

2016-UNAT-673, Nquyen-Kropp & Postica

UNAT Held or UNDT Pronouncements

UNAT first considered the receivability of the appeal and held that it was receivable, pursuant to Article 2(1) of the UNAT Statute. UNAT further held that the Ethics Office is limited to making recommendations, which are not administrative decisions subject to judicial review, to the Administration. UNAT held that UNDT made no error in dismissing the applications on the ground that the Ethics Office matters were not administrative decisions subject to judicial review. UNAT acknowledged that the Ethics Office failed in its duty to make a recommendation pursuant to Section 5.7 of ST/SGB/2005/21. However, UNAT also noted that the power to order the Ethics Office to comply with Section 5.7 or to order the Secretary-General to take action when the Ethics Office fails to do so rests with the General Assembly. UNAT accordingly dismissed the appeals and affirmed UNDT's judgment, with Judge Faherty dissenting.

Decision Contested or Judgment/Order Appealed

The Applicants submitted that they were entitled to seek judicial review of the decisions of the Ethics Office and that they suffered direct legal consequences as a result of the contested legal decisions in that they were denied the right to be protected from retaliation. UNDT referred these issues to the Secretary-General for further consideration.

Legal Principle(s)

The Ethics Office does not have the power to conduct its own investigation, nor can it make findings on the outcome of an investigation report. These powers are not included in its functions set out in Section 5. 2. Further, under Section 5. 7, the

Ethics Office is limited to making a recommendation when it receives an investigation report, so it follows that the final decision rests with the Administration. Moreover, the intention of Section 5.8 is merely to prescribe the circumstances in which the Ethics Office can advise the complainant of the existence of the Office of the Ombudsman and other informal mechanisms of conflict resolution in the Organisation. The only power conferred on the Ethics Office by Section 5.8 is a power to advise. Section 5.8 does not give the Ethics Office the capability of making decisions that have a direct impact on a staff member's terms of appointment or contract of employment.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Nquyen-Kropp & Postica

Entity

OIOS

Case Number(s)

2016-884

2016-885

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Jun 2016

President Judge

Judge Chapman

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Ethics office

Receivability

Applicable Law

Secretary-General's bulletins

- ST/SGB/2005/21
- ST/SGB/2005/22

UNAT Statute

- Article 2.1

Related Judgments and Orders

UNDT/2015/110

2011-UNAT-135

2011-UNAT-130