



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

---

Judgment No. 2025-UNAT-1531

**Sandrine Guezel**  
**(Respondent/Applicant)**

**v.**

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

## **JUDGMENT**

---

Before:	Judge Graeme Colgan, Presiding Judge Nassib G. Ziadé Judge Abdelmohsen Sheha
Case No.:	2024-1913
Date of Decision:	21 March 2025
Date of Publication:	8 May 2025
Registrar:	Juliet E. Johnson

---

Counsel for Sandrine Guezel:	Julia Kyung Min Lee, OSLA
Counsel for Secretary-General:	Amanda Stoltz

**JUDGE GRAEME COLGAN, PRESIDING.**

1. This is an appeal by the Secretary-General against Judgment No. UNDT/2024/003 (impugned Judgment),<sup>1</sup> issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal). The Dispute Tribunal awarded dependent relatives of a deceased staff member, Mr. Yann Guezel (Mr. Guezel), material damages compensation for delays in processing their claim to the Advisory Board on Compensation Claims (ABCC) and for moral harm suffered by the deceased's dependents. These compensation awards were, respectively, the equivalents of seven and six months' net base salary of Mr. Guezel.

2. The Respondent, Sandrine Guezel, is the sister and authorised representative of Mr. Guezel, who worked for the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA). Mr. Guezel died on 30 June 2018 from multiple organ failure caused by severe malaria whilst on rest and recuperation leave in Thailand, adjacent to his home country of Laos. It was subsequently established that the malarial infection was likely contracted in the Central African Republic and, therefore, in the course of Mr. Guezel's work with MINUSCA.

3. Mr. Guezel's dependents included his widow, Ms. Doknhangkham Insouvanh (Ms. Insouvanh) and a young (then pre-teenage) daughter, D.G. A claim for compensation under Appendix D to the Staff Rules was lodged with the ABCC on 18 December 2018, that is within about six months of Mr. Guezel's death.

4. On 1 July 2021, that is some 36 months after Mr. Guezel's death and 30 months after the claim was lodged, Mr Guezel's dependents began to receive monthly compensation of USD 8,353.11 starting from 1 July 2021, along with a lump sum of USD 293,641.63 as arrears for the period 1 July 2018 to 30 June 2021.

5. After addressing timeliness and other jurisdictional challenges to the UNDT's decision to receive these claims, which it dismissed and which are not an issue in the Secretary-General's appeal, the Dispute Tribunal concluded that the ABCC had delayed inordinately in processing and determining the claims for compensation. The UNDT made its orders for compensation, calculated by reference to Mr. Guezel's net base salary. In addition to details about receivability that are no longer in issue, the detailed impugned Judgment sets out not only the facts but also

---

<sup>1</sup> *Guezel v. Secretary-General of the United Nations*, Judgment No. UNDT/2024/003.

the UNDT's reasons for deciding the case as it did. Except to address the Secretary-General's grounds of appeal, we will not repeat what can be read in the impugned Judgment.

6. For the reasons set out below, we grant the appeal in part and modify the impugned Judgment.

### **Facts and Procedure**

7. On 30 June 2018, Mr. Guezel died from multiple organ failure caused by severe malaria whilst on rest and recuperation leave in Thailand, adjacent to his home country of Laos. On 13 August 2018, a pathological report into the cause of his death (malaria) was produced. However, at that time, it was not yet determined where that illness had originated and, in particular, whether it had been contracted in service.

8. On 18 December 2018, within about six months of Mr. Guezel's death, Ms. Guezel filed with the ABCC a claim for compensation under Appendix D to the Staff Rules on behalf of Ms. Insouvanh and Ms. D.G.

9. In the following months, Ms. Guezel made several enquiries of the Administration about the progress of her claim. In particular, on 4 and 16 November 2020, as well as on 1 December 2020, Ms. Guezel's counsel from the Office of Staff Legal Assistance (OSLA) followed up with the ABCC regarding the status of her claim. On 4 December 2020, the ABCC informed Ms. Guezel's counsel that it was "still awaiting medical (...) advice on this case" and that, therefore, it could not specify when a decision would be issued.<sup>2</sup>

10. On 14 May 2021, Ms. Guezel's claim was presented during the 519<sup>th</sup> Meeting of the ABCC and was recommended for compensation. In particular, the ABCC stated that it "considered the autopsy report and the memorandum from the [Division of Healthcare Management and Occupational Safety and Health (DHMOSH)] and found that the illness and death were as a result of a particular malaria strain found in the Central African Republic".<sup>3</sup>

11. On 3 June 2021, the Acting Secretary of the ABCC issued a letter to Ms. Insouvanh informing her that "the death of Mr. (...) Guezel was recognized as attributable to the performance

---

<sup>2</sup> E-mail exchange between OSLA counsel and the ABCC from November and December 2020.

