

# 2015-UNAT-562, Birya

## UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that the decision to set up a fact-finding panel was not, in and of itself, a decision relating to the contractual rights of a staff member. UNAT held that such a decision was preliminary in nature and irregularities in connection with that decision, including alleged delay in reaching that decision, may only be challenged in the context of an appeal after the conclusion of the entire process. UNAT held that UNDT's conclusion that the application was receivable was without legal basis as was its award of compensation. UNAT held that UNDT erred on a question of law and exceeded its competence in accepting the application as receivable. Turning to Mr Birya's claims regarding the UNON Administration in relation to him being detained and charged by the Kenyan police, UNAT held that UNDT's conclusion that this matter was receivable was without legal basis as it was before the fact-finding panel at the time of Mr Birya's application to UNDT. UNAT allowed the appeal and vacated the UNDT judgment.

Accountability referral: UNAT vacated the UNDT referral for possible action to enforce accountability.

## Decision Contested or Judgment/Order Appealed

Mr Birya challenged the manner in which his harassment complaint had been dealt with and the alleged decision by management of the United Nations Office at Nairobi (UNON) to use the Kenyan police to resolve the said complaint. UNDT found for Mr Birya, awarded moral damages and made a referral of the matter to the Secretary-General to enforce accountability.

## Legal Principle(s)

The key characteristic of an administrative decision subject to judicial review is that the decision must produce direct legal consequences which affect a staff member's terms or conditions of appointment. Deciding to set up a fact-finding panel is not of itself a decision relating to the contractual rights of a staff member; such a step is preliminary in nature and irregularities in connection with that decision, including alleged delay in reaching that decision, may only be challenged in the context of an appeal after the conclusion of the entire process.

## Outcome

Appeal granted

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Birya

## Entity

UNON

## Case Number(s)

2014-648

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

2 Jul 2015

## President Judge

Judge Adinyira

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Investigation

Fact-finding investigation

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Referral for accountability

## Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

UNDT Statute

UNRWA DT Statute

- Article 10.8

## Related Judgments and Orders

UNDT/2014/092

2010-UNAT-099

2011-UNAT-177

2013-UNAT-304

2015-UNAT-509

2014-UNAT-457

2014-UNAT-404

2014-UNAT-460