

UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D 'APPEL DES NATIONS UNIES

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Judgment No. 2013-UNAT-339

Tsoneva

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Valentina Tsoneva against Judgment No. UNDT/2012/112, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 20 July 2012 in the case of *Tsoneva v. Secretary-General of the United Nations*. The Secretary-General appealed on 12 September 2012, and Ms. Tsoneva answered on 15 October 2012.

Facts and Procedure

2. Ms. Tsoneva joined the Office of the High Commissioner for Refugees (UNHCR) in September 2000. In December 2007, she was appointed as a Senior Contracts Officer for UNHCR with responsibilities including the directing of the Contracts Unit in Geneva, within the Supply Management Service of the Division of Emergency, Security and Supply (Division).

3. In December 2011, Ms. Tsoneva and the Director of the Division (Director) met, upon Ms. Tsoneva's request, to discuss certain difficulties faced by the Contracts Unit due to understaffing at the time. At this meeting, the Director informed Ms. Tsoneva that it was intended to transfer her unit to Budapest for operational reasons and that, accordingly, it would be proposed to abolish Ms. Tsoneva's post. On 28 December 2011, the Director wrote to Ms. Tsoneva confirming the intention to abolish her post as of 1 July 2012 and to create a new post with a revised job description in Budapest. The Director specified that these measures would be submitted to UNHCR's Budget Committee.

4. On 29 December 2011, Ms. Tsoneva requested a meeting with the Director of the Division of Human Resources Management (Direc

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12. Thus, the Secretary-General requests this Tribunal to vacate the Judgment in its entirety.

Ms. Tsoneva's Answer

13. The UNDT concluded correctly that the rules stipulated in the Procedural Guidelines were not adhered to. The first stage in the process is to inform the staff member of the intention to discontinue a position; then the intention is to be discussed (Paragraph 1 of Procedural Guidelines).

14. While a discussion with the staff member prior to the referral of the matter to the Budget Committee is mandatory, Ms. Tsoneva

20. Paragraph 18 of the Policy provides:

When a manager intends to request a ... discontinuation ... of a position encumbered by a staff member ... the manager is encouraged to inform the staff member of his or her intent in writing. As soon as a decision to change the status of the position has been taken, the manager must formally notify the staff member in writing of the decision and the effective date of the change of status of the position.

21. The UNDT found that the Director did not comply with the Procedural Guidelines in that Ms. Tsoneva was not asked to meet with the Director following her receipt on 28 December 2011 of the written notification of his intention to discontinue her position. The UNDT considered that the meeting held on 27 December 2011 between Ms. Tsoneva and the Director, in which the discontinuation of her position was discussed, did not comply with the Procedural Guidelines since it was held before she had received the written notification.

22. At paragraph 24 of its Judgment, the UNDT concluded that:

It is clear from the aforementioned provisions that the procedure for informing concerned staff members begins when they are notified in writing that the discontinuation of their positions is being considered. The manager must then consult the concerned staff members so that they may submit their comments before the

24. In the present case, the Director discharged his responsibility of discussing with Ms. Tsoneva the discontinuation of her position when he met with her on 27 December 2011. On 28 December 2011, he informed her in writing of his intention to request the discontinuation of her position. The fact that this written notification followed the discussion is immaterial. The Director later submitted his request to the Budget Committee on 6 January 2012. The Director thus complied with the prescribed procedure.

25. Consequently, we find that the UNDT's Judgment constitutes an error of law which cannot be allowed to stand. Having found that the Administration complied with the applicable procedure, the award of moral damages must equally be reversed.

Judgment

26. The appeal is allowed and the Judgment of the UNDT is vacated in its entirety.

Original and Authoritative Version: English

Done in New York, United States.

*(Signed)*

Judge Lussick, Presiding  
28 June 2013

*(Signed)*

Judge Weinberg de Roca  
21 June 2013

*(Signed)*

Judge Adinyira  
21 June 2013

Entered in the Register on this 26<sup>th</sup> day of August 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar