

G.
v.
OPCW

141st Session

Judgment No. 5120

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs C. G., as successor of the late Mr T. G., against the Organisation for the Prohibition of Chemical Weapons (OPCW) on 22 February 2022 and corrected on 14 March 2022, the OPCW's reply of 27 June 2022, the complainant's rejoinder of 25 July 2022 and the OPCW's surrejoinder of 26 August 2022;

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 rejection of her request for disclosure of several documents which, according to her, establish the exact circumstances of her husband's death.

The complainant is the surviving spouse of an OPCW staff member, who passed away on 8 February 2020, while deployed on a mission for the Organisation in Damascus, Syria. The report on the *post-mortem* examination ("the autopsy report"), which was prepared by medical experts independent from the OPCW and dated 14 February 2020, concluded that Mr G. died of natural causes. A technical expertise report on the investigation of the presence of toxic substances in biological samples, elaborated by a Syrian laboratory of forensic

technology and dated 15 February 2020, indicated that some samples could not be examined nor investigated because the laboratory lacked the required “capabilities”.

On 19 February 2020, the complainant filed a claim for service-incurred death and disability insurance following the death of her husband. Despite the conclusions contained in the autopsy report, the Director-General accepted the death as service-incurred because Mr G. was on mission the day he passed away. The OPCW submitted the claim to the external insurer, which was processed and eventually approved on 5 June 2020. The complainant received the calculation of payments for her claim on 16 June 2020.

Simultaneously to the insurance claim process, the OPCW initiated an incident review in accordance with the standard safety procedures, the purpose of which was to establish the safety-related circumstances that prevailed, preceding and at the time of the incident. It was conducted by the Organisation’s Senior Safety Officer, assisted by the then Duty Officer at the Command Post in Damascus. An incident review report was issued on 30 March 2020 and forwarded to the complainant on 1 April 2020. The incident review established that no safety hazards were identified during the on-site survey. It did not find any indications of foul play or of other non-natural circumstances which could have caused Mr G.’s death. The findings contained in the incident review report were consistent with those contained in the autopsy report.

On 21 April 2020, the complainant’s counsel requested the Director-General to disclose three additional documents, namely (1) a copy of the original full investigation report made by the OPCW on the passing of Mr G., (2) a report on the incident issued by the United Nations Department of Safety and Security (UNDSS), and (3) a copy of any agreement, memorandum of understanding or the like between the OPCW and the United Nations providing the legal basis and conditions for OPCW staff members’ use of the United Nations Medical Service in Damascus.

By a letter dated 7 May 2020, the complainant was informed that she had received all the relevant information and documentation in connection with Mr G.'s death, including the autopsy report, the technical expertise report, and the incident review report. It was indicated that the OPCW had been diligently conducting all the necessary procedures and had provided the abovementioned documents as "a matter of urgency" and that the circumstances surrounding her husband's death had been detailed in the incident review report dated 30 March 2020. As regards the additional documents she requested, the Organisation explained that they "either [did] not exist or concern[ed] internal matters and procedures of the OPCW that [fell] outside the scope of disclosure".

On 11 May 2020, the complainant challenged the grounds for denying her request for disclosure of documents and requested the Director-General "to instruct its services to come back to a more cooperative approach toward [her] and order the disclosure of the requested documents and information". By a letter dated 25 May 2020, she was informed that the Director-General confirmed the position of the Organisation as set out in the previous letter of 7 May 2020.

On 22 June 2020, the complainant lodged an internal appeal to the Appeals Council.

On 22 November 2021, the Appeals Council issued its report in which it recommended rejecting the appeal as irreceivable as the 25 May 2020 letter did not constitute an administrative decision against which an appeal could be lodged. On 17 December 2021, the complainant was informed of the Director-General's decision to endorse the Appeals Council's recommendation. This is the impugned decision.

The complainant makes a request for disclosure of additional information and documents pursuant to Article 11 of the Tribunal's Rules in the present proceedings. In particular, she seeks the disclosure of the following documents: (a) the full and unredacted version of the incident review report, (b) any information not disclosed yet in relation to the exact causes and circumstances of Mr G.'s death, (c) the full and unredacted version of the applicable tripartite agreement between the

OPCW, the United Nations Office for Project Services (UNOPS) and Syria, (d) a complete log of the communications by the then relevant Field Security Officer in Damascus, (e) a complete log of the communications addressed to the OPCW Situation Centre by the outgoing Command Post Team Leader prior to Mr G.'s arrival and handover of the function with regard to safety issues, (f) any investigation report on Mr G.'s death prepared by UNOPS, UNDSS or any other relevant entity, (g) any exchange made on 9 or 10 February 2020 or on the following days between the OPCW and the UNDSS Office in Syria with regard to the passing of Mr G., (h) all the exchanges between the OPCW and UNDSS made after the complainant's request of 21 April 2020, and (i) any administrative OPCW directive defining unsatisfactory conduct under Staff Rule 10.2.01, "in particular with respect to dereliction of duty, recklessness, conflict of interest, misrepresentation of the truth and forgery". In addition to this request, the complainant asks the Tribunal to set aside the impugned decision and to award her 100,000 euros in moral damages, 100,000 euros in punitive damages, and costs in an amount of 10,000 euros.

The OPCW considers the complainant's request for additional documents and information to be an impermissible "fishing expedition" and an extension of the 21 April 2020 initial request and seeks its rejection. Alleging that the position contained in the letter of 7 May 2020 is not an administrative decision within the meaning of Staff Regulation 11.1 of the OPCW Staff Regulations and Staff Rules, and thus is not appealable, the Organisation asks the Tribunal to dismiss the complaint as irreceivable or, on a subsidiary basis, as unfounded. Moreover, it notes that, the subject of the present case has become moot as it has been overtaken by the filing of a second claim by the complainant's counsel based on the same events, that is the natural death of Mr G., and concerning a request for further compensation. The outcome of this claim has led to the complainant's filing of a second complaint, which is also examined this day.

CONSIDERATIONS

1. In her second complaint, which is the subject of Judgment 5121, also delivered this day, the complainant requests the joinder of her two complaints. Her request is rejected for the reasons given in consideration 1 of that judgment.

2. The facts in this case disclose that, on 21 April 2020, following the OPCW's investigation of the circumstances of the death of the complainant's spouse, the complainant's counsel requested the Director-General to disclose three documents allegedly concerning Mr G.'s death. This request was denied, by a letter dated 7 May 2020, on the main ground that the complainant had received all the relevant information and documentation in connection with the death of her spouse, including the autopsy report, the technical expertise report, and the incident review report. On 11 May 2020, the complainant requested the Director-General "to instruct its services to come back to a more cooperative approach toward [her]" and reiterated her request for the disclosure of the requested documents and information. By a letter of 25 May 2020, the Director-General confirmed the position contained in the previous 7 May 2020 letter. On 22 June 2020, the complainant challenged the decision of 25 May 2020 in an internal appeal to the Appeals Council. In its report of 22 November 2021, the Appeals Council recommended rejecting the appeal as irreceivable on the basis that the 25 May 2020 letter did not constitute an administrative decision against which an appeal could be lodged. The complainant subsequently requested the Tribunal to order the OPCW to disclose a number of other documents and additional information to her.

3. In the impugned decision of 17 December 2021, endorsing the Appeals Council's recommendation, the Director of Administration, acting on behalf of the Director-General, relevantly stated as follows:

"After careful review of the [r]eport, unanimously adopted by the Appeals Council, as well as of the material before the Appeals Council, the Director-General notes that:

- a. The Appeals Council has decisively concluded that the Organisation's letter of 25 May 2020 does not possess elements which would constitute an administrative decision.
- b. The Appeals Council has concluded that, as the letter of 25 May 2020 lacks the qualification of an administrative decision, the [a]ppeal is not receivable.
- c. The Appeals Council's unanimous conclusion regarding the irreceivability of the [a]ppeal obviated the need for consideration of the substantive claims in the [a]ppeal.
- d. The Appeals Council thus recommended that the [a]ppeal be deemed not receivable.

For the reasons given by the Appeals Council and the reasons set out in this decision – as well as for all the other reasons set forth in the letters of 7 and 25 May 2020, and in the Organisation's [r]esponse and [s]urrejoinder in this [a]ppeal – as well as on the basis of, *inter alia*, the express terms of Staff Regulation 11.1 and [...] Staff Rule 11.2.02(a), the Director-General has decided to maintain his position in respect of your request for further disclosure of documents.”

4. The OPCW submits that the complaint should be dismissed as irreceivable under Staff Regulation 11.1 which provides that “[s]taff members have the right of appeal against any administrative decision alleging non-observance of the terms of appointment, including relevant Staff Regulations and Rules, and against disciplinary action”. The OPCW argues that the decision against which the complainant purports to appeal does not constitute such a decision. It also refers to Staff Rule 11.2.02(a)(i), which states that a staff member may submit an appeal against “an administrative decision pursuant to Staff Regulation 11.1” within one month of the receipt of the Director-General's reply to her or his request for the review.

5. The conclusion in the impugned decision that the complainant's internal appeal was irreceivable pursuant to Staff Regulation 11.1 was correct. The Tribunal's case law has consistently stated, in consideration 4 of Judgment 4672, for example, that a reviewable administrative decision, which is foundational to the Tribunal's jurisdiction, implies any act by an officer of an organisation which has a legal effect (see also Judgments 5093, consideration 4,

4928, consideration 3, and 4499, consideration 8). A decision that does not alter the legal situation of an official is not a decision that adversely affects her or him and it cannot, therefore, be challenged before the Tribunal (see Judgments 4846, consideration 10, and 4675, consideration 11).

In the present case, the Tribunal finds that the rejection of the complainant's request for the disclosure of documents had no legal effect on her rights, as the Organisation correctly pointed out. In this regard, the 25 May 2020 letter did not constitute an administrative decision against which the complainant could lodge an appeal.

6. In any event, the Tribunal notes that the complainant's request for the disclosure of documents was not premised on any cause of action. At best, it was apparently made to seek information which, in the complainant's view, would have provided her with a cause of action to make a claim against the OPCW for additional compensation for her spouse's death. This claim is however the subject of her second complaint.

7. Inasmuch as the complainant's internal appeal was irreceivable under the OPCW's legal framework, it is also irreceivable in the Tribunal, pursuant to Article VII, paragraph 1, of its Statute, which states that "[a] complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of redress as are open to her or him under the applicable Staff Regulations". The complaint will therefore be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 October 2025, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

RENÉ M. VARGAS M.