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**JUDGE LUIS MARÍA SIMÓN, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment No. UNDT/2015/052, “Judgment on Receivability and Anonymity” rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 17 June 2015 in the case of *Buff v. Secretary-General of the United Nations*. Ms. Carolyn Buff appealed on 13 August 2015 and the Secretary-General answered on 16 October 2015.

**Facts and Procedure 1.**

... On 28 October [2013,] the Applicant reversed her earlier decision and requested an extension of her contract.

... The Applicant says that in October 2013 she was asked to take responsibility for managing the day to day care of acquitted persons.

... According to the Applicant, by November 2013 she was engaged in tense exchanges with her second reporting officer. She alleges that less than three hours after one of these exchanges a Temporary Vacancy Announcement (TVA) for a legal officer post in [the Judicial and Legal Affairs Section (JLAS)] was circulated.

... On 2 December 2013, the Applicant learned from the Chief of Human Resources that her contract would be extended until 31 March 2014. She wrote to the Registrar on 2 December 2013 requesting reconsideration of that decision and asked for an extension of her contract to 30 June 2014. She described the proposed contract as “inadequate, inappropriate and unfair” and “made with the ulterior purpose of disadvantaging me”. The Applicant pointed out that there was funding for her position through December 2014 and that there were sufficient tasks remaining for her to undertake during that time. She reiterated her belief that there was a desire to ensure that she would no longer be working for the Tribunal by the time that an anticipated audit would take place due to the allegations she had previously made. The Registrar met with her to discuss the issue.

... On 19 December 2013, the Registrar informed her in writing of his decision to maintain the extension of her contract to 31 March 2014 with a possibility of review if there was a determination that there would be work beyond March 2014. He informed her that he had spoken to both her reporting officers about the foreseeable workload in DCDMS and had been told that there would be insufficient work remaining in the section to justify an extension of her contract past 31 March 2014. He stated:

My view is that we maintain the extension of your contract to 31 March 2014 on the understanding that if it is demonstrated that there is or will be work beyond March 2014 justifying its further extension, the case will be reviewed and a decision taken whether to extend your contract further.

... On 27 January 2014, the Applicant met with the Registrar and advised him that on 23 January she had received an o

... On 30 January 2014, the Applicant requested management evaluation of the 19 December 2013 decision. The request was rejected by the Management Evaluation Unit (MEU) on 13 February 2014 as premature because the 19 December decision was not a final decision.

... On 11 February 2014, the Applicant accepted an offer of appointment with [the United Nations Stabilization Mission in Haiti (MINUSTAH)] in writing. However she continued to request that the Registrar reconsider the decision not to extend her contract with [the] ICTR beyond 31 March 2014.

... On 14 February 2014, the Applicant filed a complaint of retaliation with the Ethics Office. She was advised that the Ethics Office could not review her case because it did not involve a final administrative decision.

... In late February 2014, the Applicant learned that her childcare giver was ill. She informed her first reporting officer that

5. As to the 13 March 2014 decision, the UNDT found Ms. Buff's challenge not receivable because it had no legal consequences which caused her material harm or otherwise affected her terms or conditions of appointment. Her secondment to

9. The Administration took the decision to provide her with a shorter contract than she had been promised in order to retaliate against her.

10. Ms. Buff states that she never claimed that the 19 December 2013 decision was a final decision. Rather, she was contesting the assumption that a non-final decision, or the extension of a contract for a short period of time, can have no legal consequences. ST/SGB/2005/21 and ST/SGB/2008/5 establish legal rights for protection from retaliation and abuse of authority respectively, and any challenge to a decision taken in violation of these administrative issuances, whether final or not, is receivable as it has direct legal consequences on a right to be protected from retaliation or harassment.

11. The “final decision” requirement adopted by the UNDT fundamentally alters the definitions of retaliation and abuse of authority. It changes the definition to mean “any behaviour terminating the employment of an individual or individuals for raising concerns”. However, if for example abuse of authority is a factor in decision-making, that decision cannot be lawful regardless of the precise nature of the impact of the decisions (such as the staff member still has a job). By limiting review to final decisions, the UNDT has effectively given carte blanche to managers to discriminate, harass or

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22. In *Pirnea*, we held that<sup>4</sup>

the judgments of the Appeals Tribunal are published and made available to the Organization's staff and the general public. Public dissemination of the appellate judgments helps to assure there is transparency in the operations of the Appeals Tribunal. It also means, sometimes fortunately and other times unfortunately, that the conduct of individuals who are identified in the published decisions, whether they are parties or not, becomes part of the public purview.

23. There are no exceptional circumstances that could warrant departing from the general principles and from the well-established jurisprudence in the present case. The goals of transparency and accountability set out by the General Assembly when establishing the new system of internal justice lead to conclude that cases where

27. Neither could it be admissible to introduce new grounds for appeal which were not part of the original plea or to request only now remedies that were not a content of the original petition. Moreover, since in her appeal before this Tribunal the Appellant has expressly withdrawn her request for the remedies originally submitted before the UNDT, she is not able to go against her steps and ask now for compensation (*non venire contra factum proprium*) for activity which has not even been challenged through the required management evaluation step.<sup>6</sup>

*Appeal against receivability of the case before the UNDT*

28. The application that Ms. Buff filed before the UNDT, in its amended version, requested the following remedies: an extension of the contract for the P-4 Legal Officer position, without special conditions; cancellation of the P-4 position if the budget and workload do not allow for both P-3 and P-4 legal officer positions; USD 10,000 to cover costs; follow through complaints regarding financial mismanagement and transfer of assets pertaining to persons acquitted by the ICTR out of her name.<sup>7</sup>

29. In paragraph 6 of her appeal brief before this Tribunal, Ms. Buff expressly stated: “Given the passage of time, I no longer seek any of the remedies requested in my 8 May 2014 submission to the UNDT. However, as it is my view that the UNDT judgment in this case is wholly antithetical to the meaning and purpose of UN Rules.... and the intent of member states and the Secretary-General to enhance the efficiency of the United Nations system, I am compelled to appeal.”

30. It is our view that Ms. Buff’s express withdrawal of the remedies originally requested has rendered her appeal moot. Before the Appeals Tribunal, she only pursues an advisory or academic declaration about errors allegedly contained in the UNDT Judgment, and no longer seeks concrete remedies. As stated in *Saffir and Ginivan*, an appeal “is an instrument to pursue a change of a judicial decision, in the form of modification, annulment

The right to appeal arises when the decision has a negative impact on the situation of the affected party. That means that a judgment can contain errors of law or fact, even with regard to analysis of the tribunal's own jurisdiction or competence and yet, be not appealable.

If the errors attributed to the judgment do not have an impact on the final outcome of the process, an appeal concerning those errors would become moot because it would be merely academic or theoretical...

31. Judicial economy and efficiency require that we decline to examine appeals which do not seek any concrete remedy which could be awarded and only rely on the party's will to be found to be right in its position against the judgment under appeal, without seeking any actual change in the judgment itself.

32. Therefore, as the appeal is moot, we will not address whether the claims are receivable or the merits of the claims before the UNDT.

### **Judgment**

33. The appeal is dismissed in its entirety.

Original and Authoritative Version: English

Dated this 24<sup>th</sup> day of March 2016 in New York, United States.

*(Signed)*

Judge Simón, Presiding

*(Signed)*

Judge Chapman

*(Signed)*

Judge Weinberg de Roca

Entered in the Register on this 13<sup>th</sup> day of May 2016 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar