

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 Audits of Performance. On 24 January 2016 (Case No. 264/GVA/2015, of 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%essesD

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!tsD

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""#\$%ant&s 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 !a#\$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

\$.

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. 2 8 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 testimony of the witness and the