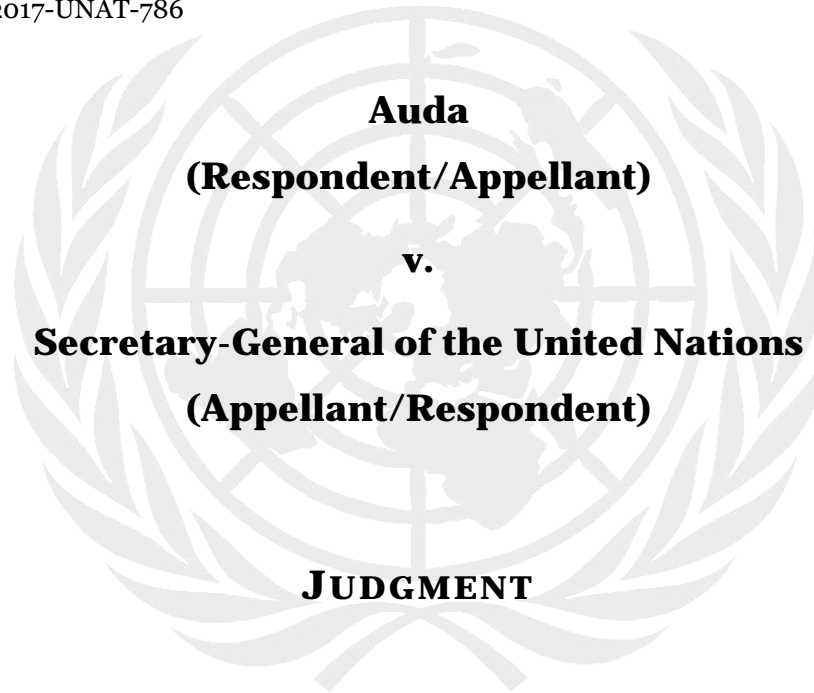




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2017-UNAT-786



**Auda  
(Respondent/Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Dimitrios Raikos, Presiding Judge Richard Lussick Judge Sabine Knierim
Case Nos.:	2017-1068 & 2017-1070
Date:	27 October 2017
Registrar:	Weicheng Lin

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Counsel for Mr. Auda:	Self-represented
Counsel for Secretary-General:	Wambui Mwangi

**JUDGE DIMITRIOS RAIKOS, PRESIDING.**

1. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York issued Judgment No. UNDT/2017/006 in the case of *Auda v. Secretary-General of the United Nations* on 1 February 2017.
2. On 3 April 2017, the Secretary-General filed an appeal of the above-referenced Judgment. This case is registered as Case No. UNAT-2017-1068. On 5 June 2017, Mr. Hesham A. Auda filed an answer.
3. Separately on 3 April 2017, Mr. Auda filed an appeal of Judgment No. UNDT/2017/006, to which the Secretary-General filed an answer on 5 June 2017. This case is registered as Case No. UNAT-2017-1070.

**Facts and Procedure**

4. At the material time, Mr. Auda was a Principal Officer at the D-1 level with the Department for General Assembly and Conference Management (DGACM). The facts as found by the Dispute Tribunal read as follows:<sup>1</sup>

... The Applicant submitted a complaint by email dated 19 April 2012 to Mr. Shaaban [then Under-Secretary-General (USG), DGACM], alleging that Mr. Baumann [then Assistant Secretary-General (ASG), DGACM] had engaged in prohibited conduct under [Secretary-General's Bulletin] ST/SGB/2008/5 [Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority]. Specifically, the Applicant submitted the following allegations:

- a. In a meeting held on 29 September 2011, Mr. Baumann stated that a comment made by the Applicant was “ridiculous”;
- b. In an email dated 22 November 2011, Mr. Baumann referred to the Applicant as “difficult”;
- c. Mr. Baumann sent an email to the Applicant on 15 April 2012, copying Mr. Shaaban and other staff members, referring to the Applicant's alleged “contrariness,” “divisiveness” and “deceptiveness”;
- d. Mr. Baumann acted in bad faith and with the intent to obscure the status and official functions of the Applicant by instructing or directing that his name and title be omitted from a DGACM organizational chart; and

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<sup>1</sup> Impugned Judgment, paras. 5-26.

e. Mr. Baumann referred to other staff members as being involved in a “racket” in relation to alleged misuse of overtime procedures.

*Appointment of the first [Fact-Finding Panel (FFP)] in 2012*

... On 27 April 2012, Mr. Shaaban, as the then USG/DGACM and responsible officer receiving the complaint, appointed the first FFP to investigate the allegations, which was comprised of two investigators, Ms. MN and Mr. GK, and a note taker.

... On 13 July 2012, Mr. Shaaban departed DGACM and two weeks later, the Secretary-General appointed Mr. Jean-Jacques Graise as Acting Head of DGACM.

... On 20 July 2012, the first FFP interviewed the Applicant after other witnesses had been interviewed. Having not heard back from the first FFP since his interview, the Applicant sent Ms. MN and Mr. GK at least three unanswered requests for an update—on 17 December 2012, 31 January 2013 and 20 March 2013.

... On 25 March 2013, the Secretary-General appointed Mr. Tegegnework Gettu as the new USG/DGACM. Mr. Gettu accordingly assumed the role of the responsible officer overseeing the Applicant’s complaint.

... Having received no response to his prior queries, the Applicant again emailed the investigators on 10 May 2013 and 15 July 2013, and also copied the then Under-Secretary-General for Internal Oversight Services (“USG/OIOS”), the then Assistant Secretary-General, Office of Human Resources Management (“ASG/OHRM”) and the Ethics Office.

... On 24 July 2013, Ms. MN responded to the Applicant and “apologize[d] for the delay, which was due to a series of personal crises” and advised that they “expect to conclude the investigation and report by end of August [2013].”

... On 19 May 2014, the Applicant emailed the first FFP requesting an update, but received no response.

... On 9 September 2014, the Applicant emailed OHRM “seeking assistance in clarifying the status and/or outcome of the ongoing fact-finding [i]nvestigation since July 2012, which is being carried [out] under the auspices of OHRM.”

... On 12 September 2014, the Secretary-General announced the transfer of Mr. Baumann to another department.

... On 15 September 2014, OHRM responded to the Applicant instructing him to direct his inquires to the Office of the USG/DGACM or the Executive Office in DGACM. OHRM stated:

The panel into your complaint against Mr. [Baumann] was convened under the authority of Mr. [Shaaban] on 27 April 2012 and not under the auspices of OHRM. We note that Ms. [MN] states that her reference to OHRM was based on an interview record template. We have no record of such information being provided to Ms. [MN] but in any case the

template should have been amended to reflect the correct position that the investigation was being conducted under the auspices of DGACM and not OHRM.

... On 15 September 2014, the Applicant emailed the Executive Office in DGACM to request an update.

... On 30 September 2014, Mr. IS, the Chief of Office of the USG/DGACM, emailed Ms. MN requesting an update on the investigation. Ms. MN replied the same day, indicating that, due to a variety of personal and professional reasons, she and Mr. GK had been unable to complete the investigation or prepare the report. She apologized for not having communicated sooner. By memorandum dated 11 November 2014, Mr. GK stated that the “[r]ecords/materials pertaining to the [p]anel’s work may be obtained from Ms. [MN] who led the investigation.” Mr. GK’s memorandum was submitted to Mr. Gettu.

... On 30 October 2014, the Applicant sent another email to the Executive Office in DGACM to request an update.

... On 18 December 2014, Mr. IS emailed the Applicant informing him that the investigation by the first FFP could not be concluded and that “this circumstance was not confirmed to DGACM’s attention until November 2014.” Mr. IS advised that the first FFP was unable to write the report and concluded his email by informing the Applicant that, if he wished to pursue his complaint “despite the time that elapsed,” a new panel would need to be convened—which could then contact the previous panel members to “seek any relevant information directly.” The Applicant was asked to confirm whether he wished to pursue the complaint.

... On 9 February 2015, the Applicant requested management evaluation of the impugned decision.

*Appointment of the second FFP in 2015*

... On 13 March 2015, Ms. AL, Special Assistant to the USG/DGACM, emailed the Applicant informing him that, because the previously appointed investigators were “unable to conclude the investigation for reasons unrelated to the case,” the USG/DGACM had appointed Ms. MS and Mr. EC to a second FFP to continue the investigation.

... On 16 March 2015, Ms. AL emailed the Applicant informing him that Mr. EC had recused himself in view of a conflict of interest and that an alternate investigator was being sought. On 27 March 2015, the Applicant was informed that Mr. FS was appointed as investigator.

... On 16 April 2015, Ms. MS and Mr. FS emailed the Applicant a memorandum informing him of their appointment taking over the investigation and inviting him to an interview. The next day, the Applicant responded to the email requesting the terms of reference of the second FFP as signed by the Head of the Department.

... On 28 April 2015, the Management Evaluation Unit (“MEU”) informed the Applicant that his request was “moot and/or not receivable” because the second FFP had been established and was yet to conclude its investigation.

*Outcome of the second FFP investigation*

... On 26 June 2015, the second FFP submitted their investigation report to Mr. Gettu.

... In accordance with sec. 5.18 of ST/SGB/2008/5, by letter dated 8 September 2015, Mr. Gettu informed the Applicant that he had reviewed the second FFP’s report, and provided the Applicant with a summary of the findings and conclusions set forth in this report. Mr. Gettu’s letter concluded as follows:

*Conclusion*

The second panel concluded, after reviewing all the evidence, that the working relationship between yourself and Mr. Baumann was especially difficult following your elevation to the post of Chief, [Office of the USG and ASG], with a different reporting line to the USG/[DGACM].

On your specific complaint, the Panel observed that your complaint cannot be viewed in isolation. Mr. Baumann produced evidence of his own complaints to the USG against your own conduct.

The second panel concluded that none of the incidents cited by themselves can be viewed as abusive and/or offensive and, viewed as a whole they still fall short of amounting to harassment. Thus there was no prohibited conduct under ST/SGB/2008/5.

Following a review of the investigation report and supporting documentation, I have concluded that the record indicated that Mr. Baumann’s conduct in the context of your complaints does not violate the provisions of ST/SGB/2008/5, and as this falls under section 5.18(a) of ST/SGB/2008/5, I therefore consider the case closed.

5. Mr. Auda separated from the Organization on 31 December 2015.
6. In the impugned Judgment, the Dispute Tribunal limited the scope of its review to the issue of the delay into the investigation of Mr. Auda’s complaint against Mr. Baumann. First, the Dispute Tribunal found that the failures of the first FFP to conclude its investigation and render a report and of the Administration to conclude the formal process in connection with Mr. Auda’s complaint of 19 April 2012 was a contestable decision and, contrary to the Secretary-General’s assertion, Mr. Auda’s application was receivable. Turning to the merits of the case, the Dispute Tribunal noted the “extraordinarily excessive” delay of more than three years between

Mr. Auda's filing of a ST/SGB/2008/5 complaint on 19 April 2012 and Mr. Gettu's decision of 8 September 2015; it found this delay to be a violation of the promptness requirement of ST/SGB/2008/5 and Mr. Auda's right to be informed of the status of the first FFP. The UNDT determined that the harm that the long delay caused to Mr. Auda's reputation and his general well-being, including the stress and anxiety that Mr. Auda suffered were "plainly evidenced" by his statements to that effect and by his demeanor and body language at the hearing. Consequently, there was "no need for verification of such psychological impact by a psychiatrist or psychiatric therapist".<sup>2</sup> The Dispute Tribunal awarded Mr. Auda USD 15,000 as compensation for the harm that he suffered as a result of the breaches of his fundamental due process rights and human rights.

7. Both parties appeal Judgment No. UNDT/2017/006.

### **Submissions**

*Case No. 2017-1068*

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

8. The Secretary-General submits that the Dispute Tribunal erred by issuing separate Judgments<sup>3</sup> following consolidated proceedings and awarding compensation twice for the same alleged harm. The Dispute Tribunal erred in law in concluding that Mr. Auda's application was receivable. There was no administrative decision on which the UNDT was competent to pass judgment in terms of Articles 2 and 8 of its Statute. By appointing the second FFP to continue and complete the work of the first FFP, the Administration effectively rescinded, or rendered moot, any decision associated with the first FFP's failure to submit a report of its investigation into Mr. Auda's complaint against Mr. Baumann, which in turn rendered Mr. Auda's UNDT application moot.

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<sup>2</sup> Impugned Judgment, para. 83.

<sup>3</sup> The Secretary-General explains in this regard that, in Judgment No. UNDT/2017/006, the UNDT awarded Mr. Auda USD 15,000 for the delay in the investigation of his complaint and the repeated lack of responses over an extended period of time. In Judgment No. UNDT/2017/007, the Dispute Tribunal awarded Mr. Auda an additional USD 5,000 for the breach of investigation related procedures in the investigation of his complaint against Mr. Baumann.

9. Alternatively, if the Appeals Tribunal considers Mr. Auda's application to the Dispute Tribunal to be receivable, the Secretary-General contends that the UNDT erred in law in awarding Mr. Auda compensation in the amount of USD 15,000 for moral damages. Moreover, it erred in law in basing its award for delay on *Abubakr*, which differs from the present case.<sup>4</sup> The UNDT's assessment of damages was based on the findings of fact that were not supported by any evidence of harm on record other than Mr. Auda's unsubstantiated assertions. His demeanor was irrelevant since he had failed to produce any actual evidence of harm. UNDT's monetary award amounts to punitive or exemplary damages, which are prohibited under the Statute of the Appeals Tribunal.

10. The Secretary-General requests that the Appeals Tribunal vacate the impugned Judgment finding Mr. Auda's application receivable. Alternatively, the Secretary-General requests that the Appeals Tribunal vacate UNDT's award of compensation or reconsider the amount of compensation awarded in light of the compensation in similar cases and the double compensation in Judgment No. UNDT/2017/007.

### **Mr. Auda's Answer**

11. Mr. Auda asserts that the Dispute Tribunal acted within its jurisdiction and competence and was correct in law by issuing separate judgments following consolidated proceedings, as the two Judgments address different procedural violations in connection with the different FFPs. The first and second FFPs were confronted with a common factual background, but not the same facts.

12. The Dispute Tribunal was correct in finding Mr. Auda's application receivable. The UNDT has jurisdiction to examine the Administration's actions and omissions in connection with a ST/SGB/2008/5 complaint, which was a contestable decision. If a staff member was not able to challenge the delay in resolving the ST/SGB/2008/5 claims, further delays and unacceptable barrier to justice, depletion of memory of witnesses and disappearance of evidence would result.

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<sup>4</sup> In *Abubakr v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-272, the Appeals Tribunal reduced the Dispute Tribunal's award of monetary compensation of USD 40,000 by USD 15,000 to USD 25,000. The Dispute Tribunal had awarded Mr. Abubakr USD 40,000 as compensation for the emotional distress caused by the investigation panel's failure to act expeditiously in bringing his case to a close.

13. The Dispute Tribunal was correct in awarding Mr. Auda compensation for non-pecuniary damages, though Mr. Auda believes that the amount of compensation at USD 15,000 was not commensurate with the harm that he suffered. It was within UNDT's jurisdiction and competence to ascertain the relevance, reliability, truthfulness and probative value of Mr. Auda's statement regarding the harm that he had suffered.

14. Contrary to the Secretary-General's claim, the Dispute Tribunal did not over-compensate or doubly compensate Mr. Auda. The two awards by the Dispute Tribunal in Judgment Nos. UNDT/2017/006 and UNDT/2017/007 were made for distinct procedural violations by the different FFPs; they therefore do not overlap. The compensation award of USD 15,000 in this case was made for the extensive harm sustained over a long period of time as a result of the excessive delay by the first FFP. The award of USD 5,000, on the other hand, in Judgment No. UNDT/2017/007 was made for the harm resulting from the procedural breaches by the second FFP and the decision to improperly close the investigation; it was not made for the overall delay in the investigation.

15. Mr. Auda requests that the Appeals Tribunal reject the appeal in its entirety, and affirm the orders of the Dispute Tribunal, except the quantum of compensation, against which Mr. Auda has filed an appeal.

*Case No. 2017-1070*

### **Mr. Auda's Appeal**

16. Mr. Auda is only appealing the quantum of compensation awarded by the Dispute Tribunal. In his view, USD 15,000 is not commensurate with UNDT's findings or on par with the jurisprudence of the Appeals Tribunal.

17. The Dispute Tribunal erred i) in using *Abubakr* as a comparator for its award; and, ii) in awarding an even lower sum than that in *Abubakr*. It should have awarded him USD 40,000 as non-pecuniary damages, per *Appellant*, in view of the egregious and reprehensible breaches of fairness and due process and abridgement of Mr. Auda's natural rights as a human being.<sup>5</sup>

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<sup>5</sup> In *Appellant v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-143, the Appeals Tribunal affirmed the Dispute Tribunal's award of USD 40,000 for emotional distress caused by the Administration's failure to respond to the Appellant's complaint of harassment, discrimination and abuse of authority against his supervisors.



18. Mr. Auda requests that the Appeals Tribunal vary the UNDT award from USD 15,000 to USD 40,000.

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

19. The Secretary-General argues that Mr. Auda's appeal is not receivable, because the Dispute Tribunal found in his favour and awarded him USD 15,000 in compensation. He has failed to identify any error committed by the UNDT in awarding him such an amount of compensation, and Mr. Auda's sole reasoning that the Dispute Tribunal should have used *Appellant*, rather than *Abubakr*, as the comparative jurisprudence in its assessment of damages is not sufficient to warrant the intervention by the Appeals Tribunal.

20. The Dispute Tribunal was not required to explain why it had not considered a specific case or cases relevant or applicable. Even if the UNDT had specifically addressed the *Appellant* case in its Judgment as part of its determination of the monetary award, the *Appellant* case does not support Mr. Auda's claim for a higher compensation, since the facts in *Appellant* are distinguishable from the facts in the present case.

21. Mr. Auda has failed to identify any defect in the UNDT's award of compensation or any ground upon which he relies in his assertion that the impugned Judgment is defective. Mr. Auda is simply attempting to re-litigate his case because he disagrees with the sum of compensation awarded by the Dispute Tribunal.

22. The Secretary-General requests that this Tribunal dismiss Mr. Auda's appeal in its entirety. He also requests that costs be imposed on Mr. Auda for having filed a frivolous claim that is not receivable and has no basis in law or in fact.

### **Considerations**

23. This impugned UNDT Judgment concerns Mr. Auda's challenge of the decision of the first FFP to "delay, withhold, and not submit its report on the investigation and the records of the investigation".

24. In the challenged Judgment, the UNDT ruled that:<sup>6</sup>

... Section 5.17 of ST/SGB/2008/5 requires the report of a fact-finding panel to be submitted to the responsible official normally no later than three months from the date of the submission of the complaint. The Applicant has a contractual right to have his complaint addressed timeously and properly. If the [Dispute] Tribunal were to accept the proposition that a staff member is unable to challenge the delay in resolving claims under ST/SGB/2008/5 until an outcome of the complaint is finalized, this could result in further delays and an unacceptable barrier to justice. Precluding staff members to challenge inordinate delays into their complaints of prohibited conduct would foster impunity and allow the Organization to run the clock on an investigation as a possible means to intimidate or tire complainants, as well as contribute to the depletion of the memory of witnesses and the preservation of evidence.

The first instance Judge went on to state:<sup>7</sup>

... In light of the cited jurisprudence, the [Dispute] Tribunal finds that the failure of the first FFP to timely conclude its investigation and its failure to render a report, as well as the Organization's failure to promptly conclude the formal process, is a contestable administrative decision and the application is therefore receivable.

25. The UNDT had clearly a false understanding of our jurisprudence. The Appeals Tribunal recalls that:<sup>8</sup>

... 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.'

26. In *Nguyen-Kropp and Postica*, the Appeals Tribunal stated that:<sup>9</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,

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<sup>6</sup> Impugned Judgment, para. 62.

<sup>7</sup> *Ibid*, para. 63.

<sup>8</sup> *Birya v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-562, para. 44, citing *Nguyen-Kropp and Postica v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-509, para. 29, *Ngokeng v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-460, para. 27, *Wasserstrom v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-457, and *Bauzá Mercére v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-404, para. 18.

<sup>9</sup> *Nguyen-Kropp and Postica v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-509, paras. 31-33 (internal citations omitted).

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.

27. The Appeals Tribunal in *Nguyen-Kropp and Postica* considered whether a challenge to the initiation of a disciplinary investigation was reviewable and concluded that:<sup>10</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.

... 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.

28. Deciding to set up a fact-finding panel is not of itself a decision relating to the contractual rights of a staff member as correctly found 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. Auda challenges the decision of the first FFP to "delay, withhold, and not submit its report on the investigation and the records of the investigation", we have previously held that the absence of a response to a staff member's request may nonetheless constitute an implied administrative decision.<sup>11</sup>

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<sup>10</sup> *Ibid*, paras. 34-35.

<sup>11</sup> *Nielsen v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-621, para. 33; *Birya v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-562, para. 47; *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, paras. 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*

29. However, this is not a case where the Administration altogether failed to respond to Mr. Auda's request; rather, it did respond, although with inordinate delay that presents a sorrowful picture of functioning on the part of the Administration. Specifically, on 27 April 2012, the former USG/DGACM appointed the first FFP to investigate his complaint, which interviewed Mr. Auda and other witnesses. Later on 18 December 2014, following a series of problems regarding the composition of the FFP and personnel matters, DGACM informed Mr. Auda that the first FFP was unable to conclude its report and on 13 March 2015 appointed a second FFP to continue the investigation. Finally, on 26 June 2015, the second FFP submitted its report to the USG/DGACM, who subsequently on 8 September 2015 informed Mr. Auda that he had closed the case, because, after having reviewed this report and the supporting information, he had concluded that the former ASG/DGACM's "conduct in the context of [Mr. Auda's] complaints [did] not violate the provisions of ST/SGB/2008/5".

30. Therefore, 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>12</sup> This final administrative decision that concludes the compound administrative process in administering the staff member's complaint is the only challengeable one and absorbs all the previous preliminary steps.

31. In a similar vein, the Appeals Tribunal has ruled that even an initial decision not to respond to a staff member's complaint, or not to constitute a fact-finding panel under ST/SGB/2008/5 "is rendered moot by the constitution of said panel",<sup>13</sup> or when he/she is notified of the outcome of its preliminary review of his/her complaint.<sup>14</sup>

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*Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2011-UNAT-177 (finding that the absence of a response by that Agency 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>12</sup> *Birya v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-562, para. 47; *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-099, para. 36. See also *Masykkanova v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-412, para. 18.

<sup>13</sup> *Masykkanova v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-412, para. 18.

<sup>14</sup> *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-294, para. 19.

32. The point at issue in the present appeal, that is, Mr. Auda's challenge to the decision of the first FFP to "delay, withhold, and not submit its report on the investigation and the records of the investigation", ceased to exist when the USG/DGACM on 8 September 2015 notified him of the outcome of the second FFP's preliminary review of his complaint.

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

34. This does not mean that Mr. Auda is without remedy. In fact, his claim for damages and compensation allegedly caused by past illegalities was the matter before the UNDT in another case (Case No. UNDT/NY/2015/062), and his appeal related to that case was addressed by the Appeals Tribunal during the 2017 Fall Session.<sup>15</sup>

35. Indeed, such issues, including the delay and irregularities in the preliminary stage of the process as well as the grievances Mr. Auda asserts in respect of alleged due process breaches, relate to Case No. UNDT/NY/2015/062 rather than the instant case, which was limited to the decision of the first FFP to "delay, withhold, and not submit its report on the investigation and the records of the investigation". Ultimately, once the investigation has been concluded, its outcome and administrative consequences, as well as any related acts or omissions, can be challenged in their own right via management evaluation and before the Dispute and Appeals Tribunals.

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<sup>15</sup> *Auda v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-787.

**Judgment**

36. The Secretary-General's appeal is granted and Judgment No. UNDT/2017/006 is vacated.
37. Mr. Auda's appeal is dismissed.

Original and Authoritative Version: English

Dated this 27<sup>th</sup> day of October 2017 in New York, United States.

*(Signed)*

Judge Raikos, Presiding

*(Signed)*

Judge Lussick

*(Signed)*

Judge Knierim

Entered in the Register on this 8<sup>th</sup> day of December 2017 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar