



**JUDGE RICHARD LUSSICK, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment No. UNDT/2014/123, issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 13 October 2014, in the matter of Staedtler v. Secretary-General of the United Nations. Mr. Marc Staedtler filed his appeal on 29 October 2014, and the Secretary-General filed his answer on 5 January 2015.

**Facts and Procedure**

2. The following facts are uncontested:<sup>1</sup>

... [Mr. Staedtler] joined [the United Nations Human Settlements Programme (UN-Habitat)] on 13 September 2011. He was recruited against a project post to serve as a Technical Officer at the P-4 level at the UN-Habitat Regional and Technical Cooperation Division Office in Tripoli, Libya, on the basis of a one-year fixed-term appointment (“FTA”) funded by the Libyan Government to support the Urban Planning Authority (“UPA”).

... [...]

... [After temporarily serving in the UN-Habitat Office in Cairo due to hostilities in Libya, on] 8 January 2012, he took up his assignment at the Tripoli Office and resumed operations with the Libyan UPA.

... Between 23 January and 31 January 2012, [Mr. Staedtler] wrote to the Director of the project office and others about certain practices within UN-Habitat that he believed needed to be changed. These communications were later relied on by [Mr. Staedtler] as reports of misconduct amounting to protected activities.

... On 5 February 2012, the Chairman of the UPA and National Coordinator of the UN-Habitat Project in Tripoli (the Chairman), wrote to the UN-Habitat Acting

... On 26 November 2012, [Mr. Staedtler] was advised by email to liaise with his supervisor concerning the necessary separation formalities that needed to be completed by 31 December 2012. When he requested reasons for the non-renewal of his appointment, it was explained to him that the decision was due to the “exhaustion of the funds which were exceptionally approved” only for the duration of his appointment’s extension.[<sup>2</sup>]

... On 27 December 2012, [Mr. Staedtler] filed a request for protection against retaliation with the Ethics Office pursuant to ST/SGB/2005/21 (Protection Against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorised Audits of Investigations).

... [Mr. Staedtler] was separated on 31 December 2012.

Ethics Office found that they did not contain evidence to support a reasonable belief that misconduct had been committed by a United Nations staff member.<sup>[3]</sup> [...]

... On 12 February 2013, the ID/OIOS, Ke

... On 31 December 2013, [Mr. Staedtler] filed a request for management evaluation of the “Respondent’s decision not to launch an investigation of the reported misconduct and prohibited activities, not to provide [Mr. Staedtler] with the requisite information and to provide misleading information”. He noted that the decision had been taken on 25 March 2013 by OIOS, and that he was only aware of it on 10 December 2013 by way of the reference to it in the Respondent’s reply to the Ethics case.

... On 30 January 2014, the Management Evaluation Unit [...] rejected [Mr. Staedtler]’s 31 December 2013 request for management evaluation on the grounds that it was not receivable.

3. On 17 February 2014, Mr. Staedtler filed an application with the UNDT challenging OIOS’ decision “not to launch an investigation of the reported misconduct and prohibited activities, not to provide [him] with the requisite information and to provide misleading information”.

4. On 13 October 2014, the Dispute Tribunal issued the Judgment currently under appeal. The UNDT dismissed Mr. Staedtler’s application in its entirety, finding that:

(a) The challenge to OIOS’ decision not to investigate part A of his report was not receivable *ratione materiae*, since whatever the outcome of OIOS’ decision on part A of the report, it would not have affected Mr. Staedtler’s terms or contract of employment;

(b) The challenge to OIOS’ decision not to investigate parts B and C of his report, but to transfer the matter to UN-Habitat for investigation, while receivable, was rejected on the merits since the decision constituted a legal exercise of OIOS’ discretion, in accordance with the OIOS Investigations Manual, and there was no evidence that the decision to transfer the investigation was arbitrary or capricious, or an attempt to cover up wrongdoing within the Organization; and

(c) OIOS, in its dealings with Mr. Staedtler, did not commit any procedural breach, in particular by failing to direct him to Secretary-General’s bulletin ST/SGB/2008/5,<sup>4</sup> in accordance with Section 3.1.4 of the OIOS Investigations Manual.

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<sup>4</sup> Secretary-General’s bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).

5. The UNDT also denied Mr. Staedtler's request to put before it a copy of the 2009 OIOS Auditing Report into the UN-Habitat Regional Office for Africa and the Arab States, finding that the Auditing Report could only relate to OIOS' assessment of the type of misconduct that Mr. Staedtler had reported, and the UNDT had found this part of his application not receivable.

### **Submissions**

#### **Mr. Staedtler's Appeal**

6. The UNDT committed an error of procedure and exceeded its competence when it

11. Mr. Staedtler alleges errors by the UNDT in setting out facts related to his other UNDT challenges, including, *inter alia*, to the non-renewal of his appointment with UN-Habitat and to the decision of the Ethics Office finding that his reports did not constitute “protected activities”, and in failing to mention both challenges were under appeal.<sup>5</sup> Although the UNDT relied in paragraph 5 of the Judgment on facts established in other judgments related to Mr. Staedtler’s prior challenges in setting out the facts underpinning his UNDT application, the UNDT failed to set out the most relevant facts concerning the lead up to the filing of his report with OIOS.

12. The UNDT erred in failing to set out in its Judgment any of the content of Mr. Staedtler’s report to OIOS. Accordingly, there was no basis for its conclusion that the report did not meet the criteria of ‘Category I’ requiring an investigation by OIOS. To the contrary, several extracts he had quoted proved that the OIOS report warranted classification as ‘Category I’.<sup>6</sup>

13. The UNDT erred in rejecting Mr. Staedtler’s challenge concerning part A of his report as not receivable, finding that the investigation outcome did not affect his rights: the investigation of the reported gross breaches of United Nations project management and procurement rules is a prerequisite for the investigation into his report of a “mal-intended recruitment” and misconduct by his supervisor. As the report of gross breaches of United Nations project management and procurement rules clearly falls in Category I, OIOS was obliged to launch a corresponding investigation.

14. The UNDT exceeded its competence when it failed to provide “single-standing assessments” of OIOS’ obligations concerning parts B and C of his report relating to recruitment and misconduct by his supervisor. The UNDT failed to examine whether OIOS properly assessed whether the reports fell under Category I or II. Contrary to the UNDT’s finding, both

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<sup>5</sup> The Appeals Tribunal disposed of both appeals in Judgment No. 2015-UNAT-546 of 2 July 2015. *Ibid.*

<sup>6</sup> Section 1.3.1 of the OIOS Investigations Manual classifies misconduct into two broad categories according to the relative seriousness of the contravention and risk to the Organization:

- Category I (Serious) includes: serious/complex fraud or criminal activity; sexual exploitation and abuse; prohibited conduct by senior staff members; conflict of interest; gross mismanagement; waste of substantial resources; risk of loss of life to staff or to others; complex proactive investigations aimed at studying and reducing risk to life and/or United Nations property entitlement fraud; procurement violations; and substantial violations of United Nations regulations, rules or administrative issuances.
- Category II (Routine) includes: personnel matters; traffic related inquiries; simple thefts; contract disputes; office management disputes; basic misuse of equipment or staff; prohibited conduct by staff; and basic mismanagement issues.

parts B and C of his report fell within Category I subject-areas requiring an investigation by OIOS, and were not Category II “routine matters”.

15. The UNDT erred in finding that OIOS’ decision was not improperly motivated given that OIOS failed to launch an investigation into Mr. Staedtler’s reports although they fell within Category I, requiring an OIOS investigation.

16. Mr. Staedtler requests the Tribunal rescind the UNDT Judgment and “direct the appointment of an alternative Judge” to hear all of his cases together to determine the overarching retaliation against him through institutional retaliation. He further requests the Tribunal order UN-Habitat to disclose the results of its investigation in its report to OIOS.

### **The Secretary-General’s Answer**

17. The UNDT correctly dismissed Mr. Staedtler’s application. The UNDT’s finding that Mr. Staedtler’s challenge to OIOS’ decision concerning part A of his report was not receivable *ratione materiae* was correct given that the challenge did not concern any rights he could have had pursuant to ST/SGB/2008/5 or under the Staff Regulations and Rules. The UNDT also correctly dismissed Mr. Staedtler’s challenge to OIOS’ decision not to investigate parts B and C of his report, given that: those allegations are obviously personnel matters which OIOS appropriately categorized as Category II matters that could be referred to the programme manager or closed, or be referred to UN-Habitat for further action. Since the UNDT found there was no evidence that OIOS’ decision not to investigate was arbitrary and capricious, an attempt to cover up wrongdoing within the Organization, or retaliation against Mr. Staedtler, the UNDT correctly concluded that the contested decision was a legitimate exercise of OIOS’ discretion.

18. The UNDT correctly concluded that OIOS’ dealings with Mr. Staedtler did not breach any of his rights. Mr. Staedtler has not established that the UNDT made any error warranting a reversal of its conclusion to dismiss his application.

19. Contrary to Mr. Staedtler’s assertions, his allegations in part A of his report concerning allegations of breaches of regulations affecting UN-Habitat’s operational activities in Libya are distinct and thus separable from his allegations in parts B and C, which involve allegations of unlawful administrative actions taken vis-à-vis Mr. Staedtler. Moreover, an investigation with



respect to parts B and C does not depend on a determination with respect to the validity of his allegations in part A. Further, Mr. Staedtler fails to establish why “single-standing assessments” concerning parts B and C are required.

20. Mr. Staedtler’s claim that the UNDT erred by failing to assess properly whether the reports fell under Category I or II is also without merit. Parts B and C of his report clearly concerned personnel matters, being routine matters within Category II that are normally referred by OIOS to the Administration for any further appropriate action.

21. Despite asserting that the UNDT erred in several findings of fact, Mr. Staedtler has not established how any of these alleged errors resulted in a manifestly unreasonable decision by the UNDT as required by Article 2(1)(e) of the Appeals Tribunal Statute (Statute).

22. While Mr. Staedtler also asserts that the UNDT committed two procedural errors, namely by impermissibly accepting the Respondent’s reply on receivability, and failing to request evidence from the Respondent, he has not established how any of these alleged errors affected the UNDT’s decision in the case as required by Article 2(1)(d) of the Statute. Further, his assertions as to the alleged errors are baseless.

23. Mr. Staedtler’s assertions of error with regard to the production and disclosure of documents must also be rejected as he failed to establish that the UNDT improperly exercised its discretion regarding the admission of evidence. Mr. Staedtler failed to establish that the 2009 Auditing Report, if admitted, would have led to different findings of fact and changed the outcome of the case,<sup>7</sup> given it was not relevant to the issues before the UNDT. The claim that the UNDT deliberately withheld the memoranda between OIOS and UN-Habitat regarding Mr. Staedtler’s report must also be rejected given he admitted to receiving them during the course of the UNDT proceedings and had annexed them to his appeal.

24. Mr. Staedtler’s request that this Tribunal order UN-Habitat to disclose the results of its investigation into his report to OIOS should also be rejected. The information he seeks relates to separate actions by UN-Habitat that were no

25. The Secretary-General requests that the Appeals Tribunal affirm the Judgment and dismiss the appeal.

### **Considerations**

26. In dismissing Mr. Staedtler's application, the UNDT made the following findings:<sup>8</sup>

... The OIOS decision not to investigate [Part A of Mr. Staedtler's report] concerns the interests of the Organisation and potentially the rights of any accused staff members; it does not and cannot affect the rights of the Applicant. Any impact of the investigation requested by the Applicant would have been on a third party, not on him.

... The Tribunal finds that whatever the outcome of the decision of OIOS on part A of the Applicant's report, it would not have affected his terms or contract of employment. Therefore, the section of the application challenging OIOS decision not to investigate part A of the Applicant's report is not receivable, *ratione materiae* .

... [...]

... The application with respect to OIOS decision not to investigate parts B and C of the Applicant's report, while receivable, is rejected on the merits since the decision constitutes a legal exercise of discretion on the part of OIOS; OIOS, in its dealing with the Applicant, did not commit any procedural breach.

27. Mr. Staedtler's appeal alleges that the UNDT made numerous errors of law, fact and procedure in dismissing his application.

28. The Appeals Tribunal's review of the impugned UNDT decision establishes that the UNDT was correct in rejecting Mr. Staedtler's application. However, for the reasons which follow, we find that the UNDT erred in not finding that the whole of Mr. Staedtler's application was not receivable *ratione materiae* .

29. Article 2(1)(a) of the UNDT Statute provides that the UNDT "shall be competent to hear and pass judgement on an application filed by an individual [...] against the Secretary-General [...] [t]o appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms 'contract' and 'terms of appointment' include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance."

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<sup>8</sup> Impugned Judgment, paras. 46-47 and 81(b).

30. We have defined an administrative decision that is subject to judicial review as:<sup>9</sup>

a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

31. The key characteristic of an administrative decision subject to judicial review is that the decision must “produce[] direct legal consequences” affecting a staff member’s terms or conditions of appointment.<sup>10</sup> “What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision”.<sup>11</sup>

32. The Appeals Tribunal held in Nwuke that “whether or not the UNDT may review a decision not to undertake an investigation, or to do so in a way that a staff member considers breaches the applicable Regulations and Rules will depend on the following question: Does the contested administrative decision affect the staff member’s rights directly and does it fall under the jurisdiction of the UNDT?”<sup>12</sup>

33. By memorandum dated 2015-UNAT-578, the Appeals Tribunal held that the UNDT has jurisdiction to review administrative decisions that affect the rights of staff members directly and that fall under the jurisdiction of the UNDT.<sup>13</sup>

considers that this matter would best be handled by your office; accordingly, it is referred to you for your attention and appropriate action”.

34. The ED, UN-Habitat, replied by memorandum dated 30 April 2013, advising that “this matter is henceforth being handled by UN-Habitat’s Legal Office and Method and Oversight Office” and that “our office shall keep you informed on the appropriate action to be taken by UN-Habitat”.

35. Thus, OIOS did not decide the question of whether an investigation ought to be conducted, but rather passed it into the hands of UN-Habitat. The referral obviously contemplated some further action by UN-Habitat and was merely a preliminary step to whatever administrative decision might be taken by UN-Habitat. It was not, of itself, capable of producing direct legal consequences affecting Mr. Staedtler’s terms or conditions of appointment and was thus not an appealable administrative decision.<sup>13</sup>

36. For these reasons, we find that the UNDT erred in deciding that Mr. Staedtler’s application concerning parts B and C of his report was receivable.

37. The Appeals Tribunal finds that Mr. Staedtler has failed to show that the UNDT committed any error warranting a reversal of its decision to reject his application. We consider that the appeal has no merit whatsoever.

38. Furthermore, for the foregoing reasons, it is the Appeals Tribunal’s opinion that

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Dated this 30<sup>th</sup> day of October 2015 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Adinyira

Entered in the Register on this 18<sup>th</sup> day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar