# UNDT/2022/114, Banaj

## UNAT Held or UNDT Pronouncements

Scope of judicial review In a remanded case, such as the instant one, the Applicant may not expand the scope of claims for remedies contained in her original application and, as such, the Tribunal will not consider her new claims or arguments unless they are essentially related to her original claim in the application. Whether and to what extent the Applicant is entitled to remedies The Appeals Tribunal found in Banaj 2022-UNAT-1202 (see para. 1) that the temporary removal from the Applicant, and reassignment to others, of certain of her functions as Head of UNODC in Albania, was an unlawful exercise of administrative power. It thus set aside and rescinded the contested decision (see Banaj, paras. 52 and 58). In the present case, the contested decision concerns the temporary reassignment of some of the Applicant's functions pending an investigation and the outcome of disciplinary proceedings. As such, the contested decision does not fall under the inclusionary clause of art. 10.5(a) of the Tribunal's Statute. Accordingly, there is no legal basis to determine an amount of compensation in lieu in the present case. With respect to pecuniary damages, the Applicant does not specify what kind of pecuniary damages she suffered due to the contested decision, nor does she present any evidence for such harm. Rather, the evidence on record shows that during the temporary reassignment, the Applicant continued to receive a full salary at the same level and step as before the reassignment. Accordingly, the Applicant is not entitled to pecuniary damages. Turning to non-pecuniary damages, having reviewed the evidence on record, the Tribunal finds that the total award of compensation for damages to the Applicant because of the professional and reputational harm, as well as stress and anxiety she suffered because of the unlawful temporary reassignment decision, amounts to two months' net base salary at the grade she encumbered at the time of the contested decision (see, e.g., Dieng 2021- UNAT-1118, para. 87).

## Decision Contested or Judgment/Order Appealed

The Applicant contests the Administration's decision to temporarily reassign a certain number of her functions pending an investigation against her.

## Legal Principle(s)

Art. 10.5(a) of the Tribunal's Statute authorizes orders for rescission, specific performance, and, in certain cases, compensation in lieu of rescission or specific performance. It is well-settled case law that "the very purpose of compensation is to place the staff member in the same position he or she would have been in had the Organization complied with its contractual obligations" (see, e.g., Applicant 2015-UNAT-590, para. 61; Warren 2010-UNAT-059, para. 10). In this respect, the Tribunal "may award compensation for actual pecuniary or economic loss, including loss of earnings, as well as non-pecuniary damage, procedural violations, stress, and moral injury" (see, e.g., Faraj 2015-UNAT-587, para. 26; Antaki 2010-UNAT-095, para. 21). Also, the Appeals Tribunal has consistently held that "compensation must be set by the [Tribunal] following a principled approach and on a case-by-case basis", and that "[t]he Dispute Tribunal is in the best position to decide on the level of compensation given its appreciation of the case" (see, e.g., Rantisi 2015-UNAT-528, para. 71; Solanki 2010-UNAT-044, para. 20). An unlawful reassignment or transfer decision does not come within the inclusionary clause of art. 10.5(a) of the Tribunal's Statute and does not require an order of compensation in lieu of rescission (see Chemingui 2016-UNAT-641, para. 24; see also Kaddoura 2011- UNAT-151, para. 41; Rantisi 2015-UNAT-528, para. 65). Art. 10.5(b) of the Tribunal's Statute requires that harm be supported by evidence. Specifically, the Appeals Tribunal has consistently held that "it is not enough to demonstrate an illegality to obtain compensation: the claimant bears the burden of proof to establish the existence of negative consequences, able to be considered damages, resulting from the illegality on a cause-effect lien" and requires that "the harm be directly caused by the administrative decision in question" (see Ashour 2019-UNAT-899, para. 31; see also Kebede 2018- UNAT-874, para. 20).

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

## Full judgment

Full judgment

## Applicants/Appellants

Banaj

## Entity

UNODC

## Case Number(s)

UNDT/GVA/2019/31/R1

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

19 Oct 2022

## Duty Judge

Judge Bravo

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Reassignment or transfer
Compensation (see also, Compensation)
Rescission
Remedies

## Applicable Law

UNDT Statute

- Article 10.5(a)
- Article 10.5(b)
- Article 10.7

## Related Judgments and Orders

UNDT/2022/060
2015-UNAT-590
2010-UNAT-059
2015-UNAT-587
2010-UNAT-095
2015-UNAT-528
2010-UNAT-044
2016-UNAT-641
2011-UNAT-151
2019-UNAT-899
2018-UNAT-874
2014-UNAT-397
2015-UNAT-516
2021-UNAT-1118