



**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2023-UNAT-1398

**Sergio Baltazar Arvizú Trevino**

**(Applicant)**

**v.**

**Secretary-General of the United Nations**

**(Respondent)**

**JUDGMENT**

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Before:	Judge Leslie Formine Forbang, Presiding Judge Kanwaldeep Sandhu Judge Katharine Mary Savage
Case No.:	2022-1747
Date of Decision:	27 October 2023
Date of Publication:	5 December 2023
Registrar:	Juliet E. Johnson

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Counsel for Applicant: Self-represented

Counsel for Respondent: Noam Wiener

**JUDGE LESLIE FORMINE FORBANG, PRESIDING.**

1. On 9 November 2022, Mr. Sergio Baltazar Arvizú Trevino filed an application for execution of Judgment No. 2022-UNAT-1231 issued by the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) on 19 May 2022 (Judgment), by which the UNAT rescinded the decision of the Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC) of 16 January 2020 not to convene an investigation panel to investigate Mr. Arvizú Trevino's harassment complaint and directed the Administration "to lawfully exercise the discretion granted to it in terms of this issue, as per [the UNAT's] reasoning".<sup>1</sup>
2. Mr. Arvizú Trevino requests that the UNAT issue an execution order directing the Secretary-General "to take concrete actions immediately to begin the investigation and to conclude the investigation within 30 days of the execution order", to conduct the investigation "lawfully, in good faith, and in a reasonable, fair, and procedurally correct manner" and to keep him "informed promptly and adequately of the concrete actions taken to investigate his harassment complaint, including the composition of the investigative panel".
3. For the reasons set out below, we grant the application, in part.

**Facts and Procedure**

4. Mr. Arvizú Trevino served with the United Nations from 1 January 2006 as the Deputy Chief Executive Officer (Deputy CEO)/Deputy Secretary of the United Nations Joint Pension Board (UNJSPB) and elected to serve as the CEO/Secretary of the UNJSPB as of 1 January 2013. He was reappointed to his second term as CEO/Secretary of the UNJSPB on 1 January 2018.
5. On 5 November 2018, Mr. Arvizú Trevino was notified of the decision of the Secretary-General to terminate his contract on health grounds. On 7 January 2019, he separated from service.
6. On 24 July 2019, Mr. Arvizú Trevino filed a harassment complaint with the Director of the Office of Internal Oversight Services (OIOS), in accordance with Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority), alleging that several staff members had engaged in a defamation campaign

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<sup>1</sup> UNAT Judgment, para. 99 (b).

against him and engaged in acts aimed to intimidate and damage his reputation. Attached to his complaint he provided a table describing several incidents in detail with supporting documentary evidence. The complaint identified seven staff members as offenders.

7. On 14 August 2019, the Director of OIOS by way of e-mail informed Mr. Arvizú Trevino that his matter “would be best addressed by the Executive Office of the Secretary-General (EOSG), copying the persons responsible for monitoring conduct complaints within the Department of Management Strategy, Policy and Compliance”.

8. On 16 January 2020, Mr. Arvizú Trevino was informed that the USG/DMSPC had decided not to convene an investigation panel to investigate his harassment complaint filed on 24 July 2019 and to close the matter.

9. On 26 May 2020, Mr. Arvizú Trevino filed an application before the UNDT challenging the decision not to convene an investigation panel. By Judgment No. UNDT/2020/211 dated 18 December 2020, the UNDT dismissed his application. Mr. Arvizú Trevino appealed.

10. On 19 May 2022, the UNAT issued Judgment No. 2022-UNAT-1231. The UNAT rescinded the decision of the USG/DMSPC dated 16 January 2020 not to convene an investigation panel to investigate Mr. Arvizú Trevino’s harassment complaint and directed the Administration “to lawfully exercise the discretion granted to it in terms of this issue, as per [the UNAT’s] reasoning”.<sup>2</sup>

11. On 4 August 2022, Mr. Arvizú Trevino sent a letter to the Secretary-General, inquiring as to the progress made in the implementation of the Judgment. On 23 September 2022, the USG/DMSPC responded stating that Mr. Arvizú Trevino would be informed of the outcome of the exercise at the earliest opportunity.

12. On 9 November 2022, Mr. Arvizú Trevino filed an application for execution of Judgment No. 2022-UNAT-1231. The Secretary-General filed his comments on 12 December 2022.

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<sup>2</sup> UNAT Judgment, para. 99.

## **Submissions**

### **Mr. Arvizú Trevino's Application for Execution**

13. Mr. Arvizú Trevino contends that the participation of the USG/DMSPC in responding to his letter on 23 September 2022 is in violation of Section 3.2 of ST/SGB/2008/5 which states that “[m]anagers and supervisors have the obligation to ensure that complaints of prohibited conduct are promptly addressed in a fair and impartial manner”. He submits that the USG/DMSPC has a vested interest in the outcome of the investigation as the Appeals Tribunal concluded that her decision not to investigate was unlawful and presented cumulative flaws. Moreover, the USG/DMSPC supervises staff who “systematically refused to provide [Mr. Arvizú Trevino] with a safe and healthy working environment”. The USG/DMSPC has a conflict of interest and handing the investigation to her vitiates it.

14. Mr. Arvizú Trevino further claims that the Secretary-General is also in breach of Section 5.16 of ST/SGB/2008/5 which states that the fact-finding investigation shall include interviews with the aggrieved person. Mr. Arvizú Trevino has not been contacted for this purpose.

15. Finally, Mr. Arvizú Trevino submits that while the UNAT did not stipulate an express time limit for executing its Judgment, there is an implied time limit based on reasonableness. Five months have passed since the issuance of the Judgment and the Secretary-General has not taken any concrete actions nor implemented the Appeals Tribunal's decision. The implied time limit has been breached in this case.

16. Therefore, in accordance with Article 27 of the UNAT Rules of Procedure, Mr. Arvizú Trevino requests that the UNAT issue an execution order directing the Secretary-General to “take concrete actions immediately to begin the investigation and to conclude the investigation within 30 days of the execution order”, to conduct the investigation “lawfully, in good faith, and in a reasonable, fair, and procedurally correct manner” and to keep Mr. Arvizú Trevino “informed promptly and adequately of the concrete actions taken to investigate his harassment complaint, including the composition of the investigative panel”.

### **The Secretary-General's Comments**

17. The Secretary-General submits that the UNAT should dismiss the application for execution in its entirety.

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 and ordered the Secretary-General to conduct a renewed assessment of Mr. Arvizú Trevino's complaint of harassment and prohibited conduct.

22. Our orders in that Judgment which constitute the main issue for current determination found in paragraphs 99 to 100 are reproduced as follows:

... The appeal succeeds in part and Judgment No. UNDT/2020/211 is hereby vacated and modified as follows:

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 was duly notified of that Judgment and 77 days later, on 4 August 2022, without any concrete actions taken, Mr. Arvizú Trevino wrote to the Secretary-General through his Counsel. On 23 September 2022, the USG/DMSPC replied to Mr. Arvizú Trevino stating that "the Secretary-General has requested me to respond to your letter on his behalf," and stating further that "[w]e will inform your client of the outcome of this exercise at the earliest opportunity".

24. Based on the above, he filed this application urging us, pursuant to Article 11(4) of the UNAT Statute read with Article 27 of UNAT Rules of Procedure, for an order of execution of the Judgment. Article 11(4) of the UNAT Statute provides that: "Where the judgement requires execution within a certain period of time and such execution has not been carried out, either party may apply to the Appeals Tribunal for an order for execution of the judgement."

25. Our prior Judgment, as rightly pointed out by the Secretary-General in his comments to the application, bears no specific time limit for its execution.

26. The question then in the instant case is whether, in the circumstances, the period of execution is left to the discretion of the Respondent or not. In our view it is not, more so given the Secretary-General's commitment to "Zero Tolerance" under the rules to keep the workplace safe from all forms of harassment and to promptly open an investigation into all allegations of harassment.

27. In *Kenneth Conteh*, cited in paragraph 39 of the UNAT Judgment, we held that the policy of "Zero Tolerance" as a general rule:<sup>3</sup>

aims to tackle the issue of harassment in the workplace mainly by means of two methods. The first and more immediate one has the corrective purpose of addressing any possible inappropriate behaviour and applying the necessary measures according

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<sup>3</sup> *Kenneth Conteh v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1171, para. 41.

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 elicited from four staff members alleged in the complaint to have engaged in misconduct and that “these responses alongside the 22 pages and 18 annexes” to the complaint were under review.

31. The Administration is under an obligation by law in cases of prohibited conduct to act promptly, fairly and impartially. Although the justification of the Secretary-General for the inaction is that in the instant matter, no specific time was set for execution, we hold that the Administration has not acted as promptly as per the obligations imposed on it. Where no specific time period has been set for compliance with an order, compliance is required within a reasonable time.

32. In *Warren*, it was affirmed that a judgment of this Tribunal “shall be executed within 60 days of the date the judgment is issued to the parties”.<sup>4</sup>

33. We conclude, therefore, that Mr. Arvizú Trevino’s application for an order of execution of judgment is properly before us, since it was made several months after notification of the Judgment on the Administration. The Administration has to date not completed its preliminary assessment to decide on the setting up of an investigation panel to investigate Mr. Arvizú Trevino’s complaint of 24 July 2019.

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<sup>4</sup> *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059, para. 17.

34. In matters which relate to the execution of judgments of this Tribunal, time is of the essence. Universally, the enforcement of orders within a reasonable period ensures that trust in and the integrity of the dispute resolution system is retained.

**Judgment**

35. We grant the application, in part. We order the Administration to execute Judgment No. 2022-UNAT-1231 within 60 days from the date the present Judgment has been served on the parties.

Original and Authoritative Version: English

Decision dated this 27th day of October 2023 in New York, United States.

*(Signed)*

Judge Forbang, Presiding

*(Signed)*

Judge Sandhu

*(Signed)*

Judge Savage

Judgment published and entered into the Register on this 5<sup>th</sup> day of December 2023 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar