



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

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Case No. 2023-1854

**Surendra Bista**

**(Appellant)**

v.

**Secretary-General of the United Nations**

**(Respondent)**

**Order No. 572 (2024)**

1. On 14 August 2023, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) issued Judgment No. UNDT/2023/085 in the matter of *Bista v. Secretary-General of the United Nations*, in which it dismissed the application of Mr. Surendra Bista, a former staff member of the United Nations Support Mission in Lybia (UNSMIL), that challenged the Administration's decision to separate him from service for serious misconduct with compensation in lieu of notice and with termination indemnity (contested decision).
2. On 12 September 2023, Mr. Bista filed an appeal of the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal). This case was registered as Case 2023-1854. On 24 November 2023, the Secretary-General filed his answer to the appeal.
3. On 28 June 2024, the Appeals Tribunal orally pronounced the outcome of the appeal in this case. The appeal was granted, the impugned Judgment was reversed, the contested decision was rescinded and compensation in lieu was set at two years' net-base salary.
4. On 9 July 2024, following the oral pronouncements, Mr. Bista filed a Motion for Interim Measures (Motion) with the Appeals Tribunal in which he requested the Appeals Tribunal to issue interim measures restraining UNSMIL from concluding "any and all

recruitment processes against the post from which he was unlawfully separated, and *pending the issuance by the Appeals Tribunal of a written judgment* that may bring greater clarity as to the meaning and intent of the decision of rescission”.<sup>1</sup>

5. On 19 July 2024, the Secretary-General filed his comments to the Motion. The Secretary-General submitted that the Motion was moot because the relief sought by Mr. Bista had already been undertaken by UNSMIL. In support of his comments, the Secretary-General annexed an e-mail exchange from 16 and 18 July 2024, in which the Legal Office of UNSMIL confirmed to Mr. Bista’s counsel that it agreed to freeze the recruitment exercise for his former position pending the issuance of the UNAT’s written Judgment.

6. Article 9(4) of the UNAT Statute provides that “[a]t any time during the proceedings, the Appeals Tribunal may order an interim measure to provide temporary relief to either party to prevent irreparable harm and to maintain consistency with the judgement of the Dispute Tribunal”. These are cumulative criteria that must be established before the Appeals Tribunal can grant temporary relief.

7. The Appeals Tribunal has consistently held that “an interim measure of relief is subject to very strict requirements; such relief is available to protect a litigant from the likelihood of irreparable harm, who the Dispute Tribunal believes is likely to succeed at trial or the Appeals Tribunal believes is likely to succeed on appeal”.<sup>2</sup>

8. In the present case, the relief sought by Mr. Bista – namely, the restriction of any and all recruitment processes against his former position pending the issuance of the UNAT Judgment in his case – had already been executed by UNSMIL, as confirmed by the e-mail exchange from 16 and 18 July 2024. Therefore, I find that the Motion became moot upon this confirmation by the Administration that the recruitment exercise for Mr. Bista’s former position is presently frozen.

9. For these reasons, the Motion must be dismissed as moot.

**IT IS HEREBY ORDERED** that Mr. Bista’s 9 July 2024 Motion for Interim Measures is **DISMISSED AS MOOT**.

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<sup>1</sup> Emphasis added.

<sup>2</sup> *Nadine Kaddoura v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Order No. 409 (2021), para. 6.

Original and Authoritative Version: English

Decision dated this 24<sup>th</sup> day of July 2024  
in Beijing, China.

*(Signed)*  
Judge Gao Xiaoli,  
President

Order published and entered in the Register on this  
24<sup>th</sup> day of July 2024 in New York, United States.

*(Signed)*  
Juliet E. Johnson,  
Registrar