

# **UNDT/2024/087, Dolgopolov**

## **UNAT Held or UNDT Pronouncements**

The Applicant's 16 September 2023 request for management evaluation was not filed in a timely manner as it was filed after the expiry of the 60-day deadline stipulated in staff rule 11.2(c). There was, however, no issue of *res judicata* in the present case.

In the absence of any further information and/or evidence, DSS/SSS indeed acted within its scope of discretion under staff regulation 1.2(c) and art. 100.2 of the United Nations Charter, when deciding not to take any further action on the Applicant's request for action regarding his complaint concerning the relevant law enforcement agency.

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

The Applicant contested "the failure of the Secretary-General to protect him in his residence and to safeguard the immunity of the Organization". As the contested decision, the Applicant refers to an email of 22 August 2023 from the Deputy Chief of the Safety and Security Service of the Department of Safety and Security ("the Deputy SSS Chief" and "DSS", name redacted for privacy reasons) to him. He further states that the "issue is an attempt by [a specific] law enforcement agency of the host country to recruit the Applicant as its agent against his country of nationality".

## **Legal Principle(s)**

The Appeals Tribunal held in AAG 2022-UNAT-1308 that "Staff Regulation 1.2(c) establishes a duty of care of the Organization towards its staff members". When the Administration exercises its authority under this duty of care, it "should seek to ensure, having regard to the circumstances, that all necessary safety and security

arrangements are made for staff carrying out the responsibilities entrusted to them". Also, the "duty of care must be exercised with reasonable discretion, necessary for the managerial process to run, manage and operate the Organization" (see, paras. 69 and 70). Concerning the Organization's duty of care towards its staff members, the Dispute Tribunal also provided in *Campeau* UNDT/2017/091 that "it is a commonly accepted principle of international law that International Organizations have a duty of care towards their staff members". The duty of care "has a multidimensional nature and can have different meanings depending on the context in which it is applied". The Organization's duty of care towards its staff implies, "first and foremost, that it has to provide a healthy and safe working environment for and to ensure the safety of its staff", which "may encompass a duty to protect its staff against outside risks, e.g. when divulging information, including personal data, that may impact on the safety and security of the staff member or his immediate family". In *Campeau*, it was "understood as the obligation of the Organization to safeguard the physical and psychological integrity of the Applicant and his family, as well as his and his family's personal data" (See, para. 38.)

The Secretary-General's discretionary administrative authority is, however, not unfettered. In the Appeals Tribunal's seminal judgment in *Sanwidi* 2010-UNAT-084, it stated that, "Administrative tribunals worldwide keep evolving legal principles to help them control abuse of discretionary powers. There can be no exhaustive list of the applicable legal principles in administrative law, but unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias, capriciousness, arbitrariness and lack of proportionality are some of the grounds on which tribunals may for good reason interfere with the exercise of administrative discretion" (see, para. 38).

## Outcome

Dismissed as not receivable

## Outcome Extra Text

Pursuant to staff rule 11.2(c), a "request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested". From art. 8.3 of the Dispute Tribunal's Statute, it further

follows that “[t]he Dispute Tribunal shall not suspend or waive the deadlines for management evaluation” (see also the Appeals Tribunal in, for instance, *Kamara-Joyner* 2023-UNAT-1400, para. 97).

As for establishing the date of notification under staff rule 11.2(c), the Appeals Tribunal has consistently held that this is “based on objective elements that both parties (Administration and staff member) can accurately determine” (see, for instance, *Rosana* 2012-UNAT-273, para. 25). In this regard, the “Appeals Tribunal has repeatedly ruled that the “decisive moment of notification for purposes of Staff Rule 11.2(c) is when ‘all relevant facts … were known, or should have reasonably been known’” (see *Auda* 2017-UNAT-746, para. 31). Also, the “case law of the Appeals Tribunal is to the effect that the repetition of an administrative decision … does not reset the time limit” for filing a request for management evaluation (see, for instance, *Das* 2024-UNAT-1433, para. 50). The Appeals Tribunal further explained in *Houran et al.* 2020-UNAT-1019 that “there is no explicit requirement for written notification as a prerequisite to contest an administrative decision”, but “if there is no written notification, it is incumbent on the body reviewing the matter to consider whether the circumstances surrounding the verbal communication still constitutes notification” (see para. 30, as also affirmed in, for instance, *Elmenshawy* 2021-UNAT-1176, para. 25).

The Appeals Tribunal has held that “[t]he authority of a final judgment—*res judicata*—cannot be so readily set aside” (see, *Costa* 2010-UNAT-063, para. 4, which has been affirmed in a number of subsequent judgments, including *Hossain* 2024-UNAT-1450). Also, “a person may not bring a case about an already resolved controversy (*res judicata*)” (see, *Kallon* 2017-UNAT-742, para. 44). The principle of *res judicata* has also endorsed in a number of other Appeals Tribunal judgments (see, for instance, *Soni* 2024-UNAT-1414, para. 25).

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Dolgopolov

## Entity

UN Secretariat

## Case Number(s)

UNDT/NY/2023/040

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

29 Oct 2024

## Duty Judge

Judge Adda

## Language of Judgment

French

## Issuance Type

Judgment

## Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Standard of review (judicial)

## Applicable Law

Staff Rules

- Rule 11.2

## Staff Regulations

- Regulation 1.2(c)

## Related Judgments and Orders

2011-UNAT-115

2023-UNAT-1400

2012-UNAT-273

2017-UNAT-746

2024-UNAT-1433

2020-UNAT-1019

2021-UNAT-1176

2010-UNAT-063

2024-UNAT-1450

2017-UNAT-742

2024-UNAT-1414

UNDT/2024/023

2022-UNAT-1308

UNDT/2017/091

2010-UNAT-084