

2017-UNAT-786, Auda

UNAT Held or UNDT Pronouncements

UNAT considered appeals by both the Secretary-General and Mr Auda. Noting that the Administration had not failed to respond, albeit with inordinate delay, and then had set up a second fact-finding panel, UNAT held that a decision may only be challenged in the context of an appeal after the conclusion of the entire process and that the step Mr Auda was challenging was preliminary in nature. UNAT held that the contested issue, namely the decision of the first fact-finding panel to delay, withhold and not submit its report and records, ceased to exist when Mr Auda was notified of the outcome of the second fact-finding panel's preliminary review of his complaint. UNAT held that the UNDT's conclusion that the application was receivable is without legal basis, as was its award of compensation based on that finding. UNAT held that UNDT erred on a question of law and exceeded its competence in accepting the application as receivable. UNAT granted the Secretary-General's appeal, dismissed Mr Auda's appeal and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

Mr Auda contested the decision of the first fact-finding panel to delay, withhold and not submit its report on, and records of, the investigation. UNDT found the application receivable and, noting the extraordinarily excessive delay of more than three years between Mr Auda filing his first complaint and a decision being taken, found this delay to be in violation of the promptness requirement of ST/SGB/2008/5 and Mr Auda's right to be informed of the status of the first fact-finding panel. UNDT awarded Mr Auda compensation for the harm that he suffered as a result of the breaches of his fundamental due process rights and human rights.

Legal Principle(s)

Tribunals should not interfere with matters that fall within the Administration's prerogatives, including its lawful and internal processes, and the Administration must be left to conduct these processes in full and to finality. The final administrative decision that concludes the compound administrative process regarding the staff member's complaint is the only challengeable one and absorbs all the previous preliminary steps.

Outcome

Appeal dismissed on merits; Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Auda

Entity

DGACM

Case Number(s)

2017-1068

2017-1070

Tribunal

UNAT

Registry

New York

Date of Judgement

27 Oct 2017

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Definition

Disciplinary matters / misconduct

Investigation (see category: Investigation)

Investigation

Fact-finding investigation

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

Related Judgments and Orders

UNDT/2017/006

2017-UNAT-787

2013-UNAT-294

2014-UNAT-412

2010-UNAT-099

2015-UNAT-562

2011-UNAT-177

2015-UNAT-566

2013-UNAT-304

2016-UNAT-621

2014-UNAT-404

2014-UNAT-457

2014-UNAT-460

2015-UNAT-509