



UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/NY/2019/069
UNDT/NY/2019/089
Judgment No.: UNDT/2020/146
Date: 14 August 2020
Original: English

Before: Judge Joelle Adda
Registry: New York
Registrar: Nerea Suero Fontecha

MOHAMED

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:
Joseph Grinblat

Counsel for Respondent:
Nusrat Chagtai, ALD/OHR, UN Secretariat
Christine Graham, ALD/OHR, UN Secretariat

Introduction

1. On 20 July 2019, the Applicant filed an application contesting “the refusal by ICSC to discuss giving an indemnity to Ms. Mohamed to compensate her for the years of sexual harassment to which she was subjected by the former Chairman of [International Civil Service Commission (“ICSC”)]”. This application was registered under case no. UNDT/NY/2019/069 (“first application”).

2. On 1 November 2019, the Applicant filed a second application contesting the “[r]efusal to provide compensation to [the Applicant] for having been the victim of sexual harassment from the former Chairman of the ICSC”. This application was registered under case no. UNDT/NY/2019/089 (“second application”).

3. For the reasons stated below, the Tribunal finds that the first application is moot, and the second application is non-receivable *ratione materiae* as it does not contest an administrative decision under art. 2 of the Tribunal’s Statute.

Considerations

First application

4. In his reply to the first application, the Respondent argued that the matter was moot because the Chairman of the ICSC had responded to the Applicant’s request.

5. The Tribunal notes that as the Respondent rightly points out, the Applicant received the Chairman’s response to her request for compensation on 16 August 2019. The first application is therefore moot.

Second application

a. Relevant facts

6. The Office of Internal Oversight Services (“OIOS”) conducted an investigation on the Applicant’s report of sexual harassment by the then Chair of the ICSC. As the current Chair of the ICSC informed the Applicant on 6 March 2019, OIOS had notified the ICSC that it had concluded its investigation and found the Applicant’s allegations credible. ICSC had then reviewed the matter under art. 7 of its Statute which provides for the termination of a Commission member’s appointment if, “in the unanimous opinion of the other members, he or she has ceased to discharge the duties in a manner consistent with [the Statute]”. The Chair informed the Applicant that the ICSC was unable to reach a unanimous opinion under this provision and that the former Chair had resigned his position effective 14 December 2018.

7. On 16 August 2019, in response to a letter from the Applicant’s counsel, the ICSC Chair stated the following:

... [T]he provisions of Secretary-General's Bulletin ST/SGB/2008/5 [(Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority)] which do not provide for monetary compensation as a remedy. Rather, the Bulletin provides for certain procedures relating to corrective measures and monitoring as set out in sections 5 and 6. These procedures were implemented as appropriate in respect of your client.

Accordingly, the ICSC secretariat has no legal authority to pay your client any amount in this context.

8. The Chair considered the matter closed.

b. Scope of the review

9. The Applicant is perplexed with the fact that the former ICSC Chair was not held accountable under ST/SGB/2008/5 even though OIOS found her report against

him credible. The Applicant claims that as a staff member, she is entitled to be protected against sexual harassment in the workplace.

10. The Tribunal notes that pursuant to its sec. 2.4, the bulletin only applies to staff of the Secretariat. The former Chair of the ICSC, not being a staff of the Secretariat, fell outside the scope of the bulletin and, in general, of that of the Staff Regulations and Rules.

11. The Tribunal is sympathetic with the Applicant and finds this accountability gap deplorable. The Organization has a duty to protect all its staff members from prohibited conduct as predicated in sec. 2.2 of the bulletin. The Tribunal understands that this obligation stands regardless of the status of the person engaging in such conduct as long as it occurred in a work-related situation.

12. These findings notwithstanding, the Tribunal notes that the Applicant is not contesting the Administration's rejection to a request addressed to it for compensation for harm suffered while discharging her official duties. Nor does it appear that the Applicant filed a compensation claim under Appendix D of the Staff Rules for work-related injury. What the Applicant challenges in this case is the decision communicated to her by the ICSC Chair on 16 August 2019 which she appears to claim is attributable to the Secretary-General.

c. Receivability of the contested decision

13. The Respondent argues that the Applicant's challenge against the Chair's decision of 16 August 2019 is not receivable *ratione materiae*. Relying on *Obino* UNDT/2013/008, affirmed by *Obino* 2014-UNAT-405, the Respondent submits that the second application does not contest an administrative decision within the scope of art. 2.1 of the Statute of the Dispute Tribunal because the ICSC Chair is not a staff member of the Organization and, therefore, his decision is not attributable to the Secretary-General.

14. The Tribunal is not persuaded that this case is comparable to *Obino*. In that case, the contested decision was the Secretary-General's application of a decision by the ICSC to reclassify two duty stations. In the present case, the matter under review is not the Secretary-General's implementation of a decision by the ICSC but rather the ICSC's decision itself communicated to the Applicant directly by its Chair.

15. While the decision under review in *Obino* was of a different nature, the Tribunal finds relevance in its findings in *Obino* UNDT/2013/008 concerning the status of the ICSC. The Tribunal recalled that the ICSC was established by the General Assembly as an independent expert body pursuant to General Assembly resolution 3357 (XXIX) of 18 December 1974 (para. 37). The Tribunal further recalled that pursuant to art. 6 of the Statute of the ICSC, its members shall "perform their functions in full independence and with impartiality; they shall not seek or receive instructions from any Government, or from any secretariat or staff association of an organization in the United Nations common system" (para. 41). The Tribunal went on to conclude that the ICSC is not answerable to the Secretary-General.

16. The Tribunal concurs with these findings and concludes that the ICSC decision under review in this case is not attributable to the Secretary-General. Accordingly, it cannot be considered to fall within the scope of art. 2.1 of the Tribunal's statute which limits the Tribunal's jurisdiction to appeals against the Secretary-General. The second application is therefore not receivable *ratione materiae*.

Conclusion

17. Cases nos. UNDT/NY/2019/069 and UNDT/NY/2019/089 are dismissed as not receivable.

(Signed)

Judge Joelle Adda

Dated this 14th day of August 2020

Entered in the Register on this 14th day of August 2020

(Signed)

Nerea Suero Fontecha, Registrar, New York