

**T. P. and M.**

**v.**

**ICC**

**126th Session**

**Judgment No. 4007**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr J. T. P. and Ms D. M. against the International Criminal Court (ICC) on 16 April 2016, the ICC's single reply of 19 September, the complainants' rejoinder of 4 November, corrected on 15 November 2016, the ICC's surrejoinder of 13 February 2017, the complainants' additional submissions of 8 February 2018 and the ICC's final comments of 5 March 2018;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which none of the parties has applied;

Considering that the facts of the cases may be summed up as follows:

The complainants challenge their redeployment following a restructuring.

Mr T. P. and Ms M. joined the ICC in 2003 and 2005 respectively. As from 2011 they were both employed as Staffing Assistants in the Human Resources Section (HRS) at grade G-5.

In 2013 the Assembly of States Parties to the Rome Statute of the International Criminal Court authorised the reorganisation of the Court's Registry. This reorganisation became known as the *ReVision* Project. In August 2014 the Registrar of the Court issued Information Circular ICC/INF/2014/011 entitled "Principles and Procedures Applicable to

Decisions Arising from the *ReVision Project*” (Principles and Procedures). On 13 June 2015 Information Circular ICC/INF/2014/011 Rev.1 was issued, which revised the Principles and Procedures.

Pursuant to the Principles and Procedures, a staff member whose post was abolished as a result of the *ReVision Project* could either accept an enhanced agreed separation package or apply as an internal candidate for newly created positions arising as a direct result of the *ReVision Project*, in which case any application would receive the priority consideration provided for in the Principles and Procedures.

In early 2015 the *ReVision Project* recommended that HRS be restructured. By an email of 21 May 2015 from the Chief of HRS the complainants were informed that they had not been affected by the *ReVision Project* and that they would each be redeployed to the post of Human Resources Assistant in the new HRS structure.

With effect from 1 June 2015 Ms M. was granted special leave without pay at her own request (for a period of four months). She resigned from the ICC on 30 September 2015.

In the meantime, on 19 June 2015 the complainants jointly requested a review of the decision of 21 May 2015. They sought the disclosure of specific information and they asked that an external classifier be engaged to determine whether there were substantial changes in the functions, duties and responsibilities of the position of Human Resources Assistant as compared to those of the position of Staffing Assistant. In the event that the external classifier confirmed that there were substantial changes between the positions, they asked the Registrar to abolish their positions as Staffing Assistants and “to apply the corresponding provisions of the *ReVision Principles and Procedures*”. On 31 July the Registrar informed the complainants that their requests were dismissed as irreceivable since he had concluded that the decision of 21 May was not an administrative decision as defined by Staff Rule 111.1.

On 2 September 2015 the complainants jointly filed an appeal with the Appeals Board in which they challenged the decision of 31 July and their respective redeployments to the post of Human Resources Assistant. They maintained, in essence, their earlier request for disclosure and claims for relief. However, given that the possibility to apply for newly created

positions arising as a direct result of the *ReVision* Project with the priority consideration provided for in the Principles and Procedures had “expired”, they sought payment of the enhanced agreed separation package provided for in the Principles and Procedures and a supplemental amount representing the amount normally awarded for training purposes. They also claimed moral damages.

In a report of 18 December 2015 the Appeals Board concluded that the appeal was receivable. On the merits, it held that there was no manifest error in the internal classifier’s assessment that there was no substantial change in the functions, duties and responsibilities of the position of Human Resources Assistant as compared to the position of Staffing Assistant. The Appeals Board further concluded that even if the complainants’ previous positions could be deemed to have been abolished they were not automatically entitled to an enhanced agreed separation package; they had been offered suitable alternative positions as Human Resources Assistants. Thus, the ICC had not breached the duty of care it owed to them. In addition, the complainants had not proved that the Registrar failed to implement appropriate classification of posts and, accordingly, that the *ReVision* Project did not have an appropriate legal basis. The Appeals Board considered that there was no need for further disclosure of documents. It recommended that the appeal should be dismissed in its entirety.

On 19 January 2016 the Registrar informed the complainants that he maintained his position that the appeal was irreceivable but he concurred with the Appeals Board’s findings on the merits; he endorsed the Board’s recommendation to dismiss the appeal in its entirety. That is the impugned decision.

Subsequent to the Registrar’s decision of 19 January Mr T. P. resigned from the ICC on 31 December 2016.

The complainants ask the Tribunal to quash the impugned decision and the earlier decision of 21 May 2015. They ask the Tribunal to order the ICC to appoint a classification expert to determine whether or not their positions either appeared to undergo or actually underwent substantial changes. They seek the abolition of their positions as Staffing Assistants and the payment of an enhanced agreed separation package as provided

for in the Principles and Procedures. Mr T. P. requests the termination of his contract and compensation for the lost opportunity to be considered as a priority candidate after the completion of the *ReVision* process in HRS. In the alternative, the complainants claim any remedy as deemed appropriate by the Tribunal. They claim moral damages and costs.

The ICC asks the Tribunal to find that the complaints are irreceivable or, in the alternative, to dismiss them on the merits in their entirety.

### CONSIDERATIONS

1. The complainants impugn the Registrar's 19 January 2016 decision dismissing their joint appeal against the 21 May 2015 decision to redeploy them in the new Registry structure. The ICC submits that as the complainants failed to show that the impugned decision caused them or were liable to cause them injury they do not have a cause of action and their complaints are irreceivable. As the two complaints raise the same issues and seek similar redress they are joined to form the subject of a single judgment.

2. It is noted that at various points in their respective pleadings, the complainants and the ICC frame the 21 May 2015 decision as being a decision not to abolish the grade G-5 Staffing Assistant positions the complainants encumbered at the time of the restructuring of the Registry as part of the *ReVision* Project. This appears to stem from the relief the complainants seek, which includes the payment of the enhanced agreed separation package paid to other staff members whose posts were abolished as a result of the restructuring of the Registry and, in Mr T. P.'s case, monetary compensation for the lost possibility to be considered as priority candidate for newly created positions as a result of the restructuring. This characterization is incorrect.

3. The issue at the core of the dispute between the parties is whether the complainants' positions had undergone substantial changes as a result of their redeployment, which was effected in accordance with the Principles and Procedures. The complainants submit that the redeployment decision had an adverse impact on their terms of employment to the extent that their duties and responsibilities were unilaterally amended and substantially reduced. In response, the ICC maintains that there was no substantial change in the complainants' duties and responsibilities.

4. In Judgment 3740, under 11, the Tribunal reiterated that "for there to be a cause of action a complainant must demonstrate that the contested administrative action caused injury to the complainant's health, finances or otherwise or that it is liable to cause injury". It is evident that the redeployment of a staff member to a new post is liable to cause injury, and it follows that the complainants have a cause of action and the complaints are receivable.

5. In Judgment 3907, delivered in public on 24 January 2018, the Tribunal considered the lawfulness of the Principles and Procedures. At consideration 26, the Tribunal held:

"As the promulgation of the Principles and Procedures by Information Circular was in violation of the Presidential Directive, they were without legal foundation and are, therefore, unlawful as are the decisions taken pursuant to the Principles and Procedures. It follows that the decisions to abolish the complainant's position and to terminate the complainant's appointment were also unlawful and will be set aside."

Following the delivery in public of Judgment 3907, at the complainants' request they were permitted to file additional submissions.

6. At this juncture, it is noted that in their rejoinder the complainants make it clear that their complaints "d[o] not challenge the lawfulness of the restructuring exercise itself or the lawfulness or appropriateness of the restructuring of the Human Resources Section. Rather, the [c]omplainants raise a number of factual and procedural errors committed in the course of the implementation of the Principles

and Procedures regarding their specific situation”. They add that “[b]y no means do the [c]omplainants challenge the lawfulness of the ReVision Project as a whole”. In their additional submissions, the complainants argue that the Tribunal’s finding in Judgment 3907 that the “Principles and Procedures are without legal foundation and that decisions taken pursuant to them are unlawful equally applies in their case and should warrant the success of their [c]omplaint[s]”.

7. In summary, in its final comments the ICC submits that the complainants cannot rely on the unlawfulness of the Principles and Procedures and, at the same time, seek to benefit from the enhanced agreed separation package under the Principles and Procedures. This is true; however, it does not end the matter.

8. The ICC does not dispute the fact that the redeployment was effected pursuant to the Principles and Procedures and does not seek to establish that it could have been done lawfully by other means. Accordingly, for the reasons stated in Judgment 3907, the redeployment decisions are unlawful and will be set aside, as will the impugned decisions of 19 January 2016. In the circumstances, a consideration of whether the complainants’ positions underwent substantial changes as a result of the redeployment is unnecessary.

9. In conclusion, the complainants are each entitled to an award of moral damages in the amount of 5,000 euros. As the complainants filed a joint brief and rejoinder, they will each be awarded costs of 500 euros. However, the complainants have not shown any material damages stemming from the redeployment. It appears that before the redeployment decision was implemented, Ms M. requested and was granted special leave without pay to take up a position with another international organization. She voluntarily resigned from the ICC on 30 September 2015. Mr T. P. took up the post of Human Resources Assistant at the G-5 level until he voluntarily resigned from the ICC effective 31 December 2016.

10. Given the above conclusions, a consideration of the complainants' request for disclosure is unnecessary.

#### DECISION

For the above reasons,

1. The Registrar's 19 January 2016 decision is set aside, as is the earlier decision of 21 May 2015.
2. The ICC shall pay to each complainant moral damages in the amount of 5,000 euros.
3. The ICC shall pay costs to each complainant in the amount of 500 euros.
4. All other claims are dismissed.

In witness of this judgment, adopted on 7 May 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, Mr Michael F. Moore, Judge, Sir Hugh A. Rawlins, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 26 June 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

HUGH A. RAWLINS

YVES KREINS

DRAŽEN PETROVIĆ