



Before: Judge Francesco Buffa

Registry: Geneva

Registrar: René M. Vargas M.

CHERNEVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

LPAS, UNOG

Introduction

1. The Applicant, a former staff member, contests her non-selection for a position of special procedure mandate holder in the Working Group of Experts on People of African Descent, member from Eastern European States, with the United Nations Human Rights Council (“the Position”).

Facts and procedural background

2. The Applicant was a staff member of the Office of the United Nations High Commissioner for Human Rights (“OHCHR”) in 2014 and a staff member of the United Nations Children’s Fund from 2016 to 2018.

3. In 2021, the Applicant applied for the Position. She was listed as one of the six eligible candidates but was not shortlisted for interview.

4. On 14 June 2021, the President of the Human Rights Council proposed a candidate other than the Applicant for appointment to the Position.

5. On 11 August 2021, the Applicant requested management evaluation of the contested decision referred to in para. 1 above; on 12 August 2021, she filed a related application (“first application”), which was registered under Case No. UNDT/GVA/2021/046 (*Cherneva*).

6. By Judgment *Cherneva* UNDT/2021/101 of 24 August 2021, the Tribunal rejected the first application in its entirety.

7. On 25 August 2021, namely after receipt on 13 August 2021 of the outcome of her request for management evaluation, the Applicant resubmitted her case to the Tribunal. The latter application was registered under Case No. UNDT/GVA/2021/050 and was assigned to the undersigned Judge on 27 August 2021.

Consideration

8. Having reviewed the application and its supporting documents, the Tribunal considers that the issue at stake in the case at hand is the receivability of the present application.

9. In this respect, the Tribunal recalls the expectations of the General Assembly in resolutions 66/237 (Administration of justice at the United Nations), adopted on 24 December 2011, and 67/241 (Administration of justice at the United Nations), adopted on 24 December 2012, that effective measures be adopted to deal with manifestly inadmissible applications (see *Sanchez Calero* UNDT/2015/074, para. 8).

10. Accordingly, the Tribunal has on numerous occasions considered matters of receivability on a priority basis without first serving the application on the Respondent or awaiting the Respondent's reply (see, e.g., *Hunter* UNDT/2012/036, *Milich* UNDT/2013/007, *Masykkanova* UNDT/2013/033, *Sanchez Calero* UNDT/2015/074, *Karambizi* UNDT/2018/001, *Morales* UNDT/2019/158, *Cherneva* UNDT/2020/074, *Prakash* UNDT/2021/083, *White* UNDT/2021/089). Therefore, the Tribunal deems that the present matter can be determined on a priority basis without first transmitting a copy of the application to the Respondent for a reply as provided for in art. 8.4 of the Tribunal's Rules of Procedure.

11. Moreover, the Tribunal has the competence to review an application's receivability even if the parties do not raise the issue because "it constitutes a matter of law and the Statute prevents the [Tribunal] from receiving a case which is actually non-receivable" (see *Christensen* 2013-UNAT-335, para. 21). Accordingly, the Tribunal deems it appropriate to decide on the matter by way of summary judgment on its own initiative pursuant to art. 9 of its Rules of Procedure.

12. In its Judgment disposing of the first application, this Tribunal stated that:

11. In her application, the Applicant indicates that she is a former staff member who was last separated from service in 2018, and that she contests the Administration's non-selection decision of 14 June 2021.

12. In this respect, the Tribunal recalls that art. 3.1(b) of its Statute allows a former staff member to file an application under art. 2.1 concerning, *inter alia*, an administrative decision "that is alleged to be in non-compliance with the terms of appointment or the contract of employment" or "imposing a disciplinary measure". It follows that a former staff member has standing to contest an administrative decision before the Tribunal only if there is "a sufficient nexus between the former employment and the contested decision" and that "[a] sufficient nexus exists when a decision has bearing on an applicant's former status as a staff member, specifically when it affects his or her previous contractual rights" (see *Arango* 2021-UNAT-1120, para. 28; see also *Shkurtaj* 2011-UNAT-148, para. 29).

13. In the present case, the Applicant asserted that the principle of giving priority to former OHCHR staff members in short-listing candidates applies to employment. However, the Position concerns an independent human rights expert in a working group, whose selection is governed by the Special Procedures of the Human Rights Council, and thus does not constitute "employment". Therefore, the contested decision had no bearing on her former employment in the sense that it affected any contractual rights she had acquired under it. The Tribunal is thus of the view that there is no nexus between the Applicant's former employment and the contested decision. Accordingly, the Tribunal finds that the Applicant does not have standing and the application is not receivable *ratione personae*.

13. It is settled law that a matter between the same persons, involving the same cause of action, may not be adjudicated twice (see, e.g., *Shanks* 2010-UNAT-026bis, *Costa* 2010-UNAT-063, *El-Khatib* 2010-UNAT-066, *Beaudry* 2011-UNAT-129). It follows that the principle of *res judicata* does not allow an applicant to bring the same complaint to the same Tribunal again. Accordingly, given that the Tribunal already adjudicated the Applicant's claim, finding it not receivable *ratione personae* for lack of standing, the present application is not receivable.

14. The Tribunal further underlines that the Applicant does not have the right to challenge the outcome of the management evaluation to “not entertain the questions raised on the basis of the applicant being a former staff member”. The management evaluation provides an opportunity for the Administration to resolve a staff member’s grievance without litigation, and thus its outcome does not constitute a fresh decision (see *Kalashnik* 2016-UNAT-661, para. 29). Accordingly, the Secretary-General’s response to a request for management evaluation is not an appealable administrative decision (see, e.g., *Kalashnik* 2016-UNAT-661; *Nwuke* 2016-UNAT-697, para. 20).

Conclusion

15. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

(Signed)

Judge Francesco Buffa

Dated this 23rd day of September 2021

Entered in the Register on this 23rd day of September 2021

(Signed)

René M. Vargas M., Registrar, Geneva