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Judgment No. 2023-UNAT-1398



Counsel for Applicant: Self-represented

Counsel for Respondent: Noam Wiener

THE UNITED NATIONS

18. In the instant case, the UNAT did not set a specific time for the execution of the UNAT Judgment. The Secretary-General is undertaking action to execute the Judgment. To reconsider whether to convene an investigation panel to investigate Mr. Arvizú Trevino's harassment claim, the Administration has elicited responses from four of the staff members alleged by him to have engaged in misconduct and is "reviewing these responses alongside the 22 pages and 18 annexes of [Mr. Arvizú Trevino's] complaint". The Secretary-General is, thus, engaged in an in-depth analysis in which it is applying the Organization's policies for handling reports of possible prohibited conduct including, as ordered by the UNAT, weighing the various freedoms and rights in question against each other.

19. Turning to Mr. Arvizú Trevino's claims relating to the participation of the USG/DMSPC in responding to his letter on 23 September 2022 and her alleged conflict of interest, the Secretary-General avers that these arguments are premature as they relate to the ongoing implementation of the UNAT's order. If, after an administrative decision has been taken, he wishes to contest it, he will have the opportunity to do so. An application for execution of judgment is not an opportunity to raise arguments relating to an on-going process.

20. Finally, as to the alleged breach of Section 5.16 of ST/SGB/2008/5 as Mr. Arvizú Trevino has not been contacted for an interview, the Secretary-General submits that there is no obligation to interview a complainant at the preliminary assessment stage, i.e., before the commencement of an investigation or before taking a decision on whether to start an investigation. Consequently, the UNAT should disregard these arguments entirely.

Considerations

21. On 19 March 2022, the Appeals Tribunal issued Judgment No. 2022-UNAT-1231 wherein it rescinded the decision of the Administration not to convene an investigation panel to investigate Mr. Arvizú Trevino's harassment claim. The Administration has since taken steps to address the harassment claim and is engaged in an in-depth analysis in which it is applying the Organization's policies for handling reports of possible prohibited conduct including, as ordered by the UNAT, weighing the various freedoms and rights in question against each other.

a) the decision of the USG/DMSPC, dated 16 January 2020, not to convene an investigation panel to investigate the Appellant's harassment complaint is rescinded; and

b) The Administration is directed to lawfully exercise the discretion granted to it in terms of this issue, as per our reasoning.

... In all other respects, the appeal is dismissed.

23. The Respondent

to the situation. The second and broader one has the preventive aim of promoting a positive work environment and preventing inappropriate behavior in the workplace.

28. In that vein, Section 3.2 of ST/SGB/2008/5 imposes an obligation on the Administration to promptly and fairly handle prohibited conduct in the workplace. It stipulates that “[m]anagers and supervisors have the obligation to ensure that complaints of prohibited conduct are promptly addressed in a fair and impartial manner”.

29. We discern from the above that in matters of complaints of prohibited conduct time is of the essence, thus the Administration is obliged to act promptly and in a fair and impartial manner.

30. In the matter at hand, it is not disputed that several months after the Secretary-General had been notified of the Judgment, the only action taken was that some responses had been

34. In matters which relate to the execution of