

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

N.-B.
v.
UNESCO

137th Session

Judgment No. 4814

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms S. N.-B. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 13 February 2023 and corrected on 13 April 2023;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions of the complainant;

CONSIDERATIONS

1. The complainant was recruited by UNESCO in 2019 as Assistant Director-General for the Natural Sciences Sector. On 16 September 2022, an external investigator engaged by the Internal Oversight Service (IOS) informed her that she was the subject of an investigation into allegations of harassment and abuse of authority made by two of her former supervisees, one of whom had submitted a formal complaint to IOS.

On 18 November 2022, the complainant's counsels wrote to the Deputy Director-General (DDG) claiming that IOS had "multiple conflicts of interest" in the matter and should not have carried out an assessment of the allegations against the complainant. Referring to paragraph 37 of UNESCO's Anti-Harassment Policy, which provides

that “in case of a conflict of interest by IOS, [the] assessment [of whether or not the reported allegations warrant the opening of a formal investigation] shall be undertaken by the [DDG]”, they asked him to remove IOS from any involvement in the matter and to assess the allegations himself.

2. The DDG replied to the complainant on 25 November, reassuring her that the Organization had taken, and would continue to take, any appropriate measures with a view to ensuring that any conflict of interest would be appropriately addressed. The complainant’s counsels reiterated their request that same day and, “[a]s a conservatory measure to prevent further violations of [paragraph] 37 of the Anti-Harassment Policy”, they further requested the DDG to instruct IOS to suspend its investigation until he had decided whether a formal investigation was warranted. On 29 November, the DDG responded that the action requested would have no legal basis and would constitute “a serious infringement to the independence granted to the oversight and investigation function”.

3. On 1 December 2022, the complainant’s counsels wrote to the Director-General, alleging that the DDG had refused to take appropriate measures to address their concerns regarding the “multiple conflicts of interest” of IOS and asking her to “immediately suspend the ongoing IOS investigation and remove the matter from [its] purview” until the DDG had decided whether a formal investigation was warranted. Having received no reply, they reiterated their request on 8 and 23 December.

4. On 24 January 2023, the external investigator informed the complainant that she had completed her investigation and had submitted her investigation report to UNESCO management. On the basis of that report, the Director-General decided to initiate disciplinary proceedings against the complainant.

5. On 13 February 2023, the complainant filed the present complaint under Article VII, paragraph 3, of the Statute of the Tribunal, alleging that she received no reply, within the sixty-day time limit mentioned in that provision, to the claim submitted to the Director-General on 1 December 2022. She asks the Tribunal to declare that the DDG was “under an obligation to screen the allegations” against her in order to decide whether a formal investigation was warranted and to assess whether “a reasonable person would not exclude partiality on the part of IOS”, and that any investigation conducted without the DDG having taken these steps is null and void. She also claims moral damages and costs.

6. Firstly, the Tribunal considers that the complainant’s reliance on Article VII, paragraph 3, of its Statute is misplaced. It is clear from her submissions that the request made by her counsels in their letter of 1 December 2022 addressed to the Director-General, which had been submitted for the first time on 18 November 2022, had already been considered and explicitly rejected by the DDG on 25 and 29 November 2022. The fact that this request was subsequently escalated to the Director-General does not alter the conclusion that the Administration had already taken a decision on it, thus excluding the application of Article VII, paragraph 3, of the Tribunal’s Statute.

7. Secondly, and even more fundamentally, it is well established in the Tribunal’s case law that procedural steps taken in the course of a process leading to a final decision cannot be the subject of a complaint to the Tribunal, though they may be challenged in the context of a complaint directed against that final decision (see Judgments 4704, consideration 5, 4404, consideration 3, 3961, consideration 4, 3876, consideration 5, and 3700, consideration 14). In the present case, the refusal to act on the request for the IOS’s divestiture is part of the process leading to a decision resulting from the investigation report (see, for a similar case, Judgment 3958, consideration 15). Accordingly, any alleged irregularities in the investigation could only be raised in the context of a complaint directed against the outcome of the disciplinary proceedings initiated against her, provided that she first exhausted the

internal remedies available to her, as required by Article VII, paragraph 1, of the Statute of the Tribunal.

8. It follows from the foregoing that the complaint is clearly irreceivable and must be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 17 November 2023, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Andrew Butler, Deputy Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

JACQUES JAUMOTTE

CLÉMENT GASCON

ANDREW BUTLER