UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2022-UNAT-1262

Egor Ovcharenko *et al.*

Daniel Edward Kutner *et al.*[1]

(Appellants)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Dimitrios Raikos, Presiding Judge Graeme Colgan Judge Martha Halfeld
Case No.:	2021-1605
Date of Decision:	1 July 2022
Date of Publication:	17 August 2022
Registrar:	Weicheng Lin

Counsel for Appellants:	George G. Irving
Counsel for Respondent:	Angélique Trouche

[1] Annex 1 to this Judgment sets forth the names of the Appellants.

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal or UNAT) is seized of an appeal against Judgment No. UNDT/2021/084 (the Impugned Judgment).[2] Several staff members of the Department of General Assembly and Conference Management (DGACM) joined in two separate applications (collectively, Applicants) to the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) to challenge the "unilateral change in the individual workload standards for translation and self-revision".[3]

2. On 16 July 2021, the Dispute Tribunal issued the Impugned Judgment dismissing the applications and finding them irreceivable *ratione materiae*. The Dispute Tribunal determined that the applications did not concern an appealable administrative decision.

3. Several of the Applicants (collectively, Appellants) have now joined in an appeal to UNAT arguing *inter alia* that the UNDT has failed to exercise jurisdiction by refusing to decide their case on the merits.[4]

4. For the reasons set out below, we allow the appeal and remand the case to the UNDT for a trial on the merits.

Facts and Procedure

5. On 31 December 2020, the General Assembly adopted resolution 75/252 (Questions relating to the proposed programme budget for 2021). The Resolution in part stated the following:

> [The General Assembly welcomes] the increased throughput productivity of the translation services at all duty stations, underlines that these productivity gains, enabled over the years by new working methods and technologies, justify revising the current notional workload standards approved in the pre-computer era by the General Assembly and decides to increase the workload standards for the translation services to 5.8 pages per day[.]

[2] *Ovcharenko et al., Kutner et al. v. Secretary-General of the United Nations*, Judgment No. UNDT/2021/084 dated 16 July 2021.
[3] On 21 May 2021, Egor Ovcharenko along with 34 staff members filed an application with the UNDT contesting the "unilateral change in the individual workload standards for translation and self-revision". Their case was registered as Case No. UNDT/NY/2021/021. On 4 June 2021, Daniel Edward Kutner along with 68 other staff members filed an application contesting the same decision, and their case was registered as Case No. UNDT/NY/2021/024. The Registry of the UNDT in New York subsequently informed the parties that the two cases would be managed jointly.
[4] See Annex 1.

6. The implementation of this new workload standard, as decided by the General Assembly, was discussed at several meetings between DGACM management and staff representatives, namely one on 15 January 2021 and another one on 18 March 2021.

7. Subsequently, on 8 April 2021, the Under-Secretary-General for DGACM (USG/DGACM) held a townhall meeting with staff members in which he discussed the implementation of the General Assembly resolution.

8. On or about 26 April 2021, the Applicants requested management evaluation of "[t]he decision of the USG/DGACM of 8 April 2021 conveyed to staff at a town hall meeting that he had decided as of 1 May 2021 to implement the recommendation of the Working Group on the implementation of the increase of workload standards/or the translation services approved by General Assembly in resolution 75/252 as of 1 May 2021 by increasing the daily workload of translators to 5.8 pages and of self-revisers to 6.4 pages".[5]

9. On 29 April 2021, the Management Evaluation Unit (MEU) informed the Applicants that their request for management evaluation was not receivable. The MEU explained:[6]

> The present request does not show that the 8 April 2021 announcement directly affects any individual staff member's terms of appointment. While the new workload standards established by the General Assembly are part of the compact of the USG/DGACM with the Secretary-General, these standards have not been incorporated in individual workplans at this time. Moreover, while it is questionable whether a staff member could challenge the implementation of workload standards in an individual staff member's workplan, *the fact that this has not yet taken place* in this case renders the present request irreceivable.

10. On 21 May and 4 June 2021, the Applicants filed two applications with the Dispute Tribunal contesting the "unilateral change in the individual workload standards for translation and self-revision".

11. On 14 June 2021, the Applicants also filed a request for interim measures. The cases were then joined for consideration.

[5] Impugned Judgment, para. 6. Based on the Appellants' submissions, it appears the individual workload standards for translation services in 1999 were: 5 pages of 330 words (of estimated standard pages (ESP)) for translation, 5.5 ESP for self-revision and 12 ESP for revision. The newly proposed standards would be: 5.8 ESP for translation and 6.4 ESP for self-revision.
[6] MEU letter to Applicants, 29 April 2021, page 2 (emphasis added).

12. On 7 June and 21 June 2021, the Secretary-General moved the Dispute Tribunal to determine the receivability of the applications as a preliminary matter.[7]

The UNDT Judgment

13. On 16 July 2021, the Dispute Tribunal issued the Impugned Judgment, finding that the applications were not receivable *ratione materiae* as they did not concern an appealable administrative decision, as defined under Article 2(1)(a) of the Dispute Tribunal Statute (UNDT Statute).[8] The Dispute Tribunal highlighted that the measures announced by the USG/DGACM on 8 April 2021 were meant to be implemented in the future, that is on 1 May 2021.[9] Additionally, the Dispute Tribunal also noted that the new translation standards announced on 8 April 2021 had not yet been incorporated in individual workplans.[10]

14. Furthermore, the UNDT also noted that the request for management evaluation appeared to have been premature. In that regard, the UNDT stated:[11]

> … The Tribunal agrees that the request for management evaluation of the 8 April 2021 announcement was premature as, by that date, there was no individualization of the measures decided by the USG/DGACM to the individual Applicants. Therefore, at that time, the announced measures were a preparatory step and did not have a direct adverse impact on the Applicants' terms of employment.
>
> … However, there is no evidence that the Applicants submitted subsequent requests for management evaluation. Therefore, any implementation of the 8 April 2021 measures occurred after the 26 April 2021 request for management evaluation and the 29 April 2021 response from the Management Evaluation Unit are beyond the scope of this case as they were not submitted for management evaluation as per staff rule 11.2(a) and art. 8.1(c) of the Tribunal's Statute.
>
> … The applications are therefore not receivable *ratione materiae*.

Procedure before the Appeals Tribunal

15. On 14 September 2021, the Appellants filed an appeal against Judgment No. UNDT/2021/084, and the appeal was registered with the Appeals Tribunal as Case No. 2021-1605. On 16 November 2021, the Secretary-General filed an answer.

[7] Case Nos. UNDT/NY/2021/021 and UNDT/NY/2021/024.
[8] Impugned Judgment, para. 3.
[9] *Ibid*., para. 31.
[10] *Ibid*., para. 32.
[11] *Ibid*. paras. 33-35.

Submissions

The Appeal

16. The main contention of the Appellants centres around the issue of when the decision to revise the workload standards was implemented and individualised. The Appellants contend that the UNDT made an error of fact in its finding that the 8 April 2021 decision required an additional step of incorporation into individual workplans to render it in an individualised decision. The Appellants submit that the 8 April 2021 decision was final and unequivocal and that its effects were immediately felt in the pressure imposed on them to increase their output. This rendered the decision an appealable administrative decision as it had an immediate individual impact on the terms and conditions of service of the affected staff members.

17. Additionally, the Appellants also submit that the UNDT appeared to have confused the concept of regulatory decisions of general application with that of operational decisions targeting specific staff members. In that regard, the Appellants argue the operational decision by the Secretary-General in execution of a decision made by the General Assembly is an administrative decision, regardless of whether it applies to one staff member or to a group of staff members.

18. Second, and related to the merits of the application, the Appellants argue that the Secretary-General improperly exercised his discretionary authority when he unilaterally changed the Appellants' conditions of service arbitrarily, without proper staff consultation and in violation of Staff Regulations 8.1 and 8.2. In that regard, the Appellants also submit the information sessions that took place in the early months of 2021 were not staff/management consultations. Additionally, the Appellants also note the change in workload standards was imposed without the necessary support or proper transitional arrangements.

19. Finally, the Appellants also submit that under the current interpretation of the UNDT, aggrieved staff members would likely be precluded from ever being able to challenge an administrative decision if they always have to wait and see how a decision would individually affect their performance report or contract decision. Notably, they argue if they have to wait for the completion of their performance reports or for their contracts to be renewed in order to challenge any change in their work requirements, they would likely be precluded *ratione temporis*.

20. In the form of relief, the Appellants ask the Appeals Tribunal to allow the appeal and to rescind the contested decision.

The Secretary-General's Answer

21. The Secretary-General first submits that the UNDT was correct to find the announcement made on 8 April 2021 was to be implemented beginning 1 May 2021. The Secretary-General thus argues the UNDT was correct in its conclusion that the measures announced on 8 April 2021 were "a preparatory step and did not have a direct adverse impact on the Applicants' terms of employment."[12] Because these measures were not yet individualised, the contested decision was not an appealable administrative decision.

22. Additionally, the Administration also notes that there is no evidence of subsequent requests for management evaluation, and as such, any individual measure that was implemented after 1 May 2021 never went through the mandatory management evaluation process. Hence, the applications were not receivable *ratione materiae*. As an aside, the Secretary-General also notes two of the Appellants were not a party to the case before the UNDT, and therefore, the instant appeal cannot be receivable in their respect.[13]

23. Regarding the main issue under appeal, that is whether the 8 April 2021 was an appealable administrative decision, the Secretary-General submits the Appellants have failed to show how the measures announced on that date directly impacted their terms of employment. In that regard, the Secretary-General argues the 8 April 2021 announcement was a general organizational announcement related to the reorganisation of services or workload standards, and as such, it was not subject to judicial review.

24. Finally, the Respondent argues that the Appellants' claims are based on conjectures as to what may happen in future performance appraisals. In response to the Appellants' argument that they immediately felt the pressure to increase their output, the Secretary-General submits that the pressure alleged by the Appellants was only their anticipation of the implementation of the decision. In that regard, anticipation and feeling about what might or might not happen in the future do not constitute a direct legal consequence as a result of an administrative decision.

[12] *Ibid*. para. 33.
[13] The two Appellants who were not a party to the case before the UNDT are Mohamad Louay Al Khaled and Roberto Gracia-García.

25. Based on the foregoing, the Secretary-General requests the Appeals Tribunal to dismiss the appeal and to uphold the Impugned Judgment.

Considerations

Receivability of the appeal

26. The Appeals Tribunal readily dismisses Mr. Mohamad Louay's and Mr. Roberto Gracia-Garcia's appeal. They were not a party to the proceedings before the UNDT and have no standing to appeal under Article 2(2) of the Statute of the Appeals Tribunal. Their case requires no further consideration.

Meris of the case

27. The issue before the Appeals Tribunal is whether the UNDT erred in law and in fact when it found that the Appellant's application was not receivable *ratione materiae*.

28. Article 2(1)(a) of the UNDT Statute confers jurisdiction upon the UNDT to hear and pass judgment on an application to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of the alleged non-compliance.

29. Thus, a statutory burden is placed upon an applicant to establish that the administrative decision in issue was in non-compliance with the terms of his or her appointment or contract of employment. Such a burden cannot be met where the applicant fails to identify an administrative decision capable of being reviewed, that is, a specific decision which has a direct and adverse impact on the applicant's contractual rights.[14]

30. We have reviewed the application to the UNDT and find that there is a reviewable administrative decision within the meaning of Article 2(1)(a) of the UNDT Statute.

[14] *Haydar v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-821, para. 13, citing *Selim v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-581, *Reid v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-419, *Obino v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-405, and *Planas v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-049.

31. We recall our settled jurisprudence that an appealable administrative decision is a decision whereby its key characteristic is the capacity to produce direct legal consequences affecting a staff member's terms and conditions of appointment. Further, the date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine.[15]

32. As the former Administrative Tribunal held in *Andronov* [16]

> There is no dispute as to what an "administrative decision" is. It is acceptable by all administrative law systems, that an "administrative decision" is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences. They are not necessarily written, as otherwise the legal protection of the employees would risk being weakened in instances where the Administration takes decisions without resorting to written formalities. These unwritten decisions are commonly referred to, within administrative law systems, as implied administrative decisions.

33. Deciding what is and what is not a decision of an administrative nature may be difficult and must be done on a case-by-case basis and will depend on the circumstances, taking into account the variety and different contexts of decision-making in the Organisation. The nature of the decision, the legal framework under which the decision was made, and the consequences of the decision are key determinants of whether the decision in question is an administrative decision. What matters is not so much the functionary who takes the decision as the nature of the function performed or the power exercised. The question is whether the task itself is administrative or not.[17]

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[15] *Kennes v. Secretary-General of the United Nations,* Judgment No. 2020-UNAT-1073, para.40; *Larriera v. United Nations Joint Staff Pension Board*, Judgment No. 2020-UNAT-1004, para. 29; *Olowo-Okello v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-967, para. 31; *Farzin v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-917, para. 36.
[16] Former United Nations Administrative Tribunal Judgment No. 1157 (2003).
[17] *Kennes v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1073, para.41; *Olowo-Okello v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-967, para. 32; *Lloret Alcañiz et al. v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-840, para. 62; *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 50.

34. In the present case, the Dispute Tribunal concluded that the Applicants' application was not receivable for the following reasons. First, the UNDT found that the application was not receivable *ratione materiae* since the "announcement" by the USG/DGACM on 8 April 2021 did not constitute an appealable administrative decision. Second, the UNDT found that the Applicants' application was not receivable, because their request for management evaluation on 26 April 2021 was premature and they had not submitted such a request for any implementation of that announcement that occurred after the above-noted request for management evaluation.

35. Appropriately, the Dispute Tribunal embarked upon its consideration on the issue before it by outlining its statutory function which is, *inter alia*, to hear appeals against administrative decisions that are alleged to be in non-compliance with the terms of appointment or contract of employment of a staff member. Thus, at the heart of the Dispute Tribunal's jurisdiction is its statutory remit to judicially review decisions which affect the contractual entitlements of employees.

36. At the outset we make clear that the crux in this case is whether the 8 April 2021 announcement by the USG/DGACM was sufficient, due to its nature, to qualify as an administrative decision directly affecting the terms of appointment or contract of employment of the Appellants, as required by Article 2(1) of the UNDT Statute. In this context, in order to be considered as an appealable administrative decision, what matters is that the administrative measure must have a present and direct adverse impact on the terms and conditions of employment and not the potential of a future injury.[18]

37. This is not always an easy task and necessitates, as already noted, a delicate assessment and analysis by the judge of the totality of the circumstances surrounding the relevant critical events. As was stated by the Appeals Tribunal:[19]

> … It happens routinely that a UNDT judge may need to identify the existence and date of a contested decision which may be express or implied. This requires adequate interpretation and comprehension of the application and the response submitted by the parties. The judge has an inherent power to define the administrative decision impugned by a party and identify what is in fact being contested and subject to judicial

[18] *Kennes v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1073, paras. 44, 49.
[19] *Monarawila v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-694, para. 32; See also, *Houran et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2020-UNAT-1019, para. 28.

> review. With an implied administrative decision, the UNDT must determine the date on which the staff member knew or reasonably should have known of the decision he or she contests, based on objective elements that both parties can accurately determine.

38. Thus, quite different is the matter of the communication of the administrative decision to its recipient/s (addressees), i.e., that of the notification of it or otherwise, by which the staff member is put to notice about the existence and the content of an extant administrative decision and which triggers the time limits for formal review of it. In that respect, per our jurisprudence, there is no explicit requirement for written notification as a prerequisite to contest an administrative decision.[20] So, there may be a written or verbal communication of the relevant decision. However, if there is no written notification, it is incumbent on the body reviewing the matter to consider whether the circumstances surrounding the verbal communication still constitute notification.[21]

39. In terms of that communication of the administrative decision, the Appeals Tribunal has also ruled, for example, in prior cases, that if there is a meeting wherein a staff member is verbally advised of an administrative decision, the Appeals Tribunal will review whether there are subsequent written communications including minutes, if they were "unsigned, undated and not shared" at the time, and whether the meetings had the "aim of notification of the administrative decision" or some other topic.[22] If not, the verbal communication does not constitute "notification". In determining the decisive moment of communication, the Appeals Tribunal has previously held that it is when "all relevant facts…were known, or should reasonably been known". In addition, the Appeals Tribunal will consider whether the verbal decision was communicated with "sufficient gravitas" in a meeting or whether it involved an informal or casual verbal communication or one where the content of the verbal communication is disputed and the facts do not support a reasonable basis upon which to make the necessary findings of "clear and unambiguous" and "sufficient gravitas".[23]

40. In this instance, it is undisputed that, following concerns expressed by the staff representatives over the interpretation by the management of resolution 75/252 of the General Assembly adopted on 31 December 2020, the USG/DGACM established a

[20] *Auda v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-746, para. 30.
[21] *Houran et al., ibid*, para.30.
[22] *Houran et al., ibid*, para.32; *Jean v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-743, para. 23.
[23] *Houran et al., ibid*, para.33, citing *Jean, ibid*, para.31 and *Krioutchkov v. Secretary-General of the United Nations*, Judgment No.2016-UNAT-691, para.21.

management Working Group on workload standards, chaired by M. K., Chief of Language Services in United Nations Office in Geneva, and requested it to prepare recommendations for him on the implementation of said resolution 75/252. On 7 April 2021, the Working Group on workload standards, created in DGACM, shared its final report with all translators, revisers and editors. The Group, *inter alia*, recommended the following:

> ***Calculations on the new workload standards for translation, self-revision and revision and changes to current formulas for productivity calculation*** *in* ***gDoc and other relevant systems:*** The Working Group held multiple sessions to determine the best means of implementing the new mandate, which requires a *16 per cent increase in the workload standard The outcome of the discussions was a daily workload of translation/monitored self-revision at 5.8 pages; self-revision at 6.4 pages; and revision at 12 pages*.

41. The next day, on 8 April 2021, the USG/DGACM held a virtual town hall for all DGACM translators and revisers, during which he stated that he had decided to begin implementing the recommendations of the Working Group on workload standards from 1 May 2021.

42. The Appellants challenged before the UNDT that "announcement" of the USG/DGACM in terms of his interpretation and implementation of the decision of the General Assembly "to increase the workload standards/or the translation services to 5.8 pages per day". They did not attack the decision of the General Assembly to alter the page requirement for translation services from 5 to 5.8 "but rather the interpretation and application introduced by the Administration, namely the USG/DGACM, that go beyond that decision and impose this as individual work requirements, including an unjustified increase to 6.4 pages for self-revision".

43. Notably, they submitted to the UNDT that, while the DGACM Working Group did not change the workload standard approved by the General Assembly of 5.8 pages per day, it went beyond that resolution and expanded the page workload for individual translators to 5.8 and for self-revisers to 6.4, which had never been reported to or approved by the General Assembly. In their view, the new standard introduced confusion since most translators also self-revise and vice versa, and therefore the workload standard arguably ought to be 5.8 pages for everyone, not 6.4. It had neither General Assembly endorsement nor any empirical study to support it and appeared to have been extrapolated from a claim to increase all workloads by 16 per cent, an allegedly arbitrary interpretation which had never been the stated intention of

the resolution. As a result, the announced imposition of new standards of performance assessment, including an unwarranted extrapolation of the increase to self-revision that had not been approved by or even reported to the General Assembly, constituted, per the Appellants' claim, an adverse administrative decision affecting their staff member status.

44. Further, in order to show that the 8 April 2021 announcement had been implemented related to the concerned staff members on an individual basis, the Appellants had brought to the attention of the UNDT of an e-mail dated 1 April 2021 from the Chief of Language Services confirming that the implementation date of the new workload standards would be 1 May 2021. On 3 May 2021, the Chief of the French Translation Service e-mailed her colleagues that the new productivity standards would be entered into the official translation assignment records system, reflecting the implementation of the new standard for all staff.

45. The Appellants had also provided the first instance Judge with records to show the implementation of the decision as of May 2021.

46. At first, the Dispute Tribunal, at paragraphs 5 and 6 of its Impugned Judgment, found that, "[o]n 8 April 2021, the Under-Secretary-General for DGACM ("the USG/DGACM") held a townhall meeting with DGACM staff in which he discussed the implementation of the General Assembly resolution" and that, "[o]n 26 April 2021, the Applicants requested management evaluation of "[t]he decision of the USG /DGACM of 8 April 2021 conveyed to staff at a town hall meeting that he had decided as of 1 May 2021 to implement the recommendation of the Working Group on the implementation of the increase of workload standards/or the translation services approved by General Assembly in resolution 75/252 as of 1 May 2021 by increasing the daily workload of translators to 5.8 pages and of self-revisers to 6.4 pages".

47. In the course of reviewing the nature of the contested decision, the UNDT made a reference to *Nguyen-Kropp* and *Postica* and *Gnassou* cases,[24] taking note that it is settled case law of the Appeals Tribunal that "the preparatory steps or actions can only be reviewed by the Dispute Tribunal in the context of an appeal against a final decision of the Administration that has direct legal consequences in the individual's terms of employment".

[24] *Nguyen-Kropp & Postica v. Secretary-General of the United Nations*, Judgment 2015-UNAT-509, paras. 31-33; *Gnassou v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-865, para.31.

48. Then, the UNDT proceeded to state that the measures announced by the USG/DGACM on 8 April 2021 were meant to be implemented on 1 May 2021 and that the annexes submitted by the Appellants to demonstrate the implementation of the measures announced on 8 April 2021 were from May 2021 onward.[25]

49. Based on these findings, the UNDT came to the conclusion that the request for management evaluation of the 8 April 2021 announcement was premature as, by that date, there had been no individualisation of the measures decided by the USG/DGACM to the individual Appellants. In this respect, the UNDT adopted the MEU's reasoning that "the new translation standards announced on 8 April 2021 had not been incorporated in individual workplan at this time". Therefore, per the UNDT's ruling, at that time, the announced measures were a preparatory step and did not have a direct adverse impact on the Appellants' terms of employment.[26] Thus, the Appellants' application was rejected as not receivable *ratione materiae*.

50. In their submissions in this appeal, the Appellants take issue with the Dispute Tribunal's approach and maintain, *inter alia*, that it erred in finding that the announcement was not an individualised decision but purportedly constituted a regulatory decision of general application. The Appellants claim that the UNDT also erred in fact, as the announcement made at the meeting was an "operational decision to increase the workload which was final and unequivocal and that the effects were immediately felt in the pressure imposed by the new requirements. They argue further that the UNDT's factual error resulted in the UNDT's having committed an error of law because, in their view, operational decisions taken by an official of the United Nations in execution of a decision or directive by a legislative body are administrative decisions.

51. In response, the Secretary-General submits that the Appellants have failed to show that the measures announced on 8 April 2021 directly impacted any of their terms of employment. He asserts that "it is revealing that the Appellants do not identify any terms of employment that the measures discussed at the meeting would purportedly have impacted. No term of employment was actually affected by the announced measures, which concerned the organisation of work in DGACM following the General Assembly resolution". He argues further that the announcement was not an individualised implementation of the

[25] Impugned Judgment, para.31.
[26] Impugned Judgment, para.33.

General Assembly resolution and that the Appellants did not show how the Meeting adversely impacted their terms of employment.

52. We have gone through the record of the case, examined the grounds of appeal, the Respondent's Answer, and hold that the UNDT erred in finding that the above announcement dated 8 April 2021 was not an appealable administrative decision for the purpose of Article 2(1) to the UNDT Statute. It is the considered view of the Appeals Tribunal that, applying the test set out in our pertinent jurisprudence, the announcement by the USG/DGACM on 8 April 2021 contained therein all the necessary components referred to in this jurisprudence to give rise to legal consequences for the Appellants in their capacity as staff members of the DGACM.

53. More particularly, under the specific circumstances of the case at bar and the overall assessment of the impugned 8 April 2021 announcement by the USG/DGACM, namely his decision to begin implementing the recommendations of the Working Group on workload standards approved by the General Assembly in resolution 75/252 as of 1 May 2021, along with the content of the above mentioned recommendation on 7 April 2021 of the Working Group on workload standards, referring to a "daily workload of translators/monitored self-revision at 5.8 pages; self-revision at 6.4 pages, and revision at 12 pages", it is our finding that the impugned "announcement" contained information which affected the rights of the staff members in question, given that it was being clearly communicated to them that changes were going to be made to their workload conditions and also it conveyed the final and unequivocal decision to that effect.[27] Put another way, the announcement in question clearly embodied a final decision with respect to their employment status taken by a person with authority to make a final decision thereon, only subject to the *dies a quo* of its implementation (1st May 2021). Therefore, vis-à-vis those staff members it had individual application as it produced direct adverse legal consequences affecting their terms and conditions of employment.

54. Consequently, the UNDT erred in law and in fact when it decided that the 8 April 2021 announcement by the USG/DGACM was not a final decision of the Administration but only a preparatory step towards it. The Appellants suffered negative consequences at the material time the contested announcement was made and communicated to them on 8 April 2021, as

[27] Comp. *Archana Patkar v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1102, paras.27-28.

this had a tangible individual direct impact on them. Nor did the launch of the implementation of the announced administrative measures from 1 May 2021 onwards detract from such finality of the impugned announcement, as the UNDT incorrectly held, because this point of time was clearly not set to function as a suspensory condition of this decision coming into effect. At any rate, though the implementation of an administrative decision is, at times, an indicator of its finality, it is not one of the requisite key characteristics of an appealable administrative decision (force executoire). In the present case, there is no gainsaying that the impugned decision of the USC/DGACM was adequately individualised and inevitably afflicted the Appellants' employment status at the time it was taken and announced on 8 April 2021, because the adverse change in their employment status legally came into effect then, despite the fact that its factual materialisation deferred to 1 May 2021.

55. Consequently, as such, the USG/DGACM announcement on 8 April 2021 reflected more than a mere "decision of general application corresponding to the obligation of a Head of Entity pursuant to Section 5.1(b) of ST/SGB/2015/3 (Organization of the Secretariat of the United Nations) to identify broad strategies required for the developments of the work programme of the department/office". Contrary to the Secretary-General's relevant argument, it constituted a final administrative decision able to be challenged through appeal, as the Appellants correctly argue.

56. In the light of the foregoing, the UNDT erred further in its subsequent determination that the request for management evaluation of the 8 April 2021 announcement was premature as, by that date, there was no final, and thus, appealable administrative decision to be challenged before the MEU. In view of the fact that the Appellants had filed their request for management evaluation on 29 April 2021 and then their application with the UNDT on 21 May 2021, their application was receivable *ratione materiae* and *ratione temporis*.

57. In the premises, the present appeal must be granted. Since the Impugned Judgment under appeal only addresses issues of receivability, the case must be remanded to the UNDT for a consideration on the merits pursuant to Article 2(3) of the Appeals Tribunal's Statute.

Judgment

58. The Appeals Tribunal grants the appeal and reverses Judgment No. UNDT/2021/084. The case is remanded to the UNDT for a trial on the merits.

Original and Authoritative Version: English

Decision dated this 1st day of July 2022 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Raikos, Presiding	Judge Colgan	Judge Halfeld

Judgment published and entered into the Register on this 17th day of August 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar

ANNEX 1.

LIST OF APPELLANTS

1. Ovcharenko, Egor
2. Kutner, Daniel
3. Skourikhine, Alexandre P.
4. Zhang, Tonghuan
5. Zhang, Yenlin
6. Al Khaled, Mohamad Louay
7. Sainz Goutard, Veronica
8. Valenta, Muriel
9. de la Fuente Noriega, Maria
10. Cui, Ying
11. García Soto, María Elisa
12. Zhao, Xingmin
13. Wang, Sen
14. Zhurbina, Maria
15. Jiang, Jieyi
16. Faouzi, Driss
17. Loutoux, Patricia
18. Slavnov, Vladimir
19. Ferrer Amich, Alfonso
20. Ghailan, Ahmed
21. Sanchez-Real, Enrique
22. Valmalette, Alain
23. Gracia-García, Roberto
24. Caldin, Galina
25. Girard-Urquhart, Coralie
26. Locker, Astrid
27. Sánchez Bou, Ana Isabel
28. Wallart, Elizabeth
29. Salathe, Edouard
30. Acker, Marine
31. Gonzalez Silva, Pablo Gonznez
32. Grunina, Yulia
33. Siegel, Alexis
34. Begisheva, Olga
35. Collier, Rebeca
36. Andreevskaya, Viktoriya
37. Caldin, Thomas
38. Johnson, Laura
39. Marquot, Lise
40. Blinov, Vladimir
41. Meyer, Olivier
42. Nissou, Bruno Michel
43. Hernandez Garcia, Eleonora
44. Helluy-Tignol, Florence
45. Salatko-Petryszce, Isabelle
46. Fadel-Ostojic, Judy
47. Legardeur, Blandine