

UNDT/2016/086, Kazagic

UNAT Held or UNDT Pronouncements

The Tribunal found that it was established by clear and convincing evidence that the Applicant had had sexual intercourse with two persons under the age of eighteen and that the sanction of dismissal, together with a fine, were proportionate to the established misconduct. This conclusion was independent from the outcome of the judicial proceedings before the national courts of Kosovo with respect to the violation(s) of the CCK. Standard of review of disciplinary matters: In reviewing disciplinary matters, the Tribunal must examine (1) whether the facts on which the disciplinary measure was based have been established; (2) whether the established facts legally amount to misconduct under the Rules and Regulations of the United Nations, and (3) whether the disciplinary measure applied is proportionate to the offence. To that effect, the Tribunal has to freely form its conviction in assessing the truth of the disputed facts, on the basis of the available evidence. In cases of termination, the Tribunal has to take into account the standard of proof established by the jurisprudence of the United Nations Appeals Tribunal (UNAT) in the case of Molari 2011-UNAT-164. Whether the facts were established: A conviction by a first instance court, together with the Applicant's free admission at trial of having had sexual intercourse with two persons while they were under the age of eighteen—which is the relevant age for the purpose of the United Nations Rules and Regulations—constitutes clear and convincing evidence for that charge of misconduct. In the absence of any evidence to the contrary, the argument that this admission had been made on the basis of falsified birth certificates lacks any foundation. Since misconduct based on underlying criminal acts does not depend upon the staff member being convicted of a crime in a national court, the conclusion by the Tribunal is without prejudice to the potential outcome of the Applicant's appeal before the higher national courts. Proportionality of the disciplinary measure: Based on the goal of ST/SGB/2003/13 to further especially protect women and children, sexual intercourse with children alone justifies a severe disciplinary measure, regardless of the outcome of the judicial proceedings before the national courts with respect to the violation of the national criminal law.

Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member of UNMIK, contests the disciplinary measures of dismissal and a fine of three months net base salary. Prior to his dismissal, the Applicant was sentenced to a 14-year imprisonment by the Basic Court of Mitrovica, Kosovo, for the following criminal offences under the Criminal Code of Kosovo (CCK): Sexual abuse of persons under the age of 16 years; Attempted facilitating prostitution; Attempted sexual assault and Rape. The Applicant appealed his sentence and at the time of the UNDT judgment, the appeal was still pending. In his testimony before the Basic Court of Mitrovica, the Applicant admitted having had sexual intercourse with two girls under the age of eighteen years, although he was represented by counsel and was instructed by the Presiding Judge of his right to be silent. The relevant age for a conviction under the CCK is sixteen, whereas under the relevant rules of the United Nations it is eighteen.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Kazagic

Entity

UNMIK

Case Number(s)

UNDT/GVA/2015/176

Tribunal

UNDT

Registry

Geneva

Date of Judgement

20 Jun 2016

Duty Judge

Judge Laker

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct
Dismissal/separation
Procedure (first instance and UNAT)
Oral hearings
Standard of review (judicial)
Disciplinary cases

Applicable Law

Information Circulars

- ST/IC/2013/29

- ST/IC/2014/26

Secretary-General's bulletins

- ST/SGB/2003/13

Staff Regulations

- Regulation 1.1(f)
- Regulation 1.2(f)
- Regulation 10.1(a)
- Regulation 10.1(b)

Staff Rules

- Rule 1.2(b)
- Rule 10.1(a)
- Rule 10.1(c)

UNDT RoP

- Article 16.2

Related Judgments and Orders

2010-UNAT-022

2010-UNAT-024

2010-UNAT-040

2010-UNAT-028

2011-UNAT-164

2013-UNAT-366

2010-UNAT-084

2010-UNAT-089