



**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

---

Judgment No. 2022-UNAT-1200

**Elizabeth Dettori  
(Appellant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT**

---

Before:	Judge Sabine Knierim, presiding Judge Kanwaldeep Sandhu Judge John Raymond Murphy
Case No.:	2021-1522
Date:	18 March 2022
Registrar:	Weicheng Lin

---

Counsel for Appellant:	Omar Yousef Shehabi, OSLA
Counsel for Respondent:	Noam Wiener

**JUDGE SABINE KNIERIM, PRESIDING.**

1. Ms. Dettori contested the decision to not take any action by the United Nations Children's Fund (UNICEF) on her report of abuse of authority against her supervisor. In her application to the United Nations Dispute Tribunal (Dispute Tribunal or UNDT), she requested that the UNDT order an investigation into her complaint against her supervisor, and, moreover, refer the Executive Director (ED) and other senior staff of UNICEF for accountability. The Dispute granted her application in part by ordering referral of the Chief of Investigations of the Office of Internal Audit and Investigations (OIAI), but not the ED or other senior staff, of UNICEF, for accountability. We affirm the UNDT's decision.

**Facts and Procedure**

2. Ms. Dettori commenced service with UNICEF in 2013 as an Executive Manager at the P-4 level in the Office of the Executive Director (OED), with supporting the Deputy Executive Director (DED) for Programmes as her main responsibilities.

3. On 4 July 2018, Ms. Dettori filed a complaint of abuse of authority under UNICEF's Administrative Instruction CF/EXD/2012-2007 Amend.1 (Prohibition of discrimination, harassment, sexual harassment and abuse of authority) with the OIAI, alleging that her supervisor, the DED for Programmes, had abused his authority and created a hostile work environment.

4. On 26 March 2019, the Head of Investigations of OIAI notified Ms. Dettori that her complaint fell outside of OIAI's normal jurisdiction and it had been forwarded to the Executive Office of the Secretary-General (EOSG) for the Secretary-General's attention and action. He also informed Ms. Dettori that a copy of the referral had been sent to the United Nations' Office of Internal Oversight Services (OIOS).

5. On 25 September 2019, the Head of Investigations of OIAI informed Ms. Dettori, copying the ED and the Director of Human Resources of UNICEF, that the EOSG had returned her complaint to the OIAI because the allegations concerned a UNICEF staff member under the authority of the ED of UNICEF. The Head of Investigations of OIAI continued:

... after careful assessment and with the understanding that the matters of [Ms. Dettori's] complaint were either addressed through management evaluation and/or were therewith related, OIAI has concluded that it is

unlikely that these grievances could result in any disciplinary action. In the circumstances, OIAI will not be taking any further action; accordingly, it has been referred to UNICEF's Executive Director for her attention and any action deemed appropriate.

6. On 3 October 2019, Ms. Dettori requested management evaluation of the OIAI's decision to not take any action on her complaint of abuse of authority.

7. On 7 November 2019, in response to her management evaluation request, UNICEF's DED *ad interim* for Management informed Ms. Dettori that she had rescinded the OIAI's decision of 25 September 2019 to not investigate her complaint, and remanded her complaint to the OIAI for a "new and thorough assessment" by officials other than those who had previously dealt with her complaint. The DED *ad interim* for Management determined that the OIAI had violated section 5.14 of CF/EXD/2012-007 Amend.1 by deciding to close Ms. Dettori's case without interviewing her. The DED *ad interim* for Management also determined that the OIAI had "unduly delayed in assessing [Ms. Dettori's] complaint", for which Ms. Dettori was awarded one-month net base salary.

8. On 5 February 2020, Ms. Dettori filed an application with the Dispute Tribunal to contest the decision to not take any action on her report of abuse of authority against the DED for Programmes. In addition to seeking compensation including moral damages for harm, she requested that the Dispute Tribunal order UNICEF to immediately comply with its obligation to investigate her complaint against the DED for Programmes. She further requested that the Dispute Tribunal refer the "Executive Director [name redacted] and other senior UNICEF staff, as appropriate, for accountability". The Secretary-General replied that Ms. Dettori's application was not receivable *ratione materiae* because the Administration had rescinded the contested decision in her favor.

9. On 29 September 2020, Ms. Dettori filed a motion with the Dispute Tribunal for leave to amend her application to "elaborate her existing claims for damages, add claims for damages arising from the contested decision since the time of [her] original Application, and identify the individuals for whom she seeks referral for accountability". Ms. Dettori stated that she requested to file an amended application in order to set forth her "additional heads of pecuniary and moral damages" as a result of the OIAI's decision in late February 2020 to again refer her complaint externally, this time, to the Office of Audit and Investigations (OAI) of the United Nations Development Programme, and UNICEF's decision dated 24 September 2020

to reassign her to Geneva, effective 1 October 2020. In Ms. Dettori's view, the reassignment decision was "intertwined with ... UNICEF's decision not to investigate [the DED for Programmes]". She sought leave to amend her application also in order to identify three senior UNICEF staff members by name and request that the Dispute Tribunal refer them for accountability, in addition to the named UNICEF official in her original UNDT application.

10. On 11 December 2020, the Dispute Tribunal issued Order No. 196 (NY/2020), in which it informed the parties that, as the case was fully briefed, the UNDT would proceed to adjudicate it based on the papers in the case file. The Dispute Tribunal did not refer to Ms. Dettori's motion of 29 September 2020 for leave to amend her UNDT application.

11. In Judgment on Receivability No. UNDT/2020/213 dated 21 December 2020, the Dispute Tribunal referred the Chief of Investigations of OIAI, but not the ED or other senior staff of UNICEF, to the Secretary-General for possible action to enforce accountability for his improper handling of Ms. Dettori's complaint. The Dispute Tribunal found the manner in which UNICEF had handled Ms. Dettori's complaint "appalling", which denoted "negligence on the part of the responsible officials".<sup>1</sup>

12. The Dispute Tribunal otherwise rejected all other aspects of Ms. Dettori's application as well as her motion to amend her application. Regarding Ms. Dettori's application, the Dispute Tribunal held that the application against the 25 September 2019 decision was not receivable because the contested decision had been rescinded on 7 November 2019 as a result of the management evaluation, and the Dispute Tribunal lacked jurisdiction to address her claim that UNICEF had failed to process her complaint of abuse of authority. Regarding Ms. Dettori's motion to amend her application, the UNDT noted that the facts supporting her additional request for damages were known to Ms. Dettori at the time of the application. Also, Ms. Dettori failed to explain why she was not properly compensated and provided no evidence to substantiate the untimely request. In so far as Ms. Dettori sought to raise additional claims related to her reassignment, those were not receivable as she had not submitted the reassignment decisions for management evaluation.<sup>2</sup>

---

<sup>1</sup> Impugned Judgment, para. 17.

<sup>2</sup> According to the documents Ms. Dettori attaches to her appeal, on 20 November 2020, she filed a request for management evaluation of i) the decision to assign her to the post of Programme Manager at the P-4 level with the Private Fundraising and Partnerships Division, in Geneva, Switzerland; and ii) the decision to separate her from service effective 31 December 2020 based on a determination that her refusal to take up the Geneva assignment constituted an abandonment of post. She filed an

13. With respect to her further request for referral for accountability of additional UNICEF officials, the UNDT held that the facts alleged by Ms. Dettori predated the filing of her application, and Ms. Dettori failed to justify why those pleadings had not been included in her application.

14. On 19 February 2021, Ms. Dettori appealed the UNDT Judgment to the United Nations Appeals Tribunal (Appeals Tribunal or UNAT). The Secretary-General filed an answer to the appeal on 26 April 2021.

### **Submissions**

#### **Ms. Dettori's Appeal**

15. Ms. Dettori requests the Appeals Tribunal remand the case to the Dispute Tribunal for additional findings of fact with respect to her accountability claim.

16. Ms. Dettori submits that the Dispute Tribunal committed an error in procedure such as to affect the decision of the case by issuing a judgment seven working days after the case had been assigned to a judge, thereby denying her any meaningful opportunity to obtain production of evidence in the possession of the opposing party that would have shed light on the responsibility of other senior UNICEF officials.

17. The Dispute Tribunal also committed an error in procedure by denying her timely-filed motion for leave to elaborate a remedy sought in her UNDT application, and not to request a new remedy. In her UNDT application, she requested that the ED and other senior staff of UNICEF be referred for accountability. In her motion, she sought leave to name the other senior officials for referral. The UNDT denied her motion because she had failed to justify why those pleadings had not been included in her UNDT application. The Dispute Tribunal had never told her that she needed to offer any such justification. This lack of notice violated the basic notions of procedural fairness. The notion that she must establish exceptional circumstances to amend her application for this purpose goes against UNDT's established practice, which the Dispute Tribunal sought to reverse through proposed Rule 8(5) of the UNDT's Rules of Procedure.

---

application with the Dispute Tribunal against the reassignment decision and the separation decision on 31 December 2020. In Judgment No. UNDT/2021/102 dated 24 August 2021, the Dispute Tribunal rejected Ms. Dettori's application. There was no appeal from the UNDT's decision.

---

18. Ms. Dettori also submits that the Dispute Tribunal erred on a question of fact resulting in a manifestly unreasonable decision to the extent that it considered that the record had been sufficiently developed to decide the case, though material facts remained in dispute and the disputed questions could only be resolved through further findings of fact.

19. In its inappropriate summary adjudication without taking any argument or evidence from the parties, the Dispute Tribunal effectively applied its proposed amendments to the Rules of Procedure, which have not been approved and are not in effect.<sup>3</sup> Its conclusion that neither the ED nor any other senior official of UNICEF could have had any influence in the OIAI's handling of Ms. Dettori's complaint is untenable and cannot withstand the record evidence. Ms. Dettori's counsel intended to seek relief from UNDT Order No. 196 in order to obtain disclosure of evidence, but he never had the opportunity because the impugned Judgment was issued five working days later.

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

20. The Secretary-General requests that the Appeals Tribunal dismiss Ms. Dettori's appeal and uphold the UNDT Judgment.

21. The Secretary-General submits that the Dispute Tribunal correctly dismissed Ms. Dettori's application as not receivable because the DED *ad interim* for Management of UNICEF had rescinded the decision to not investigate her complaint against her supervisor, had instructed the OIAI to investigate and had awarded her compensation. No contestable decision existed that Ms. Dettori could challenge. Absent such a decision, the further involvement of the UNDT in the case was beyond its competence.

22. The Secretary-General also submits that the Dispute Tribunal properly managed the case in accordance with its Statute and Rules of Procedure. It was within UNDT's authority to dispense with the case expeditiously without additional input by the parties, because Ms. Dettori's application was clearly not receivable. Ms. Dettori has failed to provide grounds

---

<sup>3</sup> On 8 June 2020, the Dispute Tribunal adopted amendments to its Rules of Procedure. An annotated version of the amended UNDT Rules of Procedure was annexed to the Secretary-General's report on administration of justice at the United Nations (A/75/162). On 26 June 2020, the President of the Dispute Tribunal indicated that the Dispute Tribunal Judges had decided that the amended rules of procedure of the Dispute Tribunal would not take effect until approved by the General Assembly. In resolution A/RES/75/248 adopted on 31 December 2020, the General Assembly decided to consider the proposed amendments to UNDT's Rules of Procedure at the next session. No further information in this regard is available.

to show why the UNDT did not have sufficient evidence to rule on the question of receivability.

23. The Secretary-General further submits that, contrary to Ms. Dettori's claim, the impugned Judgment is not a summary judgment. It is a regular judgment on the receivability of her application.

24. The Secretary-General maintains that Ms. Dettori's argument that the UNDT had an obligation to investigate her claims that the decision to not investigate her supervisor was the product of misconduct suggests that she does not have a clear understanding of the role of referrals by the Dispute Tribunal. While it is debatable whether the Dispute Tribunal has the authority to exercise its referral power after it finds a case non-receivable before the court has even heard the evidence, the Dispute Tribunal did not err when it issued Order No. 196 (NY/2020) and the impugned Judgment based on the filings before it. The UNDT was under no obligation to investigate alleged misconduct related to the OIAI's decision not to investigate.

25. Ms. Dettori has not cited any precedent or source of law that would require the Dispute Tribunal to automatically grant applicants leave to amend their applications for no apparent reason. The UNDT was correct to deny her motion to amend because in the motion she asked the Dispute Tribunal to address a whole new set of facts related to her reassignment and a wholly new remedy that was not part of her request for management evaluation.

26. The Secretary-General finally submits that the Appeals Tribunal should strike from the record annexes 14-17 to Ms. Dettori's appeal and the arguments in paragraphs 31-33 of her appeal that rely on these annexes, because she did not seek permission to file new additional evidence that she had not presented to the Dispute Tribunal.

### **Considerations**

#### *Scope of the appeal*

27. In her appeal, Ms. Dettori requests a remand of the case "for additional findings of fact with respect to her accountability claim" and challenges the UNDT's order and findings rejecting her claim to refer the ED and other staff members of UNICEF for accountability under Article 10(8) of the UNDT Statute. All other orders and findings of the UNDT, namely,

the dismissal of her application against the 25 September 2019 decision, the rejection of her request for an executable order and the rejection of her request for compensation, are not challenged by Ms. Dettori on appeal. Consequently, these orders and findings stand and will not be addressed or reviewed by the Appeals Tribunal.

28. For this reason alone, Annexes 14-17 attached to Ms. Dettori's appeal and her submissions in paragraphs 31-33 of her appeal brief, which are not related to the accountability claim, are stricken from the record.

*Merits of the appeal*

29. On appeal, Ms. Dettori challenges the UNDT's order to reject her claim to refer for accountability the ED and other officials of UNICEF. She requests that the Appeals Tribunal remand the case to the UNDT for additional findings of fact with respect to her accountability claim.

*Whether the UNDT's discretion under Article 10(8) of the UNDT Statute is limited to cases which are decided on the merits*

30. Regarding the question raised by the Secretary-General as to whether the Dispute Tribunal has the authority to exercise its referral power after it finds an application not receivable and before the court has heard the evidence, we agree with the UNDT that the Tribunals' discretion under Article 10(8) of the UNDT Statute and Article 9(5) of the UNAT Statute is not limited to applications which are decided on the merits. Those provisions do not contain such a limitation.

31. Article 10(8) of the UNDT Statute reads:

The Dispute Tribunal may refer appropriate cases to the Secretary-General of the United Nations or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.

And Article 9(5) of the UNAT Statute reads:

The Appeals Tribunal may refer appropriate cases to the Secretary-General of the United Nations or executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.



32. The purpose of Article 10(8) of the UNDT Statute and Article 9(5) of the UNAT Statute is to give the Tribunals a formal tool to make substantial breaches of procedure and due process rights or other severe wrongdoings on the part of the managers of the United Nations and other separately administered funds and programmes immediately known to the Secretary-General of the United Nations and the heads of these funds and programmes to enable them to review the matter and take appropriate action. Such a situation can also occur in a case where the application is found not receivable, particularly when, like in the present case, the non-receivability follows from the fact that the contested decision has been rescinded by the Administration resulting in the mootness of the case. We agree with the UNDT that rescission of a faulty administrative decision cannot result in the shielding of the responsible managers from accountability.

33. We note, further, that the Secretary-General has neither appealed the UNDT's order to refer the Chief of Investigations of OIAI for accountability, nor has he challenged the UNDT's findings that "the appalling manner in which this matter was handled by UNICEF denotes, to the very least, negligence on the part of the responsible officials".<sup>4</sup>

*Whether the UNDT erred in rejecting Ms. Dettori's claim that the ED and other officials of UNICEF should be referred for accountability*

34. The crucial question on appeal is whether the UNDT committed any error when it only referred for accountability the Chief of Investigations of OIAI but not the ED and other staff members of UNICEF.

35. The UNDT did not refer the ED of UNICEF for accountability because it did not find "that the Executive Director is shown to have had any influence in the handling of [Ms. Dettori's] complaint by OIAI, which is an internal oversight office independent from management".<sup>5</sup> It further rejected Ms. Dettori's claim in her 29 September 2020 motion to refer other UNICEF staff members for accountability because she failed to justify why her pleadings had not been included in her 5 February 2020 application.

---

<sup>4</sup> Impugned Judgment, para. 17.

<sup>5</sup> *Ibid.*, para. 21.

36. As the Appeals Tribunal found in *Cohen v. ICJ*, the exercise of the power of referral for accountability must be exercised sparingly and only where the breach or conduct in question exhibits serious flaws.<sup>6</sup>

37. With respect to case management, the Appeals Tribunal has always acknowledged the broad discretion of the Dispute Tribunal as court of first instance. It is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and do justice to the parties. Therefore, the Appeals Tribunal should not interfere lightly with the broad discretion of the UNDT in the management of cases.<sup>7</sup>

38. In the present case, we find no error in the UNDT Judgment. It was within the UNDT's discretion under Article 10(8) of the UNDT Statute to reject Ms. Dettori's request to refer the ED and other staff members of UNICEF for accountability.

39. The legal approach of the UNDT was correct. The UNDT decided not to refer the ED of UNICEF for accountability because it was not shown that she had had any influence in the handling of Ms. Dettori's complaint. While both Article 10(8) of the UNDT Statute and Article 9(5) of the UNAT Statute make reference to the referral of cases, this does not preclude the referral of individuals within the context of a case.<sup>8</sup> However, the Tribunals can only refer specific individuals for accountability when there is sufficient evidence that they played a part in the procedural or other mishandlings. Otherwise, the Tribunals can only refer "the case" to the Secretary-General, who then himself will have to examine which manager or official is responsible for the irregularity. Neither before the UNDT nor on appeal has the Appellant shown in which way the ED of UNICEF was involved in the handling of her complaint.

40. The UNDT's decision to reject Ms. Dettori's 29 September 2020 motion was free of error.

41. Ms. Dettori's argument that the UNDT violated Article 18 of its Rules of Procedure providing that

---

<sup>6</sup> *Cohen v. Registrar of the International Court of Justice*, Judgment No. 2017-UNAT-716, para. 46.

<sup>7</sup> *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-981, paras. 47-48, quoting *Onifade v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-668, para. 41, and citing *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062, para. 23.

<sup>8</sup> *Igbinedion v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-410, para. 37.

[a] party wishing to submit evidence that is in the possession of the opposing party or of any other entity may, in the initial application or at any stage of the proceedings, request the Dispute Tribunal to order the production of the evidence[...]

is without merit. In her 29 September 2020 motion, Ms. Dettori did not request the UNDT to order the production of evidence. Instead, she requested that the UNDT grant leave to amend her application so as to name several senior UNICEF staff members whom “the [Dispute] Tribunal [should] refer for accountability, and [...] specify the basis for the requested referral with respect to each such individual”.

42. Ms. Dettori is of the view that the UNDT’s case management was unlawful. The UNDT should not have rejected her motion/claim for referral of accountability without first doing a fact-finding concerning the responsibility of the UNICEF officials. It was erroneous of the UNDT to issue the Judgment only seven days after judicial assignment and without any fact-finding concerning the alleged mismanagement of her complaint by the UNICEF staff.

43. This argument is also without merit. The Appellant misunderstands the role and competence of the UNDT with respect to a staff member’s request for referral for accountability under Article 10(8) of the UNDT Statute.

44. Article 2 of the UNDT Statute defines the authority of the Dispute Tribunal to hear and pass judgment on an application filed by an individual, usually a staff member of the United Nations. A staff member’s request to refer other staff members for accountability is not mentioned in Article 2 of the UNDT Statute. It follows that an application filed solely for the purpose of requesting referral of staff members for accountability would not be receivable. The UNDT’s power of referral for accountability is regulated in Article 10(8) of the UNDT Statute as an accessory competence when deciding on matters pursuant to Article 2 of the UNDT Statute. As already stated above, the UNDT will normally “refer appropriate cases” for accountability, and can refer specific individuals for accountability only when there is sufficient evidence that they played a part in the procedural or other mishandlings. However, it is not the role of the Dispute Tribunal within this accessory competence under Article 10(8) of the UNDT Statute to undertake any fact finding about whether and in which way certain managers or officials are accountable for procedural or other flaws; this is the task of the Secretary-General of the United Nations and the heads of the separately administered funds and programmes. The referral constitutes a communication from the

UNDT to the Secretary-General, and the Secretary-General is vested with the discretionary power to determine a course of action to adopt or not to adopt as sequel to the referral.

**Judgment**

45. Ms. Dettori's appeal is dismissed, and Judgment No. UNDT/2020/213 is affirmed.

Original and Authoritative Version: English

Dated this 18<sup>th</sup> day of March 2022.

*(Signed)*

Judge Knierim, Presiding  
Hamburg, Germany

*(Signed)*

Judge Sandhu  
Vancouver, Canada

*(Signed)*

Judge Murphy  
Cape Town, South Africa

Entered in the Register on this 21<sup>st</sup> day of April 2022 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar