

UNDT/2019/058, Younis

UNAT Held or UNDT Pronouncements

The Tribunal finds that the rescission of the contested decision would not fully restore the status quo ante and would not provide adequate relief to the Applicant as the UN Leaders Programme in Cape Town, South Africa, which the Applicant was registered for participation at, was presumably already held in September 2017. Similarly, the Tribunal finds that monetary compensation alone would not provide the Applicant with appropriate relief because of the nature of the non-pecuniary harm in this case, as well as harm not having been established or proved. Considering that the Director of Mission Support approved the Applicant's attendance at the time, having considered the organizational needs of the mission, that the Applicant was nominated, confirmed, and endorsed by UNSCC, with OHRM confirming his nomination on 2 August 2017 (when he was no longer at D-1 level in any event, and the approval of OHRM not being required), the Tribunal orders that his approved nomination to the UN Leaders Programme be reinstated so that he can participate in an upcoming UN Leaders Programme course. Regarding the Applicant's request for an apology, the Tribunal notes that the types of relief that the Dispute Tribunal may award is limited by art. 10.5 of the Statute. An apology is not listed in the Statute and thus there is no legal basis upon which to grant it. The Applicant also requests that the Tribunal order an investigation to determine accountability. Considering that the Applicant contested the administrative decision finding him ineligible for the UN Leaders Programme on the grounds of alleged discrimination, any administrative decision or lack thereof to investigate this matter is a separate claim with its own separate procedures and is not part of the Applicant's application in the present case. Thus, this request is denied. To the extent that the Applicant requests the Dispute Tribunal's exercise of its authority to refer a case to the Secretary-General for possible action to enforce accountability under art. 10.8 of the Statute, the Tribunal does not find referral for accountability appropriate in this case. The Applicant has failed to provide any evidence documentary or otherwise to support his claim for compensation for stress. Therefore, the request for compensation is denied.

Decision Contested or Judgment/Order Appealed

The decision to find the Applicant ineligible for the UN Leaders Programme.

Legal Principle(s)

The fundamental purpose of a judicial remedy is to attempt, to the extent possible, to place the aggrieved party in the position she or he would have been in, but for the breach. To this end, the Dispute Tribunal's Statute recognizes its capacity to grant both equitable and monetary relief. The remedy of rescission of an administrative decision generally entails the undoing of the decision. However, in some situations rescission as a remedy may be unavailable, for example, where third party rights are affected, or where a restoration of the status quo ante is impossible. Further, in some instances, the Tribunal may find that, although rescission is available, other types of relief, such as specific performance or compensation, may be more appropriate. The Tribunal is vested with the statutory power to determine, in the circumstances of each case, the remedy it deems appropriate to rectify the wrong suffered by the staff member whose rights have been breached. The exercise of the power of referral for accountability must be exercised sparingly and only where the breach or conduct in question exhibits serious flaws. Compensation for harm should be supported by evidence, and as the Appeals Tribunal held, the testimony of the complainant is not sufficient without corroboration by independent evidence (expert or otherwise).

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Younis

Entity

UNAMID

Case Number(s)

UNDT/NY/2018/055

Tribunal

UNDT

Registry

New York

Date of Judgement

16 Apr 2019

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Applicable Law

UNDT Statute

- Article 10.5

UNRWA DT Statute

- Article 10.8

Related Judgments and Orders

2010-UNAT-059

2010-UNAT-082

2010-UNAT-093

UNDT/2011/169

2011-UNAT-141

2011-UNAT-143

2011-UNAT-151

UNDT/2010/148

2018-UNAT-858