



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

CHERNEVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

LPAS, UNOG

Introduction

1. By application filed on 12 August 2021, the Applicant, a former staff member, contests her non-selection for a position of special procedure mandate holder in the Working Group of Experts on People of African Descent, member from Eastern European States, with the United Nations Human Rights Council (“the Position”).

2. The application was registered under Case No. UNDT/GVA/2021/046 and assigned to the undersigned Judge.

Facts

3. The Applicant was a staff member of the Office of the United Nations High Commissioner for Human Rights (“OHCHR”) in 2014 and a staff member of the United Nations Children’s Fund from 2016 to 2018.

4. In 2021, the Applicant applied for the Position. She was listed as one of the six eligible candidates but was not shortlisted for interview.

5. On 14 June 2021, the President of the Human Rights Council proposed a candidate other than the Applicant for appointment to the Position.

6. On 11 August 2021, the Applicant requested management evaluation of the contested decision referred to in para. 1 above.

Consideration

7. Having reviewed the application and its supporting documents, the Tribunal considers that the issue at stake in the case at hand is the receivability of the related application.

8. In this respect, the Tribunal recalls the expectations of the General Assembly in resolutions 66/237 (Administration of justice at the United Nations), adopted on 24 December 2011, and 67/241 (Administration of justice at the United Nations), adopted on 24 December 2012, that effective measures be adopted to deal with

frivolous and manifestly inadmissible applications (see *Sanchez Calero* UNDT/2015/074, para. 8).

9. Accordingly, the Tribunal has on numerous occasions considered matters of receivability on a priority basis without first serving the application on the Respondent or awaiting the Respondent's reply (see, e.g., *Hunter* UNDT/2012/036, *Milich* UNDT/2013/007, *Masykkanova* UNDT/2013/033, *Sanchez Calero* UNDT/2015/074, *Karambizi* UNDT/2018/001, *Morales* UNDT/2019/158, *Cherneva* UNDT/2020/074, *Prakash* UNDT/2021/083, *White* UNDT/2021/089). Therefore, the Tribunal deems that the present matter can be determined on a priority basis without first transmitting a copy of the application to the Respondent for a reply as provided for in art. 8.4 of the Tribunal's Rules of Procedure.

10. Moreover, the Tribunal has the competence to review an application's receivability even if the parties do not raise the issue because "it constitutes a matter of law and the Statute prevents the [Tribunal] from receiving a case which is actually non-receivable" (see *Christensen* 2013-UNAT-335, para. 21). Accordingly, the Tribunal deems it appropriate to decide on the matter by way of summary judgment on its own initiative pursuant to art. 9 of its Rules of Procedure.

11. In her application, the Applicant indicates that she is a former staff member who was last separated from service in 2018, and that she contests the Administration's non-selection decision of 14 June 2021.

12. In this respect, the Tribunal recalls that art. 3.1(b) of its Statute allows a former staff member to file an application under art. 2.1 concerning, *inter alia*, an administrative decision "that is alleged to be in non-compliance with the terms of appointment or the contract of employment" or "imposing a disciplinary measure". It follows that a former staff member has standing to contest an administrative decision before the Tribunal only if there is "a sufficient nexus between the former employment and the contested decision" and that "[a] sufficient nexus exists when a decision has bearing on an applicant's former status as a staff member, specifically when it affects his or her previous contractual rights" (see *Arango* 2021-UNAT-1120, para. 28; see also *Shkurtaj* 2011-UNAT-148, para. 29).

13. In the present case, the Applicant asserted that the principle of giving priority to former OHCHR staff members in short-listing candidates applies to employment. However, the Position concerns an independent human rights expert in a working group, whose selection is governed by the Special Procedures of the Human Rights Council, and thus does not constitute “employment”. Therefore, the contested decision had no bearing on her former employment in the sense that it affected any contractual rights she had acquired under it. The Tribunal is thus of the view that there is no nexus between the Applicant’s former employment and the contested decision. Accordingly, the Tribunal finds that the Applicant does not have standing and the application is not receivable *ratione personae*.

14. Furthermore, the Tribunal observes that the Applicant filed her requests for management evaluation on 11 August 2021, that is one day before the date of filing her application with the Tribunal. However, under art. 8.1(d)(i) of its Statute, the Tribunal is competent to hear an application that is filed within 90 days of the applicant’s receipt of the response by management or of the expiry of the relevant response period for the management evaluation.

15. Having filed the application pending the response of the management evaluation and prior to the expiry of the relevant response period, the Tribunal is not competent to hear the matter at issue (cf. *Cherneva* Order No. 83 (GVA/2018), *Cherneva* UNDT/2018/059, *Cherneva* UNDT/2021/003). The Application is thus also not receivable *ratione temporis*.

Conclusion

16. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

(Signed)

Judge Teresa Bravo

Dated this 24th day of August 2021

Case No. UNDT/GVA/2021/046

Judgment No. UNDT/2021/101

Entered in the Register on this 24th day of August 2021

(Signed)

René M. Vargas M., Registrar, Geneva