



Introduction

1. On 8 May 2014, the Applicant filed an Application with the UNDT. On her Application form she described the contested decision as “[o]n 19 December 2013, the Registrar denied my request for reconsideration of a decision to extend my contract for only 90 days following its expiry on 31 December 2013”.

2. The Applicant added a submission to the Application form which included the summary of facts of the case, the facts relied on and the grounds for contesting the administrative decision. In the introduction to that submission, the Applicant stated:

I am further noting a subsequent and related decision, dated 13 March 2014, to offer a subsequent 90 day contract with a special

5. The Applicant requested the following remedies:

a) The extension of her contract at the ICTR through the period foreseen for the P-4 Legal Officer position;

b) Cancellation of the P-4 position if the budget and workload does not allow for both a P-3 and P-4 Legal Officer in the Judicial and Legal Affairs Section (JLAS) into 2015;

c) USD10,000 to cover the costs associated with maintaining two households and child care during her months with the United Nations Stabilization Mission in Haiti (MINUSTAH);

d) Follow through on her complaints about financial mismanagement and Abuse of Authority in accordance with the relevant provisions of ST/SGB/2005/21 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations) and ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority), including the creation of investigative panels if necessary;

e) The immediate transfer of assets pertaining to acquitted persons out of her name;

f) If the Reg,3(i)6.82.3(ry)-10.e.1(3(i)6.82.3(ry)-10.e.1(3(1 12i)6.8DsoT-9.2(m0004 Tc.1437 T

Applicant's submissions about the 13 March extension of her contract.

7. The Applicant responded to the submission on receivability on 20 July 2014. She had no objection to receivability being determined as a preliminary issue.

Facts

8. The following facts relevant to the preliminary question of receivability are taken from the Application, the Reply and from the Applicant's response to the Reply.

9. The Applicant began working with ICTR as a P3 Legal officer in the Chambers Section of the ICTR in 2009 and continued in that role until 31 December 2012.

10. By resolution 1966 of 22 December 2010, the Security Council requested that ICTR take all possible measures to expeditiously complete all its remaining work no later than December 2014 and to prepare for its closure.

11. In 2012, the cases for which the Applicant had been responsible came to a close and she understood that there would be no more legal work in Chambers. She applied for and was appointed to the position of P-3 Legal officer in the Defence Counsel and Detention Management Section (DCDMS) of the Judicial and Legal Services Division (JLSD) of ICTR effective 1 November 2012 for a one year term. Her contract was subsequently extended from November 2013 to December 2013.

12. The Applicant maintains that in addition to the job functions of her position she also performed legal tasks for the Registry as requested by the Registrar. In January 2013, the Applicant reported what she believed to be serious irregularities in DCDMS finances. She states that throughout 2013 she drew attention to these financial irregularities.

13. In September 2013, the Applicant advised the Registrar that she would not seek renewal of her contract when it expired in December 2013.

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

24. In late February 2014, the Applicant learned that her childcare giver was ill. She informed her first reporting officer that she would have to cancel her plans with MINUSTAH and requested that her contract be extended beyond 31 March 2014. She received no response to this request.

25. On 13 March 2014, the Applicant was informed by the Chief of Human Resources, that the ICTR administration had accepted a request from MINUSTAH for a loan agreement.

26. On 18 March 2014, the Applicant's appointment with ICTR was further renewed until 3 July to facilitate her secondment to MINUSTAH from 19 March 2014 to 18 June 2014. The Applicant requested management evaluation of the decision not to renew her appointment with ICTR beyond 3 July 2014.

27. MEU responded to that request on 2 July 2014 stating:

On 2 July 2014 the MEU received confirmation from the ICTR that your appointment had been extended through 3 October 2014. This effectively renders your request for management evaluation moot. Accordingly we are proceeding to close your file.

Receivability

Submissions of the Respondent

28. The Respondent contends that the Application is not receivable *ratione materiae*

Submissions of the Applicant

31. The Applicant agrees that art. 2.1 of the UNDT Statute and staff rule 11.4 are relevant and that a fixed-term contract does not, in and of itself, carry any expectancy of renewal.

32. She disputes that a staff member may not contest a decision to extend a contract on a short-term basis as it is in the staff member's interest.

33. The Applicant referred to *Applicant* UNDT/2012/110 in which Cousin J. held that a challenge against the renewal of a contract is not receivable and submits that his approach is inconsistent with art. 2.1, which refers to administrative decisions that are in non-compliance with the terms of appointment, including all pertinent regulations and rules and all relevant administrative issuances in force at the time.

34. She submits that all decisions taken by the management of ICTR with regards to her contract from December 2013 onwards were in retaliation for her raising concerns regarding financial mismanagement in DCDMS thereby violating ST/SGB/2005/21 and ST/SGB/2008/5. As such the contested decision and all subsequent decisions produced "direct legal consequences to the legal order".

35. The Applicant submits that the decision caused her "irreparable harm". She describes this harm as being excluded from work in JLAS, duplication of her core tasks by other staff members which hindered her professional prospects and reputation, and the uncertainty about her contractual status before she left for Haiti as well as the emotional impact of the separation from her young son.

36. The Applicant also submits that the decision not to extend her contract for more than a limited time was in violation of the ICTR Policy on Contract Extensions Beyond 2013 which requires consideration of the remaining workload of the staff member, the critical nature of the functions performed by the staff member and the projected time frame for completion.

Considerations

Legal principles

37. The Tribunal has “an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested”.¹

decision”.

43. In a dissenting judgment in that case, Flaherty J. noted that the procedures set out in ST/SGB/2005/21 are without prejudice to the rights of an individual who has suffered retaliation to seek redress through the internal recourse mechanisms and that an individual may raise a violation of the present policy by the Administration in any such internal recourse proceeding.

44. In *Appellee* 2013-UNAT-341, the Appeals Tribunal considered the decision in *Applicant* UNDT/2012/110, referred to by the Applicant in her submissions. In that case, the applicant had filed two separate applications with the UNDT each contesting decisions to extend her fixed-term appointment for periods of one to three months pending the completion of her performal(e)2.o229ce(al)JTJT*.0003

therefore not a final decision but one dependent on circumstances which were yet to be finally determined.

48. If, contrary to the above findings, this had been a final decision it had no direct legal consequences to the Applicant. The Applicant's appointment had been scheduled to end on 31 December 2013 but the 19 December decision extended this date. Although the new contract was for a shorter period than she would have liked, it continued her employment at ICTR beyond her legal entitlement under her original contract.

49. In accordance with the jurisprudence established by the Appeals Tribunal in *Appellee 2013-UNAT-341* and *Wasserstrom et al*, no legal consequence or

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54. The Tribunal finds that the Applicant's challenge to the decision of 13 March is not receivable because it had no legal consequences which caused her material harm or otherwise adversely affected her terms or conditions of appointment.

Request for Disclosure

55. The Applicant requested disclosure of a number documents which she believed may support her case such as the organizational structure and staffing of ICTR; the status and contractual arrangements of other staff members; and documents relating to the Audit of the ICTR. These documents all relate to the substantive merits of her claim. As her case is not receivable the question of disclosure is moot.

Anonymity

56. The Applicant has made repeated requests for her name to be redacted from any judgment in this matter. Her reasons are that the disputes between her and her supervisors arose solely because she accused them of financial mismanagement and that the principle of transparency is outweighed by the competing interest of encouraging staff to report breaches of rules and regulations.

57. She assumes that within ICTR she is considered to be a rabble rouser and that this reputation will spread beyond the confines of the ICTR to her disadvantage.

58. The Respondent opposes an order of anonymity on the grounds that the Applicant has not shown exceptional circumstances to justify such an order.

59. The requirement for transparency in the work of the Tribunal is based on art. 11 of the UNDT Statute which provides that "the judgements of the Dispute Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal".

60. In Practice Direction No. 6, the Tribunal provided, *inter alia*, that "the work of the Tribunal should be open and transparent, except insofar as the nature

of any information is deemed sensitive”.

61. Anonymity will be granted in cases where an applicant can show that it is necessary to protect his or her personal data or sensitive information. However, as stated in *Pirnea* 2014-UNAT-456², “[t]he names of litigants are routinely included in judgments of the internal justice system of the United Nations in the

