

L. (No. 9)

v.

ICC

131st Session

Judgment No. 4358

THE ADMINISTRATIVE TRIBUNAL,

Considering the ninth complaint filed by Mr C. L. against the International Criminal Court (ICC) on 14 December 2017 and corrected on 31 January 2018, the ICC's reply of 23 October (following a stay of proceedings granted by the President of the Tribunal upon the ICC's request), the complainant's rejoinder of 18 December 2018, the ICC's surrejoinder of 28 March 2019, the additional submissions filed by the complainant on 26 April and the ICC's final comments thereon dated 31 July 2019;

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 neither party has applied;

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

The complainant challenges the decision not to place him on the shortlist for a position.

Facts related to this case can be found in Judgments 3907 and 3908, delivered in public on 24 January 2018. Judgment 3908 concerns the complainant's third complaint. In 2013 the Assembly of States Parties to the Rome Statute of the International Criminal Court authorized the Registrar of the Court to reorganize the Registry. This reorganization became known as the *ReVision* Project, which was implemented in 2014. An Information Circular entitled "Principles and Procedures Applicable to Decisions Arising from the *ReVision* Project", which was issued in

August 2014 and modified in June 2015 by Information Circular ICC/INF/2014/011 Rev.1 (hereinafter “the Principles and Procedures”), established a framework for the implementation of decisions arising from the restructuring process. Paragraphs 33 to 39 identified a procedure whereby staff whose positions had been abolished would be treated as “Priority Candidates” who would have to apply for newly created positions.

In June 2015 the complainant was informed that his P-4 position of “Legal Officer” was being abolished and that his fixed-term contract would be terminated. He was also informed of the possibility to apply as an internal candidate with priority consideration for new positions arising out of the *ReVision* Project. Hence, in the summer of 2015, he applied for the P-4 position of Deputy Legal Counsel (vacancy announcement No. 2361), but he was informed in October 2015 that he had not been selected. A few days later, still in October, he was notified that he would separate from service at the end of the month.

In December 2015, the P-4 position was re-advertised, under vacancy announcement No. 3681. The complainant, who had applied but had received no information on the status of his application, wrote to the ICC on 9 February 2017 enquiring about the selection process. On that same day, the Human Resources Section replied that his application was unsuccessful. He filed a request for review against that decision, and requested suspension of action. Both requests were rejected in early March 2017. In his letter of 10 March 2017 concerning the request for review, the Registrar informed the complainant that he rejected it as irreceivable on the ground that the complainant had previously contested the decision not to select him for the position. In accordance with Staff Rule 111.1, a request for review could only be submitted with respect to an appealable administrative decision, that is to say the October 2015 decision notifying him that he had not been selected for the position. The fact that the same decision was reiterated in February 2017 did not mean that a new administrative decision was taken. The same on-going selection process was at stake. The Registrar added that the complainant could appeal his decision to the Appeals Board. The complainant did so on 5 April.

In its report of 28 August 2017 the Appeals Board held that the appeal was receivable because the contested decision was taken in the context of an external recruitment process (vacancy announcement No. 3681) while the October 2015 decision was taken in the context of an internal

recruitment process (vacancy announcement No. 2361). The contested decision could therefore not be considered as being identical in substance to the October 2015 decision. The Appeals Board noted that the practical implementation of the Principles and Procedures of August 2014 required the Registrar to adopt a “technical work around” whereby vacancies were advertised first internally and then externally if no suitable priority candidate was found. The Appeals Board noted that this practice had been consistently applied within the Registry for recruitments related to the *ReVision* Project and had not been applied in a discriminatory manner to the complainant.

On 22 September 2017 the Registrar informed the complainant that, contrary to the Appeals Board, he considered his appeal to be irreceivable. He otherwise endorsed the Appeals Board’s recommendations and rejected the appeal. That is the impugned decision.

The complainant asks the Tribunal to reverse the impugned decision, to order the cancellation of the recruitment process for the position of Deputy Legal Counsel (P-4) advertised in vacancy announcement No. 3681 and to order the ICC to organize a new recruitment process for that position under the same requirements, with him being given an opportunity to compete as an internal candidate. As an alternative to the cancellation, he seeks financial compensation. In addition, he claims moral damages, punitive damages and costs, including for the time and resources spent in preparing his internal appeal. In his additional submissions, he asks to be appointed to the position of Deputy Legal Counsel.

The ICC asks the Tribunal to reject the complaint as irreceivable *ratione personae* given that the complainant was not a staff member at the material time, or as irreceivable *ratione materiae* on the ground that the contested decision was not a challengeable administrative decision but merely a confirmatory decision. It adds that the complaint was also rendered *res judicata* by Judgment 3908. In the alternative, it asks the Tribunal to reject the complaint as without merit.

CONSIDERATIONS

1. This is the ninth complaint of the complainant. Much of the relevant history leading to these proceedings is to be found in Judgment 3908. Suffice it to note that the complainant had been a member of the staff of the ICC but his position was abolished in mid-

2015 and he separated from service in October 2015. These proceedings concern his non-appointment to a position of Deputy Legal Counsel in the ICC following the publication of a vacancy announcement in December 2015 (No. 3681). The complainant applied for the position in January 2016. There was a material difference between this competition and an earlier competition for the same position in August 2015. The earlier competition was not open to external candidates. The complainant was not, at the time he applied for the position in January 2016, a member of the staff of the ICC following his separation in October 2015. He could not have legally been the beneficiary of a provision of the Principles and Procedures treating him as an internal candidate because they had not lawfully been adopted (see Judgment 3907, consideration 26).

2. The ICC contends this complaint is irreceivable and develops in its pleas a number of arguments why this is so. But the issue is relatively straightforward. Article II of the Tribunal's Statute recognises that officials whose employment has ceased can access the Tribunal (Article II, paragraph 6(a)), a circumstance which might, for example, involve the enforcement of rights which had arisen during the currency of their employment (see, for example, Judgment 4219, consideration 17). However it is nonetheless necessary, to render a complaint receivable, for a complainant to be seeking to vindicate non-observance of her or his terms of appointment or Staff Regulations as are applicable (Article II, paragraph 5, of the Tribunal's Statute). Ordinarily, as is the case in the present proceedings, a person who has ceased to be a member of the staff of an international organisation has no subsisting terms of appointment nor are there ordinarily any applicable Staff Regulations and none applying to former staff members are pointed to in these proceedings.

Accordingly the complaint must be dismissed as irreceivable as the Tribunal has no competence to hear it (see, for example, Judgments 3774, consideration 1, and 3709, consideration 4).

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 20 October 2020, Mr Patrick Frydman, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 December 2020 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

DRAŽEN PETROVIĆ