



Before: Judge Thomas Laker

Registry: Geneva

Registrar: Víctor Rodríguez

ODIO-BENITO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Marcus Joyce, ALS/OHRM, UN Secretariat

Introduction

1. On 6 December 2010, the Applicant, a former judge of the International Criminal Tribunal for the Former Yugoslavia (“ICTY”) currently serving as a judge at the International Criminal Court (“ICC”), filed with the United Nations Dispute Tribunal an application against the decision to suspend the payment of her ICTY pension as long as she would be serving with ICC.

Facts

2. The Applicant served as a judge at ICTY from 1993 to 1998. As of March 2003, she was elected as judge at ICC.

3. By resolution 63/259 of 24 December 2008, the General Assembly of the United Nations decided to amend the Pension Scheme Regulations for judges of ICTY, the International Criminal Tribunal for Rwanda and the International Court of Justice, so as to ensure that no former judge of any of these Courts receives a pension while also serving as a judge of ICC.

4. On 15 May 2009, the Applicant was informed that pursuant to the above-mentioned resolution, her pension as a former ICTY judge would be suspended with retroactive effect from 24 December 2008 and that payments already received by the Applicant since that date would be recovered.

5. On 13 July 2009, the Applicant requested management evaluation of the above-mentioned decision.

6. On 31 July 2009, the Acting Chief, Management Evaluation Unit, UN Secretariat, informed the Applicant that since judges of ICTY and ICC are not staff members within the meaning of the Staff Rules, but “officials other than Secretariat officials”, her request was not receivable. She concluded her letter stating that “should [the Applicant] find the result of the management evaluation unsatisfactory, [she] may file an application to the United Nations Administrative [sic] Tribunal (UNDT)”.

7. For the next 16 months, the Applicant attempted to obtain satisfaction through informal means.

8. On 6 December 2010, she filed an application with the Dispute Tribunal, which was transmitted to the Respondent on 8 December 2010.

9. On 10 December 2010, the Respondent applied for leave to solely address the issue of receivability in the reply and requested that the issue of receivability be dealt with as a preliminary matter by the Tribunal, which request was granted by the Tribunal on 13 December.

10. On 17 December 2010, the Respondent filed his reply and on 7 January 2011, after seeking leave from the Tribunal, the Applicant filed a rejoinder on the Respondent's reply.

11. By letter dated 10 January 2011, the parties were informed that the Judge hearing the case considered that an oral hearing was not necessary and were given until 17 January 2011 to take position thereon. The Respondent agreed that an oral hearing was not necessary and the Applicant did not file any objections.

Parties' contentions

12. As regards receivability, the Applicant's contentions are:

a. The application is receivable *ratione personae*. Although judges are not staff members but elected officials, there are no prescribed procedures for addressing judges' complaints concerning non-observance of their terms and conditions of employment. Independence of judges is an essential guarantee for carrying out justice and for the proper functioning of the UN *ad hoc* Tribunals;

b. The Applicant did not make any submission concerning receivability *ratione temporis*.

13. The Respondent's contentions are:
- a. The application is not receivable *ratione personae* because the Applicant is not a staff member and was not a staff member at the time the contested decision was taken. The judges of ICTY are officials elected by the General Assembly and the Applicant does not have standing to bring her case before the Tribunal;
 - b. The application is not receivable *ratione temporis* because it was not filed within 90 calendar days of receipt of the management evaluation as required by article 8.1(d) of the UNDT Statute. The Applicant filed her application more than 12 months beyond the deadline, consequently it is time-barred.
14. The Respondent requested that the application be dismissed as not receivable. The Respondent further sought an order for costs against the Applicant, pursuant to article 10.6 of the UNDT Statute, "for the manifest abuse of court process in her application to the Tribunal".

Considerations

15. Article 8.1 of the Tribunal's Statute provides:
- An application shall be receivable if:
- ...
- (d) The application is filed within the following deadlines:
- (i) In cases where a management evaluation of the contested decision is required:
 - a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission ...
16. Article 8.3 further provides:
- The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases ...
17. The result of the management evaluation was communicated to the Applicant on 31 July 2009. She should therefore have filed an application by 29 October 2009. However, she did not do so until 6 December 2010, more than 12 months beyond the deadline.

18. In her submissions before the Tribunal, and although she was granted leave to file a rejoinder on the Respondent's reply, the Applicant did not even attempt to explain the reasons for the delay. Both the Dispute Tribunal and the Appeals Tribunal have repeatedly emphasized the need to observe time limits (see for example *Samardzic et al.* UNDT/2010/019, *Mezoui* 2010-UNAT-043, *Ibrahim* 2010-UNAT-069).

19. The Tribunal must therefore reject the application as time-barred, without its being necessary to rule on the admissibility *ratione personae* of it.

20. The Tribunal does not find that the Applicant has manifestly abused the proceedings before it and therefore does not grant the Respondent's request for costs.

Conclusion

21. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 24th day of January 2011

Entered in the Register on this 24th day of January 2011

(Signed)

Víctor Rodríguez, Registrar, UNDT, Geneva