

2016-UNAT-621, Nielsen

UNAT Held or UNDT Pronouncements

UNAT rejected the request for an oral hearing finding that an oral hearing was neither necessary nor would assist in the expeditious and fair disposal of the case. Regarding the Appellant's motion, UNAT held that there were no exceptional circumstances that would warrant the granting of the motion. UNAT held that the motion was essentially an attempt by the Appellant to supplement arguments already made in her appeal submissions. UNAT denied the motion. Regarding the appeal's submissions, UNAT held that that UNDT had erred in law in rejecting the application on the basis that the Appellant's complaints to OAS were not receivable because of her status as a former staff member of UNFPA. UNAT held that, as a former staff member of UNFPA, the Appellant had an entitlement to file a formal complaint with the Director of OAS. UNAT held, however, that the Appellant's opportunity to challenge OAS' findings had been forfeited by her failure to bring the communication of 31 March 2015 to the attention of UNDT, which she alleged to constitute evidence of the extension of the six months deadline for submitting her complain. UNAT held that, regarding the complaints filed by the Appellant on 29 November 2014 and 23 December 2014, respectively, against the UNFPA Executive Director and the Office of the Executive Director, the communication of 31 March 2015 did no more than advise her that OAS had no jurisdiction to investigate such complaints and that they would be referred to "another UN agency/Organisation for assessment and/or investigation". UNAT held that nothing in UNDT's judgment should be read as interfering with the suggested mechanism for the processing of the Appellant's complaints against the UNFPA Executive Director and the Office of the Executive Director. UNAT upheld the UNDT judgment, save that UNAT deemed that the UNDT judgment did not encompass the actions of OAS in referring two of the Applicant's complaints to another UN agency/Organisation, a referral that should be allowed to run its course.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the United Nations Population Fund's (UNFPA) inaction on her complaints of improper behaviour, harassment, and abuse of authority toward her by UNFPA's DHR, Executive Director, and Legal Offices, respectively. In a summary judgment, UNDT found that the application was not receivable. UNDT found that the Applicant had filed her first complaint to the Office of Audit and Investigation Services (OAIS), almost nine months after her separation, beyond the six-month time limit set forth in Section 9. 3. 1 of UNFPA's Policy on Harassment, Sexual Harassment, and Abuse of Authority (2013 UNFPA Policy). UNDT also found that the Applicant had no legal standing to file complaints with OAIS because, at the time of her filing, she was neither a staff member of UNFPA nor an individual independent contractor associated with UNFPA within the meaning of "Personnel" of the UNFPA Policy mentioned. The Applicant appealed and later filed a motion to request UNAT to extend her rights as a staff member or to admit that they were extended by the Executive Director of the UNFPA, to which the Secretary-General filed an objection.

Legal Principle(s)

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Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Nielsen

Entity

UNFPA

Case Number(s)

2015-724

Tribunal

UNAT

Registry

New York

Date of Judgement

24 Mar 2016

President Judge

Judge Faherty

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Evidence

Jurisdiction / receivability (UNAT)

Temporal (ratione temporis)

Applicable Law

Other UN issuances (guidelines, policies etc.)

UNAT RoP

- Article 18.1

UNAT Statute

- Article 2.1

UNDT RoP

- Article 9

Related Judgments and Orders

UNDT/2015/039