

# UNDT/2014/004, Oummih

## UNAT Held or UNDT Pronouncements

The UNDT decided to join both cases and following a review of the procedure followed, found both decisions to be illegal. It ordered the rescission of both decisions and that a new decision be taken on the Applicant's complaint. It also considered that the irregularities committed resulted in undue delay in the handling of the complaint, which caused the Applicant moral harm warranting compensation of 8,000 Swiss francs.

## Decision Contested or Judgment/Order Appealed

The Applicant challenged the decision by the Executive Director ("ED"), OAJ, to limit the scope of a fact-finding investigation with respect to a complaint the Applicant filed under ST/SGB/2008/5 to only some of the allegations put forward against her first reporting officer and a former OSLA colleague. Following the report of the fact-finding panel, the ED decided to close the case, a decision which the Applicant equally challenged, mainly based on the grounds that the fact-finding panel was not constituted in compliance with ST/SGB/2008/5.

## Legal Principle(s)

Receivability: Preparatory acts taken by the Administration that lead to a final decision do not constitute separate administrative decisions that can be challenged in front of the Tribunal. It is, hence, only the final decision that may affect the Applicant in his or her rights that can be challenged. Should the Applicant ask for a rescission of the final decision, he or she can raise any procedural illegalities that occurred in the process leading to the final decision. Section 5.14 of ST/SGB/2008/5 – the role of the responsible official: The role of the responsible official under sec. 5.14 of ST/SGB/2008/5 is limited to promptly review the complaint in order to assess whether it appears to have been made in good faith and whether there are sufficient

grounds to warrant a formal fact-finding investigation. It is not the role of the responsible official to him- or herself conduct a preliminary investigation and to inform the alleged offender(s) of the complaint, including asking him/her/them for comments. By limiting the scope of the mandate of the fact-finding panel to only investigate certain of the alleged facts contained in the complaint and not others, the responsible official unduly substitutes him- or herself to the fact-finding panel. The Tribunal is of the view that the intention of the Secretary-General in promulgating ST/SGB/2008/5 was to strictly limit the intervention of the responsible official to assess the good faith of the complainant and the seriousness of the complaint. Section 5.14 of ST/SGB/2008/5 – composition of the fact-finding panel. The appointment by the responsible officer of two persons external to the Organization, not listed on the OHRM roster, as members of a fact-finding panel set up to investigate a complaint of prohibited conduct filed pursuant to ST/SGB/2008/5 constitutes a violation of the unambiguous wording of sec. 5.14 of ST/SGB/2008/5. It is the Administration's duty to take all necessary steps to ensure the correct application of the Secretary-General's bulletins and it is OHRM responsibility to keep an updated roster containing sufficient names of persons able to conduct any type of investigations under ST/SGB/2008/5.

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

Both financial compensation and specific performance

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Oummih

## Entity

OAJ

## Case Number(s)

UNDT/GVA/2013/24

UNDT/GVA/2013/50

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

16 Jan 2014

## Duty Judge

Judge Cousin

## Language of Judgment

English

French

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Disciplinary matters / misconduct

Harassment (non-sexual)

Investigation

Fact-finding investigation

## Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

UNDT Statute

UNAT Statute

- Article 2.1(a)

## Related Judgments and Orders

UNDT/2013/162

UNDT/2012/201

2010-UNAT-099

2011-UNAT-152