<sup>3</sup> ABCC Minutes of the 519<sup>th</sup> Meeting (Part I) of 14 May 2021.

of official duties on behalf of the United Nations and that, therefore, compensation should be awarded to the dependent survivors under Article 3.4 of Appendix D”.<sup>4</sup>

12. On 1 July 2021, approximately 36 months after Mr. Guezel’s death and 30 months after the claim was lodged, Mr. Guezel’s dependents began to receive monthly compensation of USD 8,353.11 starting from 1 July 2021, along with a lump sum of USD 293,641.63 as arrears for the period from 1 July 2018 to 30 June 2021.

13. On 2 August 2021, Ms. Guezel requested management evaluation of the implied administrative decision not to compensate the dependents of Mr. Guezel for the delay by the ABCC in processing their claim (contested decision).

14. On 15 September 2021, the Management Evaluation Unit (MEU) informed Ms. Guezel by letter that “while two and a half years might appear as a non-negligible wait, this time span did not constitute an undue delay warranting compensation”. The MEU noted that the claim “was of a complex one, as it relied exclusively on opinions of medical experts as to the prevalence of a particular strain of malaria in Africa versus its presence in Southeast Asia and the probability that Mr. Guezel’s injury was incurred while in Bria as opposed to in Bangkok”. It also stated that “the time frame of [her] claim [had] to be looked at in the context of the COVID-19 world-wide pandemic, which began approximately in December 2019”.<sup>5</sup>

*Procedures before the Dispute Tribunal*

15. On 13 December 2021, Ms. Guezel filed an application with the Dispute Tribunal challenging the contested decision.

16. On 30 May 2022, by Order No. 63 (NBI/2022), the UNDT determined that Ms. Guezel’s application was receivable and informed the parties that it would provide the reasons for its decision in the impugned Judgment.<sup>6</sup>

---

<sup>4</sup> Letter from the Acting Secretary of the ABCC to Ms. Insouvanh dated 3 June 2021.

<sup>5</sup> Letter from the MEU to Ms. Guezel dated 15 September 2021.

<sup>6</sup> Impugned Judgment, para. 15.

*Impugned Judgment*

17. The UNDT held an oral hearing of the case from 15 to 17 March 2023, as well as on 18 October 2023, during which it heard oral evidence from four witnesses: Ms. Insouvanh, Ms. Guezel, C.I. (Ms. Insouvanh's sister), and U.M. (a family friend).<sup>7</sup>

18. On 8 February 2024, the Dispute Tribunal issued the impugned Judgment, granting Ms. Guezel's application. We will not reiterate the UNDT's reasoning for accepting the receivability of the application: this can be read in the impugned Judgment and is not now in issue on appeal.

19. As to the merits of the case, the UNDT recalled that although the legal framework did not prescribe an explicit time limit for the ABCC to process in-service death compensation claims, the Administration remained under a duty of care, which included the obligation to "act promptly" and to take "reasonable steps to deal with a matter expediently". The UNDT further observed that "an untimely payment of an entitlement to a staff member is a breach of the general principle of due diligence and good faith towards staff members".<sup>8</sup>

20. The UNDT then proceeded to review in detail the evidence of the witnesses who had testified before it and assess their credibility. It found that the four witnesses were credible and that their testimony was "consistent, solid, and reliable".<sup>9</sup> We will reiterate but summarise the evidence of these witnesses as they affect the Secretary-General's grounds of appeal, and the nature of the harm suffered by Mr. Guezel's dependents.

21. As to the evidence of Ms. Insouvanh, the UNDT emphasised that she was a housewife with only a primary education living in Laos with their child, D.G. It further highlighted several elements from her testimony, corroborated by the other witnesses:<sup>10</sup>

... (...) After [the] death of her husband, she became destitute. Her only income ceased abruptly due to the suddenness of the death of the bread winner. She could not support her child or herself. She sought financial assistance from relatives and close friends to survive. She could not send her child to school. She was forced by circumstances beyond her control to send away her only child to Peru soon after her husband's death to enable her [to] attend school and live a life she was accustomed to. She didn't understand what was happening to her- fate. She was sad and helpless.

---

<sup>7</sup> *Ibid.*, para. 16.

<sup>8</sup> *Ibid.*, paras. 56-57 citing *Dahan v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-861, para. 26; *Ho v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-791, para. 25.

<sup>9</sup> Impugned Judgment, para. 84.

<sup>10</sup> *Ibid.*, para. 62.

22. Regarding the relocation of D.G. (the deceased's then 11-year-old child) to Peru in October 2019, the UNDT accepted that:<sup>11</sup>

... The decision to separate the widow from her daughter was hard to make. Her husband had died. She did not want her child to leave home. The child did not want to leave home, but the mother forced her to go as the only way of securing her education and future. If she had been certain about the payment from the Organization, she would not have sent her child away. She had raised the child for 11 years until the decision to give her custody away.

23. The UNDT then examined the psychological effects of the contested decision on Ms. Insouvanh and D.G. It noted that Ms. Insouvanh and the three other witnesses testified that “the sudden death of the deceased staff member, the lack of income and the separation of the child and mother stressed her and made life difficult for the child and the whole family”.<sup>12</sup> The UNDT emphasized that D.G. had difficulty adapting to her new environment and missed her mother. It also highlighted that Ms. Insouvanh would not have sent her child away if she had been certain that she would be granted compensation from the ABCC.<sup>13</sup> The UNDT noted that Ms. Insouvanh had to borrow money from relatives to cover her needs. It also found that her failure to seek medical support regarding her mental health “was caused by cultural beliefs”, which it considered a valid reason under the circumstances of the present case.<sup>14</sup>

24. Rejecting the Secretary-General's contentions that it was “normal” to experience such lengthy delays in processing death benefits due to the volume of claimants since the ABCC Secretariat had only three professional staff members, the UNDT observed that it was “quite disheartening that the [Secretary-General seemed] to glorify his inefficiency in handling death benefits”. The UNDT also emphasized that the autopsy report was only about four pages long, was “clear and unequivocal”, and that all relevant documentation to support the claim had been submitted in a timely manner.<sup>15</sup>

25. The UNDT also dismissed the Secretary-General's contention that the COVID-19 pandemic had contributed to the undue delay, observing that this reason had never been communicated to Ms. Guezel before and was unlikely given the chronology of events.<sup>16</sup>

---

<sup>11</sup> *Ibid.*, para. 70.

<sup>12</sup> *Ibid.*, para. 72.

<sup>13</sup> *Ibid.*, para. 77.

<sup>14</sup> *Ibid.*, paras. 75-76 and 78.

<sup>15</sup> *Ibid.*, para. 80.

<sup>16</sup> *Ibid.*, para. 81.

26. Consequently, the UNDT concluded that the delay of two and a half years to process the claim could “only be attributed to lack of due care and diligence, transparency, accountability and good faith” on the part of the Administration.<sup>17</sup> The UNDT ordered the payment of seven months’ net base salary for the delay in processing the ABCC claim.

27. In response to the request for moral damages, the UNDT awarded six months’ net base salary for the moral harm suffered by Ms. Insouvanh and D.G. It found the request for moral damages to be corroborated by the witnesses and concluded that the mental and emotional harm suffered by the dependents of Mr. Guezel was directly attributable to the contested decision.<sup>18</sup>

28. In determining the appropriate compensation, the UNDT observed that the Secretary-General did not contest the time periods pleaded by Ms. Guezel. It further held that the delays in the present case amounted to extreme negligence and that the amounts awarded were “fair, reasonable and adequate compensation capable of restoring the dependents’ trust and confidence in the Organization and possibly place them in a position of state of mind that they would have been in but for the violation”.<sup>19</sup>

## Submissions

### The Secretary-General's Appeal

29. The Secretary-General requests the Appeals Tribunal to reverse the impugned Judgment in its entirety.

30. First, the Secretary-General submits that the UNDT erred in law and fact and exceeded its jurisdiction by finding that there was a compensable and inordinate delay in processing Ms. Guezel’s claim.

31. The Secretary-General argues that the UNDT erred by concluding that the Administration was under a “legal obligation to act promptly when dealing with a matter”, despite recognizing that the applicable legal framework did not provide a time limit for processing a claim under Appendix D to the Staff Rules.<sup>20</sup> In the absence of an explicit statutory deadline, the Secretary-General contends that the contested decision could only be considered unlawful if it was demonstrated that the Administration had violated the staff member’s contractual rights, which did not occur in the

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*, paras. 82-84.

<sup>19</sup> *Ibid.*, para. 87.

