

# UNDT/2020/213, Dettori

## UNAT Held or UNDT Pronouncements

The management evaluation rescinds the 25 September 2019 decision not to investigate the Applicant's complaint of abuse of authority. Therefore, in application of Crotty, the Applicant's request for an order directing UNICEF to comply with its obligations with respect to the complaint is not receivable. The Tribunal notes that as the 25 September 2019 decision was rescinded, further actions or inactions taken following the 7 November 2019 decision constitute fresh administrative decisions, actual or implied. Therefore, in application of art. 8.1(c) of the Tribunal's Statute, the Applicant must seek management evaluation before appealing these decisions before the Tribunal. There is no evidence that the Applicant sought management evaluation of these decisions. Consequently, the Tribunal lacks jurisdiction to address this part of the application. The Chief of Investigations of OIAI who took the decision was only appointed to his post sometime in early 2019 while the complaint was received by OIAI in July 2018. However, the Chief of Investigations was responsible for reaching the decision not to pursue the matter despite the length of time elapsed since the filing of the complaint and the procedural errors that were admittedly committed. The appalling manner in which this matter was handled by UNICEF denotes, to the very least, negligence on the part of the responsible officials. The Tribunal deems it appropriate to refer the Chief of Investigations of OIAI for accountability under art. 10.8 of its Statute. The Applicant makes no submissions as to how the compensation awarded with the management evaluation decision is insufficient. The Applicant further provides no evidence to substantiate a claim for compensation for damages. The Tribunal notes that the facts relied on by the Applicant to support her additional request for damages were known to the Applicant at the time of the application. The Applicant, who has been represented by professional counsel from the outset of these proceedings, fails to justify why these pleadings were not included in the application. Therefore, the additional submissions are untimely. The Applicant fails to explain what was not properly compensated. Moreover, the Applicant provides no evidence to substantiate the untimely request. None of the decisions referred by the Applicant were submitted for management

evaluation and are therefore not receivable under art. 8.1(c) of the Tribunal's Statute. Even if, arguendo, as the Applicant contends, these decisions were connected to the originally contested administrative decision, they constitute distinct administrative decisions whose appeal is governed by the procedures established by the Tribunal's Statute and Rules of Procedure. The Tribunal notes that the facts alleged by the Applicant in support of her additional request for referral for accountability predate the filing of the application. The Applicant fails to justify these pleadings were not included in the application. The Tribunal therefore rejects these pleadings as untimely.

Accountability referral: UNDT referred the Chief of Investigations of OIAI for accountability under art. 10.8 of its Statute.

## Decision Contested or Judgment/Order Appealed

Decision not to take any action following her report of abuse of authority

## Legal Principle(s)

The Dispute Tribunal has no jurisdiction to review an administrative decision that has been rescinded by the Administration before the applicant has filed the application. As a matter of principle, the Administration's rescission of a faulty administrative decision, while barring the Tribunal's jurisdiction to review the lawfulness of said decision, cannot result in the shielding of the responsible officials from accountability, particularly when the decision has, as in this case, caused harm. Indeed, art. 10.8 of the Statute of the Dispute Tribunal does not condition a referral for accountability to a finding of unlawfulness.

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Dettori

## Entity

UNICEF

## Case Number(s)

UNDT/NY/2020/003

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

21 Dec 2020

## Duty Judge

Judge Adda

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Referral for accountability

## Applicable Law

UNDT Statute