





5. The UNTSO staff members implicated in the report were Mr. Antoine and another staff member.<sup>5</sup> On the basis of the video clip, OIOS identified Mr. Antoine as wearing a distinctive Levi's T-shirt, a gold chain and silver bracelet.<sup>6</sup> He was seated in the back seat, while the female passenger, wearing a red dress, sat astride him. His right hand was placed on the left buttock of the female passenger. Another staff member of UNTSO, a Security Officer, was in the front passenger seat.<sup>7</sup> The video clip clearly shows the female passenger gyrating on Mr. Antoine in a sexual manner. The registration number of the UN vehicle was seen clearly as "205".<sup>8</sup>

6. On 25 June 2020, the Director of ID/OIOS, sent an e-mail to Acting Head of Mission, UNTSO, informing him or her of the report and the video clip.<sup>9</sup>

7. On 30 June 2020, Mr. Antoine ~~at~~ 0 0.021 pmd



Mr. Antoine had contributed significantly to the delay in the process to charge him and that there had accordingly been no violation of his due process rights or an abuse of discretion. The UNDT also found that the ALWP extension decision was adequately motivated in terms of the requirements of Staff Rule 10.4(b) governing ALWP decisions and thus lawful, and accordingly dismissed the application.

14. On 2 November 2021, the UNDT held a hearing on the merits of the application in respect of the ALWOP decision and on 7 December 2021 issued its Judgment. The UNDT upheld the ALWOP decision and dismissed the application. It also found that Mr. Antoine's challenge to the OIOS' request that he surrender his smartphone was not a reviewable administrative decision. In addition, the UNDT ruled that nine other annexes to Mr. Antoine's application were inadmissible as evidence.

15. On 31 January 2022, Mr. Antoine filed an appeal against Judgment No. UNDT/2021/144 regarding the ALWP extension decision and on 7 February 2022, he filed an appeal against Judgment No. UNDT/2021/151 regarding the ALWOP decision. The Secretary-General filed answers to the appeals on 23 February 2022. The UNDT issued its Judgment on 15 March 2022.

20. In relation to the ALWP extension decision, Mr. Antoine essentially argues that the investigation process was unreasonably delayed and that his conduct did not contribute to the delay. He also contends that the UNDT erred in ruling Annex 18 as inadmissible, as its author was available to testify and this evidence was relevant.

21. Mr. Antoine requests both UNDT Judgments to be reversed and to be substituted by orders rescinding the ALWOP decision and the ALWP extension decision, his reinstatement to duty, compensation for damage to his reputation and career prospects caused by the extended period of the investigation, and for the Director ID/OIOS to be referred for accountability.

The Secretary-General's Answers

22. The Secretary-General submits that the ALWOP decision and the ALWP extension decision were both reasonable and lawful and the UNDT did not err in any respect.

23. The Secretary-General maintains that the decisions were entirely consonant with the requirements of the applicable legal framework in Staff Rule 10.4 and Section 11.4(b) of ST/AI/2017/1 which justify both ALWOP and ALWP for the misconduct committed in this case. The decisions were without improper motive and were rationally based on the available evidence of misconduct.

24. The Secretary-General argues that Mr. Antoine's submissions about the evidence ruled inadmissible are of no consequence. The documents have no relevance and do not alter or impact on the material evidence establishing that the misconduct was committed.

25. The Secretary-General requests the appeals to be dismissed and the UNDT Judgments to be affirmed.

#### Considerations

Motion to strike the Secretary-General's response to Order No. 507 (2023)

26. After the Secretary-General submitted his response to Order No. 507 (2023), Mr. Antoine filed a motion to strike it from the record. Mr. Antoine argues that it includes irrelevant and inadmissible evidence and is an abuse of process. The Secretary-General comments that the submissions were made in good faith and the Appeals Tribunal is

well-placed to give the appropriate weight to the information and evidence provided or to ignore any information which it considers to be of no assistance.

27. Accordingly, there is no merit to Mr. Antoine's motion. It is "not up to a party to request that the Appeals Tribunal strike out each and every argument she or he does not agree with, since it is natural that the parties may dispute certain issues or matters at stake". In view of the foregoing, the motion is denied.

Merits of the appeals

28. The first issue for determination is whether the UNDT erred in a7047 Tw2/ae 8iw 9.359 0tha3.6 -7 (u2 T

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the investigators had lied to him when they relied on certain administrative issuances as a basis for the seizure. The mere fact that they differed about the legal basis for the seizure in the opinion of the UNDT, was not evidence of deceit. In his appeal, Mr. Antoine failed to challenge the UNDT

disciplinary process took place during the COVID-19 pandemic and was significantly mitigated by it, not causing Mr. Antoine any financial prejudice.

42. The length of time an investigation should take will depend on the circumstances, including any practical challenges at the duty station, the nature of the allegations, the complexity of the investigation and the need to follow due process. The length of this investigation preceding the ALWP extension decision (almost a year) was not inordinately out of line, considering that it involved several subjects, instances of noncooperation, sensitive

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Judgment

44. The appeals are dismissed and Judgment No. UNDT/2021/144 and Judgment No. UNDT/2021/151 are hereby affirmed .

Original and Authoritative Version: English

Decision dated this 24<sup>th</sup> day of March 2023 in New York, United States.

(Signed)

Judge Murphy , Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Colgan

Judgment published and entered in the Register on this 20<sup>th</sup> day of April 2023 in New York, United States.

(Signed)

Juliet Johnson , Registrar