



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

Judgment No. 2020-UNAT-1027

**Amal Belkhabbaz
(Appellant)**

v.

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

**JUDGMENT ON APPLICATION
FOR EXECUTION OF JUDGMENT**

Before:	Judge John Raymond Murphy, Presiding Judge Martha Halfeld Judge Dimitrios Raikos
Case No.:	2019-1328
Date:	26 June 2020
Registrar:	Weicheng Lin

Counsel for Ms. Belkhabbaz: Self-represented

Counsel for Secretary-General: Patricia C. Aragonés

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an application for execution of Judgment No. 2018-UNAT-873, rendered by the Appeals Tribunal on 26 October 2018, in the case of *Belkhabbaz v. Secretary-General of the United Nations*. The application was filed on 12 November 2019, and the Secretary-General filed his comments on 12 December 2019.

Facts and Procedure

2. On 27 April 2012, Ms. Belkhabbaz filed a complaint with the Deputy Secretary-General, pursuant to the Secretary-General's Bulletin on Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2008/5), against the former Chief of the Office of Staff Legal Assistance (OSLA), Office of Administration of Justice (OAJ). The complaint alleged improper deprivation of functions, discrimination, abuse of authority, retaliation through performance appraisals, defamation, and preferential treatment of another staff member. The complaint was investigated by two separate fact-finding panels resulting ultimately in a finding of the Officer-in-Charge, Assistant Secretary-General, of the Office of Human Resources Management (OiC ASG/OHRM) on 25 October 2016 that no prohibited conduct took place and a decision to close the matter without further action.

3. Ms. Belkhabbaz challenged the decision before the United Nations Dispute Tribunal (UNDT) which concluded that the contested decision to take no further action on Ms. Belkhabbaz's complaint was unjustifiable and unlawful. It accordingly reviewed it and set it aside. Having so decided, it went on to consider and pronounce on the merits of the complaint about whether the former Chief of OSLA had in fact and in law committed prohibited conduct as contemplated in ST/SGB/2008/5, and concluded that he did. Accordingly, the UNDT rescinded the contested decision to take no further action and awarded Ms. Belkhabbaz moral damages. It remanded the case to the ASG/OHRM to institute disciplinary procedures against the former Chief of OSLA in accordance with Section 5.18(c) of ST/SGB/2008/5. This provision provided that if the report indicates that the allegations of prohibited conduct are well founded, the responsible official shall refer the matter to the ASG/OHRM for disciplinary action. Additionally, without referring to the provision of the UNDT Statute upon which it relied to do so, the UNDT issued an

order declaring that the former Chief of OSLA had committed prohibited conduct under ST/SGB/2008/5.

4. This Tribunal, in partially upholding the appeal of the Secretary-General, found that the UNDT had erred in ordering the ASG/OHRM to institute disciplinary procedures against the former Chief of OSLA in accordance with Section 5.18(c) of ST/SGB/2008/5. The former Chief of OSLA was not joined as a party in the proceedings before the UNDT and was not interviewed by the investigating panels. A finding by the UNDT that the contested decision was irrational could not constitute a final determination of misconduct on his part. It was rather a finding that the evidence rationally justified a referral for disciplinary action under Section 5.18(c) of ST/SGB/2008/5. For that reason, this Tribunal set aside the order of the UNDT declaring that the former Chief of OSLA had committed prohibited misconduct under ST/SGB/2008/5. Moreover, although the order of the UNDT remanding the matter to the ASG/OHRM to proceed with disciplinary proceedings was within the competence of the UNDT, its order directing the ASG/OHRM to “institute” disciplinary proceedings impinged upon the discretion of the ASG/OHRM. This Tribunal accordingly substituted that order with one directing the ASG/OHRM to act in terms of Section 5.18(c) of ST/SGB/2008/5 in accordance with the findings of its Judgment.

5. By letter, dated 25 February 2019, the ASG/OHRM informed Ms. Belkhabbaz that the former Chief of OSLA had separated from the United Nations and accordingly pursuant to Section 5.18(c) of ST/SGB/2008/5 a note would be placed in his Official Status File (OSF) indicating that the matter was subject to further review should the former Chief of OSLA seek to rejoin the services of the Organization.

6. Dissatisfied with this outcome, on 15 October 2019, Ms. Belkhabbaz filed an Application for Execution of Judgment, which was re-filed due to technical reasons and completed on 11 November 2019. In the application, Ms. Belkhabbaz requests that regardless of the former Chief of OSLA’s separation from the Organization, the Appeals Tribunal should order “specific performance remedies.” She also requests the Appeals Tribunal to order: (i) the levying of a fine of USD 200 for each day the Judgment has not been executed; (ii) the Organization to issue a statement of its “intentions” had the former Chief of OSLA not separated from the Organization; (iii) payment of USD 40,000 as compensation for the harassment and abuse she has suffered; (iv) the grant of permission to her to pursue her remedies against the former Chief of OSLA; (v) the deduction from the former Chief of

OSLA's pension of any eventual compensation provided in lieu of specific performance; and (vi) publication of the former Chief of OSLA's name in the Appeals Tribunal's issuances.

Submissions

Ms. Belkhabbaz's Application

7. Ms. Belkhabbaz maintains that the Secretary-General has not executed the Judgment, insofar as the ASG/OHRM failed to take further action regarding her complaint against the former Chief of OSLA by declining to make any determination and/or decision to take disciplinary action beyond noting that the matter would be under further review if the former Chief of OSLA re-joined the Organization.

The Secretary-General's Comments

8. The Secretary-General submits that the Judgment has been fully executed, and Ms. Belkhabbaz is not entitled to any additional remedies. In opting to limit the measure against the former Chief of OSLA to a note on his OSF, the ASG/OHRM properly considered the evidence and other relevant factors before her, including the Judgment and its findings; the complaint and the established factual background with respect thereto; the employment status of both Ms. Belkhabbaz (who has separated from the Organization) and the former Chief of OSLA; and the Organization's priorities and practice in similar cases. Although the Organization is able to conduct a formal disciplinary process against a former staff member, there is no obligation to do so. Neither the Judgment nor the applicable legal provisions prescribe the initiation of a formal disciplinary process against the former Chief of OSLA.

9. The Secretary-General further submits that there is no basis upon which the Appeals Tribunal can grant any of the remedies that Ms. Belkhabbaz requests. She is entitled only to the remedies ordered in the Judgment, and an Application for an Execution of Judgment is not an appropriate vehicle to request additional remedies.

10. The Secretary-General accordingly requests that the application be dismissed in its entirety.

Considerations

11. In terms of Article 11(4) of the Appeals Tribunal's Statute, where a judgment requires execution within a certain period of time and such execution has not been carried out, either party may apply to the Appeals Tribunal for an order for execution of the judgment.

12. The Judgment of this Tribunal ordered the Secretary-General "to proceed in relation to this matter in accordance with the provisions of Section 5.18(c) of ST/SGB/2008/5". Section 5.18(c) of ST/SGB/2008/5 requires the ASG/OHRM to "proceed in accordance with the applicable disciplinary procedures" and to "also inform the aggrieved individual of the outcome of the investigation and the action taken." The ASG/OHRM has discretion under Section 5.18(c) of ST/SGB/2008/5 when proceeding with the applicable disciplinary procedures such that the decision whether or not to institute disciplinary proceedings falls within her discretion.

13. The applicable disciplinary procedures at the time of the Judgment were set forth in Administrative Instruction on Unsatisfactory conduct, investigations and the disciplinary process (ST/AI/2017/1). Section 8 of ST/AI/2017/1 details the steps to be taken by the ASG/OHRM: initiating a disciplinary process; taking managerial and/or administrative actions; or closing the matter. Section 9.7 of ST/AI/2017/1 provides that "[a] note will be prepared in order to document cases in which a staff member who is the subject of a report of unsatisfactory conduct separates from service before the investigation or the disciplinary process is concluded." The ASG/OHRM took managerial action in accordance with Section 9.7 of ST/AI/2017/1. The note placed in the former Chief of OSLA's OSF indicates that the matter was subject to further review upon the former Chief of OSLA's separation and that, if re-employed by the Organization or another entity that is a member of the United Nations system, the Administrative Law Division, OHRM, should be contacted.

14. The Secretary-General justifies the approach taken by the ASG/OHRM on the basis that limited resources and priorities in disciplinary matters favour the initiation of a disciplinary process only should the former Chief of OSLA seek to rejoin the Organisation at any point in the future. The managerial action taken, he maintains, was a reasonable exercise of the ASG/OHRM's broad discretion in disciplinary matters, but more importantly gave effect to the order of this Tribunal in the peculiar circumstances that the order was made.

The ASG/OHRM proceeded appropriately in accordance with Section 5.18(c) of ST/SGB/2008/5 and, thus, he submits, fully executed the Judgment.

15. The reasonableness of the administrative decision to take managerial action is not a matter for consideration in this application for execution. The only question is whether that decision executed the Judgment. In taking managerial action in accordance with Section 9.7 of ST/AI/2017/1 the ASG/OHRM proceeded in terms of Section 5.18(c) of ST/SGB/2008/5 and in accordance with the applicable disciplinary procedures. This is what the Judgment directed her to do and she did it. Accordingly, the Judgment has been executed.

16. As the Judgment has been fully executed, there is no basis upon which the Appeals Tribunal can grant any of the remedies that Ms. Belkhabbaz requests. She is entitled only to the remedies ordered in the Judgment, and an Application for an Execution of Judgment is not an appropriate vehicle to request additional remedies. In any event, the additional remedies sought do not fall within the Appeals Tribunal's remedial powers under Article 9 of the Appeals Tribunal's Statute. Article 9(3) expressly prohibits the award of exemplary or punitive damages, which prohibition would extend to the levying of a fine for any alleged failure to execute a judgment. The Appeals Tribunal also cannot order the waiver of immunity of the former Chief of OSLA, which is what Ms. Belkhabbaz effectively seeks in her request to be permitted to "pursue her remedies" directly against the former Chief of OSLA. Such a waiver of immunity is solely within the authority of the Secretary-General as a matter of treaty law. The Appeals Tribunal also has no competence to order any deductions from the pension of the former Chief of OSLA. But whatever the limitations upon the remedial powers of the Appeals Tribunal, it is not permissible for any applicant to seek to use an application of this kind to obtain additional remedies that were not granted in the Judgment.

17. The Secretary-General has fully and properly executed the Judgment with the result that the application must be dismissed in its entirety.

Judgment

18. The application is dismissed.

Original and Authoritative Version: English

Dated this 26th day of June 2020.

(Signed)

Judge Murphy, Presiding
Cape Town, South Africa

(Signed)

Judge Halfeld
Bournemouth, United Kingdom

(Signed)

Judge Raikos
Athens, Greece

Entered in the Register on this 29th day of July 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar