

Case No. UNDT/GVA/2015/173

Judgment No. UNDT/2016/214

15. A case management discussion was held on 16 December 2015. The Tribunal heard the "applicant's" inter alia on the "applicant's" oral testimony on 20 of the Tribunal's Audio of Proceedings 93 ('de' No. 264 -GVA/2015. on 22 December 2015. The Tribunal determined that

"'o%esses-D t!\$s "assage su""o'ts t!at t!e T'\$9una#s !a!e <u'\$sd\$t\$on to \$nte'lene 4 !en t!e Adm\$ns\$st'at\$on does not ad!e'e to \$ts \$nte'na# "'o%esses)

d. Powell 2012\$UNAT\$52=5 'u#ed t!at on#3 #m\$ted due "'o%ess '\$g!ts a""#3 du'\$ng t!e "'e#m\$na'3 \$n!est\$gat\$on. T!e '\$g!t to a ,du#3 aut!o'\$:ed& \$m"a't\$a# and \$nde"endent \$n!est\$gat\$on and de%\$s\$on\$ma;e'- \$s "a't o t!ese #m\$ted due "'o%ess '\$g!ts)

e. T!e /D/(AJ #a% ;s aut!o'\$t3 to a""o\$nt a a%t5 \$nd\$ng "ane# 9e%ause t!e A""#\$%ant no #onge' se'les \$n t!e)e%'eta'\$at. @e 'etu'ned to UN@CAH 'om 4!e'e !e !ad 9een se%ondedHa te' t!e UNAT Judgment 4as \$ssued 9ut 9e o'e t!e ne4 a%t5 \$nd\$ng "ane# 4as a""o\$nted. T!\$s a%t st'\$""ed t!e /D/(AJ o !e' <u'\$sd\$t\$on \$n 'e#at\$on to t!e A""#\$%ant. @en%e& at t!e t\$me o t!e %ontested de%\$s\$on& t!e /D/(AJ !ad no aut!o'\$t3 to a""o\$nt t!e a%t5 \$nd\$ng "ane#& and (@A 2 4ou#d !a!e no aut!o'\$t3 to ta;e an3 u't!e' a%t\$on o#o4\$ng t!e "ane#6s \$n!est\$gat\$on& "a't\$%u#a'#3 o a d\$s%\$"#na'3 natu'ed)

. Unde' a't\$%#e 11 o t!e A""ea#s T'\$9una#6s)tatute& t!e ('gan\$:at\$on %ou#d& and s!ou#d& !a!e soug!t 'e!\$s\$on o t!e <udgment on t!e g'ounds o t!e d\$s%o!e'3 o a de%\$s\$!e a%t un;no4n at t!e t\$me o t!e <udgment name#3& \$n t!\$s %ase& t!e A""#\$%ant6s se"a'at\$on& o' e#se \$ts 'e!\$s\$on& as a means o %a'\$ \$%at\$onD)

g. B t!e \$n!est\$gat\$on \$s not %a''\$ed out \$n a%o'dan%e 4\$t!)T/)>G7/2008/5& \$ts out%ome and 1a#\$d\$t3 ma3 9e %!a##enged& \$n 4!\$%! %ase t!e A""#\$%ant 4## !a!e to unde'go t!e same "'o%ess o' a t!\$'d t\$meD)

!. T!e a%t5 \$nd\$ng "ane#6s %om"o\$st\$on \$s \$m""o'e'. Bt \$s %om"osed o t4o \$nd\$1\$d\$ua#s 4!o a'e on t!e 'oste' o (@A 2 9ut 4!o a'e no #onge' UN sta mem9e's& as t!e3 'et'\$ed& and a'e 'e'o'ted#3 !o#d\$ng a %onsu#tan%3 o' , 4 !en a%tua##3 em"#o3ed- %ont'a%tD)

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30. /1en \$ t!e T'\$9una# us\$ng \$ts , \$n!e'ent "o4e' to \$nd\$1\$dua#:\$e and de \$ne t!e admn\$st'at\$1e de%\$\$son \$m"ugned I and \$dent\$ 3 4!at \$s \$n a#t 9e\$ng %ontested- +%assabni 20125UNAT5238. & 4as to \$nte' "'et t!e %ontested de%\$\$son \$n a#a'ge' manne' and unde'stand t!at t!e A"'#\$%ant 'at!e' meant to ta;e \$ssue 4\$t! t!e a#t o #aun%!\$ng a ne4 \$n1est\$gat\$on on t!e a##egat\$ons aga\$nst !\$m& t!e #atte' 4ou#d st\$## 9e s\$m"#3 a "'e"a'ato'3 ste". Bndeed& \$n Nguyen-Kropp & Postica 20155UNAT550= +"a'a. 31.& t!e A"'ea#s T'\$9una# ound t!at aut!o'\$s\$ng o' #aun%!\$ng an \$n1est\$gat\$on 4as a "'e"a'ato'3 a#t& as o##o4s?

Gene'a##3 s"ea;\$ng& a"'ea#s aga\$nst a de%\$\$son to \$n\$tate an \$n1est\$gat\$on a'e not 'e%e\$1a9#e as su%! a de%\$\$son \$s "'e#\$m\$na'3 \$n natu'e and does not& at t!at stage& a e#t t!e #ega# '\$g!ts o a sta mem9e' as 'eCu\$'ed o an admn\$st'at\$1e de%\$\$son %a"a9#e o 9e\$ng a"'ea#ed 9e o'e t!e D\$s"ute T'\$9una#.

31. Not4\$t!stand\$ng t!\$s Cu\$te %#ea' o'mu#at\$on o t!e "'\$n%\$"#e& t!e A"'#\$%ant %ontends t!at t!e use o t!e e0"ess\$on ,gene'a##3 s"ea;\$ng- suggests t!e e0\$sten%e o e0%e"t\$ons to \$t. @e u't!e' notes t!at Nguyen-Kropp & Postica "u'sues stat\$ng +"a'a. 32.?

T!\$s a%%o'ds 4\$t! anot!e' gene'a# "'\$n%\$"#e t!at t'\$9una#s s!ou#d not \$nte' e'e 4\$t! t!e matte's t!at a## 4\$t!\$n t!e Adm\$st'at\$on6s "'e'ogatR17 11. 28 T f D98746 ()-37.787 a

(\$436(e)-3.66637 2 29(e)6.99348()-389.524)-9.78436(a)-3.66653(t)0.874349(\$)-0.874341(u)-0.9602 2 1991(8927(

34. The Tribunal notes that the evidence presented to it, including the affidavits of the witnesses, the expert reports and the evidence submitted by the parties, does not establish that the Respondent acted in bad faith. The Tribunal finds that the Respondent's conduct was not in breach of the provisions of the ICSID Convention and the ICSID Rules of Procedure. The Tribunal dismisses the Respondent's claim for moral damages and awards costs to the Applicant.

35. The Tribunal finds that the Respondent's conduct was not in breach of the provisions of the ICSID Convention and the ICSID Rules of Procedure. The Tribunal dismisses the Respondent's claim for moral damages and awards costs to the Applicant.

36. The Tribunal finds that the Respondent's conduct was not in breach of the provisions of the ICSID Convention and the ICSID Rules of Procedure. The Tribunal dismisses the Respondent's claim for moral damages and awards costs to the Applicant.

37. In light of the evidence presented to it, the Tribunal finds that the Respondent acted in bad faith.

The Tribunal awards costs to the Applicant.

+Signed.

Judge Aonani

Dated this 6th day of December 2016

/Noted in the Registry on this 6th day of December 2016

+Signed.

Aenk 2. Vargas 2. Aegst'a'k Geneia