



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

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Judgment No. 2022-UNAT-1276

**Ahmad Shuaib Payenda  
(Applicant)**

**v.**

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

**JUDGMENT ON APPLICATION FOR REVISION**

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Before:	Judge Martha Halfeld, Presiding Judge John Raymond Murphy Judge Sabine Knierim
Case No.:	2022-1650
Date of Decision:	28 October 2022
Date of Publication:	22 November 2022
Registrar:	Juliet Johnson

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Counsel for Applicant:	Self-represented
Counsel for Respondent:	Patricia Aragonés

**JUDGE MARTHA HALFELD, PRESIDING.**

1. Mr. Ahmad Shuaib Payenda has submitted an application for revision of Judgment No. 2021-UNAT-1156 that the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) issued on 29 October 2021 (impugned Judgment or Appeals Tribunal Judgment).
2. For the reasons set out below, we dismiss the application.

**Facts and Procedure**

3. Mr. Payenda, a former staff member of the United Nations Children’s Fund (UNICEF) serving in the Afghanistan Country Office, appealed Judgment No. UNDT/2021/171 issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal). In that Judgment, the Dispute Tribunal reviewed the contested decision to dismiss Mr. Payenda from service for having intentionally misstated the truth in his job application for the position of Finance Assistant at UNICEF by ticking the “No” box in answer to the question whether he had ever been the subject of a misconduct investigation. The Dispute Tribunal found that, in April 2017 when he applied for the UNICEF post, Mr. Payenda was aware that he had been the subject of an investigation while employed by the International Organization for Migration (IOM), that his misrepresentation to UNICEF constituted misconduct, and that the sanction of dismissal was a proportionate measure given the seriousness and gravity of the offense.
4. The Appeals Tribunal reviewed Mr. Payenda’s case during its 2021 Fall Session and rendered Judgment No. 2021-UNAT-1156, in which it dismissed Mr. Payenda’s appeal and affirmed the UNDT Judgment. UNAT found that Mr. Payenda had breached his duty to provide correct and accurate information in his UNICEF job application and agreed with the Dispute Tribunal that his dismissal from the service of UNICEF was lawful.
5. On 14 January 2022, Mr. Payenda filed an application for revision of Judgment No. 2021-UNAT-1156, to which the Secretary-General filed comments on 16 February 2022.

## Submissions

### Mr. Payenda's Application

6. Mr. Payenda seeks revision of the Appeals Tribunal Judgment based on the following:
- i) A Senior Resource Management Officer of IOM issued him a “No Objection Certificate” dated 15 August 2017, certifying that his resignation had been approved on 19 July 2017, and wishing him “all the best in his future endeavor”. According to Mr. Payenda, he did not present this document to the Dispute Tribunal because that document stored in his desk drawer had been partially ruined by his spouse when she accidentally spilled coffee on the desk. He asked IOM for another copy, but his request was denied. He now submits it as his “last hope”.
  - ii) The investigation launched by IOM was a “general investigation” that did not specifically target him. In her memorandum dated 9 November 2016, the IOM Inspector General informed Mr. Payenda of the launch of an investigation and the decision to retrieve his data from his IOM-issued work computer and mobile devices, but she clarified that “no adverse inference concerning impropriety or wrongdoing should be drawn from this request”. Many IOM staff members received the same e-mail, their computers were collected, and they were interviewed. There was no misconduct investigation, but only a fact-finding, for which he represented the Finance Department to describe its policies and procedures.<sup>1</sup>

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<sup>1</sup> It should be noted that in a strictly confidential memorandum dated 25 January 2017, the IOM Inspector General advised Mr. Payenda that he had “been made the subject of allegations which, if proven, could lead to administrative or disciplinary action against [him]”. The memorandum noted that “[i]t is alleged that [Mr. Payenda] committed acts constituting fraud or abuse of assets or funds leading to financial loss to the Organization in relation to the disbursement of cash/reintegration grants. [His] reported action may have violated provisions of the following rules and standards: [internal citation omitted]”. According to the IOM Legal Counsel, Mr. Payenda signed the memorandum on 29 January 2017, acknowledging receipt of the same.

- iii) He had the right to answer “No” to the question on the UNICEF application because it stated, in addition to whether he had been the subject of any investigation for misconduct, that “you can state “no” if you were cleared or if the charges have been levied”. [sic]

7. Mr. Payenda asks that the Appeals Tribunal show “humanitarian kindness” if it finds that he has still not provided sufficient evidence, and order UNICEF to “recruit [him] back” because he and his family have been suffering since his dismissal.

### **The Secretary-General’s Comments**

8. The Secretary-General requests that the Appeals Tribunal dismiss the application for revision in its entirety, because Mr. Payenda has failed to establish a new decisive fact that warrants a revision of the impugned Judgment.

9. The Secretary-General notes that Mr. Payenda has annexed several documents to his application for revision, five of which were not part of the record before the Tribunals though they all predate the filing of his UNDT application and appear to have been known to him at that time.

10. The Secretary-General submits that Mr. Payenda has failed to identify the discovery of a decisive fact which was, at the time the impugned Judgment was rendered, unknown to the Appeals Tribunal and to him, as required by Article 11 of the UNAT Statute. For this reason alone, his application for revision fails and should be dismissed.

### **Considerations**

11. Applications for revision of judgment are governed by Article 11 of the Appeals Tribunal Statute (Statute) and Article 24 of the Appeals Tribunal Rules of Procedure (Rules). By these provisions, an applicant must show or identify a decisive fact that at the time of the Appeals Tribunal Judgment was unknown to both the Appeals Tribunal and the party applying for revision; that such ignorance was not due to the negligence of the applicant; that the fact identified would have been decisive in reaching the decision;<sup>2</sup> and that the decisive fact existed

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<sup>2</sup> *Carolina Larriera v. United Nations Joint Staff Pension Board*, Judgment No. 2022-UNAT-1193, para. 24; *Hasan Khalil Sirhan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1131, para. 31;

at the time when the judgment was given and discovered subsequently. Facts which occur after a judgment has been given are not such facts within the meaning of Article 11 of the Statute and Article 24 of the Rules. This remains the case irrespective of the legal consequences that such facts may have.<sup>3</sup>

12. The Appeals Tribunal has consistently held that “any application which, in fact, seeks a review of a final judgment rendered by the Appeals Tribunal can, irrespective of its title, only succeed if it fulfils the strict and exceptional criteria established by Article 11 of the Statute of the Appeals Tribunal”.<sup>4</sup> Thus, in order to succeed in his claim for revision, the Applicant must prove that he has discovered a decisive fact which was unknown to both him and this Tribunal at the time of judgment, and which existed at the time when the judgment was given and was subsequently discovered.<sup>5</sup>

13. The decisive fact which the Applicant maintains is sufficient for the revision of the Appeals Tribunal Judgment is a letter called “No Objection Certificate” dated 15 August 2017 by the Senior Resource Management Officer at IOM Afghanistan, Mr. Payenda’s former employer. However, this document was known to him at the time of his initial application to the UNDT. The reasons why Mr. Payenda did not present this document to the UNDT at the time (“my spouse had mistakenly poured a cup of coffee on my desk and the paper was unfortunately inside the drawer and was ruined partially”), and also his allegation of having been refused another copy by the IOM, are not persuasive, since the same reasons did not prevent him from presenting this very document as an annex to the present application. The certificate is a document which was known to him and which he now presents, even without having received a new copy. The Appeals Tribunal can only conclude that this certificate, which was produced after the filing of the UNDT application and the Appeals Tribunal Judgment, does not fulfil the requirement of a document unknown by a party who wishes to apply for revision of a judgment.

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*Mbaigolmem v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-890, para. 12; *Walden v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-573, para. 16.

<sup>3</sup> *Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia)*, Preliminary Objections (*Yugoslavia v Bosnia and Herzegovina*), Judgment, ICJ Reports 2003, para. 67.

<sup>4</sup> *Hasan Khalil Sirhan* Judgment, *op. cit.*, para. 32; *Mbaigolmem* Judgment, *op. cit.*, para. 12; *Walden* Judgment, *op. cit.*, para. 17.

<sup>5</sup> *Carolina Larriera* Judgment, *op. cit.*, para. 26.

14. Furthermore, the Appeals Tribunal recalls that, under the terms of Article 11(1) of the Statute and Article 24 of the Rules, an application for revision must be made within 30 calendar days of the discovery of the fact, and within one year of the date of the judgment. In the case at hand, the “decisive fact” on which the Applicant relies, i.e. the 15 August 2017 letter, was known to him at the time when the Appeals Tribunal Judgment was issued, that is, on 29 October 2021. Even if the Appeals Tribunal were to consider the letter only known to Mr. Payenda at the time of the issuance of the Appeals Tribunal Judgment (29 October 2021), the present application submitted on 10 January 2022 was not filed on time.

15. In truth, Mr. Payenda seeks to appeal against the Appeals Tribunal Judgment on the grounds that the Appeals Tribunal erred when it found that the UNDT was correct in determining that the failure to disclose relevant information in his UNICEF application amounted to misconduct.<sup>6</sup> In this respect, the Appeals Tribunal concluded that the letter from the IOM Legal Counsel dated 13 August 2018 to UNICEF confirmed that Mr. Payenda, as early as 26 January 2017, had been served with a formal Notice of Allegations (NoA) informing him that he was the subject of allegations of “acts constituting fraud or abuse of assets or funds leading to financial loss to the Organization in relation to the disbursement of cash/reintegration grants” and that Mr. Payenda had signed the NoA on 29 January 2017 and had been formally interviewed on 31 January 2017.<sup>7</sup> Thus, the Appeals Tribunal reasoned that:<sup>8</sup>

... Coming from an authorized representative of an agency within the United Nations System, which previously employed Mr. Payenda, this letter enjoys the status of an official act and, as such, carries with it the presumption of regularity. Therefore, once this piece of evidence had been adduced to the record together with the screenshot of the NoA, it was incumbent upon Mr. Payenda to provide countervailing evidence, which he did not do.

16. The Appeals Tribunal also concluded that:<sup>9</sup>

... even though the disciplinary process at IOM had not concluded at the time Mr. Payenda resigned, what matters in the present case is not the outcome of the IOM investigation but rather the fact that he was clearly informed in January 2017 that there

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<sup>6</sup> Impugned Judgment, paras. 39, 40 and 43.

<sup>7</sup> *Ibid.*, para. 31.

<sup>8</sup> *Ibid.*, para. 32.

<sup>9</sup> *Ibid.*, para. 40.

was an investigation into his alleged misconduct before he had applied for the UNICEF Post in April 2017.

17. Further, the Appeals Tribunal found the following:<sup>10</sup>

.. ... The disciplinary process at IOM never concluded because Mr. Payenda had resigned from IOM and started a new position at UNICEF. It does not appear from the record that he was not sanctioned because of a lack of evidence or because the allegations were not substantiated. Rather, the OIAI Investigation Report actually revealed that after IOM had substantiated the allegations, it withheld part of Mr. Payenda's final entitlements to recover monies lost in an alleged embezzlement scheme.

... Whether or not Mr. Payenda's intended purpose for resigning his post at IOM and applying to the position at UNICEF was to escape any disciplinary measure by IOM cannot be determined with certitude. But the previous possible misconduct, although subject to an investigation at the time, is not the issue here.

18. The Appeals Tribunal Judgment was thus decided on the basis of Mr. Payenda's breach of duty to give correct information in the application to UNICEF, not the outcome of the investigation by IOM, which was unknown to this Appeals Tribunal. Moreover, it was established that Mr. Payenda did not provide countervailing evidence of his allegations that he had been cleared of the accusations against him.

19. Reiterating his previous claim that he had been cleared of the accusations against him, Mr. Payenda now, in his application for revision, submits additional unproven arguments (e.g., that he had received the totality of his entitlements from IOM) and e-mails and other documents predating his initial application to the UNDT and not submitted to either Tribunal, in a vain attempt to show errors in the Appeals Tribunal Judgment, all of which is impermissible. Article 10(6) of the Statute provides that the judgments of the Appeals Tribunal shall be final and without appeal.<sup>11</sup> The Appeals Tribunal's judgments are decisive and definitively binding on the parties.<sup>12</sup> There is accordingly no legal basis to revisit Mr. Payenda's arguments.

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<sup>10</sup> *Ibid.*, paras. 42 and 43.

<sup>11</sup> Subject only to the narrow and restrictive provisions of Article 11 of the Statute.

<sup>12</sup> Article 10(5) the Statute.

20. There is one last point which the Appeals Tribunal wishes to address. Mr. Payenda's arguments about the scope of the previous investigation within IOM are rather inconsistent. Whilst sometimes he claims that there was *not* an accusation of misconduct against him personally, but a mere fact-finding investigation in the Finance department where he served and with which he cooperated, at other points he indicates that either he was cleared of the accusations, or that the charges against him had been dropped.

21. Under these circumstances, Mr. Payenda's request for revision of the Appeals Tribunal Judgment constitutes, in fact, a disguised attempt to re-open the case. His application therefore does not meet the requirements under the above legal framework and stands to be dismissed. The Appeals Tribunal is the final appellate body in the United Nations' internal justice system and an application for revision of a judgment cannot be a collateral means of contesting the judgment, nor can it be allowed to be a second right of appeal.



**Judgment**

22. The application for revision of Judgment No. 2021-UNAT-1156 is dismissed.

Original and Authoritative Version: English

Decision dated this 28<sup>th</sup> day of October 2022 in New York, United States.

*(Signed)*

Judge Halfeld, Presiding

*(Signed)*

Judge Murphy

*(Signed)*

Judge Knierim

Judgment published and entered into the Register on this 22<sup>nd</sup> day of November 2022 in New York, United States.

*(Signed)*

Juliet Johnson, Registrar