

Case No.:

## **Introduction**

1. By application filed on 16 March 2018, the Applicant, a Human Rights Officer (P-3) in the Office of the High Commissioner for Human Rights (“OHCHR”), contests the implied decision not to process her complaint of abuse of authority against the High Commissioner for Human Rights (“High Commissioner”).

## **Facts**

2. In 2015 and 2016, the Applicant filed applications for protection against retaliation to the Ethics Office under ST/SGB/2005/21 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations).

3. On 20 July 2016, the Applicant filed a complaint of harassment under ST/SGB/2008/5 (Protection against discrimination, harassment, including sexual harassment, and abuse of authority) against her then first and second reporting officers.

4. The Ethics Office determined in its confidential memorandum of 7 October 2016, that some of the activities that the Applicant had engaged in did constitute protected activities under ST/SGB/2005/21, but that most did not. However, the Ethics office found that there was no *prima facie* case that the protected activities were a contributing factor in causing the alleged retaliation.<sup>1</sup>

5. Following a telephone call between the Applicant and an officer of the Ethics Office on 13 October 2016, her complaint with the Ethics Office was re-opened.

6. On 5 January 2017, the High Commissioner responded to the Applicant’s complaint of harassment indicating that the facts alleged regarding adverse actions in performance management had been corroborated, but related to the management

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<sup>1</sup> The Ethics Office memorandum was not filed in this case, however it is well known to both parties, having been filed in another matter between them. The Tribunal has determined to include the memorandum in the file in this case, as the summary advanced by the Applicant was not complete.

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of

11. On 20 February 2017, the Applicant wrote to the High Commissioner taking issue with the content of the press release. She expressed the view that it misrepresented OHCHR's policies regarding the sharing of information regarding NGO participants in OHCHR meetings with the Chinese government. 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17. On the same

27. On 17 July 2017, the the

34. On 15 April 2019, both parties confirmed their agreement that the case may be decided on the basis of the documents.

35. By his submissions dated 15 April 2019, the Applicant also sought leave to adduce medical evidence and to comment upon a letter dated 11 January 2018 filed by the Respondent as Annex 11 to his reply. The Tribunal finds that it is in the interest of justice to grant the Applicant's request and that it would cause no prejudice to the Respondent. It will therefore accept the additional evidence and submissions produced by the Applicant.

**Parties' submissions**

36. The Applicant's principal contentions are:

- e. The Applicant requests:
  - i. A decision as to whether her complaint will be investigated be made and communicated to her within a reasonable delay; and
  - ii. Compensation for moral damages (stress and anxiety).

37. The Respondent's principal contentions are:

- a. The application is not receivable as no implied decision not to investigate the Applicant's complaint has been taken. The application is thus premature;
- b. Should the Tribunal consider that the application is receivable, the taking of additional time to complete the review of the Applicant's complaint is a proper exercise of the Administration's discretion. The Applicant has made several overlapping complaints and applications against several individuals, to different entities. The time taken to review the complaint is therefore reasonable in view of the complexity of the entire matter;
- c. Furthermore, the Secretary-General considered that it was appropriate to pause the review of the Applicant's complaint pending the outcome of the proceedings before the Dispute Tribunal since the publication of the press release is the main component of the Applicant's complaint against the High Commissioner; and
- d. The Respondent requests that the Tribunal rejects the application in its entirety.

### **Consideration**

38. The Tribunal notes that at the time of submitting her request for management evaluation, the Applicant had not yet received the letter of 11 January 2018 from the ASG, OHRM. The Applicant had been repeatedly told that her complaint was

its submission to the ASG, OHRM. This is the matter that is the subject of the application and thus under review.

39. In turn, the letter of 11 January 2018 where the ASG, OHRM, communicated her decision to defer the consideration of the Applicant's complaint pending adjudication of her application in Case No. UNDT/GVA/2017/052 was produced in the present case by the Respondent to explain or justify the delay in considering the Applicant's complaint. This is not the decision under review and the Tribunal will consider the letter of 11 January 2018 only insofar as it is relied upon by the Respondent to justify the lengthy time taken in the consideration of the Applicant's complaint.

40. In examining the receivability of the application, the Tribunal must determine if the failure to take any action on the Applicant's complaint almost nine months after its filing, taking into account the time elapsed at the time of the management evaluation request, amounts to an implicit decision not to take action on her complaint. This issue requires the Tribunal to determine if there has been an inordinate delay in the consideration of the Applicant's complaint. It is intertwined with the merits of the application, which claims that the Administration violated the Applicant's terms and conditions of employment in not taking action on her complaint as required by ST/SGB/2008/5. The Tribunal (Administration) Tj ( ) Tj 55.9599914

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that she would defer her consideration of the complaint until resolution of Case No. UNDT/GVA/2017/52. At the time of the application, the Applicant's

rights to privacy and to be protected against defamation. An pr

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ST/SGB/2008/5 (see, *e.g.*, *Belkhabbaz* UNDT/2018/071, para. 41). This is

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