

# UNDT/2011/005, Comerford-Verzuu

## UNAT Held or UNDT Pronouncements

The Tribunal found that the OIOS decision was an appealable administrative decision but that the application was time-barred. Force of JAB conclusions and recommendations: The Tribunal is not bound by the conclusions and recommendations of the Joint Appeals Board, which is only a consultative body. Tribunal's obligation to raise on its own motion issues related to its competence: Before ruling on the legality of a decision, the Tribunal must examine on its own motion—that is, even if the issue was not raised by the parties—whether it is competent, pursuant to its Statute, to hear and pass judgment on an application, including whether the contested decision is an appealable administrative decision (receivability *ratione materiae*). Failure to do so may result in the Tribunal acting *ultra vires*. The OIOS decision not to conduct an investigation is an appealable administrative decision: Whilst the General Assembly gave OIOS “operational independence”—which prohibits the Secretary-General from giving instructions to that Office in the conduct of its investigative duties—the GA also specified that OIOS acts “under the authority of the Secretary-General”, thus recognizing that the Secretary-General is ultimately liable for any breach of staff members' rights by OIOS. The fact that the Secretary-General, at the management evaluation stage, cannot overturn an OIOS decision not to conduct an investigation is no obstacle to the Tribunal's competence to review such a decision. Tribunal's duty to raise on its own motion the issue of receivability *ratione temporis*: Both the Administration and the Tribunal are bound by the applicable law, including regarding time limits. Thus, when the Respondent fails to raise the fact that an application is time-barred, it behoves the Tribunal to raise it on its own motion because neither the Tribunal nor the Administration have authority to waive rules on time limits, save in exceptional cases. Confirmative decisions: When a staff member repeats the same request to the Administration, only the first decision denying it is subject to appeal and the time limits for appeal start running from that first decision. Subsequent refusal decisions are confirmative decisions which are not subject to appeal.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to conduct an investigation into allegations of misconduct against the UNDP Administrator and another UNDP senior official.

## Legal Principle(s)

N/A

## Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Comerford-Verzuu

Entity

UNDP

Case Number(s)

UNDT/GVA/2010/031

Tribunal

UNDT

Registry

Geneva

Date of Judgement

9 Jan 2011

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Temporal (ratione temporis)

Applicable Law

Former Staff Rules

- Rule 111.2(a)

Former UNAT Statute

- Article 2.1

GA Resolutions

- A/RES/55/159
- A/RES/59/287
- A/RES/63/253

Secretary-General's bulletins

- ST/SGB/273

UNDT Statute

- Article 2
- Article 8

Related Judgments and Orders

2010-UNAT-079

2010-UNAT-099

2010-UNAT-100

UNDT/2010/174

UNDT/2010/210