UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Case Nos. 2012-294 & 2012-313

Bangoura

(Respondent/Applicant)

v.

Secretary-General of the United Nations

(Appellant/Respondent)

JUDGMENT

Before:	Judge Inés Weinberg de Roca, Presiding Judge Mary Faherty Judge Sophia Adinyira
Judgment No.:	2012-UNAT-268
Date:	1 November 2012
Registrar:	Weicheng Lin

Counsel for Respondent/Applicant:	Self-represented
Counsel for Appellant/Respondent:	Zarqaa Chohan/Rupa Mitra

JUDGE INÉS WEINBERG DE ROCA, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it two appeals by the Secretary-General and Mr. Cheickh Bangoura against Judgment No. UNDT/2011/202, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 29 November 2011. The Secretary-General filed his appeal on 30 January 2012 and Mr. Bangoura filed his appeal on 30 March 2012. Mr. Bangoura and the Secretary-General filed their respective answers on 2 April 2012 and 24 May 2012.

Synopsis

2. The former Administrative Tribunal established a procedure for staff members wishing to challenge the non-execution of a judgment. According to the former Administrative Tribunal, the implementation by the Administration of a Tribunal's order is in itself an administrative decision subject to review. Mr. Bangoura needed to make a request for review of the administrative decision and, if denied, appeal to the former Joint Appeals Board, and thereafter to that Tribunal. Since Mr. Bangoura failed to initiate the formal appeal process under the former system of administration of justice, his application to the UNDT was not receivable ratione materiae.

Facts and Procedure

3. The facts as set out in the UNDT Judgment are not contested and read as follows (footnotes omitted):

> 4. The Applicant was employed by the United Nations International Drug Control Programme (UNDCP) on a series of fixed-term appointments between January 1992 and January 1997. In October 1994, the Applicant was assigned to Abidjan, Ivory Coast, and on 24 December 1994 to the UNDCP regional office in Nairobi, Kenya.
>
> 5. In 1996, the Applicant's post at UNDCP was abolished. A few short-term extensions were granted but the Applicant's contract was ultimately not renewed beyond 31 January 1997.
>
> 6. On 5 January 1997, The Washington Post published an article referring to the Applicant by name and making a number of allegations against him which ultimately proved to be false and unfounded. On 9 January 1997, as a result of the article in The Washington Post, the Applicant was suspended on full pay pending expiry of his contract.

7. On the same day, Mr. Fred Eckhard, the Acting Spokesman for the (then new) Secretary-General Kofi Annan, made an announcement at a press conference, referring to these allegations of "mismanagement and misconduct" and stating that the Applicant had been placed on administrative leave and that his contract would not be renewed. The Judgment referred to this press conference as a "press briefing".

8. The Applicant sought a review of these decisions and on 6 April 1997, he lodged an appeal with the former Joint Appeals Board (JAB), contesting not only the decisions to suspend him, and not to renew his contract, but also regarding the withholding of his final payments and the defamatory remarks made about him at the press conference.

9. The JAB submitted its report on 3 July 1998. The panel concluded that the Respondent had, through his Acting Spokesman, made defamatory statements about the Applicant, and that placing him on special leave with full pay ("SLW[F]P") was an arbitrary and improper use of discretion. The panel further noted that the decision not to renew the Applicant's contract and place him on SLW[F]P was the result of allegations of misconduct to which the Applicant had not been given a chance to respond, and that no disciplinary process had been initiated nor any disciplinary action taken against him.

10. The Secretary-General did not accept the findings of the JAB, and the Applicant appealed to the former UN Administrative Tribunal. Judgment No. 1029 resulted in the following disposition:

For the foregoing reasons, the Tribunal:

> 1. Decides that both the decision to terminate the Applicant's contract and the decision to place him on special leave are tainted by abuse of power;
>
> 2. That the Applicant is therefore entitled to one year's net base salary by way of compensation, that being the proper reparation due him;
>
> 3. Decides, further, that since his reputation has suffered serious injury as a result of information disseminated in a United Nations press briefing, the Applicant is entitled to reparation for the moral injury suffered, in the form of, on the one hand, financial compensation in the amount of 50,000 United States dollars, and, on the other, publication of the pronouncements of this judgement in a United Nations press briefing within three months of the judgement;
>
> 4. Decides that the Administration cannot continue to withhold the sums due the Applicant and must therefore pay them to him;
>
> 5. Rejects all other pleas.

11. Although dated 21 November 2001, Judgment No. 1029 was not issued to the parties until 13 March 2002. The sums due to the Applicant were disbursed to him, in accordance with the disposition cited above.

> 12. On 13 September 2002, the Respondent issued the following Press Release:
>
> UNITED NATIONS ADMINISTRATIVE TRIBUNAL RENDERS JUDGEMENT IN FAVOUR OF FORMER STAFF MEMBER
>
> In March of this year, the United Nations Administrative Tribunal communicated to the Administration its judgment in the case of Mr. Bangoura. Mr. Bangoura worked for the United Nations International Drug Control Programme, Vienna, under a series of fixed-term contracts. The Tribunal found that the Organization's decision not to continue his employment was tainted by abuse of power on the part of the Administration. It also criticized the discussion of Mr. Bangoura's case by the Administration at the Organization's press briefing in January 1997. The Tribunal ordered the Administration to compensate Mr. Bangoura $50,000 for the injuries he suffered, including injury to his reputation, and to publish the pronouncements of the judgement in a press release.
>
> Attached to this press release is the text of United Nations Administrative Tribunal Judgement No. 1029, in French and in English. The French version of the judgement is the official version.
>
> 13. It appears that the Applicant was not satisfied with the outcome of his case because between April 2002 and October 2008 he raised the matter with various arms of the Respondent Organisation to no avail. Ultimately, he filed the present Application.

4. The UNDT noted that while the former Administrative Tribunal concluded that it had no jurisdiction to consider complaints regarding defamation, it did conclude that, as a result of the remarks made in the press briefing, Mr. Bangoura had suffered serious injury and was entitled to compensation. The UNDT found that the issues raised by Mr. Bangoura before the UNDT stemmed from the same course of action and were thus res judicata. The matter was therefore closed.

5. The UNDT examined whether or not the underlying judgment of the former Administrative Tribunal had been fully implemented. It found that the Administration, by issuing a press release, had not fully implemented the judgment. It failed to absolve Mr. Bangoura in the same way as he had been impeached, through a public announcement at a press briefing, as ordered by the former Administrative Tribunal.

6. The UNDT next turned to consider whether Mr. Bangoura's application was receivable ratione materiae. It found that although the Statute of the former Administrative Tribunal did not state that it had the power to deal with the execution of

judgments, it nevertheless had inherent authority to deal with this matter. In reaching this conclusion, the UNDT noted that this authority was not specifically mentioned in the Statute of the former Administrative Tribunal; and that the former Administrative Tribunal in its *Mbarushimana* Judgment[1] had expressly found by majority decision that it had no authority to order the execution of judgments. The UNDT however concluded that it was not bound by this jurisprudence and endorsed the minority opinion in that judgment that opined that the Administrative Tribunal did have the inherent power to order the execution of its own judgments. Accordingly, the UNDT has the same power.

7. Finally, the UNDT examined whether Mr. Bangoura's application was receivable ratione temporis. It found that notwithstanding the long time that had passed since the judgment, Mr. Bangoura could not be left without remedy; he in fact had repeatedly raised the matter with the Administration. The UNDT concluded that it had jurisdiction over the case, since the case had been transferred to the UNDT during the transitional period related to the introduction of the new system of administration of justice. The UNDT found that its Rules of Procedure provided a sufficient legal basis for the UNDT to order the execution of a judgment rendered by the former Administrative Tribunal.

8. The UNDT ordered the Secretary-General to execute, within one month of the date on which the UNDT Judgment became executable, Judgment No. 1029 of the former Administrative Tribunal by holding a press briefing in which his Spokesman should give the particulars of both Judgment No. 1029 and the UNDT Judgment.

9. The UNDT also awarded compensation in the amount of USD 10,000 on the ground that the Administration's failure to fully execute the judgment of the former Administrative Tribunal had deprived Mr. Bangoura of complete redress for the wrong done to him over a period of nearly ten years.

10. Both parties appeal the UNDT Judgment. Mr Bangoura requests that the Appeals Tribunal hold an oral hearing on both appeals.

[1] Former Administrative Tribunal Judgment No. 1283, *Mbarushimana* (2006).

Submissions

Secretary-General's Appeal

11. The Secretary-General submits that the UNDT erred in law in concluding that it had the authority to order the execution of judgments of the former Administrative Tribunal. The UNDT noted the Judgment of the former Administrative Tribunal in *Mbarushimana*,[2] which found that the former Administrative Tribunal had no power to order the execution of its own judgments. It however failed to acknowledge that the former Administrative Tribunal had established a procedure for staff members wishing to challenge the non-execution of a judgment, which Mr. Bangoura failed to follow. According to the former Administrative Tribunal, the implementation by the Administration of an order by that Tribunal was itself an administrative act. Accordingly, Mr. Bangoura needed to request review of the administrative decision and, if his request was denied, appeal to the former JAB; and thereafter to the former Administrative Tribunal. Since Mr. Bangoura failed to initiate the formal appeal process, his request to the UNDT was not receivable ratione materiae. The UNDT erred in considering a matter that was not receivable.

12. The Secretary-General further submits that the UNDT erred in law and exceeded its competence in awarding moral damages in the absence of evidence demonstrating that Mr. Bangoura had suffered actual harm to his reputation. Mr. Bangoura has not provided any evidence demonstrating that any damage to his reputation had not already been remedied by the Organization's issuance of the press release concerning the issuance of the underlying judgment of the former Administrative Tribunal. The UNDT makes no finding that the brief mention of his case during the 1997 press conference had a continuing impact on his reputation over the last 14 years. No record of the 1997 press conference is even available on the internet, given the passage of time.

13. The Secretary-General requests that the Appeals Tribunal vacate the UNDT Judgment in its entirety.

[2] *Ibid*.

Mr. Bangoura's Answer

14. Mr. Bangoura endorses the UNDT's reasoning on the question of execution of judgment in paragraphs 20 through 37 of the UNDT Judgment.

15. Mr. Bangoura requests that the Appeals Tribunal take judicial notice of the conclusions of the JAB and the former Administrative Tribunal. He submits that the defamatory statements caused damages to his reputation and that his career has been strongly damaged with serious consequences.

16. Mr. Bangoura submits that the consequences that the former Administrative Tribunal had predicted materialized, namely damages that he suffered over a period of nearly ten years. Because the harm has been caused by repeated defamatory statements, the damages are evident and can be anticipated, hence the findings by the former Administrative Tribunal. Mr. Bangoura also submits that from 2002 to 2009, he constantly pointed out to the Administration that the publication on the internet caused consequences for him. The Administration was therefore well aware of the damages he suffered.

17. Mr. Bangoura requests that the Appeals Tribunal reject the Secretary-General's appeal.

Mr. Bangoura's Appeal

18. Mr. Bangoura submits that the UNDT erred in law and fact in deciding that his defamation complaints were res judicata. The compensation ordered by the former Administrative Tribunal was awarded for the moral damages that Mr. Bagoura had suffered. However, the harm done to his reputation triggered events which do not only warrant moral compensation. In fact, the harm done to his reputation has caused a number of consequences affecting his professional career and his entire life. He requests that the Appeals Tribunal appreciate the material and professional damages suffered.

19. Mr. Bangoura submits that the UNDT misinterpreted his claim that the Organization had not properly executed all the orders in the judgment of the former Administrative Tribunal. He reiterates his claim that the Organization wrongly published the entire text of that judgment in its 2002 press release rather than only the operative provisions, and that the Organization made harmful comments in its text explaining the judgment.

20. Mr. Bangoura submits that USD 10,000 is insufficient to compensate him for the prejudice he suffered as a result of these actions.

Secretary-General's Answer

21. The Secretary-General requests that the Appeals Tribunal vacate the UNDT Judgment in its entirety for the reasons set out in his own appeal.

22. Should the Appeals Tribunal reject the Secretary-General's submissions in his appeal, the Secretary-General submits that Mr. Bangoura does not merit compensation for his claim that the Administration failed to execute the judgment of the former Administrative Tribunal.

23. Furthermore, the Secretary-General requests that the Appeals Tribunal hold that the UNDT correctly declined to address Mr. Bangoura's defamation claims.

Considerations

24. This Tribunal had scheduled a hearing at the request of Mr. Bangoura, but on 11 October 2011 received from him the following e-mail:

> *Comme mentionné dans mes requêtes et réponses aux requêtes, je souhaiterai avoir des audiences sur mes cas si le Tribunal le trouve necessaire. Cependant, il se trouve que je serai en pèlerinage à la Mecque -Arabie saoudite - du 19 Octobre 2012 au 7 Novembre 2012. Il s'agit d'un voyage planifié depuis 12 mois et déjà entièrement payé. Je vous serai donc reconnaissant de tout arrangement qui me permettrait de participer à une audience orale sur mes cas et si permis par le Tribunal d'Appel.*

25. The Tribunal, considering his willingness to attend a hearing if necessary, decides to cancel it on the ground that the case is decided on law and that the pertinent documents are on record.

26. On 25 June 2009, Mr. Bangoura requested the execution of a part of Judgment No. 1029 of the former Administrative Tribunal issued to the parties on 13 March 2002.

27. The former Administrative Tribunal established a procedure for staff members wishing to challenge the non-execution of a judgment. According to the former Administrative Tribunal, the implementation by the Administration of a Tribunal's order is in itself an administrative decision subject to review. Accordingly, Mr. Bangoura needed to

make a request for review of the administrative decision and, if denied, appeal to the former JAB, and thereafter to that Tribunal. Where a staff member fails to request timely administrative review, mandatory under former Staff Rule 111.2(2) applicable at the time, the UNDT has no jurisdiction.[3] Since Mr. Bangoura failed to initiate the formal appeal process, his application to the UNDT was not receivable ratione materiae.

28. Mr. Bangoura's submission is not receivable under the transitional measures provided for by the UNDT Statute. Article 2(7) of the Statute of the United Nations Dispute Tribunal provides:

> As a transitional measure, the Dispute Tribunal shall be competent to hear and pass judgement on:
>
> (a) A case transferred to it from a joint appeals board or a joint disciplinary committee established by the United Nations....

29. The case has not been transferred from the JAB because Mr. Bangoura failed to request timely administrative review.

30. Furthermore, under Article 8(4) of the UNDT Statute, the UNDT cannot waive the time limit to file an appeal, more than three years after the applicant's receipt of the contested administrative decision.

31. The UNDT therefore erred in receiving the case.

32. Turning to Mr. Bangoura's appeal, the Appeals Tribunal has consistently held that neither the UNDT[4] nor the Appeals Tribunal[5] have the power to review decisions of the former Administrative Tribunal. Mr. Bangoura's appeal must fail on this ground.

[3] *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010 UNAT 035.
[4] *Piskolti v. Secretary-General of the United Nations*, Judgment No. paras. 14-15, citing *Fagundes v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-57, para. 15.
[5] *Lesar v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-126, paras. 1 and 13.

Judgment

33. Mr. Bangoura's appeal is dismissed. The Secretary-General's appeal is granted and the UNDT Judgment is vacated.

Original and Authoritative Version: English

Dated this 1st day of November 2012 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Weinberg de Roca, Presiding	Judge Faherty	Judge Adinyira

Entered in the Register on this 18th day of January 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar