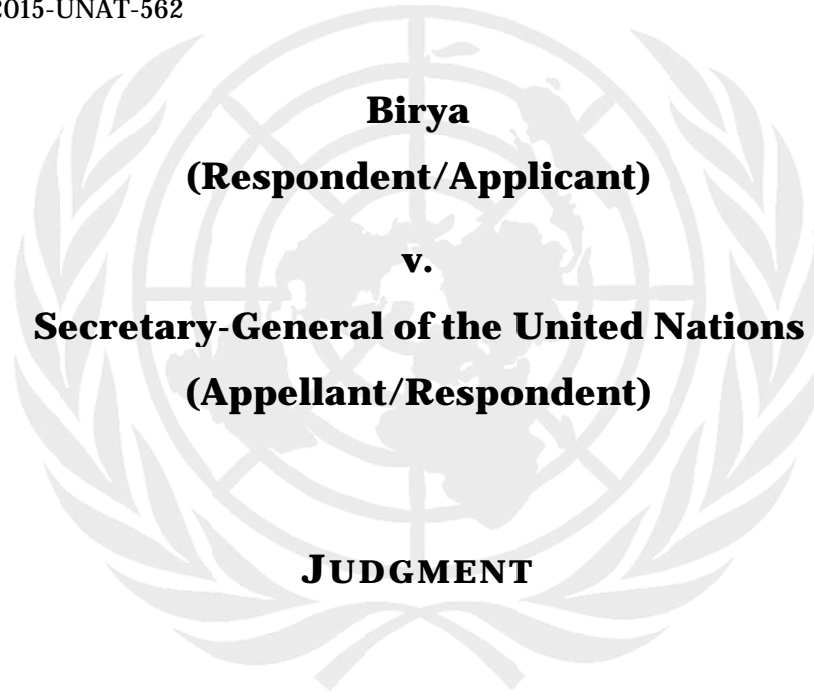




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2015-UNAT-562



**Birya  
(Respondent/Applicant)**

**v.**

**Secretary-General of the United Nations  
(Appellant/Respondent)**

**JUDGMENT**

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Before:	Judge Sophia Adinyira, Presiding Judge Inés Weinberg de Roca Judge Rosalyn Chapman
Case No.:	2014-648
Date:	2 July 2015
Registrar:	Weicheng Lin

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Counsel for Mr. Birya:	Self-represented
Counsel for Secretary-General:	Rupa Mitra

**JUDGE SOPHIA ADINYIRA, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Order No. 062 (NBI/2014) and Judgment No. UNDT/2014/092, issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 28 March 2014 and 1 July 2014, respectively, in the matter of *Birya v. Secretary-General of the United Nations*. On 2 September 2014, the Secretary-General filed his appeal, and Mr. George Robert Birya filed his answer on 4 October 2014.

**Facts and Procedure**

2. In August 2010, Mr. Birya joined the Department of Safety and Security at the United Nations Office in Nairobi (DSS/UNON) as a Security Officer.

3. From October 2012 to January 2013, some individuals who were not part of the United Nations alleged that Mr. Birya owed them money, had issued fraudulent cheques and had stolen car parts. Some of the complainants reported those disputes to the Kenyan police who, in turn, approached DSS/UNON at their premises in person in late-January 2013, where they encountered Mr. Birya's Second Reporting Officer (SRO). In an attempt to resolve the matter, Mr. Birya's SRO invited the complainants and a Constable from the Kenyan police into her office to discuss the complaint. In the following days, Mr. Birya's SRO also raised the matter with Mr. Birya directly and meetings were subsequently arranged with, inter alia, the Assistant Chief of Security and the Constable, with a view to resolving the complainants' dispute with Mr. Birya.

4. In this period, the relations between Mr. Birya and his SRO deteriorated such that on 18 February 2013, Mr. Birya filed a complaint of harassment and abuse of authority against his SRO, the Assistant Chief of Security and another DSS officer. Mr. Birya contested the manner in which they had intervened in, and sought to handle, his private dispute, including inter alia, by meeting and seeking to mediate with members of the Kenyan police at UNON premises, seeking to withdraw his firearm, and preventing him from going on mission to Dadaab (Harassment Complaint).

5. Sometime in March 2013, upon the direction of UNON's Chief of Security, the Special Investigation Unit (SIU) commenced an internal investigation into Mr. Birya's Harassment Complaint.

6. On 13 March 2013, Mr. Biryra wrote to the UNON Director-General indicating that he still awaited a response to his Harassment Complaint. He also pointed out that the SIU officer investigating his Harassment Complaint had a conflict of interest as he was deputy to one of the persons about whom Mr. Biryra had complained.

7. On 26 March 2013, the individuals who had a private dispute with Mr. Biryra requested the help of UNON to address their complaints against Mr. Biryra (private complaint). The SIU, being copied in the complaint, followed up on the complaint with the Diplomatic Police and later with the Constable in charge of the matter at Gigiri police station. As Mr. Biryra's Harassment Complaint and the private complaint were intertwined, the SIU officer tasked with the investigation combined his findings on the two complaints and submitted his finalised report to the Chief of SIU. It was subsequently shared with the UNON Director-General and DSS in New York.

8. On 3 May 2013, the UNON Director-General referred Mr. Biryra's Harassment Complaint and the private complaint from Mr. Biryra's alleged creditors to the Chief of the Investigations Division of the Office of Internal Oversight Services (ID/OIOS and OIOS, respectively) for investigation. She considered that OIOS was better suited to establish the facts as it related to security personnel and that the private complaint indicated possible misconduct by Mr. Biryra. On the same day, the UNON Director-General informed Mr. Biryra that she had referred his Harassment Complaint to OIOS for possible investigation.

9. On 6 May 2013 and 17 June 2013, OIOS referred the private complaint and the Harassment Complaint to the Under-Secretary-General of DSS (USG/DSS) for action, and informed the UNON Director-General of the referral.

10. On 8 July 2013, DSS/NY informed the Director ID/OIOS of the outcome of its review. DSS/NY referred both matters back to OIOS with recommendations that UNON's SIU carry out some follow-up.

11. On 20 August 2013, the follow-up recommendations of DSS/NY were conveyed to UNON's SIU, and on 21 August 2013, pursuant to instructions, an SIU Officer attended Gigiri police station to check on the progress of any enquiries by the Kenyan police and how they intended to proceed with the matter to report the same to New York. The Kenyan police prepared an official letter on the same day. Noting that Mr. Biryra was suspected of involvement

in two offences but that previous efforts to summon him had been unsuccessful, the letter requested the Chief Security Officer of the United Nations in Nairobi to “instruct him to appear before the [Officer Commanding Station in] Gigiri for further action”.

12. Mr. Birya went to Gigiri police station on the same day. He was charged and finger printed, and a bond was set. He was released on the condition that he would appear in court one week later.

13. On 22 August 2013, Mr. Birya wrote to the UNON Director-General complaining, *inter alia*, that DSS/UNON had requested the Kenyan police to demand that he be handed over for questioning and arrest thereby trying to force him to drop his Harassment Complaint. He asked for protection.

14. While there is confusion as to the precise date that was set for Mr. Birya to appear in the Magistrate’s Court, it is not disputed that when he failed to appear, the Magistrate issued a warrant for Mr. Birya’s arrest.

15. On 4 September 2013, the UNON Director-General was informed that an arrest warrant had been issued against Mr. Birya and wrote to the Office of Legal Affairs (OLA) for advice as to the implications for the immunities of the Organisation.

16. On 9 September 2013, the UNON Director-General responded to Mr. Birya that in view of his “repeatedly stated concerns about the integrity of DSS”, she had decided to establish a fact-finding panel to examine his Harassment Complaint. She also noted that an arrest warrant had been issued for him and that he had been summoned to appear on 30 August 2013.

17. On 11 September 2013, OLA informed the UNON Director-General that since the alleged actions that were the subject of the criminal charges against Mr. Birya did not relate to his official functions, he did not benefit from immunity from suit.

18. On 11 September 2013, the UNON Director-General constituted a fact-finding panel and informed Mr. Birya and three staff members, who were the subject of Mr. Birya’s Harassment Complaint, of the same.

19. On 13 October 2013, Mr. Birya filed a request for a management evaluation of the alleged decision taken by “UNON Management”, namely the UNON Director-General, the Chief/SIU, his Second Reporting Officer, and the SIU officer investigating his complaints, to use the Kenyan police to resolve his Harassment Complaint filed under ST/SGB/2008/5 (Prohibition of Discrimination, Harassment, Including Sexual Harassment, and Abuse of Authority). As a remedy, he requested the Management Evaluation Unit (MEU) to conclude inter alia that: UNON management erred in relaying his Harassment Complaint to the Gigiri police station for resolution, as well as to OIOS which returned the matter to DSS/UNON for action; the actions by DSS/UNON officers amounted to blackmail; resolution of his Harassment Complaint had taken “inordinately long” and the process had lacked transparency; and the actions of the DSS/UNON officers he named in his Harassment Complaint did not respect the Vienna Convention.

20. On 25 November 2013, the MEU informed Mr. Birya that his two challenges were not receivable since: (a) his first claim concerning the actions taken by UNON to address his Harassment Complaint was premature since the fact-finding investigation was still ongoing; and (b) his second claim, i.e., the decision to involve the Kenyan police to handle his complaint and the alleged conspiracy to force him to drop his Harassment Complaint, was only based on speculation, and thus there was no concrete decision to challenge.

21. On 10 February 2014, Mr. Birya filed an application with the UNDT challenging the same decisions he set out in his request for management evaluation.

22. On 28 March 2014, by Order No. 062 (NBI/2014) the UNDT confirmed that the application was receivable insofar as Mr. Birya’s challenge to the delay in establishing a fact-finding panel constituted an “administrative decision” which had the potential to affect his substantive rights to protection from intimidation and retaliation. The UNDT also found that Section 5.20 of ST/SGB/2008/5 allowed an aggrieved individual to challenge the procedures followed before the finalization of the fact-finding investigation.

23. In April 2014, the UNDT held oral hearings and, on 2 July 2014, it issued its Judgment in which it found in favour of Mr. Birya. The UNDT found that the UNON Director-General erroneously referred the matter to OIOS and had thereby improperly delayed the review of the Harassment Complaint. It found that a seven-month delay before appointing a fact-finding panel was not prompt, and therefore the UNON Director-General had breached Sections 5.3 and 5.14 of ST/SGB/2008/5. The UNDT further found that DSS/UNON had

unlawfully instigated the Kenyan police to charge and detain Mr. Biryra on 21 August 2013. Finally, once Mr. Biryra was detained, the UNDT found that the UNON Director-General and the Assistant Secretary-General of the Office of Human Resources Management (ASG/OHRM) had breached Administrative Instruction ST/AI/299 (Reporting of Arrest or Detention of Staff Members, Other Agents of the United Nations and Members of Their Families) by failing to follow its procedures.

24. The UNDT ordered moral damages in the sum of USD 3,000 for anxiety and stress caused by the seven-month delay in establishing the fact-finding panel, and USD 3,000 for UNON's failure to comply with the procedures related to the arrest and detention of its staff members. The UNDT also referred DSS/UNON to the Secretary-General to enforce accountability, noting its concern with the continuing impunity and disregard of DSS/UNON officers vis-à-vis their obligations to protect United Nations staff members.

### **Submissions**

#### **The Secretary-General's Appeal**

25. The UNDT erred in law when it found in Order No. 062 (NBI/2014) that Mr. Biryra's claims regarding the delay involved in establishing the fact-finding panel were receivable. The UNDT expressly disregarded the Appeals Tribunal's jurisprudence that holds that where there is a process involving a series of steps, a staff member can only challenge the final administrative decision once the process has been completed, but not the individual steps in the course of an ongoing process.<sup>1</sup> The UNDT erred in finding that the process outlined in ST/SGB/2008/5 "exceptionally create[s] important interim rights" for staff members. Further, the plain language of Section 5.20 of ST/SGB/2008/5 intends that staff members may only challenge procedural irregularities in the fact-finding investigation *after* the fact-finding panel has issued its report. Mr. Biryra was required to wait until the end of the fact-finding investigation before he could challenge any alleged shortcomings in the review of his Harassment Complaint.

26. In the event that the Appeals Tribunal considers that *each stage* of a fact-finding investigation of a complaint under ST/SGB/2008/5 constitutes a separate administrative decision, then the established procedures for challenging an administrative decision would also

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<sup>1</sup> Citing *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-313; *Ishak v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-152.

apply. As such, Mr. Birya's challenge would not be receivable because he failed to seek management evaluation of the decision of May 2013 to refer his complaint to OIOS within 60 days.

27. Should the Appeals Tribunal consider that Mr. Birya's challenge to the correctness of the referral of his Harassment Complaint was receivable, the UNDT erred in fact in concluding that the seven-month delay in addressing Mr. Birya's Harassment Complaint was unjustified in view of the complexities, developments in the case and practical limitations of establishing a fact-finding panel, as well as the period spent awaiting responses from OIOS and DSS/NY.

28. The UNDT erred when it found that DSS/UNON instigated the Kenyan police to issue criminal charges and an arrest warrant against Mr. Birya for the purpose of coercing him to retract his Harassment Complaint. Firstly, the issues relating to the events of 21 August 2013 were not receivable given that the fact-finding panel had widened its investigation to cover allegations relating to those events. The UNDT thus erred in making conclusions on issues that should have been the preserve of the fact-finding panel. Should the Appeals Tribunal nonetheless consider the merits of this finding, the UNDT erred insofar as it based its finding solely on Mr. Birya's uncorroborated hearsay evidence, while apparently rejecting without reason the testimony of other witnesses who consistently refuted Mr. Birya's claim and other documentary evidence. The UNDT's conclusion that DSS/UNON officers instigated Mr. Birya's arrest was not based on evidence but its own speculation.

29. The UNDT exceeded its competence in making findings regarding the Administration's compliance with ST/AI/299 as Mr. Birya never raised such a claim, either in his request for management evaluation or his UNDT application, and neither party cited or annexed the two documents relied on by the UNDT to reach its findings.<sup>2</sup>

30. Should the Appeals Tribunal nonetheless consider the merits of this finding, the UNDT erred in concluding that the UNON Director-General and the ASG/OHRM breached ST/AI/299 by not following the procedures outlined therein. The UNON Director-General fulfilled her responsibilities under ST/AI/299 to convey the pertinent information regarding Mr. Birya's arrest to United Nations Headquarters, and ST/AI/299 provides for no role for the ASG/OHRM in the procedures for reporting on the arrest or detention of staff members.

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<sup>2</sup> Citing *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 42.

31. Having regard to the foregoing errors, the UNDT consequently erred in awarding compensation and in referring DSS/UNON to the Secretary-General for accountability. The Secretary-General requests that the Appeals Tribunal vacate the UNDT Judgment in its entirety.

**Mr. Birya's Answer**

32. The Dispute Tribunal correctly determined that a failure to constitute a fact-finding panel within a reasonable time is a reviewable decision. The Secretary-General's contention that staff members may only challenge delays in constituting fact-finding panels at the end of the process is unfounded and would give rise to a perverse situation whereby the Administration would be able to prevent a staff member from challenging excessive delays in constituting fact-finding panels by indefinitely stalling the process. This is particularly true in the present case since at the time of filing his answer to the Secretary-General's appeal, some 20 months after his Harassment Complaint had been filed, the fact-finding panel had not yet released its report.

33. The Secretary-General's reliance on jurisprudence relating to rebuttal processes is inapplicable to fact-finding processes for several reasons. First, the delay affects the rights of the staff member regardless of the outcome of the process as a staff member may be a victim of prohibited conduct in the interim. Thus, any delay in addressing his complaint exposes him or her to a prolonged mental anguish and deprives a staff member of his status as a potential victim. Further, the expected remedy will no longer be effective after a long period of time either because the staff member will suffer irreparable harm or because the alleged offender may retire or leave the Organization before the completion of the fact-finding process. The fact-finding process is also distinguishable from a rebuttal process as it is more akin to a disciplinary process.

34. The Secretary-General's contention that his claim was time-barred, as time began to run as of 3 May 2013 when his complaint was referred to OIOS, is misplaced. The referral of his complaint to OIOS did not absolve the UNON Director-General from the obligation to comply with Section 5.14 of ST/SGB/2008/5, which mandates the appointment of a fact-finding panel, and she could have concomitantly referred the complaint to OIOS and constituted a fact-finding panel, as the two steps were not mutually exclusive. The UNDT thus did not err in law when it found that Mr. Birya's claims were "receivable both as to timeliness and substance".



35. The UNDT equally did not err in concluding that the delay was unjustified given that the reasons raised by the Secretary-General were not beyond the Administration's control. Further, the absence of either the UNON Director-General or the Legal Adviser cannot paralyze the functioning of the office as someone must have been appointed Officer-in-Charge to address such important matters. Moreover, the Secretary-General's explanation for the delay, namely that it would be hard to find trained staff members to sit on the panel, was inconsistent with the facts of the case which showed that a panel was constituted within two days of the decision of the UNON Director-General to establish a fact-finding panel.

36. The UNDT correctly found that DSS/UNON attempted to coerce Mr. Birya to retract his complaint and its finding was based on extensive witness and documentary evidence. The Secretary-General's appeal is an attempt to have a *de novo* hearing, which the Appeals Tribunal has ruled on numerous occasions is not its function, and a great degree of deference is owed to the UNDT on findings of fact where oral evidence was heard.

37. The Secretary-General's claim that the UNDT exceeded its jurisdiction in considering or making findings in relation to the events of 21 August 2013 is unfounded. The UNDT did no more than consider the facts which were directly related to Mr. Birya's claim, and which were properly raised in his management evaluation request and UNDT application, namely that the UNON management improperly sought to use the Gigiri police to resolve his Harassment Complaint. While the fact-finding panel examined the same facts with the purpose of concluding whether it amounted to harassment or abuse of authority, the UNDT only examined the events of 21 August 2013 with the sole propose of determining whether resorting to the involvement of national police was lawful, or based on extraneous reasons including personal animosity.

38. The UNDT did not exceed its jurisdiction by referring to ST/AI/299 given that Mr. Birya's complaint unequivocally stated that the Administration violated his rights by involving the national police. The Dispute Tribunal simply identified the legal rules that applied to the factual allegations he raised. Although he had not personally cited this administrative instruction in his management evaluation request or UNDT application, a staff member is not obliged to identify every statutory and jurisprudential rule that applies and it is within the prerogative and jurisdiction of the reviewing court to identify the applicable rules and examine the lawfulness of the decision, particularly where staff members are self-represented. While the Secretary-General argues that a breach based on ST/AI/299 was a new claim, it is in fact merely the legal basis underpinning his factual claim and the UNDT did not exceed its jurisdiction in so finding.

39. The UNDT did not err in fact when it concluded that the Administration had breached ST/AI/299 as the UNON Director-General had a duty to report to Headquarters information related to all of the points enumerated in Section 5(a) to (g) of ST/AI/299. Furthermore, the UNON Director-General did not attempt to obtain more information regarding his arrest from the national authorities. As a result, she did not fulfil her responsibilities under ST/AI/299.

40. The UNDT did not err in awarding compensation as this was warranted on the basis of the UNDT's correct findings, nor did it err in referring DSS/UNON to the Secretary-General for accountability. The Secretary-General also does not have standing to contest the accountability referral since he represents the interests of the Organization and not the individual staff members concerned. Mr. Birya requests that this Tribunal dismiss the Secretary-General's appeal in its entirety.

### **Considerations**

41. Having regard to the submissions made by the Secretary-General, and the answer filed by Mr. Birya, we consider that the issues to be decided are:

(a) Did the Dispute Tribunal err in accepting Mr. Birya's claims regarding the delay involved in establishing the fact-finding panel as receivable?

(b) Did the Dispute Tribunal err in receiving Mr. Birya's claims regarding the complaint against the UNON Administration in relation to his detention and charging by the Kenyan police in August 2013?

42. As an initial comment, we take note that at the time that the Dispute Tribunal issued its Judgment, the fact-finding investigation in respect of the events underpinning Mr. Birya's Harassment Complaint was still underway.

*Did the Dispute Tribunal err in accepting Mr. Birya's claim regarding the delay involved in establishing the fact-finding panel as receivable?*

43. In UNDT Order No. 062 (NBI/204), the UNDT ruled that "the alleged delay in the setting up of an investigation panel is an administrative decision alleged to be in non-compliance with the Applicant's terms of appointment which had the potential to affect the Applicant's substantive rights to protection from intimidation and retaliation". The Secretary-General

submits that at the time Mr. Biryá submitted his UNDT application, the work of the fact-finding panel was still ongoing and that Mr. Biryá could only challenge the resulting administrative decision once the process was completed.

44. The Appeals Tribunal recalls that “the key characteristic of an administrative decision subject to judicial review is that the decision must ‘produce direct legal consequences’ affecting a staff member’s terms or conditions of appointment. ‘What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision.’”<sup>3</sup>

45. In *Nguyen-Kropp and Postica*, the Appeals Tribunal stated that:<sup>4</sup>

... Generally speaking, appeals against a decision to initiate an investigation are not receivable as such a decision is preliminary in nature and does not, at that stage, affect the legal rights of a staff member as required of an administrative decision capable of being appealed before the Dispute Tribunal.

... This accords with another general principle that tribunals should not interfere with matters that fall within the Administration’s prerogatives, including its lawful internal processes, and that the Administration must be left to conduct these processes in full and to finality.

... The Appeals Tribunal has previously held that certain administrative processes, such as a selection process in *Ishak*, and the Administration’s proposal of an alternative rebuttal panel in an ongoing performance appraisal rebuttal process in *Gehr*, are preparatory decisions or one of a series of steps which lead to an administrative decision. Such steps are preliminary in nature and may only be challenged in the context of an appeal against a final decision of the Administration that has direct legal consequences.

46. The Appeals Tribunal in *Nguyen-Kropp and Postica* considered whether a challenge as to the initiation of a disciplinary investigation was reviewable and concluded that:<sup>5</sup>

... Initiating an investigation is merely a step in the investigative process and it is not an administrative decision which the UNDT is competent to review under Article 2(1) of its Statute.

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<sup>3</sup> *Nguyen-Kropp and Postica v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-509, para. 29, citing *Ngokeng v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-460, para. 27, *Bauzá Mercére v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-404, para. 18 and *Wasserstrom v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-457.

<sup>4</sup> *Nguyen-Kropp and Postica v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-509, paras. 31-33 (internal cites omitted).

<sup>5</sup> *Ibid*, paras. 34-35.

... From the foregoing, we hold that the UNDT erred on a question of law and exceeded its competence in accepting Ms. Nguyen-Kropp and Mr. Postica's applications as receivable.

47. Deciding to set up a fact-finding panel is not of itself a decision relating to the contractual rights of a staff member as decided by the Dispute Tribunal. In the present instance, the decision itself is but one step in the administrative process set out in ST/SGB/2008/5. Insofar as Mr. Biryra challenges the delay in establishing the fact-finding panel, we have previously held that the absence of a response to a staff member's request may nonetheless constitute an implied administrative decision.<sup>6</sup> However, this is not a case where the Administration altogether failed to respond to Mr. Biryra's request. To the contrary, throughout the period during which the UNON Director-General was deciding whether to establish a fact-finding panel, she kept Mr. Biryra apprised of her actions. Further, the UNON Director-General ultimately decided to constitute a fact-finding panel on 11 September 2013. 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.<sup>7</sup>

48. From the foregoing, we hold that the Dispute Tribunal's conclusion that Mr. Biryra's application was receivable is without legal basis, as is the Dispute Tribunal's consequent award of compensation based on this finding. The Dispute Tribunal erred on a question of law and exceeded its competence in accepting Mr. Biryra's application as receivable.

*Did the Dispute Tribunal err in receiving Mr. Biryra's claims regarding the complaint against the UNON Administration in relation to the detention and charging of Mr. Biryra by the Kenyan police in August 2013?*

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<sup>6</sup> *Al Surkhi et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-304, para. 26, citing former Administrative Tribunal Judgment No. 1157 *Andronov* (2003). See also *Terragnolo v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-566, para. 34-36 (where a delay of 14 days in responding to Mr. Terragnolo's request was not found to constitute an implied administrative decision able to be challenged); *Tabari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2011-UNAT-177 (finding that the absence of a response by UNRWA to the staff member's request for hazard pay constituted an appealable administrative decision as it was an implied unilateral decision with direct legal consequences).

<sup>7</sup> *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-099, para. 36. See also *Masykhanova v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-412, para. 18.

49. As the UNDT correctly noted, at the time of its Judgment, Mr. Birya's complaint relating to the events of August 2013 was a subject before the fact-finding panel established by the UNON Director-General. Accordingly, at the time of his application to the UNDT there was not yet an "administrative decision" able to be challenged or reviewed by the Dispute Tribunal. Consequently, we find that the Dispute Tribunal's conclusion that Mr. Birya's complaint against the UNON Administration in respect of the same facts was receivable is without legal basis as is the Dispute Tribunal's award of compensation based on this finding.

50. In view of the foregoing, it is unnecessary for us to address the UNDT's findings regarding the Administration's compliance with ST/AI/299.

*Referral*

51. As discussed above, there were no legal bases for the Dispute Tribunal's decision. Accordingly, there were equally no grounds for the Dispute Tribunal to refer DSS/UNON to the Secretary-General for accountability pursuant to Article 10(8) of the UNDT Statute.

52. From the foregoing, the appeal succeeds.

**Judgment**

53. The appeal is allowed. The UNDT Judgment is vacated.

Original and Authoritative Version: English

Dated this 2<sup>nd</sup> day of July 2015 in Geneva, Switzerland.

*(Signed)*

Judge Adinyira, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Chapman

Entered in the Register on this 20<sup>th</sup> day of August 2015 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar