

UNDT/2023/006, Ovcharenko et Al, Kutner et Al

UNAT Held or UNDT Pronouncements

The various acts submitted by the Respondent—General Assembly resolution 76/245 (Questions relating to the proposed programme budget for 2022) dated 24 December 2021; ACABQ report A/76/7 (First report on the proposed programme budget for 2022) dated 13 August 2021; Draft Fifth Committee resolution submitted by its Chair following informal consultations A/C.5/77/L.23 (Questions relating to the proposed programme budget for 2023) dated 30 December 2022; General Assembly resolution A/RES/77/262 (Seventy-seventh session, Agenda item 138, Proposed programme budget for 2023) dated 30 December 2022—all form part of the general legal and institutional framework of the Organization, which may be considered as part of the Tribunal’s deliberations without any further consideration (see, for instance, Villamoran 2011/UNDT/12, para. 29). Whereas the Tribunal notes that the General Assembly only regulated the workload standard for translation services in its resolution 75/252, it therefore also finds that it squarely falls within USG’s discretionary authority to proportionally adjust the workload standards for self-revision services. Considering the logical and methodological approach taken by the Working Group as per its 26 March 2021 report, the Tribunal further finds that the USG did not overstep the boundaries of his discretion when endorsing the Working Group’s conclusion that the workload standard for self-revision services should be increased to 6.4 pages a day. This only appears to be a fair and reasonable decision in light of the relatively similar increase in workload of the translation services, namely 16 per cent according to the Working Group report. Neither staff regulation 8.1 nor ST/SGB/274 is applicable in the present case. With reference to Ovcharenko et al. Kutner et al. 2022-UNAT-1262, rather than general policy questions as per staff regulation 8.1 and ST/SGB/274, the contested decisions are specific appealable administrative decisions in accordance with art. 2.1(a) of the Statute of the Dispute Tribunal with “a tangible individual direct impact” for each of the affected staff members (see para. 54). Nevertheless, even if staff regulation 8.1(a) and ST/SGB/274 were viewed as applicable, the Tribunal finds that there would be no merit to the Applicants’ case.

Decision Contested or Judgment/Order Appealed

The decision to increase the daily workload requirement of self-revision services to 6.4 pages.

Legal Principle(s)

The Appeals Tribunal has generally held that the discretion of authority of the Administration is not unfettered. As the Appeals Tribunal stated in its seminal judgment in Sanwidi 2010-UNAT-084, at para. 40, “when judging the validity of the exercise of discretionary authority, ... the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate”. This means that the Tribunal “can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse”. The Appeals Tribunal, however, underlined that “it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him” or otherwise “substitute its own decision for that of the Secretary-General” (see Sanwidi, para. 40). In this regard, “the Dispute Tribunal is not conducting a ‘merit-based review, but a judicial review’” explaining that a “[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker’s decision” (see Sanwidi, para. 42). Among the circumstances to consider when assessing the Administration’s exercise of its discretion, the Appeals Tribunal stated “[t]here can be no exhaustive list of the applicable legal principles in administrative law, but unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias, capriciousness, arbitrariness and lack of proportionality are some of the grounds on which tribunals may for good reason interfere with the exercise of administrative discretion” (see Sanwidi, para. 38). As the Chief Administrative Office of the Secretariat and appointed by the

General Assembly under art. 97 of the United Nations Charter, the Secretary-General must follow and implement decisions of the General Assembly that require him to do so (see also sec. 2.1(a) of ST/SGB/2015/3 (Organization of the Secretariat of the United Nations)). In line herewith, the Appeals Tribunal has affirmed the superiority of legal acts of the General Assembly to those of the Secretary-General in, for instance, Villamoran 2011/UNDT/126, para. 29, and Al-Shakour 2021-UNAT-1107, para. 49. Also, pursuant to art. 101.1 of the United Nations Charter, staff members of the Secretariat shall be appointed by the Secretary-General, who as the Chief Administrative Officer also directs their work. In this regard, the General Assembly has stipulated in staff regulation 1.2(c) that “[s]taff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations”. Regarding DGACM, it follows from sec. 3 of ST/SGB/2021/3 (Organization of the Department for General Assembly and Conference Management) and sec. 6 of ST/AI/2021/4 (Performance Management and Development System) that the USG is charged with the overall responsibility of managing the work of the Department and its staff members. This therefore also includes deciding the specific workload standards and work output requirements. In this regard, the Tribunal notes that albeit in a different context, the Appeals Tribunal in Simmons 2016-UNAT-624 held that “[t]he jurisprudence of the Appeals Tribunal has been that the Administration has the power to restructure and reorganize its units and its departments to lend to greater efficiency” (subsequently affirmed in Saredidine 2018-UNAT-852). Staff regulation 8.1(a) and ST/SGB/274 impose a duty on the Administration to establish a staff representative body and undertake meaningful consultations with affected staff in certain particular circumstances. The focus of staff regulation 8.1(a) is, henceforth, on the general application and process concerning preparation and promulgation of “human resources policies” concerning “staff welfare” as explicitly stated at the end of the provision by stipulating the work “other”. Similarly, the consultative process set out in ST/SGB/274 explicitly concerns the general application of “regulations, rules and policies” regarding “staff welfare, working conditions and efficiency” at “the departmental and office level”.

Outcome

Appeal dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Ovcharenko et Al

Kutner et Al

Entity

DGACM

Case Number(s)

UNDT/NY/2021/21/R1

UNDT/NY/2021/24/R1

Tribunal

UNDT

Registry

New York

Date of Judgement

26 Jan 2023

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Judicial review (general)

Standard of review (judicial)

Applicable Law

Administrative Instructions

- ST/AI/2021/4

GA Resolutions

Secretary-General's bulletins

- ST/SGB/2015/3
- ST/SGB/274

Staff Regulations

- Regulation 1.2(c)
- Regulation 8.1

Staff Rules

- Rule 11.2(a)

UN Charter

- Article 101.1

UNAT Statute

- Article 2.1(a)

UNDT Statute

Related Judgments and Orders

UNDT/2021/084

2017-UNAT-765

2018-UNAT-876

2010-UNAT-084

2014-UNAT-409

2020-UNAT-1044

2021-UNAT-1107

2016-UNAT-624

2018-UNAT-852

2022-UNAT-1262

2020-UNAT-981

2015-UNAT-568

UNDT/2014/033

UNDT/2011/012

UNDT/2011/126