nr. 26 and 27 I applied for Management Evaluation after waiting for the reply from UNFPA Investigation Office for few months and after not receiving any reply from UNFPA Investigation Office I took the silence of UNFPA Investigation Office as their decision that the involved offices ostensibly didn't do any misconduct as the fair amount of time was given to the from [sic] UNFPA Investigation Office in order to evaluate my complaint. All my previous cases show that UNFPA Investigation Office despite the presence of clear facts of lies and slanders on me from the involved in my cases UNFPA PSB staff members, nonetheless denied that the involved staff members did misconduct and I find that from [sic] UNFPA Investigation Office is not doing their tasks in objective way.

35. In the course of her appeal submissions to this Tribunal, Ms. Nielsen contends that she did not refer to the 31 March 2015 letter in her UNDT application because the correspondence was marked "STRICTLY CONFIDENTIAL" and she asserts that she "didn't dare" add it to the annexes she filed with her UNDT application. Moreover, she asserts on appeal that she did not think that disclosing the letter to the UNDT would be important as the "UNFPA Investigation Office was not admitting that anything was done wrong by UNFPA staff members".

36. Irrespective of whether Ms. Nielsen agreed with the substantive response she received from the Director, OAI, on 31 March 2015, she was obliged, in our view, to alert the Dispute Tribunal that she had in fact received a response to the complaints she filed with OAI between 2 October 2014 and 13 February 2015 and to annex the correspondence to her application. Her duty could not be otherwise given that a principal plank of her case before the UNDT concerned her dissatisfaction with, *inter alia*, OAI personnel. We do not accept her explanation that she was somehow debarred from bringing the letter to the attention of the UNDT because it was marked "strictly confidential". We note that

Ms. Nielsen had no such qualms about bringing it to the attention of the Appeals Tribunal notwithstanding the confidential nature of the communication. Furthermore, irrespective of whether the UNDT would have allowed her to file the letter with that Tribunal on an *ex parte* basis, she could at least have sought to do so, or alternatively, she could have simply alerted the Dispute Tribunal to the fact of receipt of such letter thereby allowing the Dispute Tribunal to conduct such further enquiry with regard to the letter as it saw fit in the conduct of its case management functions.

37. Ms. Nielsen now wishes to rely on the letter of 31 March 2015 on the basis that the letter constitutes evidence of “the extension of the [six months’] deadline” given to her by the Director, OAIS. Her rationale for this submission is premised on the following: “[A]s the UNFPA Investigation Office Director accepted complaints, did the review and even sent [..] the complaint to another Investigation Office, which by itself means that the deadline was extended, otherwise my complaints would have been rejected by OAIS”.

38. Whether or which the substantive content of the letter of 31 March 2015 bolsters Ms. Nielsen’s assertion that at the very least her complaints were not rejected by OAIS on the basis that they were out of time, the Appeals Tribunal is not minded to interfere with the findings of Judgment No. UNDT/2015/039 insofar as those findings encompass the complaints Ms. Nielsen had filed on 2 October 2014 and 10 December 2014 against the Director, DHR and the UNFPA Legal Specialist, respectively. Were the Appeals Tribunal to find that the letter of 31 March 2015 could conceivably be read as a rejection by OAIS of Ms. Nielsen’s complaints for reasons other than for the failure to abide by time limits and were we to remand the matter to the UNDT for its substantive consideration of the reason put forward by OAIS as to why it was not progressing the relevant complaints, Ms. Nielsen would effectively be getting a second opportunity to challenge the substantive findings made by OAIS with regard to the complaints made against the Director of DHR and the UNFPA Legal Specialist. This would be in circumstances where she was not forthcoming with the Dispute Tribunal as to the exact state of affairs as of 21 April 2015. We hold, therefore, that Ms. Nielsen’s opportunity to challenge the aforesaid findings has been forfeited by her failure to bring the communication of 31 March 2015 to the attention of the Dispute Tribunal.

39. That being said, we note that with regard to the complaints filed by Ms. Nielsen on 29 November 2014 and 23 December 2014, respectively, against the UNFPA Executive Director and the Office of the Executive Director, the letter of 31 March 2015

did no more than advise her that OAIS had no jurisdiction to investigate such complaints and that they would be referred to “another UN agency/organization for assessment and/or investigation”. In this circumstance and notwithstanding Ms. Nielsen’s failure to bring this factor to the attention of the Dispute Tribunal, we hold, albeit with some reluctance, that nothing in Judgment No. UNDT/2015/039 should be read as interfering with the suggested mechanism for the processing of Ms. Nielsen’s complaints against the UNFPA Executive Director and the Office of the Executive Director. Accordingly, the referral to another United Nations agency/organization should be allowed to run its course.

Judgment

40. Judgment No. UNDT/2015/039 is upheld, save that the Appeals Tribunal deems that the said UNDT Judgment does not encompass the actions of OAIS in referring two of Ms. Nielsen’s complaints to another United Nations agency/organization, which referral should be allowed to run its course.

Original and Authoritative Version: English

Dated this 24th day of March 2016 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Lussick

Entered in the Register on this 13th day of May 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar