

UNDT/2011/024, Worsley

UNAT Held or UNDT Pronouncements

Independent status: OSLA enjoys functional or operational independence, in the sense that it does not receive instructions from its hierarchy when providing advice to staff members or representing their interests, while remaining administratively subject to the Secretary-General. Attribution of Independent organs' acts to the Secretary-General: If article 2.1 of the UNDT Statute designates the Secretary-General as the respondent before the Tribunal, he assumes this role in his capacity as Chief Administrative Officer, and not on account of his personal behaviour. This responsibility is linked to his institutional position within the Organization. In no manner is the receivability of an application made conditional upon the Secretary-General's having intervened directly in the decision-making process which led to the contested decision. Scope of judicial review: Limiting judicial review only to decisions which were or could have lawfully been made by the Secretary-General would entail leaving entire areas of the Administration's activity out of any meaningful control of legality. This appears hardly compatible with a legal order which postulates the principles of rule of law and access to justice.

Administrative decisions: A decision like the one contested constitutes an administrative decision within the meaning of article 2.1(a) of the Statute. Unlike providing legal advice to staff members or pursuing complaints on their behalf, deciding whether or not to provide assistance to a staff member does imply making a determination of the right laid down in staff rule 11.4(d), thereby modifying his or her legal situation. Right to be provided with/obligation to provide legal assistance: The duty incumbent on OSLA under staff rule 11.4(d) to grant legal assistance does not go as far as to include an obligation to represent staff members willing to instigate procedures before UNDT. Staff rule 11.4(d) unambiguously imposes on OSLA an obligation to provide advice, which, if it is to be interpreted fairly and in good faith, must entail for the Office, first, the duty to examine the issues presented by a potential applicant and, second, the duty to take and communicate a decision in due time as to the further assistance, if any, it intends to provide to the staff member. What should be understood as "due time" in this context is to be determined on a case-by-case basis. Attention must be paid to the running deadlines and a situation must be avoided in which the staff member would not be able to pursue the legal avenues on his or her own in an appropriate way. Apart from the duties outlined above, OSLA possesses a large margin of discretion to decide whether it undertakes to represent a given client, or, by the same token, whether it ceases representing him or her.

Decision Contested or Judgment/Order Appealed

OSLA undertook to provide assistance to the Applicant, a UNOG staff member suffering from a severe handicap, but after some months, the Chief, OSLA, decided that OSLA would not continue assisting her, due to her abusive and uncooperative attitude. The Applicant contested that decision, claiming discrimination against her as a disabled person.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Worsley

Entity

UNOG

Case Number(s)

UNDT/GVA/2010/097

Tribunal

UNDT

Registry

Geneva

Date of Judgement

26 Jan 2011

Duty Judge

Judge Laker

Language of Judgment

French

English

Issuance Type

Judgment

Categories/Subcategories

Abuse of process before UNDT/UNAT

Manifest abuse

Jurisdiction / receivability (UNDT or first instance)

Legal services (OSLA or other) and self-representation

Legal representation

Standard of review (judicial)

Judicial review (general)

Applicable Law

GA Resolutions

- A/RES/62/228
- A/RES/63/253

Secretary-General's bulletins

- ST/SGB/2010/3

Staff Rules

- Rule 11.4(d)

UNDT Statute

- Article 10.6
- Article 2.1
- Article 8.1

Related Judgments and Orders

2010-UNAT-013

2010-UNAT-021

2010-UNAT-030

2010-UNAT-099

2010-UNAT-100

UNDT/2009/083

UNDT/2009/086

UNDT/2009/093

UNDT/2010/009

UNDT/2010/025

UNDT/2010/111

UNDT/2010/108

UNDT/2010/112

UNDT/2011/005

UNDT/2011/006