

# 2022-UNAT-1200, Elizabeth Dettori

## UNAT Held or UNDT Pronouncements

The crucial question on appeal was whether the UNDT committed any error when it only referred for accountability the Chief of Investigations of OIAI but not the ED and other staff members of UNICEF. The UNAT held that there was no error in the UNDT judgment, because it was within the Dispute Tribunal's discretion to reject the applicant's request for referral. The UNDT's legal approach was correct. The UNDT decided not to refer the ED of UNICEF for accountability because it was not shown that she had had any influence in the handling of applicant's complaint. Ms. Dettori also did not show on appeal in which way the ED of UNICEF was involved in the handling of her complaint. Thus, the UNDT's decision to reject Ms. Dettori's motion was free of error.

The UNAT also rejected Ms. Dettori's argument that the UNDT should have conducted a fact-finding concerning the alleged mismanagement of her complaint by the UNICEF staff. The UNAT held that it is not the role of the Dispute Tribunal under Article 10(8) of the UNDT Statute to undertake any fact-finding about whether and in which way certain managers or officials are accountable for procedural or other flaws; this is the task of the Secretary-General and heads of the separately administered funds and programs. The referral constitutes a communication from the UNDT to the Secretary-General, and the Secretary-General is vested with the discretionary power to determine a course of action to adopt or not to adopt as sequel to the referral.

## Decision Contested or Judgment/Order Appealed

UNDT/2020/213, in which UNDT referred the Chief of Investigations of OIAI, UNICEF, but not the Executive Director or other senior staff of UNICEF to the Secretary-General for possible action to enforce accountability for his improper handling of Ms. Dettori's complaint. The UNDT otherwise rejected all other aspects of Ms. Dettori's application as well as her motion to amend her application.

## Legal Principle(s)

The Tribunals' discretion under Article 10(8) of the UNDT Statute and Article 9(5) of the UNAT Statute is not limited to application which are decided on the merits. These provisions do not contain such a limitation. The purpose of Article 10(8) of the UNDT Statute and Article 9(5) of the UNAT Statute is to give the Tribunals a formal tool to make substantial breaches of procedure and due process rights or other severe wrongdoings on the part of the managers of the United Nations and other separately administered funds and programs immediately known to the Secretary-General of the United Nations and the heads of these funds and programs to enable them to review the matter and take appropriate action. Such a situation can also occur in a case where the application is found not receivable, particularly when the non-receivability follows from the fact that the contested decision has been rescinded by the Administration resulting in the mootness of the case. Rescission of a faulty decision cannot result in the shielding of the responsible managers from accountability.

While Article 10(8) of the UNDT Statute and Article 9(5) of the UNAT Statute make reference to the referral of cases, this does not preclude referral of individuals within the context of a case. However, the Tribunals can only refer specific individuals for accountability when there is sufficient evidence that they played a part in the procedural or other mishandlings. Otherwise, the Tribunals can only refer "the case" to the Secretary-General, who then himself will have to examine which manager or official is responsible for the irregularity.

The exercise of the power of referral for accountability must be exercised sparingly and only where the breach or conduct in question exhibits serious flaws.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Elizabeth Dettori

## Entity

UN Secretariat

## Case Number(s)

2021-1522

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

21 Apr 2022

## President Judge

Judge Knierim

Judge Murphy

Judge Sandhu

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Referral for accountability

Abuse of authority

Disciplinary matters / misconduct

## Applicable Law

### UNAT Statute

- Article 9.5

### UNDT Statute

- Article 2

## Related Judgments and Orders

2017-UNAT-716

2020-UNAT-981

2014-UNAT-410