

Introduction

1. The Applicant, a former Investigator at the P-4 level in the Investigations Division of the United Nations Secretariat, contests the decision taken by the then Under-Secretary-General of OIOS to refer the investigation report of a fact-

the theory
member in OIOS.

6. By memorandum dated 17 January 2014, officer requested the Director of ID/OIOS to initiate a formal investigation into the matter in accordance with sec. 5.11 of ST/SGB/2008/5.

7. By interoffice memorandum dated 31 January 2014, the then USG/OIOS appointed a fact-finding panel to investigate the against the Applicant for prohibited conduct under ST/SGB/2008/5. On the same date, by interoffice memorandum, the then USG/OIOS informed the Applicant of the initiation of the fact-finding investigation and the establishment of the panel.

8. On 4 February 2014, the Applicant requested management evaluation of this decision and, after receiving the management evaluation response on 10 March 2014, he appealed the decision to the Dispute Tribunal (Case No. UNDT/NY/2014/017). In *Gallo* UNDT/2015/073, the Tribunal dismissed the , and the decision was not appealed.

9. On 31 March 2014, the fact-finding panel submitted its investigation report concluding actions and behavior towards one of his OIOS colleagues constituted harassment under sec. 2.2 of ST/SGB/2008/5.

10. By a memorandum dated 9 April 2014, the USG/OIOS forwarded the fact-

calendar days of the date of receipt of the application, namely by 13 April 2015,
pursuant to art. 10 of the Dispute

25. By Order No. 67 (NY/2015) dated 23 April 2015, the Tribunal (Duty Judge) granted the newly assigned Counsel for the Respondent (the current Counsel on record) access to all filings and confirmed the deadline for the

26. was filed on 26 May 2015.

27. By Order No. 99 (NY/2015) dated 29 May 2015, the Tribunal (Duty Judge) ordered the Applicant to file a response, if any, to the receivability issues raised by the Respondent in his reply. The Order was transmitted to the email account of the Applicant but not to his Counsel. No response was filed by the Applicant on or before the set deadline (29 June 2015).

28. By Order No. 191 (NY/2015) dated 24 August 2015, the Tribunal (Duty Judge) instructed the Registry to transmit Order No. 99 to the Counsel for the Applicant. The Applicant was instructed to file a response, if any, to the

29. The Applicant filed the above-said authorization form on 25 August 2015, and by submission dated the same day, declined to file any further submissions

30. By Order No. 245 (NY/2015) dated 28 September 2015, the Tribunal (Duty Judge) ordered the present case to join the queue of pending cases and be assigned to a Judge in due course. The Tribunal further noted that it had a backlog of cases awaiting assignment and that cases are generally considered by the Tribunal based on the date of submission of the application (i.e., first priority is normally given to older cases).

31. The case was assigned to the undersigned Judge on 14 January 2016.

filed by the Secretary-General against three judgments rendered by
the

Article 8

1. An application shall be receivable if:

(a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute;

(b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; and

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the response by management to his or her submission; or

b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices;

3. The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

38. Articles 7 and 35 in relevant parts:

Article 7 Time limits for filing applications

1. Applications shall be submitted to the Dispute Tribunal through the Registrar within:

Case No. UNDT/NY/2015/013

Judgment No.

a request for a management evaluation of the administrative decision.

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

(d) The Secretary-General shall communicate the outcome of the management evaluation, shall be communicated in writing to the staff member within 30 calendar days of receipt of the request for management evaluation if the staff member is stationed in New York, and within 45 calendar days of receipt of the request for management evaluation if the staff member is stationed outside of New York. The deadline may be extended by the Secretary-General pending efforts for

the department, office or mission concerned who have been trained in investigating allegations of prohibited conduct or, if necessary, from the Office of Human Resources Management roster.

5.15 At the beginning of the fact-finding investigation, the panel shall inform the alleged offender of the nature of the allegation(s) against him or her. In order to preserve the integrity of the process, information that may undermine the conduct of the fact-finding investigation or result in intimidation or retaliation shall not be disclosed to the alleged offender at that point. This may include the names of witnesses or particular details of incidents. All persons interviewed in the course of the investigation shall be reminded of the policy introduced by ST/SGB/2005/21.

5.16 The fact-finding investigation shall include interviews with the aggrieved individual, the alleged offender and any other individuals who may have relevant information about the conduct alleged.

5.17 The officials appointed to conduct the fact-finding investigation shall prepare a detailed report, giving a full account of the facts that they have ascertained in the process and attaching documentary evidence, such as written statements by witnesses or any other documents or records relevant to the alleged prohibited conduct. This report shall be submitted to the responsible official normally no later than three months from the date of submission of the formal complaint or report.

5.18 On the basis of the report, the responsible official shall take one of the following courses of action:

(a) If the report indicates that no prohibited conduct took place, the responsible official will close the case and so inform the alleged offender and the aggrieved individual, giving a summary of the findings and conclusions of the investigation;

(b) If the report indicates that there was a factual basis for the allegations but that, while not sufficient to justify the institution of disciplinary proceedings, the facts would warrant managerial action, the responsible official shall decide on the type of managerial action to be taken, inform the staff member concerned, and make arrangements for the implementation of any responsible

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Nations, including the United Nations Secretariat or separately administered funds and programmes (arts. 3.1(c) and 8.1(b) of the Statute);

b. The application is receivable *ratione materiae* if the applicant is non-compliance with the terms of appointment or the contract of submitted the contested administrative decision for management evaluation, where required (art. 8.1(c) of the Statute);

c. The application is receivable *ratione temporis* if it was filed before the Tribunal within the deadlines established in art. 8.1(d)(i) (iv) of the Statute and art. 7.1 7.3 of the Rules of Procedure.

44. It results that for being considered receivable by the Tribunal, an application must fulfil all the mandatory and cumulative requirements mentioned above.

Receivability ratione personae and ratione temporis

45. The Applicant a former OIOS staff member filed a management evaluation request of the contested decision on 16 January 2015 and the present application on 26 February 2015, within 90 days

a panel of at least two individuals from the department, office or mission concerned, who have been trained in investigating allegations of prohibited conduct or, if necessary, from the relevant roster kept by OHRM.

47. After being appointed, the fact-finding panel shall:
 - a. Inform the alleged offender of the nature of the allegations against him or her (sec. 5.15);
 - b. Interview the aggrieved individual, the alleged offender and any other individuals who may have relevant information about the conduct alleged (sec. 5.16); and
 - c. Prepare and submit a detailed report giving a full account of the facts that they have ascertained in the process together with the documentary evidence (written statements by witnesses or any other documents or records relevant to the alleged prohibit conduct (sec. 5.17)).
48. Based on the report, the responsible official shall take a decision (sec.

the indication if the complaint was made in good faith or was based on malicious intent.

50. The Tribunal notes that as results from the above considerations, the fact-finding panel

an investigation are not receivable as such a decision is preliminary in nature and does not, at that stage, affect the legal rights of a staff member as required of an administrative decision capable of being appealed before the Dispute Tribunal.

32. This accords with another general principle that tribunals should not interfere with matters that fall within the processes, and that the Administration must be left to conduct these processes in full and to f

Conclusion

58. In the light of the foregoing, the Tribunal DECIDES:

The application is rejected as non-receivable.

(Signed)

Judge Alessandra Greceanu

Dated this 22nd day of April 2016

Entered in the Register on this 22nd day of April 2016

(Signed)

Hafida Lahiouel, Registrar, New York