

UNITED NATIONS DISPUTE TRIBUNAL

Comrades are you guys watching the tense and delicate situation in which our partners are going through right now in Syria.

Unfortunately the Syrian are not in a financial position at that time to send us plane tickets. I request all of you who make an extreme effort to facilitate the departure of you now that delegation of October 20 to Syria. It is extremely important.

I await a return of you urgently.

4. However, on the same day, on 2 October 2013, the Applicant received an email from WIDF, entitled "UMUT URGENT TRIP SYRIA", which stated the following:

Dear Umut:

Today was finally possible to set the date of travel to Damascus in Syria at the International Solidarity meeting in Damascus. The new date is now October 20. It is very important your presence in the delegation from WIDF.

As you guys are neighbours of Syria thought it would be very important if you could be with us in the delegation of WIDF that is now in Syria on October 20.

Please reply me very urgent.

5. Subsequently, at a date unknown to the Tribunal, a formal invitation was addressed to the Applicant through the Syrian Arab Republic General Women Union, also a member of WIDF, as follows:

Ms. Umut Kuruc

General Women's Union, in Syria honour to invite you to participate in a solidarity vigil hosted by the [WIDF] in Damascus against foreign interference in the internal affairs of Syria and rejection of foreign aggression and international terrorism faced by the Syrian people and so on 10.20.2013.

We hope your participation with us note that the General Women's Union in Syria will bear all costs of the visit except for the airline ticket.

President of the General Women's Union

Dr. [M. K.]

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was taken to a TV channel for a live interview. The Applicant stressed, however, that while “the rest of the delegation went”, “thinking of [her] employment situation, [her] UN and UNHCR position, [she] refused to attend that interview and [...] didn’t go there”. She returned to Ankara on 22 October 2013, and came back to work on the following day.

12. On 22 or 23 October 2013, a picture of the Applicant handing the flag to the President of Syria was published in an online Turkish newspaper, milliyet.com.tr, as well as in Syrian media. While the Applicant’s affiliation with UNHCR was not rendered public, her name was expressly mentioned next to the picture published in the Turkish newspaper.

13. The Applicant found out about the publication of the picture on 23 October 2013. The Representative stated that she discovered the existence of the picture on the same day, when she was given media reports and newspaper articles in her office, and that this was how she was made aware that the Applicant had been to Syria and of the nature of her visit.

14. On the same day, on 23 October 2013, the IGO received an e-mail alleging that the Applicant had travelled to Syria and met with the Syrian President, and that a picture of her handing over a Gezi demonstrators’ flag—with an inscription in Turkish meaning “do not yield”—to the Syrian President had been taken and subsequently been published in an online Turkish newspaper, milliyet.com.tr.

15. In view of the allegations against the Applicant, she was placed on administrative leave with full pay as of 23 October 2013 by the Director, Division of Human Resources Management (“DHRM”), UNHCR, and the IGO conducted an investigation. Also on 23 October 2013, the IGO looked at the Applicant’s personal Facebook account, and noted that the above-referenced picture had been posted on the Applicant’s “wall” on Facebook. The IGO further noted that “although [the Applicant] had, at the time of her interview with the IGO, removed any reference to her professional affiliation from her Facebook page, her profile read on 23 October 2013: ‘works at [UNHCR]’”.

By her mere attendance of a meeting with the Syrian President, by giving him a flag which reads "Do not yield" and by allowing herself to be photographed together with the Syrian President, [the Applicant] has engaged an action which can be construed as a public pronouncement in favour of the Syrian President. The IGO also finds that being part of such a visit on behalf of a political organization is not compatible with her obligations of integrity, independence and impartiality that are required by her status as an international civil servant.

22. The IGO considered that the evidence available supported a finding that the Applicant:

- a. Failed to disclose the political nature of visit to Syria and failed to follow the directions and instructions properly issued by her supervisor, [the UNHCR Representative in Turkey];**

from service for misconduct, with compensation in lieu of notice, and with termination indemnity pursuant to staff rule 10.2(a)(viii) and paragraph (c) of Annex III to the Staff Regulations. The recommendation was approved on 21 February 2014.

26. On 25 February 2014, the Applicant was notified of the disciplinary measure to separate her, by letter dated 24 February 2014 from the Director,

vii. Finally, because of her status as a UNHCR staff member, she took special care during the visit not to get involved in any activity that may have political implications, for instance she refused to attend

Turkey had no problem to continue working with her; also, no inquiry was launched against her by the Turkish authorities;

- c. The Applicant's assertion that she was simply participating in a humanitarian mission lacks credibility, particularly in light of the clear wording of the invitation sent by the Syrian Arab Republic General Women Union, the subsequent meeting with the Syrian President and the presentation of the flag with the words "do not yield";
- d. The investigation by the IGO was conducted in a fair and transparent manner, and there are no grounds to support the Applicant's assertion that the use of her publicly available Facebook page for purposes of the investigation constituted a violation of her right to privacy, since access to her Facebook page was possible as no privacy settings were activated; even assuming that her assertion that her Facebook account had been hacked was true, this would not change the outcome of her case;
- e. As to whether the disciplinary measure applied is proportionate to the offence, it is established jurisprudence that due deference must be shown to the High Commissioner's administrative discretion in his decisions on disciplinary measures, and in the present case the disciplinary measure was proportionate to the Applicant's conduct, taking into account her role and responsibilities as the Senior Secretary to the Representative and her interactions with the Turkish Government;
- f. In view of the above, the application should be rejected in its entirety.

Consideration

31. Pursuant to staff rules 10.3(c) and 11.4(b), a staff member may challenge the imposition of a disciplinary measure by appealing directly to the Dispute Tribunal within 90 calendar days from the date of the notification of the decision, without seeking first management evaluation. In the present case, the contested disciplinary measure was notified to the Applicant on 25 February 2014, therefore the deadline to submit her application to the Tribunal was 26 May 2014. On that day, due to technical issues encountered when trying to submit her application to

the Tribunal through the eFiling portal, the Applicant emailed her application to the generic address of the Office of the Administration of Justice (oaj@un.org) and to the eFiling support team (ccms-support@un.org). She succeeded in submitting her application through the eFiling portal only on 17 June 2014 (see paras. 26 and 27 above).

32. The Tribunal considers that by emailing her application to the Office of Administration of Justice and to the eFiling support team on 26 May 2014, the Applicant duly complied with the statutory time-limit and her application is receivable *ratione temporis*, which the Respondent does not contest (see also *re UNDT/2014/109*).

re

33. As regularly recalled by the United Nations Appeals Tribunal (“UNAT”) for instance in *re* 2014-UNAT-436 and *D* 2014-UNAT-403, it is settled jurisprudence that, when reviewing a disciplinary sanction imposed by the Administration, the role of the Tribunal is to examine:

whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence.

34. In the present case, the facts on which the disciplinary measure was based are not at challenge. Indeed, it is established, and not contested, that during the period of 19 to 22 October 2013, the Applicant travelled to Syria in her private capacity as a member of a WIDF (y))054(-sFy,i4)56(- ny,505c-eFy,y))054(y,00i0nny,505cJ6i,wc40-WFy,iy)

35. As a second step, the Tribunal needs to consider whether the established facts do qualify as misconduct. In this respect, the Tribunal recalls that staff regulation 1.2, under "General rights and obligations", provides as follows:

...

(e) By accepting appointment, staff members pledge themselves to discharge their functions and regulate their conduct with the interests of the Organization only in view. Loyalty to the aims, principles and purposes of the United Nations, as set forth in its Charter, is a fundamental obligation of all staff members by virtue of their status as international civil servants;

(f) While staff members' personal views and convictions, including their political and religious convictions, remain inviolable, staff members shall ensure that those views and convictions do not adversely affect their official duties or the interests of the United Nations. They shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties

Conclusion

46. In view of the foregoing, the Tribunal DECIDES:

The application is rejected in its entirety.

(n)

Judge Thomas Laker

Dated this 30th day of January 2015

Entered in the Register on this 30th day of January 2015

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René M. Vargas M., Registrar, Geneva