

# **UNDT/2017/025, Benamar**

## **UNAT Held or UNDT Pronouncements**

Due process rights: Disciplinary proceedings are of an administrative and not of a criminal nature, hence criminal law procedures do not apply. The Applicant's due process rights are contained in the relevant administrative issuances, under which rights such as the right to counsel and to be informed about the charges against him do only apply as of the moment the disciplinary procedure is initiated (charge letter), but not at the stage of the preliminary investigation. The right to cross examine witnesses does not apply at any stage of the administrative procedure, but only once the case is submitted to the Tribunal. Proportionality: The Tribunal can review the level of sanction imposed only in case of obvious absurdity or flagrant arbitrariness. Superior interest of the child: The Tribunal is not competent to decide on family matters, however, it can assess whether the interest of the child was taken into account as a mitigating circumstance. *Ne bis in idem*: This is a principle in criminal law, but its rationale may also be applied to disciplinary cases. However, the mere fact to envisage, possibly and in the future, new disciplinary measures in case a staff member continues to refuse to abide by judgments from national jurisdictions cannot in itself constitute a violation of said principle.

## **Decision Contested or Judgment/Order Appealed**

The Applicant appealed the disciplinary decisions to impose on him a written censure, a loss of three steps in grade and the deferment, for three years, of eligibility for consideration for promotion. While working for UNHCR in Burkina Faso, the Applicant had a child with a woman from RDC. One evening, an alleged consul of the RDC, together with armed "policemen" and in the presence of the child's mother, intruded the Applicant's house and took the child with him, accompanied by the child's mother. Upon intervention of UNHCR and the national authorities in Burkina Faso, the child and his mother did however return to the Applicant's residency. Thereafter, the Applicant initiated proceedings in front of the courts in Burkina Faso for the purpose of determining the custody of the child. The First

Instance Court attributed the custody to the child's mother. The Applicant appealed against that judgment. While the appeal was still pending, the Applicant took his child with him, upon his reassignment to Jordan, without the consent of the child's mother. He had not informed UNHCR Administration of the First instance judgment granting custody to the mother and claimed official travel for his child to Jordan. The Appeals Tribunal confirmed the judgment of first instance, and the Applicant filed a pourvoi en cassation against said judgment with the Court of Cassation. The pourvoi en cassation did not have the effect of suspending the judgment of the Appeals Tribunal. Nevertheless, the Applicant kept the child with him, even upon his subsequent reassignment to Turkey. The Administration got aware of the matter when the mother of the child filed a complaint with the Inspector General's Office. After the completion of an investigation, the Administration charged the Applicant with having failed to inform it of the change of his administrative situation, having violated his obligation to comply with his private legal obligations and the judgments of the First and Second instance Court, and having failed in his obligation to cooperate with the investigators. The UNDT found that the charges against the Applicant were established and constituted misconduct, that the sanction was proportionate to the offence and that the Applicant's due process rights had been respected.

## Legal Principle(s)

N/A

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Benamar

## Entity

UNHCR

## Case Number(s)

UNDT/GVA/2016/43

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

10 Apr 2017

## Duty Judge

Judge Bravo

## Language of Judgment

English

French

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Due process

## Applicable Law

Administrative Instructions

- ST/AI/371/Amend.1

Agreements, conventions, treaties (etc.)

- European Convention on Human Rights
- International Covenant on Civil and Political Rights
- United Nations Convention on the rights of the child
- Universal Declaration on Human Rights

Laws of other entities (rules, regulations etc.)

- UNHCR IOM/09/FOM/10/2012

Staff Regulations

- Regulation 10.1a)

Staff Rules

- Rule 1.2(b)
- Rule 1.2(c)
- Rule 1.5(a)
- Rule 10.1
- Rule 10.2
- Rule 10.3

## Related Judgments and Orders

2010-UNAT-098

2012-UNAT-195

2015-UNAT-523

2011-UNAT-164

2010-UNAT-030

2011-UNAT-107

2013-UNAT-295

2013-UNAT-336

2010-UNAT-040

2010-UNAT-084

2014-UNAT-408