

2022-UNAT-1255, Boubacar Dieng

UNAT Held or UNDT Pronouncements

The Secretary-General sought interpretation, revision, and execution of Judgment No. 2021-UNAT-1118, on grounds that he was unable to effectuate the compensation awarded in the UNDT Judgment because Mr. Dieng refused to provide his banking details. UNAT held that the Judgment was clear, written in plain and unambiguous language, and it left no reasonable doubt as to what it meant. Thus, there was no need for clarification. UNAT further found that the Secretary-General had failed to argue that he had discovered a decisive fact which was unknown to the Appeals Tribunal at the time the Judgment was rendered. UNAT therefore found not admissible the Secretary-General's application, which sought interpretation and revision of Judgment, and rejected it. As to the consideration of the part of the application seeking the execution of Judgment, UNAT found that what had been requested by the Secretary-General did not fall within the ambit of Article 11(4) of the Statute, which contemplates an order for execution of a judgment which has not been carried out by the Administration timely, but not an order for the non-execution of a judgment by the Administration. Absent a legal basis to grant the Secretary-General's request in this regard, UNAT dismissed the application.

Decision Contested or Judgment/Order Appealed

Before the UNDT, Mr. Dieng challenged the decision by the Joint Special Representative, UNAMID to remove him from his position of Senior Child Protection Advisor in the Child Protection Unit and to reassign him as a Senior Political Affairs Officer within UNAMID. In Judgment No. UNDT/2020/093, the UNDT partially granted his application and awarded one-month net base salary as non-pecuniary damages. Mr. Dieng appealed. By Judgment No. 2021-UNAT-1118, UNAT partially granted the appeal and directed the Secretary-General to pay Mr. Dieng two months' net base salary as non-pecuniary damages and to place a copy of the Judgment in Mr. Dieng's official status file.

Legal Principle(s)

Interpretation of Judgment: An application for interpretation will be admitted only if the parties disagree on the meaning or scope of a judgment because it is unclear or ambiguous. Interpretation is only needed to clarify the meaning of a judgment when it leaves reasonable doubts about the will of the Tribunal or the arguments leading to a decision. But if the judgment is comprehensible, whatever the opinion the parties may have about it or its reasoning, an application for interpretation is not admissible. Execution of Judgment: In principle, the freedom of disposition grants every person the freedom to dispose of their property in any way they want including their right to forfeit a claim. Thus, the creditor cannot be forced to accept a payment and the debtor does not have the right of acceptance by the creditor. However, if the creditor to whom a tender of payment is made refuses to accept it, or despite the debtor's willingness to perform, the creditor fails to provide the cooperation required for performance by the debtor, then the creditor is in default of acceptance and the debtor is released from any liability, including the accompanying accrued interest due for the delay of such payment, since the debtor's inability for (or delay in) the execution of the Judgement is not attributable to the latter.

Outcome

Revision, correction, interpretation or execution

Outcome Extra Text

The Secretary-General's application for interpretation, revision and execution of Judgment No. 2021-UNAT-1118 is dismissed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Boubacar Dieng

Entity

UN Secretariat

Case Number(s)

2021-1598

Tribunal

UNAT

Registry

New York

Date of Judgement

12 Aug 2022

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Execution of Judgment

Interpretation of Judgment

Revision of Judgment

Judgment-related matters

Applicable Law

UNAT RoP

- Article 24
- Article 25
- Article 27

UNAT Statute

- Article 11.1
- Article 11.3
- Article 11.4

Related Judgments and Orders

2019-UNAT-910

2018-UNAT-827

2013-UNAT-315