

UNDT/2021/037, Viteskic

UNAT Held or UNDT Pronouncements

The Applicant seems to also challenge the Administration's response to his request for management evaluation, which is not a reviewable administrative decision, and therefore the Tribunal will only review the contested decision itself. The governing legal framework in this case is ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process). ST/SGB/2008/5 is not applicable in this case as he did not allege that he was subjected to discrimination, harassment, or abuse of authority by Ms. A. Rather, the Applicant's claim is that Ms. A filed a false and malicious complaint against him, which is not a subject matter governed by ST/SGB/2008/5. First, while it is unfortunate that the United Nations Interim Administration Mission in Kosovo ("UNMIK") did not follow the provisions of ST/AI/2017/1 by conducting an unauthorized preliminary assessment, this procedural mistake of UNMIK was irrelevant to the contested decision. The contested decision was made by OIOS and there is no allegation or evidence that UNMIK's procedural mistake had any impact on the contested decision made by OIOS. A procedural mistake by UNMIK was immaterial and inconsequential to the contested decision. Second, the Applicant claimed that OIOS violated his rights by not disclosing certain information and documents relating to his complaint, but he had no such right under the applicable legal framework and therefore his argument is rejected. Third, the Applicant questioned the methodology of OIOS's preliminary assessment, but OIOS reasonably decided to rely on the extensive case file provided by UNDP Office of Audit and Investigations ("OAI") in reaching its conclusion. Fourth, whether the OIOS assessment report in question complied with all the formalities required by the OIOS Investigations Manual is irrelevant. Even if the OIOS assessment report was not in strict compliance with the OIOS Investigations Manual, it has no impact on the fact that the OIOS Director considered the assessment report in making the contested decision in this case. Only substantial procedural irregularities can render the administrative decision unlawful and this alleged procedural mistake does not qualify as such. Fifth, the Applicant argues that OIOS violated the fundamental principle of equal treatment of all staff members when it decided to treat unsubstantiated sexual harassment complaints differently and leniently. However, OIOS did not say that it decided to consider mala fide sexual harassment complaints more leniently. Rather, given that launching an investigation against a sexual harassment complainant would have a chilling effect on the willingness of victims to come forward, the OIOS Director instructed investigators that complaints against an alleged victim of sexual harassment should be very thoroughly assessed. The Tribunal does not find the OIOS Director's additional consideration of a potential "chilling effect" unreasonable. In any event, OIOS reasonably determined not to conduct the investigation based on its preliminary assessment of existing evidence. It exercised its discretion reasonably by deciding to close the case. Finally, unlike ST/SGB/2008/5, which does not apply in this case, ST/AI/2017/1 does not have a clause which specifically requires that complaints shall be promptly addressed. There is no set time limit for a preliminary assessment. In addition, OIOS explained that the Applicant's complaint was put in abeyance pending a conclusion of a related investigation that was finalized later. Therefore, the delay in notifying the Applicant of the contested decision did not violate any terms or conditions of the Applicant's employment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision of the Investigations Division of the Office of Internal Oversight Services ("OIOS") not to investigate the applicant's complaint.

Legal Principle(s)

The Administration's response to a request for management evaluation is not a reviewable administrative decision. Only in a case of serious and reasonable accusation, does a staff member have a right to an

investigation against another staff member which may be subject to judicial review, and a fact-finding investigation may only be undertaken if there are ‘sufficient grounds’ or, respectively, ‘reason[s] to believe that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed. The Administration has a degree of discretion as to how to conduct a review and assessment of a complaint and whether to undertake an investigation regarding all or some of the allegations. The judicial review of an administrative decision involves a determination of the validity of the contested decision on grounds of legality, reasonableness and procedural fairness. Only substantial procedural irregularities can render an administrative decision unlawful.

Outcome

Dismissed on merits

Outcome Extra Text

Based on the above, the Tribunal finds that the contested decision was lawful.

Full judgment

[Full judgment](#)

Applicants/Appellants

Viteskic

Entity

UNDP

Case Number(s)

??UNDT/GVA/2020/002??

Tribunal

UNDT

Registry

Geneva

Date of Judgement

19 Apr 2021

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Sexual harassment

Due process

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Related Judgments and Orders

2016-UNAT-661

UNDT/2013/162

2015-UNAT-505

2018-UNAT-873

2010-UNAT-084

2020-UNAT-978

2012-UNAT-272

2016-UNAT-662