

UNDT/2023/121, Reilly

UNAT Held or UNDT Pronouncements

Sec. 10.1 of ST/SGB/2017/2/Rev.1 provides that the action or inaction of the Administration on a recommendation from the Ethics Office under section 8 will constitute a contestable administrative decision under chapter XI of the Staff Rules if it has direct legal consequences affecting the terms and conditions of appointment of the complainant. The Tribunal, therefore, found that the application was receivable.

To determine whether the decision not to implement the March 2020 Alternate Chair's recommendations was arbitrary, the Tribunal examined the grounds on which it was based.

The Tribunal was persuaded by the Respondent's arguments that said decision was grounded on the fact that the March 2020 Alternate Chair: a) acted outside the scope of his mandate when he examined matters that were not part of the Applicant's referral; b) did not follow the procedure set forth in ST/SGB/2017/2/Rev.1, more specifically sec. 9.2, when he did not seek comments from the Administration on the Applicant's requests for protection against retaliation; and c) made premature recommendations since retaliation had not been established following an investigation.

The Tribunal found that the evidence did not support the Applicant's claim that the USG/DMSPC and the Chef de Cabinet were conflicted when they made the decision not to implement the March 2020 Alternate Chair's recommendations. The Tribunal also found that while the USG/DMSPC acted without legal authority, the absence of such authority was not sufficient to vitiate the decision in the circumstances of this case.

Therefore, the Tribunal upheld the decision not to implement the March 2020 Alternate Chair's recommendations.

The Tribunal also rejected the Applicant's challenge against a) the decision not to provide her interim protection measures and b) the delegation of authority of the USG/DMSPC to decide on whether to refer the matter to an Alternative Investigative Mechanism.

Consequently, the Tribunal rejected the application in its entirety.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decisions: not to implement the recommendations of the Alternate Chair of the Ethics Panel, not to provide her interim protection measures, and to refer the Applicant's retaliation case to the Office of Internal Oversight Service for investigation.

Legal Principle(s)

The Tribunal is obliged to interpret and identify what the "contested decision" is according to the applicable law. This requires that the Tribunal considers the application, the applicable legal framework, and the features of the internal legal system as a whole to ensure a harmonious and coherent case law.

It is settled law that recommendations of the Ethics Office do not constitute administrative decisions subject to challenge.

When judging the validity of the exercise of discretion in administrative matters, the role of the Tribunal is limited to determining if "the decision is legal, rational, procedurally correct and proportionate". In so doing, the Tribunal is barred from considering the correctness of the choice of the decision-maker, and from substituting its own decision for that of the decision-maker.

Conflict of interest will arise if there is a "reasonable apprehension of bias or self-interest". Additionally, the existence of a conflict of interest is an objective fact and does not depend on any particular intention or motive.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Reilly

Entity

OHCHR

Case Number(s)

UNDT/GVA/2021/024

Tribunal

UNDT

Registry

Geneva

Date of Judgement

7 Nov 2023

Duty Judge

Judge Tibulya

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Ethics office

Investigation

Applicable Law

Secretary-General's bulletins

- ST/SGB/2005/21
- ST/SGB/2017/2
- ST/SGB/2017/2/Rev.1

Related Judgments and Orders

2012-UNAT-238

2021-UNAT-1079

2010-UNAT-084

2021-UNAT-1157

2021-UNAT-1117

UNDT/2020/097

UNDT/2010/116