<sup>20</sup> *Ibid.*, para. 43.

present case. On the contrary, the Secretary-General asserts that, while the process was lengthy, it was not unlawful, and the Administration acted fairly, reasonably, and in good faith in processing the claim. He highlights that it is not unusual for the review of such claims to take between 12 and 18 months, as these often involve complex medical and administrative issues requiring several steps. He also reiterates that the ABCC Secretariat is staffed with only two professional and three support staff members. Furthermore, relying on *McKay*,<sup>21</sup> the Secretary-General argues that the Appeals Tribunal “itself has recognized the complexity of the Appendix D claims review process and has explicitly determined that 14 months does not constitute an excessive delay that would justify an award of compensation”.

32. The Secretary-General contends that the UNDT erred when it found that his argument – that there was no automatic entitlement to in-service death compensation – lacked legal basis. He further argues that the UNDT’s finding that the process took an inordinate delay appears to have been based on this erroneous assumption.<sup>22</sup> In contrast, the Secretary-General emphasises that such compensation is only payable “following a deliberative process that requires consideration of the circumstances surrounding the death to determine, among other things, whether the death was service-incurred”.

33. The Secretary-General submits that the UNDT erred when it suggested that the claim could have been processed faster, particularly since the autopsy report was only about four pages long and was “clear and unequivocal”.<sup>23</sup> Relying on *Applicant*,<sup>24</sup> he clarifies that the UNDT did not possess the medical expertise to interpret the autopsy report and, specifically, to determine the delay within which the Administration should have processed the claim based solely on its own interpretation of the autopsy report.

34. The Secretary-General contends that the UNDT erred when it suggested that it was “highly unlikely” that the COVID-19 pandemic contributed to the inordinate delay in processing the claim given the “chronology of events”.<sup>25</sup> He asserts that the claim was forwarded to DHMOSH for advice in May 2019 and had thus only been pending for 10 months when the COVID-19 pandemic was declared. Consequently, he argues that the UNDT impermissibly disregarded the impact of the COVID-19 pandemic on DHMOSH.

---

<sup>21</sup> *McKay v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-287/Corr. 1.

<sup>22</sup> Impugned Judgment, para. 79.

<sup>23</sup> *Ibid.*, para. 80.

<sup>24</sup> *Applicant v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1133, para. 58.

<sup>25</sup> Impugned Judgment, para. 81.



35. Second, the Secretary-General submits that, in the absence of illegality, no compensation can be awarded.<sup>26</sup> In any event, even if the UNAT were to consider the matter further, he contends that the UNDT nevertheless committed several errors of law and exceeded its jurisdiction by awarding compensation for procedural delay and for moral harm.

36. Regarding the compensation of seven months' net base salary awarded for procedural delay, the Secretary-General submits that it violates Article 10(5)(b) of the Dispute Tribunal Statute, which prohibits any award of compensation in the absence of evidence of harm.<sup>27</sup> The Secretary-General further contends that this compensation is impermissibly duplicative of the six months' net base salary awarded by the Dispute Tribunal for the moral harm caused by the contested decision.

37. With respect to the compensation for moral harm of six months' net base salary, the Secretary-General argues that the Dispute Tribunal lacked competence to award it. He submits that there was no causal link between "the perceived impacts of the alleged delay and any (purported) illegality on the part of the Administration". In particular, the Secretary-General highlights that the UNDT's reference to the financial difficulties encountered by Ms. Insouvanh in July and August 2018 in paying the school tuition fees of D.G. "cannot be linked to any alleged delays in reviewing the Appendix D claim which was not filed until December 2018". Similarly, he asserts that, in light of *McKay*,<sup>28</sup> where the UNDT recognized that 14 months did not constitute an excessive delay in processing an ABCC claim, the relocation of D.G. to Peru in October 2019 cannot be attributed to the contested decision.

38. Finally, the Secretary-General contends that the compensation awarded by the UNDT for moral harm lacks any principled approach. He emphasizes that the "only reasoning" provided by the UNDT in this regard was that it found the amount was deemed "fair, reasonable, and adequate".<sup>29</sup> Furthermore, the Secretary-General submits that, even assuming that the contested decision was unlawful and caused compensable moral harm, the amount of six months' net base

---

<sup>26</sup> The Secretary-General refers, *inter alia*, to *AAM v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1372, where the UNAT affirmed an award of compensation for procedural delay. He attempts to distinguish that case from the present one, asserting that "such delay was linked to the fact that the Controller twice remanded the claim back to the ABCC for renewed assessment".

<sup>27</sup> *Nchimbi v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-815, para. 29.

<sup>28</sup> *McKay* Judgment, *op. cit.*

<sup>29</sup> Impugned Judgment, para. 87.

salary awarded by the UNDT is nevertheless excessive when examined in light of the jurisprudence and should be reduced proportionally to reflect “the procedural nature of the (alleged) violation”.<sup>30</sup>

### **Ms. Guezel’s Answer**

39. Ms. Guezel requests the Appeals Tribunal to affirm the impugned Judgment and dismiss the appeal.

40. First, Ms. Guezel submits that the Secretary-General has failed to meet the requirements of Article 2(1) of the Appeals Tribunal Statute (Statute). She specifically argues that the Secretary-General has not demonstrated any error in the UNDT’s conclusions that would warrant a reversal of the impugned Judgment. On the contrary, she asserts that the Secretary-General merely disagrees with the impugned Judgment and attempts to reargue the case.

41. Second, Ms. Guezel submits that the UNDT correctly found that there was a compensable and inordinate delay in processing her claim. She highlights that the Secretary-General’s arguments in this regard are contradictory, as he also acknowledges the UNAT’s conclusions in *AAM*,<sup>31</sup> where the Appeals Tribunal affirmed an award of compensation for a delay of nearly two and a half years in obtaining a decision to an ABCC claim, even though the claim was ultimately denied. Ms. Guezel argues that the Secretary-General’s attempt to distinguish that case from the present one is “devoid of logic”, especially since he himself stated that the approval by the Controller of the ABCC’s recommendation was one of the many steps in the review process of Appendix D compensation claims.

42. Ms. Guezel submits that the Secretary-General’s assertion that the UNDT erroneously found there to be an automatic entitlement to in-service death compensation is a misinterpretation of the impugned Judgment. She points out that the UNDT specifically concluded that “[t]he question of (...) whether the deceased staff member’s dependent is entitled to compensation under Appendix D is a matter of law which is triggered automatically *after* a factual finding that death is service incurred”.<sup>32</sup>

43. Ms. Guezel contends that the UNDT’s observations regarding the autopsy report were appropriate, as the UNDT “merely pointed out that the documents [she] submitted (...) with her ABCC claim on 18 December 2018 were unequivocal and that all necessary and relevant

---

<sup>30</sup> *AAM* Judgment, *op. cit.*; *Applicant v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1001; *Ho* Judgment, *op. cit.*; *Benfield-Laporte v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-505.

<sup>31</sup> *AAM* Judgment, *op. cit.*

<sup>32</sup> Impugned Judgment, para. 79 (emphasis added).

documents to support the claim were submitted timely”. Furthermore, she observes that this finding is corroborated by the ABCC Minutes of the 519<sup>th</sup> Meeting (Part I) of 14 May 2021, which the Secretary-General himself submitted to the UNDT.<sup>33</sup>

44. Ms. Guezel argues that the UNDT did not err in rejecting the Secretary-General’s argument that the COVID-19 pandemic contributed to the undue delay in processing her claim. She emphasizes that, despite having every opportunity, the Secretary-General has failed to produce any evidence to support his contention, other than a mere reference to the MEU response of 15 September 2021.<sup>34</sup>

45. Third, Ms. Guezel submits that the UNDT appropriately exercised its jurisdiction and correctly determined that compensation should be awarded for the unlawful delay in processing her claim, as well as for the moral harm suffered by the dependents of Mr. Guezel.

46. Regarding the compensation of seven months’ net base salary awarded for procedural delay, Ms. Guezel argues that the delay is not duplicative and that the UNDT correctly considered the contemporaneous evidence of material harm caused to the dependents of Mr. Guezel.<sup>35</sup>

47. Regarding the compensation of six months’ net base salary for moral harm, Ms. Guezel submits that the UNDT appropriately exercised its jurisdiction in awarding this amount based on the testimony of the four witnesses who testified before it. She emphasizes that the UNDT did not conclude that the moral damages should be awarded “for any financial difficulties faced by the widow of Mr. Guezel in paying her daughter’s school fees in July and August 2018”, but instead merely summarized the testimony provided by Ms. Insouvanh.<sup>36</sup> She contends that the Secretary-General’s assertion in this regard misrepresents the evidence submitted to the UNDT, particularly as she testified that she paid for the tuition fees of D.G. for 2018.<sup>37</sup>

48. Ms. Guezel contends that *McKay* is distinguishable from the present case, and that the Secretary-General cannot rely on that Judgment to support his argument that the UNDT erred in awarding moral damages for the harm suffered by Ms. Insouvanh and D.G. following their separation in October 2019. She notes that the procedural delay in the present case was more than twice as long as it was in *McKay*, and that the widow in *McKay* did not face the same financial

---

<sup>33</sup> ABCC Minutes of the 519<sup>th</sup> Meeting (Part I) of 14 May 2021.

<sup>34</sup> Letter from the MEU to Ms. Guezel dated 15 September 2021.

<sup>35</sup> Ms. Guezel refers to her letter dated 4 February 2021, which describes the family situation regarding financial and moral harm caused by the delay in processing the claim.

<sup>36</sup> Impugned Judgment, para. 65.

<sup>37</sup> Hearing transcript, 18 October 2023, Ms. Guezel’s testimony, p. 9: 12-18 and p. 10: 4-11.

difficulties, as she received death benefits within four months of the death of the staff member and did not have a young child who was “suddenly unable to receive basic needs and education to survive”. Ms. Guezel reiterates her reference to *AAM*,<sup>38</sup> where the Appeals Tribunal confirmed that moral damages may be awarded when supported by specific evidence, and that both the UNAT and the UNDT have discretion to award compensation, normally not exceeding two years’ net base salary.

49. Last, Ms. Guezel submits that the UNDT correctly applied a principled approach in its assessment of the moral damages. She argues that the UNDT’s reasoning correctly assessed the credibility of the witnesses and that it appropriately concluded that the evidence demonstrated that the mental and emotional harm suffered by Ms. Insouvanh and D.G. was directly attributable to the contested decision. She further notes that, before the UNDT, the Secretary-General did not oppose the specific periods pleaded by her and failed “to provide any arguments, *in light of the evidence provided by these witnesses*, as to why the award of compensation for the delay and moral damages claimed by [her] were excessive or unwarranted”.<sup>39</sup> Therefore, relying on Appeals Tribunal jurisprudence, she contends that he cannot raise this new argument for the first time on appeal.<sup>40</sup> In any event, Ms. Guezel submits that, unlike in *AAM*, the evidence provided in this case supports compensation at the higher end, emphasizing that the contested decision caused mental harm not only to Ms. Insouvanh but also to D.G., who had to be relocated to another country, another continent and another culture.

### Considerations

50. We have identified three issues for consideration in the present case:

- i) Did the UNDT err or exceed its jurisdiction by finding that there was an undue and compensable delay in processing Ms. Guezel’s claim?
- ii) Did the UNDT err or exceed its jurisdiction by awarding compensation of six months’ net base salary for moral harm caused to the dependents of Mr. Guezel?
- iii) Did the UNDT err or exceed its jurisdiction by awarding compensation of seven months’ net base salary for the undue procedural delay in processing Ms. Guezel’s claim?

---

<sup>38</sup> *AAM* Judgment, *op. cit.*, para. 60.

<sup>39</sup> Emphasis added. Ms. Guezel argues that the Secretary-General’s reliance on his reply and his closing submissions dated 20 June 2022 is misplaced, as these were submitted before the oral hearing took place and, therefore, do not address the evidentiary value of the witnesses.

<sup>40</sup> *Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-292, para. 33.

51. Whether a delay is excessive under a regime in which no specific time limits for decision-making are set or even recommended is a matter of fact and degree in each case. However, there are some general principles against which these assessments in individual cases need to be made.

52. These principles include the desirability, if not the imperative, of reaching a prompt decision in cases where individuals, particularly innocent persons with limited financial means or those in arduous or straightened circumstances, depend on the outcome of the decision for their livelihood. These principles also include the nature of the decision(s) that must be made, and in particular, whether they are complex and involve expert assessment. Whether there has been delay may also be affected by the degree of involvement and cooperation by those seeking the decision. Additionally, there may be other factors unique to each case that must be considered.

53. In this case, while the cause of death was established relatively soon after the event, it was the ascertainment of where Mr. Guezel's malaria was contracted that caused further delay. This included the analysis of the particular strain of the disease and expert assessment of its prevalence in both the Central African Republic and Thailand. However, despite some further delay being warranted in the circumstances of this case, we are not satisfied that this justified the significant delays before liability was conceded and payments made.

54. Mr. Guezel's salary, essential to the well-being of his family who depended on him for their livelihood, stopped shortly after his demise. Although the periodic and lumpsum compensation eventually paid was generous, his family went without income for a significant time, relying on the sacrifices of family members to ensure their survival. That could not have been an unforeseen consequence of the delay: the United Nations employs many staff members in similar financial and family circumstances, and there is no evidence to suggest that the Administration was unaware of the plight of Mr. Guezel's dependents. There was regular communication on behalf of the dependents with those administering the claim for compensation, confirming the seriousness of the delay to them. The explanations proffered for the delay were scant.

55. Therefore, on its face, the case for unreasonable, inadequately explained, and excessive delay was established by the indisputable facts.

56. Having established a *prima facie* case of excessive delay in deciding to grant compensation (in this case, the period of over 30 months after Ms. Guezel lodged her claim with the ABCC), the onus of justifying that excessive delay shifted to the Secretary-General. That shifting onus arose

because the reasons for the delay were known to the Administration alone: the representative and the dependents of a deceased staff member cannot be expected to establish what they did not know and only the decision-maker itself knew.

57. What were the explanations for this delay between the lodgement of the claim and the payment of compensation? First, the Secretary-General says that in determining whether the ABCC's delay was inordinate and compensable, the Dispute Tribunal failed to take sufficient account of the complex, deliberative, and time-consuming process mandated where a claim is made under Appendix D to the Staff Rules for a service-incurred death of a staff member. In his appeal brief, the Secretary-General identifies six distinct steps that the ABCC must undertake before a delay in processing a claim can be fairly criticised. We consider that the clock for calculating delay should start to run when the claim is filed, which in this case, was about six months after Mr. Guezel's death. We also consider that not all six steps will necessarily take place in every case, and a case-by-case assessment of what will almost inevitably be unique facts will be required in an assessment of delay.

58. Those steps include, first, an initial review of the claim by the ABCC Secretariat. Following this, information may need to be sought from the claimant or others, although this is not always necessary and depends on the individual circumstances of each case. There is then a medical review of the basis for the claim to determine whether there is medical evidence that the death was caused by circumstances occurring during the staff member's performance of official duties. Next, the file undergoes further review by the ABCC, including a decision on the cause of death on which the medical expert(s) have opined. There is then an independent decision by the Controller, who has the delegated authority to approve or reject the claim. What the Secretary-General defines as a separate step – the formal notification of the decision to the claimant – we consider is really part of the Controller's decision-making and, in any event, is very unlikely to be a time-consuming exercise which may warrant a degree of further delay.

59. An unusual feature of this case, on which the Secretary-General relies, is the delaying effect of the COVID-19 pandemic. While we note the UNDT's finding that reliance on this submission was not reflective of the explanations given to the claimants at the time of the delays, we recognise and accept that it may nevertheless have affected work undertaken by United Nations staff members while they could not congregate in offices and may themselves have been sufferers. On the other hand, the work involved in processing and verifying such claims does not appear to require face-to-face interaction between staff as would, for example, have been appropriate for an

investigation into alleged misconduct. Assessing health documentation, reaching and exchanging expert opinions, calculating compensation figures, getting verification of these results, and conveying the outcome to the deceased's dependents, all seem capable of being undertaken by electronic communications once these had been established at staff members' homes or other alternative locations than centralised offices during the COVID-19 pandemic.

60. There is little, if any, detailed explanation from the Secretary-General as to the particular delays in this case or their attribution. In these circumstances, we must make the best of what information we have. Furthermore, even assuming that all six identified separate stages had to be completed, a notional period of four weeks for each stage would seem reasonable. Some may have taken longer, others completed more quickly. Using that formula, we conclude that a period of 24 weeks (almost six months) should have been the maximum reasonable delay to be expected and that any delay beyond that would have been excessive unless explained cogently and persuasively and, thereby, justified.

61. It is also necessary that we address the Secretary-General's broader submission (recorded at paragraph 35 of this Judgment) that, in the absence of illegality, no compensation can be awarded. While we agree that there can be no compensation without a causative illegality, there was such in this case. The undue and unsatisfactorily explained delay of 24 months and 13 days following a reasonable time to decide Ms. Guezel's claim for compensation was unlawful. That is because this excessive delay constituted a breach of the Administration's duty to treat Mr. Guezel's dependents fairly, reasonably, and respectfully.

62. Therefore, in the absence of an adequate explanation, we find that the UNDT did not err in concluding that the undue and excessive delay of over 24 months warranted compensation.

63. Turning to the awards of compensation made by the UNDT, it is worth summarising them, their bases, and the harms or losses for which they were intended to compensate.

64. The first award (equivalent to six months' net base salary) was for moral damages, which refers to the non-exactly quantifiable but nevertheless very real harms and losses suffered by Mr. Guezel's dependents during the period of undue delay. An examination of the evidence and other materials that were before the UNDT supporting this award and its amount reveals a lengthy, heart-felt, but also very personal account of their tribulations written on 4 February 2021, i.e., over 19 months into the two-year delay and about five months before compensation was finally

agreed to and paid by the Administration.<sup>41</sup> Despite the personal sufferings it described, the letter was polite, objective and restrained in its tone. It recorded the absence, at least to that point, of any communication from the Administration about the matter. Due to its personal nature and its focus on D.G., we will not reiterate its content, which is known to the parties. The letter clearly impressed the UNDT. Suffice to say, its unchallenged content amply justified the award of moral damages, and we will not interfere with this award or its amount.

65. As to the award of material damages (equivalent to seven months' net base salary), while there is no tabulated list of specific losses or expenses attributable to the period of undue and insufficiently explained delay, there are inferences that can be reasonably drawn from the evidence underpinning the award of moral damages. It is undisputed that Mr. Guezel's dependents were suddenly and unexpectedly deprived of their major source of income during the period of undue delay. They were deprived of the use of this money at the time it was needed in the aftermath of Mr. Guezel's death to meet daily living and educational expenses. Even eventually paying the same amount of money but only after a delay of more than two years, normally causes harm. Due to inflation, the purchasing power of that same amount paid in mid-2021 is naturally weaker than it was up to three years previously. Besides inflation, there is a cost of potential non-investment of at least some of that money in the delayed period from mid-2019 until mid-2021. In those circumstances, we are satisfied that it has been established that Mr. Guezel's dependents suffered material harm and losses. Compensation in the form of interest on the amount unpaid for reasons of undue delay is the best way to compensate for the established harms.

66. So, while we affirm the UNDT's decision to award material damages, we disagree with the way it was calculated and its amount. Despite the proper inferences that we can and do draw about losses and expenditures attributable to the delayed payment of compensation to Mr. Guezel's widow and child, the absence of proof of further specific losses means that the very substantial award equivalent to seven months' net base salary cannot stand. Further, tying the award to Mr. Guezel's salary was not the appropriate method for determining its amount. The two factors (loss by and harm to the dependents and the deceased's income) are not sufficiently linked when there is a more direct source of assessment available.

---

<sup>41</sup> Ms. Guezel's letter dated 4 February 2021, which describes the family situation regarding financial and moral harm caused by the delay in processing the claim.



67. In this case, we consider that these economic (material) losses should be compensated for by an award linked to the interest on the unpaid compensation for the period of the Administration's unreasonable delay.<sup>42</sup> Our orders will reflect that methodology.

68. Therefore, we conclude that while the procedural delay caused moral harm endured by Mr. Guezal's dependents, which was properly compensated by the UNDT's award equivalent to six months' net base salary, compensation for material damages was not sufficiently proven beyond what can be properly inferred from the evidence. Furthermore, the method used to calculate material damages was inappropriate and should be substituted by requiring interest to be paid on the lump-sum arrears of USD 293,641.63 for the period of undue delay, which lasted 24 months and 13 days, from 18 June 2019 to 1 July 2021. The rate of interest is to be set at the United States Prime Rate(s) for that period of undue delay.

---

<sup>42</sup> In this regard, see *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059, paras. 9-11, 13-14 and 17.

**Judgment**

69. The Secretary-General's appeal is granted in part and Judgment No. UNDT/2024/003 is hereby modified. The UNDT's compensatory order for material damages is reversed, and the remainder of the impugned Judgment is affirmed. In substitution for the material damages award of seven months' net base salary, the Secretary-General is ordered to pay the dependents of Mr. Guezel interest on the sum of USD 293,641.63 at the United States Prime Rate(s) for the period from 18 June 2019 to 1 July 2021. The combined amounts of compensation for moral harm and material losses shall not exceed, and if necessary, will be capped at, the equivalent of two years' net base salary of Mr. Guezel at the date of his death.

70. The Secretary-General is directed to execute this remedy within a 60-day period counting from the date of the oral pronouncement of 21 March 2025, and if unpaid by then, an additional five per cent per annum rate of interest is to be added to the compensation calculated above until such payment is made to Mr. Guezel's dependents.

Original and Authoritative Version: English

Dated this 21<sup>st</sup> day of March 2025 in Nairobi, Kenya.

*(Signed)*

Judge Colgan, Presiding

*(Signed)*

Judge Ziadé

*(Signed)*

Judge Sheha

Judgment published and entered into the Register on this 8<sup>th</sup> day of May 2025 in New York, United States.

*(Signed)*

Juliet E. Johnson,  
Registrar