

UNDT/2024/003, GUEZEL

UNAT Held or UNDT Pronouncements

The lack of justifiable explanation on the part of the Respondent for the delay from December 2018 to June 2021 could only be attributed to lack of due care and diligence, transparency, accountability and good faith. Therefore, the Tribunal held that the delay was compensable.

The Applicant proved beyond a balance of probabilities that the mental and emotional harm suffered by the dependents was directly attributable to the Administration's negligent handling of the matter.

The claim of moral harm was sufficiently proved to the requisite standard.

Decision Contested or Judgment/Order Appealed

The Applicant challenged an implied administrative decision taken by the Advisory Board on Compensation Claims ("ABCC") not to compensate the deceased staff member's dependents for the inordinate delay of the ABCC in processing their compensation claim pursuant to Appendix D to the Staff Regulations and Rules (Rules Governing Compensation in the Event of Death, Injury or Illness Attributable to the Performance of Official Duties on Behalf of the United Nations).

Legal Principle(s)

Despite the apparently narrow wording of the third category of lawful claimant under art. 3.1(c) of the UNDT Statute, its intention is clearly to at least allow claims made by, for example, the executor or other administrator of the estate, of a deceased staff member.

Inordinate delay is a reviewable administrative decision.

Compensation may only be awarded for harm supported by evidence.

The party alleging moral injury carries the burden to adduce sufficient evidence proving, beyond a balance of probabilities, the existence of factors causing harm to the victim's personality rights or dignity, comprised of psychological, emotional, spiritual, reputational and analogous intangible or non patrimonial incidents of personality.

Moral harm can be proved by evidence produced by way of a medical, psychological report or otherwise. Credible external evidence independent of the Applicant's testimony whether medical or otherwise constitutes adequate corroborative evidence.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

GUEZEL

Entity

MINUSCA

Case Number(s)

UNDT/NBI/2021/104

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

8 Feb 2024

Duty Judge

Judge Sikwese

Language of Judgment

English

Appeal Status

Appealed

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Jurisdiction / receivability (UNDT or first instance)

Compensation for injury, illness or death attributable to service (Appendix D to Staff Rules)

Personal (ratione personae)

Subject matter (ratione materiae)

Temporal (ratione temporis)

Jurisdiction / receivability (UNAT)

Applicable Law

Staff Rules

Staff Regulations

UNDT Statute

- Article 3.1(c)
- Article 8.1(a)

- Article 8.1(b)
- Article 8.1(d)(i)

UNAT Statute

- Article 10.5(b)
- Article 8.1(c)

TANU Statut du Tribunal

- Article 2.1

Related Judgments and Orders

2022-UNAT-1271

UNDT/2019/019

2015-UNAT-562

2022-UNAT-1231

2023-UNAT-1377

2018-UNAT-861

2017-UNAT-791

2012-UNAT-198

2013-UNAT-287

2017-UNAT-786

2017-UNAT-742

2016-UNAT-640

2012-UNAT-277

2017-UNAT-724