

UNDT/2012/092, Wasserstrom

UNAT Held or UNDT Pronouncements

The UNDT found that, given the burden of proof on the Administration to establish by “clear and convincing evidence” that there is no retaliation pursuant to sec. 2.2 of ST/SGB/2005/21, and given some of the unresolved questions arising from the OIOS investigation report and its annexes, any reasonable reviewer would have examined the annexes, which the Ethics Office did not. Nor did the Ethics Office sent the report back to OIOS for further investigations and/or clarification. Since the Ethics Office did neither, the Respondent was found liable for the Ethics Office’s failures and/or omissions.

Decision Contested or Judgment/Order Appealed

The Applicant appealed the Ethics Office’s determination that he had not been retaliated against.

Legal Principle(s)

The judicial review of a retaliation decision of the Ethics Office: The Tribunal held that the duty of the Ethics Office is not simply to rubberstamp an investigation report and recommendations by OIOS. The Tribunal is to consider whether any reasonable reviewer properly directing her/himself to the questions of fact and law of the investigation report and recommendations would have seen it as part of their duty to examine the full report, including its annexes, and/or requested OIOS to make further enquires.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Wasserstrom

Entity

UNMIK

Case Number(s)

UNDT/NY/2009/044/JAB

Tribunal

UNDT

Registry

New York

Date of Judgement

21 Jun 2012

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Ethics office

Investigation

Standard of review (judicial)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2005/21