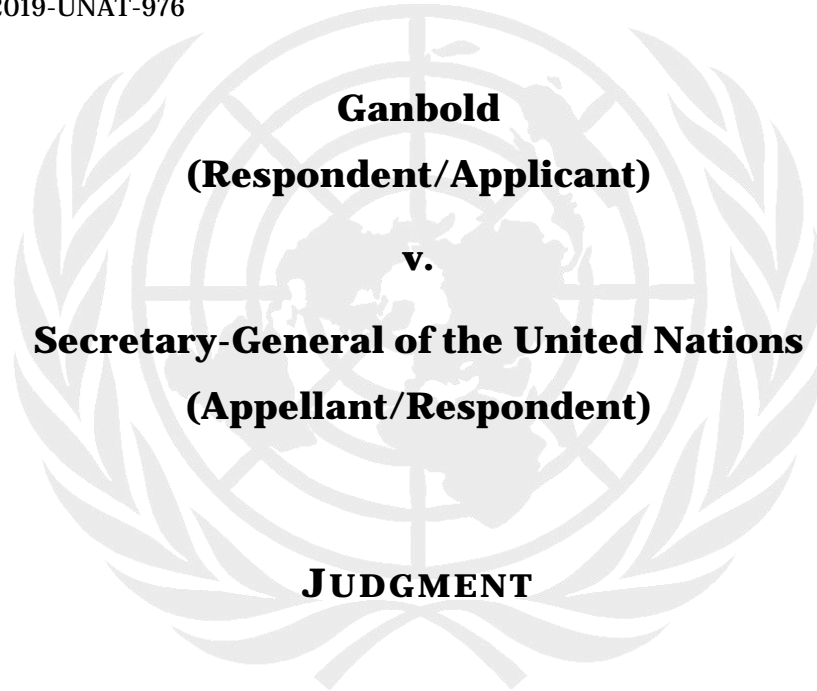




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

---

Judgment No. 2019-UNAT-976



**Ganbold  
(Respondent/Applicant)**

**v.**

**Secretary-General of the United Nations  
(Appellant/Respondent)**

**JUDGMENT**

---

**Before:** Judge Sabine Knierim, Presiding  
Judge John Raymond Murphy  
Judge Kanwaldeep Sandhu

**Case No.:** 2019-1245

**Date:** 25 October 2019

**Registrar:** Weicheng Lin

---

**Counsel for Ms. Ganbold:** Evelyn W. Kamau, OSLA

**Counsel for Secretary-General:** Phyllis Hwang & Patricia C. Aragonés

*Reissued for technical reasons on 03 January 2020*

**JUDGE SABINE KNIERIM, PRESIDING.**

1. Ms. Enkhjargal Ganbold, a former staff member at the United Nations Population Fund (UNFPA) in Mongolia, was separated from service with compensation in lieu of notice and without termination indemnity, as a disciplinary measure for several misconduct violations related to UNFPA's procurement of property that was owned by her relatives. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) found there had been several flaws in the investigation into her alleged misconduct and conducted a *de novo* review. The UNDT rendered Judgment No. UNDT/2019/015 in Geneva on 31 January 2019 wherein it ordered *inter alia* the rescission of her disciplinary measure on grounds it was disproportionate and replaced it with a loss of one step in grade and a written censure. In lieu of rescission, the UNDT awarded 24 months' net base salary. The Secretary-General appealed before this Tribunal. For the reasons set forth below, the Appeals Tribunal upholds the Secretary-General's appeal and vacates the UNDT's Judgment.

**Facts and Procedure**

2. On 21 March 2014, the Representative of the UNFPA Mongolia Country Office (UNFPA Mongolia CO) reported to the Office of Audit and Investigation Services (OAIS) an allegation of fraud against Ms. Ganbold, a UNFPA staff member who served at the time as a Finance and Administrative Associate at the G-7 level. The allegation indicated that Ms. Ganbold's first reporting officer (FRO) had entered into lease agreements on behalf of UNFPA for the lease of a storage building that belonged to, or was co-owned by, Ms. Ganbold.

3. Two years later, on 21 March 2016, OAIS issued its investigation report, which indicated that it had interviewed Ms. Ganbold and five other witnesses. The scope of the investigation was to establish whether Ms. Ganbold:

- a) held a financial interest in, or was associated with, the management of the building/premises rented;
- b) was actively associated with Company 1, Company 2, Ms. N. (her mother) and/or Ms. T.; and
- c) had benefitted improperly, directly or indirectly, from her association with any of the above by reason of her position with the United Nations.

4. OASIS concluded that Ms. Ganbold: (i) had failed to disclose to the proper management level that her spouse and mother were actively associated with Company 1 and Ms. N., who were UNFPA suppliers of rental space that had received USD 22,178.23 in UNFPA payments; (ii) had failed to disclose that Company 1 was owned by her relatives; (iii) had failed, in her capacity as both Administrative Finance Associate and Operations Manager, to recuse herself from procurement transactions with Company 1 and Ms. N.; (iv) had repeatedly misrepresented her association with Company 1 in her financial disclosure declarations and had falsely attested therein that her husband did not have any interest in, or was associated with, any entity dealing with the Organization; and (v) had benefitted improperly from her association with Company 1 and Ms. N. by reason of her position with UNFPA. OASIS concluded there was no substantiation to any claims pertaining to Company 2.

5. The Director, Division for Human Resources (DHR), sent Ms. Ganbold a “charge letter” that charged her with three counts of misconduct and invited her response. By letter dated 17 July 2017, the Acting Executive Director, UNFPA informed Ms. Ganbold of her separation from service with compensation in lieu of notice and without termination indemnity as a disciplinary measure, which is the administrative decision Ms. Ganbold contested before the UNDT.

6. The Acting Executive Director’s letter notified Ms. Ganbold that the following three counts (same as the charge letter) had been established and supported a finding of misconduct:<sup>1</sup>

**Count 1:**

By awarding and signing a contract with a UNFPA vendor, [Company 1 ], without the necessary authority, without conducting market research and considering other potential suppliers, and by involving yourself in procurement activities in relation to Ms. [N.], another UNFPA vendor, you violated Staff Regulation 1.2 (b), UNFPA Financial Rules and Regulations, Regulation 14.8 (revision of year 2010), Rule 114.12, (revision of year 2010), Financial Regulation 14.7 (revision of year 2012) and Financial Regulation 15.2 (revision for year 2014), UNFPA Procurement procedures for year 2008, paragraph C.1, UNFPA Procurement Procedures for year 2012 paragraph 6.3.1.1 and standards of Conduct for the International Civil Service (year 2013) paragraph 5.

---

<sup>1</sup> Impugned Judgment, para. 14.

**Count 2:**

You failed to excuse yourself from procurement transactions with two UNFPA vendors, [Company 1, LLC] and Ms. [N.], in your capacity as Administrative/Finance Assistant, Administrative/Finance Associate and later as Operations Manager a.i. of the [UNFPA Mongolia CO]. Moreover, you failed to bring to the attention of the Representative of the UNFPA Mongolia CO, your association with the UNFPA vendors [Company 1, LLC] and Ms. [N.]. By doing so, you also provided an advantage to your family in the award of contracts by UNFPA Mongolia CO. Your actions therefore violated Staff Regulation 1.2 (b), Staff Regulation 1.2 (g), Staff Regulation 1.2 (m), Staff Rule 1.2 (p and q ...) and Standards of Conduct for the International Civil Service paragraphs 5 and 23.

**Count 3:**

You failed to uphold the highest standards of efficiency, competence and integrity expected of a United Nations staff member by repeatedly misrepresenting in your filed Financial Disclosure Forms for January 2006 to December 2014, submitted to the UNFPA Ethics Office, that you and your close relatives, namely your spouse and mother, did not have any association to entities that engaged in commercial transactions with UNFPA. By doing so you also violated Staff Regulations 1.2 (b) and Staff Regulations 1.2 (m), Staff Rule 1.2 (p and q ...), paras. 5, 21, 22 and 23 of the Standards of Conduct for the International Civil Service (2011) and para. 5 of the Standards of Conduct for the International Civil Service (2013).

7. The UNDT's hearing took place on 20-23 February 2018. Ms. Ganbold and her former FRO, Mr. B., were heard as witnesses. The UNDT was of the view that the investigation had serious flaws, and its resulting report was significantly misleading and incomplete. Per the hearing and record, the UNDT concluded that: (i) relevant facts, known to the investigators, had been omitted from the report and had not been disclosed; (ii) the investigation was incomplete and had failed to disclose the whole context of the transactions; (iii) a crucial audio recording had been lost; (iv) a witness statement had not been taken in a proper manner; and (v) exculpatory evidence pertaining to Ms. Ganbold acquired during a subsequent investigation into her former FRO had not been added to the investigation report, nor brought to the attention of the decision-maker or to the UNDT. The UNDT placed little reliance on the investigation report having found it was biased in its approach. As a consequence, the UNDT embarked on a *de novo* review of the evidence.

8. The UNDT established that in September 2007 the UNFPA Mongolia CO had been given USD one million that had to be utilized by the end of that year. This left the office with only four months to procure goods and created an urgent need to obtain heated storage to avoid goods

spoiling in the harsh Mongolian winter. Ms. Ganbold's former FRO, Mr. B., who was then the Operations Manager, testified before the UNDT that due to this emergent need he had asked Ms. Ganbold if it was possible for UNFPA to use her family's available storage space. Because the price to rent the storage was offered even lower than the overhead cost for space that the UNFPA Mongolia CO paid to the Government of Mongolia for its "free" office space, he believed that UNFPA did not suffer any losses in the process and accordingly he made the decision to lease the storage space from Ms. Ganbold's family with the full knowledge that her relatives owned the property. He testified that, contrary to the findings of the investigation report, he, and not Ms. Ganbold, had signed and had decided to enter into the lease agreements.

9. Mr. B. testified that he had told all of this to the investigator, yet it had not been included in the investigation report and was contrary to the findings of the decision-maker. The investigation provided only a summary of the former FRO's interview with OAIS, not an actual transcript. When the UNDT requested the audio recording of the interview, OAIS admitted that the recording had been lost. The former FRO testified that he had also told investigators how he had conducted a cost analysis and had compared the rental costs to conclude it was financially beneficial to UNFPA to lease the storage garages. The UNDT learned that the former FRO had been interviewed in February 2016 regarding investigations into his own misconduct around the lease of the storage garages, but the investigator had not mentioned them when testifying before the UNDT in Ms. Ganbold's case despite being the same interviewer. The interview of Mr. B. contained the critical information he had provided to the UNDT. The UNDT determined this was exculpatory evidence supporting that Ms. Ganbold had not been involved in the decision to lease the storage garages. Rather this evidence supported that it was Mr. B. who had decided to lease the property and had done so fully aware her relatives owned the property.

10. The UNDT in its *de novo* review determined, with regard to Count 1, that Ms. Ganbold had not awarded or signed binding contracts with a UNFPA vendor, save for a contract renewal in 2013, but that it had been her former FRO who had initiated, authorised, and signed such contracts.

11. With regard to Ms. Ganbold's alleged failure to recuse herself from certain procurement transactions and to disclose her association with two UNFPA vendors (Count 2), the UNDT found: (i) there was no evidence that her spouse had been "actively" associated with Company 1; (ii) prior to the change of the UNFPA Rules in 2012 which required the disclosure of any association be made to the Head of Mission, Ms. Ganbold had disclosed her relatives' ownership

of the procured property to her supervisor and to the Ethics Office as had been required; (iii) Ms. Ganbold had not been associated with procurement transactions, apart from one renewal of an existing contractual relationship and her processing of invoices in the ordinary course of her responsibilities; and (iv) there was no proof that Ms. Ganbold had received any benefit from her relatives' ownership of the storage garages that had been leased by UNFPA and that no advantage to Ms. Ganbold had been demonstrated. Ms. Ganbold had not awarded any contracts and had not been involved in procurement contracts. The analysis of the costing rather shows a significant advantage had been received by UNFPA at it had received storage space significantly below the market rate.

12. With regard to the charge that Ms. Ganbold had made misrepresentations in the financial disclosure forms (Count 3), the UNDT found that she had not complied with the requirements following the 2012 policy change. The UNDT found, however, that her testimony was truthful and credible in that she had not known that her husband had shares in Company 1, and instead she had thought the shares had been in her father-in-law's name. She testified without any contradictory evidence that she had been unaware that her husband had been involved in the management of Company 1. The forms asked "to the best of your knowledge" and thus the UNDT found that her responses thereto had been to the best of her knowledge.

13. Ultimately the UNDT concluded that due to the flaws in the investigation the facts upon which the decision had been founded had not been properly established by clear and convincing evidence. The investigation's conclusions were not supported by evidence and the decision-maker did not have the whole context including exculpatory information, which the UNDT considered was compelling. The UNDT further concluded that there had been no intent to defraud and that Ms. Ganbold's failure to make disclosures on all of the forms throughout the years in question had been on account of her negligence.

14. As a result, the UNDT determined that the disciplinary measure was disproportionate. The UNDT noted that Ms. Ganbold's former FRO who had entered into the lease agreements had only been sanctioned with a written censure and the loss of one step in grade. Accordingly, the UNDT ordered the rescission of her disciplinary measure and replaced it with that of a loss of one step in grade and a written censure (the same disciplinary measure received by her former FRO). In lieu of rescission, the UNDT awarded 24 months' net base salary. The UNDT further directed that any person within the Organization who was asked for a professional reference for Ms. Ganbold should not advise that she had been separated from service due to procurement

fraud or other misconduct. A copy of the impugned Judgment was ordered to be placed in her official status file.

15. The Secretary-General filed an appeal on 1 April 2019, and Ms. Ganbold filed her answer on 30 May 2019.

### **Submissions**

#### **The Secretary-General's Appeal**

16. The Secretary-General requests the Appeals Tribunal to vacate the impugned Judgment in its entirety. He argues that the facts on which the sanction was based had been established by Ms. Ganbold's own admissions. She had suggested that UNFPA lease garage and storage facilities from two vendors, Ms. N., her mother, and from Company 1, owned by her husband. The garage facilities were located in a complex of two buildings, one owned by Ms. Ganbold and the other by her husband. She had never disclosed her husband's interest in the Company on any financial disclosure forms. She had also taken steps to facilitate the leasing by drafting notes to the file and submitting transaction requests. She was also listed as the buyer on two purchase order transaction payments to Ms. N., her mother. Ms. Ganbold did not deny these facts to the investigators nor in her submissions before the UNDT.

17. These facts establish misconduct in violation of Staff Regulation 1.2 and Staff Rule 1.2 as Ms. Ganbold should have recused herself from participating in any matter that was a conflict. The Rules also obliged her to disclose any indirect or direct financial interests that might have risen to a conflict of interest. UNFPA's procurement policies also imposed disclosure obligations when a possible conflict existed, which were required to be in writing and required her recusal from impacting the outcome. Her breach of these Rules was not mitigated by her former FRO's knowledge that her relatives owned the property. She had failed to recuse herself and had failed to make written disclosures, which constituted clear and convincing evidence of her misconduct.

18. The UNDT erred in law as its requirement that the investigation prove corrupt, fraudulent or dishonest intent was at odds with the jurisprudence. In addition, the UNDT erred in law and fact in finding there had been no conflict of interest. It further erred in requiring proof that there had been actual financial loss and that a financial benefit had been gained by Ms. Ganbold personally. Financial loss to UNFPA is not a requisite element of conflict of interest set out in any legal framework. Likewise, the fact that rents were paid to her family and not

directly to Ms. Ganbold did not mitigate the existence of a conflict of interest for which proper written disclosure was required. Even assuming her excuse as true that she did not know her mother had transferred the property to her name, this did not obviate her obligation to provide a written disclosure because the standard is for direct or indirect benefit. Likewise, the UNDT erred in fact in finding that she had complied with her obligations to file accurate financial disclosure forms on the notion that it only asked for responses “to the best of her knowledge” and thus she had not been obliged to make inquiries about her husband’s business affairs. The UNDT erred in finding her testimony was credible in that she thought her father-in-law’s name was on the business and not her husband’s as this conflicted with her own statements to OAI, whereby she had stated at her interview that her husband was the co-owner in case her mother passed away, her husband had received a monthly salary from the Company, and she had reviewed bank statements of the Company.

19. The UNDT erred in conducting a *de novo* review as it erred in finding that there was insufficient evidence on the record warranting a *de novo* review. The alleged missing facts from the investigation report were actually referenced in the investigation report or its exhibits, all of which had gone before the decision-maker. Furthermore, a fuller elucidation of facts did not change the conclusion that the evidence established that there had been a conflict of interest, that Ms. Ganbold had failed to provide the required written disclosures, had failed to recuse herself from involvement in the lease arrangements, and had failed to disclose her husband’s involvement in the Company in the financial disclosure forms. The UNDT in turn exceeded the parameters of a *de novo* review. The UNDT may make a fresh determination of the facts and call as witnesses those interviewed to reach its own conclusions as to credibility. However, the decision-maker’s factual findings cannot be assessed on the basis of novel and alternative explanations advanced by the staff member that had never been put to the decision-maker in the first place for consideration. The UNDT accepted Ms. Ganbold’s testimony that she had not been aware of her mother’s use of power of attorney to transfer ownership to her and that she had believed her father-in-law, not her husband, had owned the property even though these explanations had never been given by Ms. Ganbold during her interview, or in comments on the transcripts of the investigation, or in her comments in response to the report or the charges of misconduct. By considering entirely new evidence never before presented to the decision-maker, the UNDT exceeded its parameters of a *de novo* review.



20. The UNDT erred in finding the sanction was disproportionate, erred in fact and law and exceeded its competence by replacing its own decision for that of the Administration. The UNDT considered the sanction disproportionate as compared to the sanction against Ms. Ganbold's former FRO, who received a written censure and loss of step for his failure to report the association between the vendors and Ms. Ganbold to his supervisors. When imposing sanctions, the Executive Director had considered the magnitude of her actions over her FRO's actions and mitigated his sanction since he had not acted to enrich himself or his relatives, unlike Ms. Ganbold. Ms. Ganbold's sanction was not absurd, based on flagrant arbitrariness, or demonstrably disproportionate and the Appeals Tribunal should not disturb the given sanction.

21. The UNDT erred in law in ordering an accountability referral of the OAIS investigator. Article 10(8) of the UNDT's Statute should be triggered by a high standard of personal wrongful action by a staff member. Even if accepting that there were errors or omissions in the investigation this standard has not been met. In addition, Ms. Ganbold did not raise as an issue before the UNDT that the investigator was biased. The UNDT considered the investigator was biased because the investigator had not provided any analysis of potential organizational loss. However, such a determination is not relevant to whether a conflict of interest existed.

### **Ms. Ganbold's Answer**

22. Ms. Ganbold requests the Appeals Tribunal to dismiss the appeal in its entirety. The UNDT correctly found that significant flaws in the investigation, including the loss of exculpatory evidence that had intentionally not been disclosed, warranted a *de novo* review. The UNDT correctly conducted this *de novo* review. The Secretary-General is mistaken in his argument that the UNDT exceeded the limits of a *de novo* review when it considered new evidence. The evidence was not new. Ms. Ganbold had given the investigator a copy of the power of attorney, but the investigator had considered this issue insignificant and had only given it passing attention. The UNDT was correct to conduct a hearing, call witnesses, assess credibility, establish facts and receive evidence. The Secretary-General failed to identify any errors by the UNDT in doing so. Likewise, the UNDT correctly referred the investigator for accountability as the investigator's conduct had impacted her procedural rights. The investigator had not brought forth exculpatory evidence, had failed to interview witnesses with respect to exculpatory evidence, and had not verified collected evidence. The investigator also had only summarized the interview with Ms. Ganbold's former FRO without indicating there was an audio recording, until questioned by the UNDT. The investigator further had not captured the discussion that he had

had prior to the interview which contained exculpatory information and had not disclosed the subsequent interview of her former FRO which had exculpatory information, even though it had been taken two months before the investigation report had been finalized.

23. The UNDT did not err when it considered Ms. Ganbold's intent and the context within which she had carried out her duties, when it reached the conclusion that she had had no fraudulent intent, and when it held that there was no evidence of an actual conflict of interest within the meaning of Staff Regulation 1.4(m) as her personal interests had not interfered with the performance of her duties. The investigation sought three things, one of which was whether she had "benefitted improperly, directly or indirectly, from her association with the vendors by reason of her position". It was thus proper for the UNDT to review whether there was financial loss in light of the investigation's failure to assess this. The Secretary-General has not demonstrated any error in the UNDT's approach.

24. The UNDT properly assessed that Ms. Ganbold had fulfilled her obligations to address any potential conflicts of interest. The UNDT carefully considered her actions, her intent, and her motive and correctly found that she had been negligent regarding her formal disclosure of her family's ownership of the properties. The UNDT correctly found her testimony was credible that she had been unaware of her ownership due to her mothers' use of a power of attorney to transfer the property. The UNDT's assessment of her knowledge to determine whether her disclosure violations were negligent or intentional is an approach consistent with the jurisprudence of the Appeals Tribunal. In *Koutange*,<sup>2</sup> the staff member was, without authorization, involved in his father's technology business. The facts are distinguishable from Ms. Ganbold's situation as she was never involved in her family's business. The *Rajan*<sup>3</sup> case involved intentional dishonesty. In Ms. Ganbold's case, she had no intent to conceal the truth from the financial disclosure forms as she was unaware of her ownership and she had no intention to conceal her family's ownership of the property at the time her FRO entered into lease agreements as he was aware of this status.

25. The UNDT correctly found the sanction was disproportionate in light of the exculpatory evidence and her lack of intent to defraud. The Secretary-General argues that her sanction is comparable to those in *Rajan*, *Koutange* and *Konate*.<sup>4</sup> However, as explained above, those cases involved intentional actions whereas here the evidence showed Ms. Ganbold had no fraudulent or

---

<sup>2</sup> *Koutange v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-374.

<sup>3</sup> *Rajan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-781.

<sup>4</sup> *Konate v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-334.

dishonest intent. She disclosed her family's ownership to her FRO who entered into the agreements fully aware of this. Her failure to disclose information on the financial disclosure form had also not been intentional but negligent at best, as the UNDT correctly determined. It was accurate for the UNDT to compare her sanction to that of her FRO. In light of this, the UNDT's replacement sanction was proportionate to the misconduct of a negligent nature. The UNDT correctly balanced her misconduct due to negligence over fraud taking into account the length of her unblemished service record with the Organization and the exculpatory evidence. The Secretary-General has not demonstrated any error in respect of the UNDT's sanction.

### **Considerations**

*Whether the UNDT committed errors of law, fact, or procedure*

26. Under Article 2(1) of the Appeals Tribunal's Statute

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

27. We find that the UNDT committed various errors of law, fact, and procedure.

28. The UNDT erred in law and procedure in the way it conducted its review *de novo*. As this Tribunal stated most recently in *Nadasan*:<sup>5</sup>

... There may be instances, where the UNDT will come to the conclusion that the facts on which the disciplinary measure was based have been established, where necessary by clear and convincing evidence, during the investigation proceedings. In such cases, the UNDT will normally undertake an oral hearing as provided for in

---

<sup>5</sup> *Nadasan v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-918, paras. 39 and 40 (internal citations omitted) citing to *Mbaigolmem v. Secretary-General of the United Nations*, Judgment No. UNDT/2017/051.

disciplinary cases under Article 16 of the UNDT Rules of Procedure, but the Tribunal may decide not to (re)hear witnesses or gather additional evidence.

... If, on the other hand, the UNDT does not find the evidence established during the disciplinary proceedings is sufficient, it will undertake a “fresh” or “de novo” investigation meaning that the UNDT will (re)hear witnesses and/or gather other evidence to examine and assess whether the above-mentioned standard of proof has been met. The Appeals Tribunal would like to point out that there has been no change in jurisprudence. The UNDT is not allowed to investigate facts on which the disciplinary sanction has not been based and may not substitute its own judgment for that of the Secretary-General. It will only examine whether there is sufficient evidence for the facts on which the disciplinary sanction was based. Before the UNDT issued its judgment in *Mbaigolmem*, it was not disputed that the UNDT has the authority to rehear the witnesses of the disciplinary proceedings in order to assess whether there is sufficient evidence to conclude that misconduct occurred, and the UNDT has done that several times.

29. The error of the UNDT was not to hear or rehear Ms. Ganbold, Mr. B., Ms. Kitahara, and the investigator. However, the UNDT committed an error of law and procedure in completely ignoring the factual findings of the investigation. Even if the investigation process was flawed, the UNDT may not ignore the findings of the investigation. More specifically, when hearing Ms. Ganbold as a witness, the UNDT was still required to compare her testimony to her submissions during the investigation proceedings and, where necessary, to confront her with any alterations and/or inconsistencies. Further, in the present case, although we agree with the UNDT that there were some flaws in the investigation procedure because the recording of Mr. B.’s 19 October 2015 interview was lost, there is no evidence that the investigators were biased against Ms. Ganbold or that they withheld any facts from the decision-maker. Contrary to the UNDT’s findings, Mr. B.’s 9-10 February 2016 interview with OAS clearly was before the decision-maker when the disciplinary sanction was taken: Ms. Ganbold and Mr. B. were disciplined on the same day, 17 July 2017, by the same Acting Executive Director. The 17 July 2017 decision to impose a disciplinary sanction on Mr. B. refers to his interview with OAS. The Administration was not obliged to provide Mr. B.’s own investigation testimony to Ms. Ganbold because it was confidential and his testimony related to the cost benefit analysis which was of no relevance to the allegations against her.

30. The UNDT also committed an error of fact resulting in a manifestly unreasonable outcome when it found that the contractual relationship started in 2007 and that it was Mr. B. who had originally initiated the lease of the properties to UNFPA. The UNDT failed to

consider the undisputed facts in the record that the lease did not start in 2007 (storage facilities) but had already commenced in 2006 (garage). From Ms. Ganbold's own statements during the investigation and before the UNDT, it is apparent that she originally suggested that UNFPA lease the storage garage. During her testimony before the UNDT, Ms. Ganbold explained that with regard to the 2006 need for a garage to store a vehicle, she had a conversation about an emergent need for storage space and in turn suggested to the administrative assistant and her former FRO, Mr. B., that UNFPA rent space from her family. Her testimony is revealing on this point in relevant part as follows:

... The administrative assistant, I think said that the she- we no longer have space, the current existing vendor is no longer able to provide garage space to the UNFPA and, therefore, we need to find a new space, a new garage for our vehicle—and at the time, I said that there's one option, but they can consider it—consider it—they could consider it, but based on the comparison of the prices they can select, which was the garage owned by Vertical Company.

... After that suggestion, [Mr. B.] told me that we'll –we'll draw a contract and basically the contract was established between Vertical [C]ompany and UNFPA.

31. The UNDT erred in law when requiring proof of dishonest or fraudulent intent on the part of Ms. Ganbold. We note that under our consistent jurisprudence, dishonest or fraudulent intent is not required.<sup>6</sup> Although her intent had been investigated, the result of the investigation was that no proof of fraudulent intent could be found, and, consequently, the 17 July 2017 separation letter did not charge Ms. Ganbold with having fraudulent intent. Fraudulent intent is not a requisite element of the offenses under the Staff Regulations and Rules for which Ms. Ganbold has been charged and which she has been found to have violated.

32. The UNDT erred in giving weight to the issue of whether there had been financial loss to the Organization as this was not a requisite element to establishing whether Ms. Ganbold committed misconduct. For example, violation of Staff Regulation 1.2(g) charged under Counts 1 and 2 does not require loss to the Organization but rather prohibits gain to the staff members, stating as follows in pertinent part:

Staff members shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the private gain of any third party, including family friends and those they favour.

---

<sup>6</sup> *Rajan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-781; *Konate v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-334, para. 22.

33. Thus, the analysis as to whether UNFPA suffered loss is irrelevant and constitutes an error.

34. The UNDT also erred in law in requiring proof of *personal* gain on the part of Ms. Ganbold. Neither do the relevant legal provisions require nor does the 17 July 2017 separation letter refer to such a personal gain. The relevant legal question is whether Ms. Ganbold provided an advantage to her family because rental contracts were concluded between UNFPA Mongolia, Vertical LLC and Ms. N., and because payments of USD 22,178.23 were transferred by UNFPA to Vertical LLC and Ms. N. between 2006 and 2013.

35. Due to these errors, the whole reasoning of the UNDT is misconstrued. In fact, the UNDT did not properly examine the lawfulness of the 17 July 2017 disciplinary sanction but created its own case, possibly because it was misled by the fact that the issues of fraudulent intent, personal gain, and financial loss to the Organization had been part of the disciplinary investigation. However, they are not part of the 17 July 2017 disciplinary sanction which is the relevant administrative decision before the Tribunals. Consequently, it is the Appeals Tribunal's task to examine whether the disciplinary sanction imposed on Ms. Ganbold was lawful.

#### *Lawfulness of the disciplinary sanction*

36. In disciplinary cases, the Tribunals will examine the following: (i) whether the facts on which the disciplinary measure is based have been established (where termination is a possible sanction, the facts must be established by clear and convincing evidence); (ii) whether the established facts amount to misconduct; (iii) whether the sanction is proportionate to the offence; and iv) whether the staff member's due process rights were respected.<sup>7</sup>

#### *Count 1*

37. Under Count 1, the Secretary-General alleges that Ms. Ganbold, by awarding and signing a contract with a UNFPA vendor, Vertical LLC, without the necessary authority, without conducting market research and considering other potential suppliers, and by involving herself in procurement activities in relation to Ms. N., another UNFPA vendor, violated Staff Regulation 1.2(b), UNFPA's Financial Regulations 14.7 (revision of year 2012), 14.8 (revision of year 2010)

---

<sup>7</sup> *Nadasan v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-918, para. 38.

and 15.2 (revision for year 2014) and Financial Rule 114.12 (revision of year 2010), UNFPA's Procurement Procedures for 2008, paragraph C.1, UNFPA's Procurement Procedures for 2012, paragraph 6.3.1.1 and the Standards of Conduct for the International Civil Service (year 2013), paragraph 5.

38. There is clear and convincing evidence that Ms. Ganbold, on 30 March 2012, awarded and signed a contract on behalf of UNFPA with Vertical LLC for the lease of a garage for the purpose of parking a vehicle from 1 April 2012, until the end of 31 August 2012, for MNT 6,500 respectively MNT 2,500 per day. The contract is part of our case file, Ms. Ganbold's signature is on it and Ms. Ganbold confirmed, before the investigators and the UNDT, that she had signed this contract. There is also clear and convincing evidence that Ms. Ganbold did not conduct any market research or considered other potential suppliers before awarding and signing the contract. Ms. Ganbold herself does not claim that she undertook any market research. Mr. B. testified before the UNDT that the only time he had conducted market research was in 2006 when the garage was rented by UNFPA for the first time.

39. Further, there is clear and convincing evidence that Ms. Ganbold had no authority to sign this contract. Ms. Kitahara, the Head of Office and UNFPA Representative, testified before the UNDT that contracts both over and under USD 5,000 had to be signed by the head of office and could not be signed by any staff member. This testimony is in full accord with UNFPA Policies and Procedures Manual (PPM), Internal Control Framework (for year 2009) which reads, in relevant parts:<sup>8</sup>

*i. Ensure segregation of responsibilities*

...

The head of office automatically has the authority to (1) approve requisitions or requests for non-purchase order payments (2) approve purchase orders and non-purchase order payments and (3) approve pending disbursements. He/she must formally delegate these authorities to office staff and, at the same time, ensure the staff members have the correct Atlas profile.

Where the head of office has decided that, for payments under US\$5,000, the approving manager may approve both the requisition and the purchase order, this must be documented in the delegation.

---

<sup>8</sup> The quotes in this paragraph and the following paragraphs are taken from the letter of separation of 17 July 2017 from UNFPA's Acting Executive Director to Ms. Ganbold.

*iv. Sign contracts/agreements, create posts, and assign Atlas profiles*

...

When the head of office is away, he/she must formally delegate these authorities to another staff member—i.e. the officer in charge. This delegation, which must be in writing and to an individual, maybe done once by the head of office and then referred to each time the officer in charge is appointed. ...

40. There is also clear and convincing evidence that Ms. Ganbold was involved in procurement activities in relation to Ms. N., another UNFPA vendor. Ms. Ganbold conceded that she processed payments to Ms. N. and the UNDT itself held that “it is apparent that the Applicant was also involved in the processing of some payments, which were made under the contracts entered into by her former FRO”.<sup>9</sup>

41. Ms. Ganbold’s actions amount to misconduct under the legal provisions cited in the separation letter, particularly Staff Regulation 1.2(b) (in effect 2005, next revision for year 2007, 2008, 2009, 2010, 2011 and next revision January 2014):

Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status[.]

And UNFPA’s Financial Rule 114.12 (for years 2010, 2012 and 2014):

a) Entering into procurement by contract. No contract shall be entered into on behalf of UNFPA except by the CPO or an authorized delegate.

42. Particularly Ms. Ganbold’s unauthorized signing of a contract is a violation of UNFPA’s legal framework.

*Count 2*

43. Under Count 2, it is alleged that Ms. Ganbold failed to excuse herself from procurement transactions with two UNFPA vendors, Vertical LLC and Ms. N., in her capacity as Administrative/Finance Assistant, Administrative/Finance Associate and later as Operations Manager of the UNFPA Mongolia CO; that she failed to bring to the attention of the Representative of the UNFPA Mongolia CO her association with the UNFPA vendors, Vertical LLC and Ms. N.; and that, by doing so, she also provided an advantage to her family in

---

<sup>9</sup> Impugned Judgment, para. 83.



the award of contracts by the UNFPA Mongolia CO, thus violating Staff Regulations 1.2(b), (g) and (m), Staff Rules 1.2(p) and (q) and the Standards of Conduct for the International Civil Service, paragraphs 5 and 23.

44. As already noted above, there is clear and convincing evidence that Ms. Ganbold participated in procurement transactions with Vertical LLC and Ms. N., by awarding and signing a contract, dated 30 March 2012 and by processing payments to Ms. N. There is also clear and convincing evidence that Ms. Ganbold did not inform the Representative of the UNFPA Mongolia CO about her association with the UNFPA vendors, Vertical LLC and Ms. N., although she knew that her mother held shares in Vertical LLC and thought that her mother was the owner of the storage facilities rented by UNFPA (it later became apparent that Ms. Ganbold herself owned the storage facilities). Neither before the investigators nor before the UNDT did Ms. Ganbold allege that she had informed the Representatives about her connections with Vertical LLC or Ms. N. To the contrary, before the investigator, she explicitly stated that she had not informed them. Only her former FRO, Mr. B., had been orally informed by her about the family relationship. This is confirmed by Mr. B. who testified before the UNDT that although he had himself told the Representative (Ms. Barcelona) in 2007 when UNFPA had first rented the storage facilities, he did not recall that later the Representatives (Ms. Matavel acted as Representative for UNFPA Mongolia CO from December 2009 to July 2013 and Ms. Kitahara became Representative in July 2013) had been so informed.

45. Finally, there is clear and convincing evidence that Ms. Ganbold provided a financial advantage to her family. It is undisputed that, between 2006 and 2013, payments amounting to USD 22,178.23 were transferred from UNFPA to UNFPA vendors, Vertical LLC and Ms. N. This serves as *prima facie* evidence of a financial advantage. Mr. B.'s statements before the investigators and the UNDT that the rent for the properties provided by Vertical LLC and Ms. N. had only been USD 1 per square meter per month, while even the "free" properties provided by the Mongolian government were charged at USD 11 per square meter per month for heating, electricity, security, cleaning, etc., do not place this finding into doubt. Although both Ms. Ganbold and Mr. B. stated during the investigation proceedings and before the UNDT that they felt the rent was to the advantage of UNFPA and that Ms. Ganbold was doing UNFPA a favour in providing those properties, neither of them alluded that the costs for heating, electricity, security and cleaning equaled or even exceeded the payments Vertical LLC and Ms. N. received from UNFPA for the rent of the garage and storage facilities. Thus, the investigators did not have

an obligation to go into this matter any further. We add that the rent for the garage and storage facilities increased considerably during the following years but no further market research had been undertaken by either Ms. Ganbold or Mr. B.

46. These actions amount to misconduct under the UNFPA legal framework which reads as follows:

*Staff Regulation 1.2(b) (in effect 2005, next revision for year 2007, 2008, 2009, 2010, 2011 and next revision January 2014)*

Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status[.]

*Staff Regulation 1.2(g) (in effect 2005, next revision for year 2007, 2008, 2009, 2010, 2011 and next revision for year 2014)*

Staff members shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the private gain of any third party, including family, friends and those they favour. Nor shall staff members use their office for personal reasons to prejudice the positions of those they do not favour.

*Staff Regulation 1.2(m) (in effect 2005, next revision for year 2007, 2008, 2009, 2001, 2011, 2012 and 2013)*

Staff members shall not be actively associated with the management of, or hold a financial interest in, any profit-making, business or other concern, if it were possible for the staff member or the profit-making, business or other concern to benefit from such association or financial interest by reason of his or her position with the United Nations.

*Staff Regulation 1.2(m) (in effect 2014)*

A conflict of interest occurs when, by act or omission, a staff member's personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member's status as an international civil servant. When an actual or possible conflict of interest does arise, the conflict shall be disclosed by staff members to their head of office, mitigated by the Organization and resolved in favour of the interests of the Organization.

*Staff Rule 101.2(n) (in effect 2002 to 2008)*

A staff member who has occasion to deal in his or her official capacity with any matter involving a profit-making, business, or other concern in which he or she holds a financial interest, directly or indirectly, shall disclose the measure of that interest to

the Secretary-General and, except as otherwise authorized by the Secretary-General, either dispose of that financial interest or formally excuse himself or herself from participating with regard to any involvement in that matter which gives rise to the conflict of interest situation.

*Staff Rule 1.2(p) (in effect 2009, 2010, 2011 and 2012):*

A staff member who has occasion to deal in his or her official capacity with any matter involving a profit-making business or other concern, including a concern in which he or she holds a financial interest, directly or indirectly, shall disclose that interest to the Secretary-General and, except as otherwise authorized by the Secretary General, either dispose of that financial interest or formally excuse himself or herself from participating with regard to any involvement in that matter which might give rise to the conflict of interest situation.

*Staff Rule 1.2(q) (in effect 2013 and 2014)*

A staff member whose personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member's status as an international civil servant shall disclose any such actual or possible interest to the head of office and, except as otherwise authorized by the Secretary-General, formally excuse himself or herself from participating with regard to any involvement in that matter which might give rise to a conflict of interest situation.

*Staff Rule 101.2(p) in effect 2002-2008; Staff Rule 1.2(q) in effect 2009, 2010, 2011 and 2012; and Staff Rule 1.2(r) in effect 2013 and 2014)*

[T]he Secretary-General shall establish procedures for the filing and utilization of financial disclosure statements.

*Standards of Conduct for the International Civil Service (in effect 2013)*

5. The concept of integrity enshrined in the Charter of the United Nations embraces all aspects of an international civil servant's behavior, including such qualities as honesty, truthfulness, impartiality and incorruptibility.

...

23. Conflicts of interest may occur when an international civil servant's personal interests interfere with the performance of his/her official duties or call into question the qualities of integrity, independence and impartiality required [of] the status of an international civil servant. Conflicts of interest include circumstances in which international civil servants, directly or indirectly, may benefit improperly, or allow a third party to benefit improperly, from their association with their organization. Conflicts of interest can arise from an international civil servant's personal or familial dealings with third parties, individuals, beneficiaries, or other institutions. If a conflict of interest or possible conflict of interest does arise, the conflict shall be disclosed,

addressed and resolved in the best interest of the organization. Questions entailing a conflict of interest can be very sensitive and need to be treated with care.

47. It is apparent that Ms. Ganbold violated these provisions. In offering the garage and storage facilities to UNFPA from 2006 until 2013, Ms. Ganbold used her office and knowledge from her official functions for her family's private gain. She also failed to disclose her conflict of interest and did not formally excuse herself from any involvement in that matter which might give rise to the conflict of interest situation. Instead, she actively participated in the dealings between UNFPA and UNFPA vendors, Vertical LLC and Ms. N. by awarding and signing a contract on 30 March 2012 and by processing payments to Ms. N.

48. As Ms. Ganbold knew that her mother held shares in Vertical LLC and thought that her mother was the owner of the storage facilities, there clearly was a conflict of interest. Property belonging to her family was rented by UNFPA, and UNFPA paid a monthly rent amounting to over USD 22,000 from 2006 until 2013. Under the above-mentioned Regulations and Rules, Ms. Ganbold clearly had the obligation to inform "the Secretary-General" or her head of office (the UNFPA Representative) about her connections to the UNFPA vendors. It was not sufficient under those provisions to inform the FRO. We note, further, that even the FRO was only informed orally and not in writing and had no clear perception of who owned the properties.

49. As to the PPM on Procurement Procedures referred to by the UNDT, we note that Ms. Ganbold, when signing the 30 March 2012 contract which was "under her consideration", violated Section A.3.1 of the 2008 Procurement Guidelines as she did not inform her FRO "in writing" as required by those provisions. Contrary to the UNDT's findings, the prerequisite of a disclosure in writing is not a mere formality but a necessary tool to assure integrity of staff members and avoid corruption. Only by such a written disclosure will it become clear what the special conflict of interest may be, e.g. to whom which properties belong, etc. It becomes apparent from the case at hand that an oral disclosure was not sufficient because it did not provide such certainty. Only when a staff member gives a written disclosure will there be certainty about a potential conflict of interest. Contrary to the UNDT's findings, proof of financial loss or risk of financial loss to UNFPA is not necessary in order to find misconduct by Ms. Ganbold. Neither do the above-mentioned legal provisions refer to such a financial loss nor was it part of the charges in the separation letter. We note, however, that according to both Ms. Ganbold's and Mr. B.'s testimonies before the UNDT, the leases of the properties apparently were no longer necessary in 2012 and 2013 because UNFPA had moved into new facilities which

provided sufficient storage space. It may well be considered a financial loss to UNFPA if properties were rented from, and rents were paid to, UNFPA vendors when the need for such properties had ceased.

*Count 3*

50. In Count 3, it is alleged that Ms. Ganbold failed to uphold the highest standards of efficiency, competence and integrity expected of a United Nations staff member by repeatedly misrepresenting in the Financial Disclosure Forms for January 2006 to December 2014, which she had submitted to the UNFPA Ethics Office, that she and her close relatives, namely her spouse and mother, did not have any association to entities that engaged in commercial transactions with UNFPA, and that, by doing so, she also violated Staff Regulations 1.2(b) and (m), Staff Rules 1.2(p) and (q), paragraphs 5, 21, 22 and 23 of the Standards of Conduct for the International Civil Service (2011) and paragraph 5 of the Standards of Conduct for the International Civil Service (2013).

51. We find there is clear and convincing evidence that Ms. Ganbold gave false statements concerning her husband in the Financial Disclosure Forms. It is undisputed that Ms. Ganbold's husband held shares in Vertical LLC and received a monthly income from this Company during the contractual relationship between UNFPA and Vertical LLC (2006 to 2013). Ms. Ganbold herself testified to this effect both before the investigators and the UNDT. In her Financial Disclosure Forms, Ms. Ganbold clearly misrepresented her husband's association with Vertical LLC.

52. Firstly, both in 2012 and 2013, she stated that her husband had income from non-United Nations sources totaling over USD 10,000 in the reporting period but, in the section where specific information about the source and reason of such income had to be given, she only listed a "remuneration for building 2 welcome signs of Mandal sub-province" by "Mandal Soum (sub-province Governor's Office, Selenge aimag (province), Mongolia)" and not the monthly income paid by Vertical LLC at the same time. As the indicated income already exceeded the total amount of USD 10,000 Ms. Ganbold had a duty to also report her husband's additional salary that he received from Vertical LLC regardless whether or not this income exceeded USD 10,000 per year. It is also legally irrelevant whether Ms. Ganbold knew that her husband received a monthly income from Vertical LLC. The Financial Disclosure Forms demand specific and correct information on any income from non-United Nations sources totaling over

USD 10,000. Different from the No. 4 follow-up question, the response may not be given “to the best of your knowledge” but must be an accurate response. The staff member, before filling out the Forms, thus had a duty to make sure that correct information was given to the Organization.

53. Secondly, contrary to the UNDT, we also find there is clear and convincing evidence that Ms. Ganbold misrepresented her husband’s situation in repeatedly answering in the negative the No. 4 follow-up question: “To the best of your knowledge, does your spouse ... have any interest in, or association with, any entity with which you may be required, directly or indirectly, to have dealings on behalf of the Organization, or which has any commercial interest in the work of the United Nations, or a common area of activity with the United Nations?” As it is undisputed that Ms. Ganbold’s husband, due to his shares and monthly salary, had an interest in Vertical LLC, an entity with which Ms. Ganbold had dealings on behalf of UNFPA and which had a commercial interest in the work of UNFPA, the only remaining question is whether Ms. Ganbold gave her answer “to the best of her knowledge”.

54. We cannot rely on the UNDT’s finding that Ms. Ganbold gave a truthful and convincing statement that, until 2015, she did not know about her husband’s connection with Vertical LLC but thought it was her father-in-law who held shares in the Company together with her mother. This finding completely ignores, and is in contradiction to, Ms. Ganbold’s oral and written statements during the investigation. In her 2 September 2015 interview before the investigator, Ms. Ganbold stated that she knew that her husband held shares in Vertical LLC and received a monthly salary. At no point during this interview did she claim that she had only found out about this recently. On the contrary, when asked whether she disclosed to anyone at UNFPA that her husband owned shares in Vertical LLC she answered: “I do not think I said explicitly it was [my] husband’s but I disclosed to Mr. B. that it is my family.” When asked whether she had any specific knowledge about Vertical LLC she stated: “I really do not. I do not even think my husband knows, because it is ... it used to be purely my mother’s Company. Then to ensure that, you know, in case, you know, my mother passes away, she wanted to make sure that it has relationship to me so that it comes to me if she passes away, and I think that was the reason she included my husband as a co-owner, but both me and my husband really do not know.”

55. Asked whether she remembered when her mother had included her husband in the ownership, Ms. Ganbold answered that she did not remember. In her 30 June 2016 and 4 July 2017 letters to the Organization, Ms. Ganbold did not claim that she had no knowledge

of her husband's involvement in Vertical LLC. On the contrary, in her 30 June 2016 response, she explicitly referred to the No. 4 follow-up question stating she wished this question had been "formulated differently and asked whether staff member, spouse or dependent children had any business association or income from [United Nations or] UNFPA during the reporting period" continuing "[t]hat way it would have been less confusing, and simpler and easier to understand and respond". We note that Ms. Ganbold for the first time before the UNDT testified that she thought the shares in Vertical LLC belonged to her father-in-law, and that this statement was at odds with all her prior statements. Due to these contradictions, and as Ms. Ganbold was not an objective witness but had a deep personal interest in the outcome of the case, we reject her testimony before the UNDT and hold her to her statements during the investigation process.

56. Contrary to the assertions in the separation letter, the Financial Disclosure Forms did not require Ms. Ganbold to give any specific information about her mother, as they only referred to the staff member, spouse and dependent children. However, as we are satisfied that Ms. Ganbold clearly misrepresented her husband's association with Vertical LLC in the Financial Disclosure Forms, it is not relevant whether or not she additionally violated her duties with regard to another family member.

57. Ms. Ganbold's false statements about her husband in the Financial Disclosure Form amount to misconduct under UNFPA's legal framework, particularly Staff Regulation 1.2(b) and (m), and Staff Rule 1.2(p) and (q).

*Proportionality of the sanction*

58. The matter of the degree of the sanction is usually reserved for the Administration, who has discretion to impose the measure that it considers adequate in the circumstances of the case and for the actions and conduct of the staff member involved. This appears as a natural consequence of the scope of administrative hierarchy and the power vested in the competent authority. It is the Administration that carries out the administrative activity and procedure and deals with the staff members. Therefore, the Administration is best suited to select an adequate sanction able to fulfil the general requirements of these kinds of measures such as a sanction within the limits stated by the respective norms, sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance. That is why the Tribunals will only interfere and rescind or modify a sanction imposed by the Administration where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the

respective norms, excessive, abusive, discriminatory or absurd in its severity. This rationale is followed in the jurisprudence of this Tribunal.<sup>10</sup>

59. In the present case, we are satisfied that the Secretary-General's decision to separate Ms. Ganbold from service with compensation in lieu of notice and without termination indemnity cannot be regarded as excessive, abusive, discriminatory or absurd but is within the discretion of the Organization. The Secretary-General has expressly considered, as a mitigating factor, Ms. Ganbold's unblemished disciplinary record, and as an aggravating factor, the fact that she had been working with UNFPA since 2003 encumbering positions involving procurement and administrative and financial responsibilities. We can find no fault in this approach. Particularly, the Administration was under no obligation to impose the same sanction on Ms. Ganbold as on Mr. B. whose situation was different in that he had not failed to disclose a personal conflict of interests, had not given false information in the disclosure forms nor provided a financial gain to his family.

*Due process*

60. Under our jurisprudence, a disciplinary sanction will be rescinded if substantial irregularities occur during the investigation proceedings (e.g. the staff member is not informed about the allegations against him).<sup>11</sup> In the present case, we find no serious violations of procedure. Ms. Ganbold was duly informed of the charges against her and had sufficient opportunities to respond. While we agree with the UNDT that the loss of the recording of Mr. B.'s 19 October 2015 before hearing the investigator was unfortunate and should not have happened, we can find no evidence of bias towards Ms. Ganbold. We are satisfied that all necessary documents and information were before the decision-maker and that all legally relevant matters were taken into account.

---

<sup>10</sup> *Portillo-Mayo v Secretary-General of the United Nations*, Judgment No.2015-UNAT-523.

<sup>11</sup> *Muindi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-782.



**Judgment**

61. The appeal is upheld and Judgment No. UNDT/2019/015 is hereby vacated.

Original and Authoritative Version: English

Dated this 25<sup>th</sup> day of October 2019 in New York, United States.

*(Signed)*

Judge Knierim, Presiding

*(Signed)*

Judge Murphy

*(Signed)*

Judge Sandhu

Entered in the Register on this 30<sup>th</sup> day of December 2019 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar