

Case No. UNDT/GVA/2019/014

! "g# e\$% No. UNDT/2020/101

, o&o88o Co!\$%&1 Off'8e. T)e 7a\$e(8o\$8(!"e" %)a% %)e , o&o88o Co!\$%&1 Off'8e s)o!(" &e7(a8e %)e 7os% e\$8! #9e&e" 91 %)e A77('8a\$% 3 %) a P.@ 7os%.

1B. O\$ 1 , a&8) 20164 %)e A77('8a\$% 3 as '\$fo&#e" of %)e "e8's'o\$ %o a9o('s))e& 7os% effe8%'*e 1 ! \$e 2016.

1C. O\$ 14 , a&8) 20164 %)e A77('8a\$% &e?!es%e" #a\$age#e\$% e*a(!a%'o\$ of sa'" "e8's'o\$.

19. O\$ @0 , a&8) 20164 %)e A77('8a\$% f('e" a se8o\$" 8o#7(a'\$% 3 %))e E%)'8s Off'8e! UNICE /4 8o\$8e&\$' \$g &e%a('a%'o\$ '\$ &e(a%'o\$ %o %)e #os% &e8e\$% "e8's'o\$ %o a9o('s))e& 7os%. T)e E%)'8s Off'8e "e%e&# '\$e" %)a% a prima facie 8ase of &e%a('a%'o\$)a" \$o% 9ee\$ es%a9('s)e".

20. B1 (e%&e& "a%e" 6 A7&'(20164 %)e De7!%1 EEe8!%'*e D'&e8%o&4 , a\$age#e\$%4 UNICE /4 &e7('e" %o %)e A77('8a\$%:s &e?!es% fo& #a\$age#e\$% e*a(!a%'o\$. Leg%' #a%e &easo\$s 3 e&e fo!\$" fo& %)e <' \$%e&\$a%'o\$a('Aa%'o\$= of)e& 7os%. Oo3e*e&4 s)e \$o%e" %)a% %)e 7a\$e("" " \$o% a""&ess %)e fa8% %)a% %)e ge\$e&'8 Fo9 "es8&'7%'o\$ fo& %)e P.@ 7os%)a" \$o% 9ee\$ 8)a\$ge" f&o# %)e A77('8a\$%:s Fo9 "es8&'7%'o\$. T)e&efo&e4 '% 3as fo!\$" %)a% %)e 7a\$e(fa('e" %o a""&ess 3)e%)e& %)e A77('8a\$% # 'g%))a*e 9ee\$ a9(e %o f!(f(%)e &e?!'e#e\$%s of %)e P.@ 7os%. Co\$se?!e\$(14 %)e A77('8a\$% 3as g&a\$%e" 8o#7e\$sa%'o\$ '\$ %)e a#o!\$% of 12 #o\$%)s: \$e% 9ase sa(a&1 fo& (oss of 8)a\$8e of 8o\$%&a8% &e\$e3a(.

21. O\$ @1 , a1 20164 %)e A77('8a\$% 3 as se7a&a%e" f&o# se&*'8e.

Consideration

Contested decision and scope of judicial review

22. T)e T&'9!\$a(f'\$"s %)a% %)e 8o\$%es%e" "e8's'o\$ '\$ %)e 7&ese\$% 8ase 's %)e "e8's'o\$ 8o# # !\$'8a%e" %o %)e A77('8a\$% o\$ 1 , a&8) 2016 %o a9o('s))e& 7os% a\$"4 8o\$se?!e\$(14 \$o% %o &e\$e3)e& 8o\$%&a8% 9e1o\$" @1 , a1 2016.

20. I\$ "ee"4 af%e& a 8a&ef!(a\$a(1s's of %)e A77('8a\$%:s #a\$aage#e\$% e*a(!a%'o\$
&e?!es% a\$" %)e s!9se?!e\$% "e8's'o\$4 o\$e # !s% 8o\$8(!"e %)a% 3)a% 's a% s%aDe 's %)e
"e8's'o\$ %)a% fo((o3e" %)e Pa\$e(:s &e*'e3 of %)e \$ee"s of %)e , o&o88o Co!.\$%&1
Off'8e.

24. T)e A77('8a\$'s's's %)a% %)e "e8's'o\$ %o a9o('s))e& 7os% '\$ 2016 3as a(so

29.

GTI)e e(e#e\$%s 3)'8) 8a\$ 9e 8o\$%s"e&e" a&e4 a#o\$g o%)e&s4 %)e \$a%!&e a\$" %)e (e*e(of %)e 7os% fo&#e&(1 o88!7'e" 91 %)e s%aff #e#9e& ;'.e.4 8o\$%'\$!o!s4 7&o*'s'o\$a(4 f'Ee".%e&#>4 %)e &e#a'\$'Sg %'#e4 8)a\$8es of &e\$e 3a(4 e%8. I% # !s% a(so 9e %aDe\$ '\$%o a88o!\$%)a% %)e %3o.1ea& ('#%' '#7ose" 91 %)e S%a%!%e of %)e D's7!%e T&'9!\$a(8o\$%!'!%es a #aE' # ! #4 as a ge\$e&a(&!(e 3'%) eE8e7'o\$\$. As s!8)4 '% 8a\$%o\$ 9e %)e a*e&age <'\$ ('e! 8o#7e\$%a'o\$= es%a9('s)e" 91 %)e 8o!&%.

@4. /!&%)e&#o&e4 s'\$8e %)e assess#e\$% of 8o#7e\$%a'o\$ #!s% 9e "o\$e o\$ a 8ase.91.8ase 9as's! '% 8a&&'es a 8e&a'\$ "eg&ee of e#7'&'8's#.

@5. I\$ %)e 8ase a%)a\$"4 %)e A77('8a\$% 3o&De" as a\$ O7e&a%'o\$s , a\$age&4 a% %)e NO.C (e*e(4 '\$ %)e UNICE/ , o&o88o Co!\$%&1 Off'8e. S)e 3o&De" o\$a f'Ee".%e&# a77o'\$%#e\$ s'\$8e /e9&!a&1 2010 a\$" %)e "e8's'o\$ \$o%o &e\$e3)e& 8o\$%&a8% 9e1o\$" @1 , a1 2016 3as 9ase" o\$ %)e &e8o# #e\$"a'o\$s #a"e 91 a\$ '\$"e7e\$"e\$ 7a\$e(%o a9o('s))e& 7os%. A(%)o!g) %)e&e 3e&e 7&o8e" !&a('&&eg!(a&'%'es4 as 8o\$8e"e" 91 %)e Res7o\$"e\$%4 %)e&e 3e&e4 a77a&e\$(14 so('" &easo\$s %o F!s%'f1 %)e <'\$%e&a'o\$a('Aa%'o\$= of %)e A77('8a\$%:s fo&#e& 7os%.

@6. I\$ Warren 2010.UNAT.0594 %)e A77ea(s T&'9!\$a(aff'&#e" %)a% %)e 7!&7ose

)e& 8o\$%&a8% \$o% &e\$e3e" fo& aSo%)e& 1ea&. T)e&efo&e4 \$o a""%'o\$a(8o#7e\$Sa'o\$'s a3a&"e".

Moral damages

@9. I\$ &e(a%'o\$ %o #o&a("a#ages4%)e T&'9!\$a(\$o%es%)a%%)e%)&es)o(" of e*"e\$8e &e?!'&e" f&o# %)e A77('8a\$% fo((o3'\$g %)e a#e\$" #e\$% of a&%. 10.5;9> of %)e T&'9!\$a(:s S#a%!)e)as 9e8o#e #o&e &es%&'8%'*e.

40. A&%.10.5;9> \$o3 s%'7!(a%es%)a%%)e D's7!%e T&'9!\$a(#a1 a3a&" 8o#7e\$Sa'o\$ fo&)a&# 'f s!8))a&# 's <s!77o&&ie" 91 e*"e\$8e=. T)'s 's %)e 8!&&e\$% (a3 o\$ 8o#7e\$Sa'o\$ fo&)a&# a\$" '% 's %)e (a3 %)a% %)s T&'9!\$a(#!s! a77(1 3)e\$ 8o\$%e#7(a%'\$g s!8) a f'\$""\$g. T)'s 's '\$ ('\$e 3'%) %)e F!&'s7&!"e\$8e of %)e A77ea(s T&'9!\$a(o\$ 8o#7e\$Sa'o\$ fo&)a&# ;see Kebede 201C.UNAT.CB4J Kallon 201B.UNAT.B42>.

41. T)e A77('8a\$% 8(a'#s %)a% %)e 8o\$%es%ie" "e8's'o\$ 8a!se")e&)a&# %o)e& 8a&ee& a\$")ea(%). S)e a&g!es inter alia %)a% s)e)as s!ffe&e" #e\$a(("s%&ess4 3)'8) '#7a8%e")e&)ea(%)8o\$""%'o\$.

42. No%'\$g %)e A77('8a\$%:s 8(a'# fo& #o&a("a#ages4 %)e T&'9!\$a(eE7&ess(1 &e?!es%e" e*"e\$8e f&o# %)e A77('8a\$% '\$ %)s &es7e8%4 3)'8) s)e f'(e" o\$ 6 A7&'(20204 \$a#e(14 a #e""8a(8e&&'f'8a%e f&o#)e& g1\$ae8o(og'8a(s!&geo\$ "a%e" 2@ , a&8) 2020 a\$" a\$ e#a'("a%e" 2B A!g!s% 2014 '\$ 3)'8) s)e #e\$%'o\$e" %)a% s)e *'s%e" a 8a&""o(og's% af%e& fee('\$g 7a'\$ '\$)e& 8)es%.

4@. T)e T&'9!\$a(f'\$'s %)e #e""8a(8e&&'f'8a%e 7&ese\$%e" 91 %)e A77('8a\$% eSo!g) e*"e\$8e of %)e)a&# s)e s!ffe&e" %o)e&)ea(%) 91 %)e 'ss!es s)e 3as)a*" \$g a% 3o&D. K)'(e %)e #e""8a(8e&&'f'8a%e "oes \$o% s7e8'f'8a((1 &efe& %o %)e A77('8a\$%:s s!'!a%'o\$ '\$ 20164 %)e&e 's \$o "o!9% %)a%)e&)ea(%) 8o\$""%'o\$ 3as agg&a*a%e" as of 2015 91 %)e "'ff'8!(% s%'!a%'o\$ %)a% s)e 3as fa8'\$g a% 3o&D4 a\$" 3)'8) s)e s)a&e" 3'%))e& "o8%o& as '\$""8a%e" '\$ %)e #e""8a(8e&&'f'8a%e. 0o3e*e&4%)e T&'9!\$a('s \$o% 7e&ts!a"e" of %)e &e(e*a\$8e of %)e e#a'("a%e" 2B A!g!s% 20144 s'\$8e '% 's \$o% a #e""8a(8e&&'f'8a%e 9!%4 &a%)e&4 %)e A77('8a\$%:s o3\$ a88o!\$% of e*\$e\$%s.

