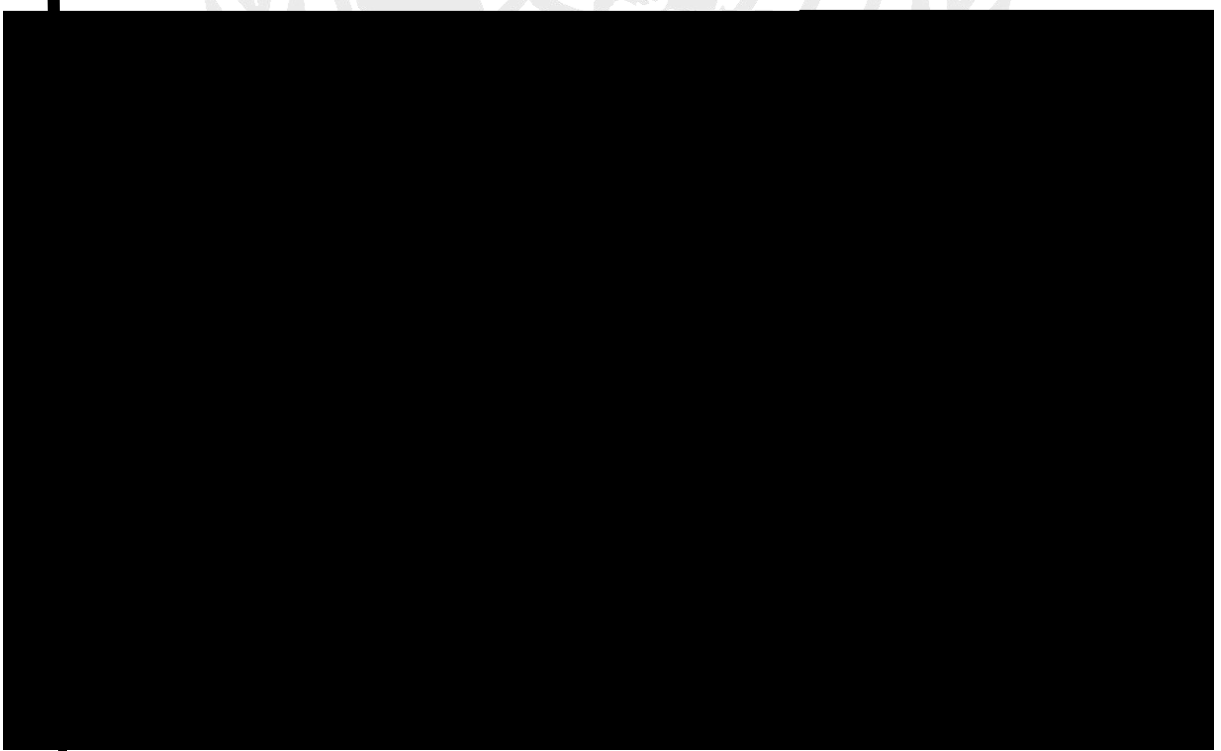
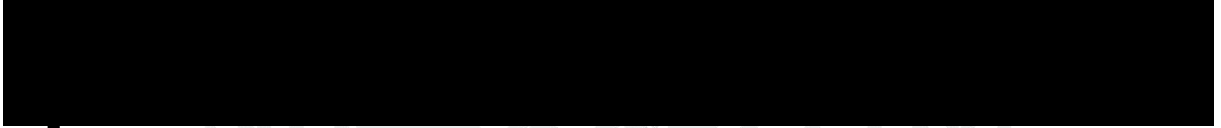




UNITED

PPEALS



JUDGE KAMALJIT SINGH GAREWAL, Presiding.

Synopsis

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal by Ms. Deborah Comerford-Verzuu against Judgment No. UNDT/2011/005 rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 10 January 2011 in the case of Comerford-Verzuu v. Secretary-General of the United Nations .

2. Ms. Comerford-Verzuu is the widow of the late Joseph Comerford, a staff member of the United Nations Development Programme (UNDP), who was found hanged in his hotel room in Kisangani, Democratic Republic of Congo (DRC) on 18 August 2000, while on mission.

3.

Facts & Procedure

7. On 25 June 2005, Ms. Comerford-Verzoo filed a complaint with the Reporting Facility of OIOS. In this complaint, she accused the former UNDP Administrator and the OLPS Director, UNDP of “[v]iolations of the UN Standards of Conduct and of professional Codes of Conduct”, intimidation, harassment, retaliation, and inappropriate and unprofessional behaviour. Ms. Comerford-Verzoo requested that OIOS open a full and independent investigation into her allegations. She was specifically concerned by what the UNDP Administrator had told the High Commissioner, UNHCR, about the cause and circumstances of her husband’s death.

8. By e-mail dated 2 August 2005, Ms. Joyce Tolley, Investigations Division, OIOS, informed Ms. Comerford-Verzoo:

Your complaint has been evaluated. Since the substance of your complaint is the same as that of your prior complaint and has been the subject of consideration in the appropriate

and requested a “clear answer” to her questions. Ms. Comerford-Verzuu stressed that if the

Secretary-General rejected the JAB/GVA's finding that there was a substantive difference between Ms. Comerford-Verzoo's 2001 complaint and her 25 June 2005 complaint. In the view of the Secretary-General, it would be prejudicial to take a decision on the issues raised in Ms. Comerford-Verzoo's 25 June 2005 complaint when her 2001 complaint was pending before the former Administrative Tribunal.

17. Ms. Comerford-Verzoo's application to the former Administrative Tribunal was transferred to the UNDT. In Judgment No. UNDT/2011/005, the UNDT found that the contested decision by the USG/OIOS was an appealable administrative decision. Despite the finding by the JAB/GVA that Ms. Comerford-Verzoo's appeal was admissible *ratione temporis* and the fact that the Secretary-General did not raise any receivability issue, the UNDT raised the issue of receivability of Ms. Comerford-Verzoo's application on its own motion. The UNDT determined that OIOS took the decision to refuse an investigation and notified Ms. Comerford-Verzoo of that decision on 2 August 2005. The UNDT also determined that Ms. Comerford-Verzoo's further requests of 9 August, 5 September, 16 September and 23 September of 2005 and 11 January 2006 raised no new matters that were capable of being the subject of a fresh request for administrative review. The UNDT thus found that Ms. Comerford-Verzoo's request for administrative review of 16 February 2006 was filed more than six months after she had received notification of the contested decision and had to be rejected as out of time.

18. The UNDT Judgment was rendered in French on 10 January 2011. According to Ms. Comerford-Verzoo, an English translation of the Judgment was transmitted to her on 16 February 2011. On 1 April 2011, Ms. Comerford-Verzoo appealed the UNDT Judgment. On 23 May 2011, the Secretary-General submitted an answer and a cross-appeal. After receiving an extension, Ms. Comerford-Verzoo submitted an answer to the cross-appeal on 14 July 2011.

Submissions

Ms. Comerford-Verzoo's Appeal

19. Ms. Comerford-Verzoo submits that the UNDT Judge was not competent to hear her case as he was not fluent in English. When all of the pleadings and documents were in English, Ms. Comerford-Verzoo's business language is English and the professional language

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2012-UNAT-203

THE

38. In the cross-appeal, the Secretary-General challenges the UNDT's finding that he may be held liable for the acts or omissions of OIOS, and that OIOS is not exempt from the scrutiny under the new system of administration of justice. We note that these arguments were made before our Judgment in Koda was rendered. We reaffirm what we stated in Koda:

OIOS operates under the 'authority' of the Secretary-General, but has 'operational independence'. As to the issues of budget and oversight functions in general, the General Assembly resolution calls for the Secretary-General's involvement. Further, the Secretary-General is charged with ensuring that 'procedures are also in place' to protect fairness and due-process rights of staff members. It seems that the drafters of this legislation sought to both establish the 'operational independence' of OIOS and keep it in an administrative framework. We hold that, insofar as the contents and procedures of an individual report are concerned, the Secretary-General has no power to influence or interfere with OIOS. Thus the UNDT also has no jurisdiction to do so, as it can only review the Secretary-General's administrative decisions. But this is a minor distinction. Since OIOS is part of the Secretariat, it is of course subject to the Internal Justice System.²

Judgment

39. The appeal and the cross-appeal are dismissed. We uphold the UNDT Judgment.

² Koda v. Secretary-General of the United Nations, Judgment No. 2011-UNAT-130, para. 41 (footnotes omitted).

THE UNITED NATIONS APPEALS TRIBUNAL