



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/023

Judgment No.: UNDT/2025/037

Date: 25 June 2025

Original: English

Before: Judge Margaret Tibulya

Registry: Geneva

Registrar: Liliana López Bello

SOUM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Christopher Bollen

Counsel for Respondent:

Chenayi Mutuama, UNHCR

Elizabeth Brown, UNHCR

Introduction

1. The Applicant, a Senior Finance Associate, with the Office of the United Nations High Commissioner for Refugees (“UNHCR”), contests the 29 September 2023 decision by the Inspector General’s Office (“IGO”) confirming a previous decision dated 20 October 2022 not to initiate a full investigation into the matters of the Applicant’s complaint against her supervisor, the Head of Evaluation Service, UNHCR (“the contested decision”).

2. For the reasons set forth below, the Tribunal finds that the application is not receivable.

Facts

3. On 15 August 2022, the Applicant filed a complaint of harassment, discrimination, islamophobia, and racism against her First Reporting Officer (“FRO”).

4. On 20 October 2022, the IGO decided not to initiate a full fact-finding investigation into the Applicant’s allegations. This is the initial complaint and “first” contested decision.

5. On 4 June 2023, the Applicant filed an application contesting the first decision. The application was registered in the records of the Dispute Tribunal under Case No. UNDT/GVA/2023/030. By judgment *Soum* UNDT/2024/059 of 12 September 2024, the Tribunal decided to reject the application.

6. On 16 May 2023, Counsel for the Applicant wrote to the High Commissioner and submitted, *inter alia*, that, following the Applicant’s first complaint of multiple incidents of harassment, racism, discrimination based on nationality, and islamophobia against her FRO, she had been subjected to further harassment and retaliatory treatment by the same FRO. He stated that the additional incidents of harassment required further investigation.

7. On 7 August 2023, the parties and the Office of the Ombudsman and Mediation Services met for informal dispute resolution discussions. During those

confidential discussions, the parties agreed to solicit the IGO's views as to whether the information included in the letter dated 16 May 2023 amounted to new information warranting reconsideration of the decision dated 20 October 2022 not to initiate an investigation.

8. On 14 August 2023, the IGO initiated a review of the additional information provided by the Applicant regarding her complaint.

9. On 22 August 2023, the IGO interviewed the Applicant for a second time. During its reassessment, the IGO contacted four staff members identified by the Applicant as potential witnesses, two of whom were interviewed, respectively, on 28 and 30 August 2023.

10. By email dated 29 September 2023, the Head of Investigation Service, IGO, informed the Applicant that the IGO had completed its reassessment of her complaint in light of the *new* information shared, and concluded that its decision of 20 October 2022 remained unchanged. This is the "second" contested decision.

11. On 28 November 2023, the Applicant requested management evaluation of the "second" contested decision.

12. On 26 March 2024, the Deputy High Commissioner decided that the Applicant's management evaluation request was not receivable because the communication dated 29 September 2023 did not amount to a new contestable administrative decision. He further stated that, even if the request was found receivable, the Applicant's request was without merit.

13. On 24 June 2024, the Applicant filed the instant application against the "second" contested decision.

14. On 2 August 2024, the Respondent filed his reply challenging, *inter alia*, the receivability of the application.

15. On 23 September 2024, the Tribunal directed the Applicant to file a rejoinder and encouraged the parties to explore resolving the dispute amicably.

16. After a request for extension of time, the Applicant filed her rejoinder on 25 October 2024.

17. By separate emails dated 1 November 2024, the parties informed the Tribunal that they were not amenable to an amicable settlement.

18. On 1 April 2025, the instant case was assigned to the undersigned Judge.

19. By notification dated 3 April 2025, the Tribunal scheduled a Case Management Discussion (“CMD”), which took place virtually via MS Teams on 28 April 2025. During the CMD, the Tribunal, *inter alia*, encouraged the parties to explore resolving the issue amicably, and decided that it would pronounce itself on the receivability issues raised by the Respondent before moving forward with case management.

20. On 12 May 2025, the parties informed the Tribunal that no amicable settlement had been reached.

Consideration

Receivability

21. The Respondent argues that the application is not receivable because the contested decision is not a challengeable administrative decision. In support, he submits that the communication of 29 September 2023 simply reiterates the IGO’s initial finding that the Applicant’s complaint lacked merit and did not warrant a full investigation. As a reiteration of a previous decision, it does not amount to a new administrative decision that can be the subject of a fresh judicial review.

