

# **UNDT/2019/094, Reilly**

## **UNAT Held or UNDT Pronouncements**

**Receivability** The Tribunal found that the ASG, OHRM's failure to take action on the Applicant's complaint almost nine months after its filing, taking into account only the period that preceded the request for management evaluation, is a clear violation of the provisions of ST/SGB/2008/5. The Tribunal considered that the Administration's failure to act on the Applicant's complaint amounted to an implicit administrative decision that was subject to judicial review. The application was therefore considered receivable.

**Merits** The Tribunal found that the failure to process the Applicant's complaint was unlawful insofar as it did not comply with the provision of ST/SGB/2008/5 for the following reasons. There is no provision allowing the Secretary-General to unilaterally decide to suspend or defer the treatment of a complaint under ST/SGB/2008/5, nor any discretionary power involved. In deciding to defer the consideration of the Applicant's complaint, the Secretary-General was not exercising any specific right under the rules that could justify a delay in the conclusion of the investigation under the Appeals Tribunal's jurisprudence. He was making a unilateral decision to deviate from the applicable rules, which is not permitted. Furthermore, there was no cogent reason to defer consideration of the Applicant's complaint until a decision is made on her application in Case No. UNDT/GVA/2017/052, which challenges, inter alia, the issuance of a press release of 2 February 2017 on the basis of alleged violations of the Applicant's rights to privacy and to be protected against defamation. An investigation into a complaint of abuse of authority has a different purpose than the Tribunal's review of the decision to issue a press release if this is deemed to constitute a reviewable administrative decision.

**Remedies** Given that the unlawfulness in the present case involved inaction, the Tribunal considered that the appropriate remedy was an order for specific performance under sec. 10.5(a) of its Statute, to compel the Administration to make a determination as to whether to initiate a fact-finding investigation into the Applicant's complaint, in accordance with sec. 5.14 of ST/SGB/2008/5. Taking into account the time already elapsed and the fact that the ASG, OHRM, had already received comments from the High Commissioner, the Tribunal considered it

appropriate to give the ASG, OHRM, a thirty-calendar day deadline to do so. The Applicant's request for moral damages was rejected.

## Decision Contested or Judgment/Order Appealed

The Applicant contests the implied decision not to process her complaint of abuse of authority against the United Nations High Commissioner for Human Rights.

## Legal Principle(s)

The Appeals Tribunal has considered that the complexity of some complaints, the fact that additional elements were put forward by the complainant, and the exercise of the parties' rights through litigation were considered to be valid justifications when examining delays in the conclusion of investigations (Oummih 2015-UNAT-518). That being said, the Appeals Tribunal held in Benfield-Laporte 2015-UNAT-505 that "a period of six months to communicate the decision not to open a formal fact-finding investigation is far from prompt" and did not conform with the requirements of ST/SGB/2008/5. It is also trite law that failure to take a decision can represent a reviewable administrative decision (Tabari 2010-UNAT-030).

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Reilly

## Entity

OHCHR

## Case Number(s)

UNDT/GVA/2018/024

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

24 May 2019

## Duty Judge

Judge Downing

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Administrative decision

Implied administrative decision

Investigation

## Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

UNDT Statute

- Article 10.5(a)

## Related Judgments and Orders

2015-UNAT-518

2015-UNAT-505

2010-UNAT-099

2010-UNAT-084

UNDT/2018/071