

134 (GVA/2024), SANAKA SAMARASINHA

UNAT Held or UNDT Pronouncements

The Applicant's motion for interim measure is made in the context of a series of applications arising from decisions taken because of allegations of misconduct against the Applicant, which involved sexual harassment and sexual abuse. Such misconduct is recognized in the regulatory framework as of such gravity that it provides an exceptional basis for placing a staff member on ALWOP pending the conclusion of the investigation. The Applicant contends that, based on new information available, there is no longer any basis for a finding that there is a preponderance of evidence that he engaged in said misconduct, and thus, no longer a basis for this continuance on ALWOP. The new information referred to by the Applicant is the OIOS investigation report that was already in possession of the Organization when his placement on ALWOP was extended. However, the evidence on record supports the Respondent's claim that the Office of Audit and Investigations only transmitted the investigation report to the decision-maker after the decision to extend the Applicant's placement on ALWOP was made. Accordingly, there is no prima facie unlawfulness. Furthermore, the Tribunal disagrees with the Applicant that the investigation report concludes for a lack of preponderance of evidence or that it failed to consider exculpatory evidence. Instead, it could reasonably be concluded that there is a preponderance of evidence of even more grave misconduct than was initially being investigated. As the Applicant failed to establish that the 20 August 2024 decision extending his placement on ALWOP was prima facie unlawful, the Tribunal does not find it necessary to examine the remaining cumulative conditions required to order interim measures.

Decision Contested or Judgment/Order Appealed

The Applicant seeks suspension of the decision to extend his placement on ALWOP pending the outcome of an investigation of potential prohibited conduct against him.

Outcome

Interim measure denied

Full order

[Full order](#)

Individual Party

SANAKA SAMARASINHA

Entity

UNDP

Case Number(s)

UNDT/GVA/2024/041 (SAMARASINHA, SANAKA)

Tribunal

UNDT

Registry

Geneva

Date of Order

1 Nov 2024

Duty Judge

Judge Honeywell

Language of Order

English

Appeal Status

Appealed

Issuance Type

Order

Categories/Subcategories

Interim measures

Applicable Law

Staff Rules

- Rule 10.2(a)(ix)
- Rule 10.4 (c) (ii)

UNDT RoP

- Article 14

UNDT Statute

- Article 10.2