22. The Respondent further claims that the matters complained about arose in the context of confidential mediation discussions. Art. 15.7 of the Tribunal’s Rules of Procedure (“RoP”) expressly and unambiguously states that all documents and oral statements made during any informal conflict resolution process or mediation are absolutely privileged and shall not be disclosed.

23. In response, Counsel for the Applicant asserts that, as a result of a mediation agreement, the IGO decided to revisit and re-assess the Applicant’s allegations

against her supervisor. Further, that the IGO considered new and additional information. He submits that this new assessment entailed a review of fresh facts and evidence. It is argued that the IGO's subsequent decision amounted to a new administrative decision.

24. The Counsel for the Applicant further submits that the outcome of the IGO fresh review is not part of the mediation agreement and, therefore, is not confidential in nature.

25. Upon a review of the pleadings and parties' submissions, the Tribunal finds that the application is not receivable for the reasons that will be developed below.

26. The background to this application is that on 15 August 2022, the Applicant filed a report of potential misconduct against her FRO for alleged harassment by preferential treatment of others and unfair work distribution, harassment, and retaliation through performance evaluation and contractual issues, discrimination based on nationality, islamophobia, and racism.

27. After an initial assessment, the IGO decided not to initiate an investigation into the allegations on the basis that:

[...] although there appear[ed] to be workplace conflict and challenges within [the] service—the evidence assessed demonstrate[d] that they do not qualify as discrimination or harassment, and do not rise to the level of staff misconduct [...]

28. Following that determination, the Applicant filed an application with the Tribunal contesting the decision not to initiate a full fact-finding investigation into her allegations. The Tribunal, however, found that in undertaking the preliminary assessment, IGO duly reviewed the evidence and did not err in concluding that the complaint lacked sufficient evidence and meaningful indicia of misconduct. Furthermore, the Tribunal found that the IGO's conclusion was reasonable and supported by the evidence.

29. Before the Tribunal rendered the foregoing decision in judgment *Soum* UNDT/2024/059, the Applicant filed another complaint alleging that after her first complaint, she continued to be subjected to harassment and

retaliation by her FRO. These new incidents allegedly occurred specifically between October 2022 and January 2023, and, according to the Applicant, were composed of new elements that warranted a fresh investigation.

30. In this regard, the Applicant complained about the unfair distribution of duties, with her FRO favouring a younger, less senior colleague while sidelining her and her colleague. She explained that her manager assigned substantive work to the more junior administrative colleague and basic administrative work to her and her colleague, thereby contradicting their job descriptions.

31. According to the Applicant, the new elements that warranted a new assessment of her complaint were the following:

- a. New witnesses that could testify to the general toxic work environment within the Service;
- b. A claim that Eritrean nationals are discriminated against based on their nationality and that she feared being under surveillance while working in Eritrea;
- c. Further harassment as retaliation for the Applicant filing the first complaint; and
- d. Additional information on the harassment incidents raised in the first complaint, in particular regarding the toxic work environment which affected her and her colleagues, whom she had already cited as witnesses.

32. The IGO made an initial assessment of the second complaint and determined that the previous decision from October 2022 should remain unchanged. Its new assessment included the information and evidence of the first complaint, the elements of the second complaint, and the information they had obtained during their second assessment of the complaint.

33. The Applicant then filed this application in which she maintains that the decision of 29 September 2023 to close the investigation is unjustified and unlawful.

34. The Respondent's assertion that the communication of 29 September 2023 simply reiterated the IGO's initial finding that the Applicant's complaint lacked merit to warrant a full investigation is supported by the fact that the Applicant re-filed the same complaints and sought to support them by the same evidence she had presented in the first complaint.

35. The second complaint was comprised of the following:

- a. Harassment by preferential treatment of others and unfair work distribution;
- b. Discrimination based on nationality, race, and religion; and
- c. Harassment and retaliation through performance evaluation and contractual issues.

36. The Tribunal noted that, during the Applicant's second interview, the issue of the scope of the interview arose. The IGO insisted that the investigation would be limited to new matters, while the Applicant's view was that the first inquiry should be re-opened since it had not been conducted properly.

37. In the Tribunal's view, the first inquiry cannot be reopened since the IGO's decision has already been the subject of judicial review proceedings.

38. This Tribunal is called to determine whether the IGO's conclusion that there were insufficient grounds to reconsider or reverse the initial decision not to open an investigation into the Applicant's allegations against her supervisor amounts to a new administrative decision that can be the subject of a fresh judicial review. The issue is to be resolved through a comparison of the contents of both complaints and the evidence that was adduced in each of the investigations.

39. As already mentioned, the Applicant's first complaint related to:

- a. Being subjected to continuous harassment in her day-to-day activities. She advanced several assertions under this head, including that there was

preferential treatment of other staff members and that there was unfair work distribution in her section;

b. Being subjected to harassment and retaliation through performance evaluation and contractual issues;

c. Being discriminated against based on her nationality. Under this head, she advanced two contentions, one of which related to a message from her supervisor to her Country Representative (Eritrea), allegedly asserting that she was unprofessional, and

d. Being a victim of islamophobia and racism, which, *inter alia*, stems from information that the supervisor's family gave Muslim names to their dogs.

40. The specifics of the Applicant's second complaint are contained in a letter from her Counsel to the High Commissioner, in which it was alleged that the Applicant was subjected to further harassment and retaliatory treatment by the same supervisor. In summary, the letter complains of:

a. Discriminatory and harassing behaviour by the Applicant's supervisor, including:

i. Jokes made about a colleague's appearance that were racially insensitive;

ii. Comment about naming dogs with Muslim names, including "Mohamed," shared with a Muslim colleague; and

iii. Disparaging email to UNHCR Eritrea Representative implying the Applicant might act unprofessionally.

b. Retaliation and undermining of the Applicant's professional standing by:

i. Negative and unrelated comments inserted into her performance appraisals (ePAD);

- ii. Shortening the Applicant's 2022 performance review period from 12 to nine months after filing a complaint; and
 - iii. Her supervisor referred to the Applicant as "confrontational" and "high conflict."
- c. Obstruction of the Applicant's leave and medical recommendations including:
 - i. The UNHCR Medical Section denied her sick leave recommended by the psychiatrist;
 - ii. The supervisor initially approved, then revoked approval for her annual leave; and
 - iii. The Applicant was forced to use her own leave entitlements to avoid contact with her supervisor.
- d. Whistleblowing and repercussions by:
 - i. The Applicant raised concerns about excessive costs for a staff retreat in Interlaken and escalated the matter to the High Commissioner. The supervisor labelled this escalation as "confrontational" and used it against the Applicant in performance reviews.
- e. Advocacy and backlash by:
 - i. The Applicant co-authored a response to a controversial email from the UNHCR Uganda Representative regarding racism in Ukraine. The supervisor used this incident to justify negative comments in the Applicant's ePAD despite no formal reprimand.
- f. Discriminatory work distribution by:
 - i. A younger white colleague in the Section was given more substantive tasks, while senior women of colour were assigned

administrative duties. The supervisor dismissed the raised concerns about fairness and policy compliance.

g. Organizational failures, including:

i. IGO declined to investigate the complaint, citing insufficient evidence and only contacted one witness. Management Evaluation upheld IGO's decision, dismissing the need for a victim-centered approach; and

ii. The Applicant's post was advertised without offering her a chance to return or be reassigned, even though she retained a lien to it.

41. In the Tribunal's view, judgment *Soum* captures all the allegations which were advanced by the Applicant, and which were the subject of the first complaint and assessment. It also captures the IGO's reasoning and conclusion on each of those allegations.

42. The allegations of islamophobia, for example, were the subject of the Applicant's first complaint. The same allegations and evidence, however, formed the second complaint. The IGO assessed the allegation and noted that the staff member who had been the alleged victim of islamophobia unambiguously stated that the matter had been resolved and that she did not wish to make a formal complaint about it. IGO concluded that a formal investigation was not warranted under the circumstances; a decision that this Tribunal upheld. In this connection, there were no new elements in the Applicant's second complaint that would warrant a revision of the foregoing conclusion.

43. The Applicant also complains about racism. This complaint and evidence were assessed by the IGO, which concluded that a reference to a colleague's height was insufficient indicia of misconduct to warrant a full investigation. The Tribunal considered the IGO's conclusion and available evidence and determined that the Applicant provided no evidence to suggest that "the small woman" comment was motivated by race, and that the nature of the comment did not lend itself to such a suggestion. The Tribunal therefore concluded that the IGO did not err in its

conclusion (see *Soum*, paras. 74-77). There were no new elements in the Applicant's second complaint to support a reconsideration of the foregoing conclusion.

44. The disagreement about the costs of the Evaluation Service Retreat was also assessed by IGO, which concluded that it fell outside the scope of sec. 5.2 of UNHCR/HCP/2014/4 ("Policy on Discrimination, Harassment, Sexual Harassment, and Abuse of Authority"), which usually excludes disagreements on work performance or other work-related issues from the definition of harassment. The Tribunal upheld the IGO's decision (see *Soum*, paras. 44-45).

45. The allegation that the UNHCR Medical Section refused to approve the Applicant's sick leave was rejected on the basis that her allegations fell outside the IGO's mandate and did not warrant a full investigation. The Tribunal found no legal or significant factual basis to overturn that conclusion. The Tribunal also found that this allegation was neither part of the Applicant's 15 August 2022 complaint nor a subject of an administrative decision. It was therefore not receivable and fell outside the judicial review (see *Soum*, paras. 55-56).

46. Allegations that the Applicant's supervisor reneged on a decision to approve her annual leave, the refusal to approve her certified sick leave, and the advertisement of her position on 21 February 2023 were ruled not receivable since they were not part of the Applicant's complaint of prohibited conduct to IGO and had not been subjected to management evaluation. They did not, therefore, form part of the contested decision under judicial review. It is worth noting that this conclusion cannot be changed by merely subjecting the complaints to further investigation.

47. The Applicant sought to have allegations that her supervisor created a toxic work environment in which her every attempt to stand up for her and her colleagues' rights and dignity was viewed as an escalation of a conflict and miscommunication. Further, the Applicant claims that she was continuously subjected to degrading and humiliating treatment in that her valid concerns were ignored or dismissed. Also, she argues that there was a pattern of retaliatory reactions by the supervisor to her

attempts to advocate for a non-discriminatory and respectful workplace environment, and to stand up for the integrity of civil service, justice, and dignity for her colleagues and herself.

48. The Tribunal found that the Applicant did not file a complaint with the Ethics Office to protect her from her FRO's retaliatory actions, which is the appropriate office to deal with claims of retaliation. Therefore, according to the Tribunal, the allegations in this respect fell outside the scope of the judicial review (see *Soum*, para. 96).

49. The complaint that the Applicant's supervisor attempted to include irrelevant negative comments in her ePAD was also the subject of the IGO assessment in the first complaint. The comments in issue included ones by the Representative in Uganda about the Applicant's alleged lack of respect, which her supervisor used in the ePAD for 2021 to justify negative comments about the Applicant's communication approach. The Applicant's supervisor also referred to her as a "difficult and a high conflict person".

50. In judgment *Soum*, the Tribunal found that the IGO considered the allegations and concluded that, based on their nature and available evidence, they constituted ongoing disagreements over the performance evaluation, which fell under the context of performance management and not misconduct. The Tribunal further found that the investigators were emphatic that the final assessment for the two previous performance evaluations of the Applicant did not contain any hidden sanction. It was concluded that the Applicant's allegation that the documents in issue were used for harassment remained unsupported.

51. The Tribunal further noted that the alleged negative comments were eventually excluded from her record. Further, the Applicant did not provide evidence suggesting that the matter had not been handled and that it was motivated by retaliation, ill will, or bias. The Tribunal found no evidence of ill intent that would warrant an investigation, especially since the allegedly offensive comments were removed during the finalisation of the relevant performance evaluations. The Tribunal concluded that matters relating to performance evaluations ought to be

addressed through the relevant rebuttal processes, which, in this case, did not happen, and that insofar as it relates to the 2020, 2021 and 2022 performance evaluations, the Applicant's grievances were indeed outside the scope of the mandate of IGO (See *Soum*, paras. 59-63). In the Tribunal's view, the above conclusions can only be challenged on appeal rather than through a second investigation.

52. The Applicant also sought to reassess the allegation that the Organization failed in its duty of care with respect to the implementation of the mediation agreement. The agreement clearly stated that she would be re-assigned without relinquishing her lien to her post. Instead, her post was advertised for 364 days, and she was not given an opportunity to either go back to the same post or to be reassigned for the whole duration of her contract. The Organization failed to provide her with a viable solution apart from the Evaluation Service, as agreed. It further failed to protect her from the persistent harassment by her supervisor.

53. The Tribunal considered the above allegations and noted that with the support of the Department of Human Resources, the Applicant was admitted as a member of the Emergency Response Team, which made her eligible for relevant job openings as they arose. Moreover, when the Applicant was selected for her current temporary assignment away from her service, DHR facilitated this by providing funding for her assignment (see *Soum*, para. 94). The Tribunal was satisfied that the Organization took appropriate steps to support the Applicant's request to be removed from a work environment she found disagreeable and did not find any duty of care violations in this respect (*Soum*, para. 97). This conclusion can only be challenged on appeal of judgment *Soum* UNDT/2024/059.

54. Furthermore, the Tribunal noted that, as per staff rule 4.13(c), a fixed-term appointment does not carry any expectation, legal or otherwise, of renewal or conversion, irrespective of the length of service. The Tribunal held the view that unless the Applicant could clearly demonstrate that she was expressly promised and had a legitimate expectation of a three-year renewal, which she did not do, the Tribunal did not see any lawful reason to support her complaint of wrongdoing. Importantly, even if she had such a legitimate expectation, the Tribunal agreed with

IGO that any alleged broken promise would not amount to misconduct warranting a harassment investigation against the Applicant's FRO. Based on the foregoing, clearly both the IGO and the Tribunal reviewed this allegation. The remedy, if any, lies, therefore, on appeal.

55. The IGO assessed the allegation that the Applicant was expected to perform duties that were significantly below her grade. They concluded that the evidence provided by the Applicant for its review and preliminary assessment did not demonstrate any instance of harassment or discrimination, but instead merely showcased the Applicant's own disagreements over the distribution of tasks within the Unit, and work-related grievances with her FRO. The Tribunal found that IGO considered the allegation and concluded that the matter of task distribution fell outside the scope of sec. 5.2 of UNHCR/HCP/2014/4, which normally excludes disagreements on work performance or other work-related issues from the definition of harassment.

56. According to the Tribunal in *Soum*:

47. A complete reading of the emails the Applicant provided did not disclose any preferential assignment of tasks. IGO did not find evidence that the Applicant's FRO promoted a "white woman" at the expense of the Applicant, nor that the allegations pertaining to office absences had any foundation. Neither did the Tribunal.

57. Regarding the message to the UNHCR Representative in Eritrea, in which she implied that the Applicant was unprofessional, the Tribunal found in *Soum* that:

72. A plain reading of the email makes it clear to the Tribunal that the FRO politely expressed gratitude to the Representative for accommodating the Applicant onsite and stated what is normally expected from a staff member in terms of conduct.

73. The Tribunal found that the email does not allude to any lack of professionalism, integrity and/or the presence of a conflict of interest because of the Applicant's nationality, as she claims. Equally, the email also does not infer any form of abuse of authority .

58. Any dissatisfaction with the foregoing conclusions should have been presented at the appellate level.

59. The complaint that the Applicant's supervisor unjustifiably shortened her performance review period, and that only with the Ombudsman's intervention did she use the correct evaluation period, was in fact considered by the IGO. It was noted that, contrary to the Applicant's assertion, the chain of emails that she provided for the period between 21 October 2020 and 9 November 2020 did not indicate that the decision of the FRO over the Applicant's contract renewal length had been made "to show power". IGO further noted that its mandate does not extend to issues related to contract renewals. The Tribunal upheld that conclusion in *Soum* UNDT/2024/059.

60. Based on the foregoing, it is clear that all the allegations raised by the Applicant that formed the basis of the current contested decision were precisely those of the first complaint, which was the subject of the original contested decision and reviewed by this Tribunal in judgment *Soum* UNDT/2024/059. Therefore, the Tribunal has already pronounced itself on the reasonableness and legality of IGO's decision not to investigate the allegations.

61. Furthermore, the reassessment of the complaint conducted by IGO did not reveal any new significant evidence that would warrant a reconsideration of the initial findings. The Applicant's assertion that "further harassment and discrimination" continued to occur is not supported by the evidence that she provided or the testimony that she gave.

62. Instead, the 29 September 2023 "contested decision" was indeed a mere reiteration of the original contested decision dated 20 October 2022 that arose after the Organization agreed on a mediation agreement, to revisit and reassess the Applicant's complaint taking into account any new or additional information she wished to bring to the IGO's attention. No new or additional information was, however, provided.

63. Accordingly, the Tribunal finds that the IGO's reassessment of the Applicant's complaint does not amount to a new administrative decision that can be the subject of a fresh exercise of judicial review because there were no new

elements in the second complaint supporting a finding that a new decision was made.

Conclusion

64. In view of the foregoing, the Tribunal DECIDES that the application is not receivable *ratione materiae*.

(Signed)

Judge Margaret Tibulya

Dated this 25th day of June 2025

Entered in the Register on this 25th day of June 2025

(Signed)

Liliana López Bello, Registrar, Geneva