

# **UNDT/2023/012, Denisa Dragnea**

## **UNAT Held or UNDT Pronouncements**

The challenge against the decision to place the Applicant on a PIP and the outcome of the review of MEU of the contested decisions is not receivable.

The Administration failed to respect the procedural standards expected from the United Nations in proceedings leading to the imposition of a written reprimand. The above-mentioned deficiencies raise doubts about the appearance of impartiality of the investigation and the decision-making process and are thus sufficient to taint the contested decision. Accordingly, the Administration's decision to issue to the Applicant a written reprimand and place it in her personnel file is unlawful.

The Tribunal finds it appropriate to rescind the decision to issue to the Applicant a written reprimand and order the Administration to remove it from her personnel file.

The Tribunal is not satisfied that the alleged harm was the result of the Administration's failure to respect her right to due process in issuing the written reprimand. Moreover, the Applicant failed to establish a causal link between the contested decision and the alleged harm. Consequently, the Tribunal does not consider that compensation should be paid to the Applicant as a remedy given the circumstances of the present case, even though the written reprimand should not have been issued without granting the Applicant the benefits of full due process.

The Applicant failed to demonstrate that certain of the Secretary-General's conduct amounted to a manifest abuse of legal proceedings. The Tribunal further finds no evidence in this respect. Accordingly, there is no basis to reimburse the Applicant's attorney's fees and costs.

## **Decision Contested or Judgment/Order Appealed**

The Applicant contests: a) the issuance to her of a written reprimand; b) the placement of said reprimand in her personnel file; c) her placement under a

performance improvement plan (“PIP”); and d) the outcome of the Management Evaluation Unit’s (“MEU”) review of the decisions in question.

## Legal Principle(s)

Applications are not intended to have a snowball effect. After filing an initial application, applicants cannot keep adding additional matters to the same case as they arise. This would be a back-door way of bringing a substantively new cause of action even prior to the management evaluation and without the filing of a formal application on the merits.

In exercising judicial review, the role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate. Judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker’s decision.

The Tribunal may determine if there was a proper investigation into the allegations and may consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse.

In reviewing decisions imposing a sanction, be it disciplinary or administrative, the Tribunal’s scope of review is limited to determining whether: an applicant’s due process rights were respected, the facts underlying disciplinary or administrative measures were established, the established facts amount to the conduct foreseen in the rules provided for the applied measure, and the measure was proportionate to the offence.

In relation to a written reprimand, the standard of proof to establish the facts is that of “preponderance of evidence”, and such standard of proof is met where the reprimand was based on “reasonable grounds”.

The consequences of a disciplinary measure are not equivalent to those of an administrative measure. Although a reprimand could have an adverse impact on a staff member’s career, since it is placed in his or her Official Status File, it is not comparable, by its nature, to the effects of any disciplinary measure.

Procedural fairness is a highly variable concept and is context specific. The essential question is whether the staff member is adequately apprised of any allegations and had a reasonable opportunity to make representations before action was taken against him.

Harm must be supported by evidence. It is not enough to demonstrate an illegality to obtain compensation: the claimant bears the burden of proof to establish the existence of negative consequences, able to be considered damages, resulting from the illegality on a cause-effect lien.

Art. 10.6 of the Tribunal's Statute "does not allow [it] to award costs to the prevailing party, as a matter of course", but rather allows it to award costs only when a party has manifestly abused the proceedings.

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Denisa Dragnea

## Entity

DSS

## Case Number(s)

UNDT/NY/2021/058

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

27 Feb 2023

## Duty Judge

Judge Belle

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Due process

## Applicable Law

Administrative Instructions

- ST/AI/2017/1

Other UN issuances (guidelines, policies etc.)

- Document ADMIN-18 of the General Orders of UNSSS

Staff Rules

- Rule 10.2(c)

Former Staff Rules

- Rule 11.2

UNDT Statute

- Article 10.6

## Related Judgments and Orders

2019-UNAT-909  
UNDT/2012/205  
2019-UNAT-915  
2010-UNAT-084  
2011-UNAT-123  
2017-UNAT-745  
2021-UNAT-1184  
UNDT/2021/076  
UNDT/2017/054  
2012-UNAT-209  
2022-UNAT-1268  
2012-UNAT-192  
2017-UNAT-761  
2013-UNAT-289  
2019-UNAT-899  
2018-UNAT-874  
2015-UNAT-544