

UNDT/2024/023, Dolgopolov

UNAT Held or UNDT Pronouncements

Considering the above jurisprudence, the Tribunal determines that the Applicant must demonstrate: (a) that the contested decisions were specifically addressed to him on an individualized basis and that they were not of general application to other staff members, and (b) that it was the Administration which took the decisions and not some other entity or person outside the United Nations.

The provisions of ST/SGB/2019/8, on which the Applicant seeks to base his claim are only enforceable against persons, and not governments. The Tribunal therefore has no jurisdiction to adjudicate complaints against a host country's government.

The Respondent's submissions were legally founded that: (a) “[v]isa restrictions imposed on a staff member of the Organisation by the Government of the United States are not part of the terms and conditions of employment” (see in line herewith, the Appeals Tribunal in *Dolgopolov* 2021-UNAT-1093, para. 41); (b) “[i]ssuance of a visa is a result of an administrative procedure held by a host country in accordance with its own internal policies” (similarly, see the Dispute Tribunal in *Mollaoglu*. UNDT/2022/125, para. 28, holding that :“issuance ... of visas are ... a result of an administrative procedure held by a host country in accordance with its own internal policies”); (c) the Organization “cannot be held accountable for any delay of the host country in issuing a visa to the Applicant” (see also *Mollaoglu*, para. 29, where the Dispute Tribunal stated that the Organization “cannot be held accountable for the refusal of the host country to issue a visa to the Applicant”, and the same logic applies for delay of the host country to issue a visa to a United Nation staff member).

Also, since UNDT does not have jurisdiction to adjudicate disputes that may arise between the United Nations and host countries, or between staff members of the United Nations and governments of host countries, the Applicants claim is beyond the scope of its jurisdiction

Decision Contested or Judgment/Order Appealed

The Applicant contests “[t]wo negative decisions violating the duty of care and the obligation to protect staff members against discrimination”.

Legal Principle(s)

For an application to be receivable, and for the Dispute Tribunal to thereby have jurisdiction under its Statute, the relevant staff member must therefore be able to (a) identify a particular and affirmative legal right in her/his employment relationship with Organization, and (b) prove that this right has been violated by the Administration.

“[A]n appealable administrative decision is a decision whereby its key characteristic is the capacity to produce direct legal consequences affecting a staff member’s terms and conditions of appointment” (see, the Appeal Tribunal in *Larriera* 2020-UNAT-1004, para. 28, as affirmed in, for instance, *Handy* 2020-UNAT-1044, *Kennes* 2020-UNAT-1073, *Toson* 2021-UNAT-1161, *Loto* 2022-UNAT-1292, and *Reilly* 2022-UNAT-1309). In *Ovcharenko et al.* 2022-UNAT-1262, para. 36, the Appeals Tribunal added that “[i]n this context, in order to be considered as an appealable administrative decision, what matters is that the administrative measure must have a present and direct adverse impact on the terms and conditions of employment and not the potential of a future injury” (see, similarly, *Sahyoun* 2021-UNAT-1149, para. 25 and *Al Smadi* 2022-UNAT-1241, para. 25)

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Dolgopolov

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2022/034

Tribunal

UNDT

Registry

New York

Date of Judgement

24 Apr 2024

Duty Judge

Judge Tibulya

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Subject matter (ratione materiae)

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Administrative Instructions

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

2020-UNAT-1004

2020-UNAT-1044

2020-UNAT-1073

2021-UNAT-1161

2022-UNAT-1292

2022-UNAT-1309

2022-UNAT-1262

2021-UNAT-1149

2022-UNAT-1241

2021-UNAT-1086

2021-UNAT-1093

UNDT/2022/125