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UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D 'APPEL DES NATIONS UNIES

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Judgment No. 2022-UNAT-1266

Korkut Yavuz  
(Appellant )

v.

Secretary -General of the United Nations  
(Respondent )

JUDGMENT

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|----------------------|--|
| Before:              | Judge Sabine Knierim, Presiding<br>Judge John Raymond Murphy<br>Judge Dimitrios Raikos |
| Case No:             | 2021-1591  |
| Date of Decision:    | 1 July 2022  |
| Date of Publication: | 19 August 2022   |
| Registrar:           | Weicheng Lin   |

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|-------------------------|-----------------------|
| Counsel for Appellant:  | Robbie Leighton, OSLA |
| Counsel for Respondent: | Rupa Mitra            |

THE UNITED NATIONS APPEALS TRIBUNAL

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Judgment No. 2022-UNAT-1266

JUDGE SABINE KNIERIM , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal or UNAT) has before it an appeal by Mr. Korkut Yavuz, a former staff member who served as an Economic Affairs Officer at the P-3 level with the Economic Commission for Europe (ECE) on a fixed-term appointment (FTA). Mr. Yavuz contested before the Tribunal his appointment to the post of Economic Affairs Officer (FTA) on the basis of the following grounds:

( F T N D T u n t m r s t a



7. On 28 May 2018, Mr. Yavuz received his performance appraisal (ePAS) for the period from 4 May 2017 until 31 March 2018, with an overall rating of “partially meets expectations” signed by his initial FRO and SRO. Mr. Yavuz initiated a rebuttal process against his 2017/2018 ePAS. The convened Rebuttal Panel met with Mr. Yavuz, his FRO, and his SRO, and with another team member under the FRO’s supervision. While under the Director, DECT’s supervision, Mr. Yavuz performed two tasks for another section and received a positive evaluation. In December 2018, the Director, DECT, who had left ECE in November 2018, provided her appraisal via e-mail to the Executive Officer and stated that Mr. Yavuz “was eager to carry out the assignment and had a pleasant disposition towards work” but “needs more guidance and direction than would normally be required from a P-3 staff member” and that he, when given an “opportunity to work with another section[,] ... finally produced a satisfactory output”.

8. The Rebuttal Panel’s report upheld the performance appraisal of “partially meets expectations” finding that the appraisal procedure was properly followed.

9. Mr. Yavuz’s appointment was subsequently extended to allow him to exhaust his sick leave entitlements after his placement on sick leave. On 31 May 2019, Mr. Yavuz was informed of his separation from service, as further sick leave could not be approved by the United Nations Office at Geneva (UNOG) Medical Service in the absence of a valid medical report. Mr. Yavuz separated from service on 31 May 2019.

#### Impugned Judgment

10. Mr. Yavuz filed an application with the UNDT on 19 July 2019. On 31 May 2021, the UNDT issued the Impugned Judgment in Mr. Yavuz’s favour holding that the separation on performance grounds was unlawful. The UNDT found evidence of “bias and lack of objectivity in the evaluation of Mr. Yavuz’s performance by the FRO and SRO” further noting that the interpersonal issues between Mr. Yavuz and the FRO and SRO impaired the ability of the FRO and SRO to objectively evaluate his performance. The Rebuttal Panel failed to consider the interpersonal issues in its review and the UNDT found it was contradictory to have Mr. Yavuz change reporting lines only to have his evaluation finalized by his initial FRO and SRO as grounds to justify his separation. The UNDT ordered the separation be rescinded and set in-lieu compensation as three months’ net base salary. It rejected a request for a moral damages award.

Procedure before the Appeals Tribunal

11. On 30 July 2021, Mr. Yavuz filed the instant appeal.
12. On 2 Octo4 Oct0 Tw (18n >>BDC (e)-4. <k/MCIDr9.836 55e10n1 0 a3(d)-0B70)1Tc 0.001 Tw -0.98 78

six and nine months, respectively, and neither case was marked with as serious a breach and irregularity and prejudice suffered as in Mr. Yavuz's case.

15.







26. In-lieu compensation under Article 10(5) of the UNDT Statute shall be an economic equivalent for the loss of rescission or specific performance the Tribunal has ordered in favor of the staff member. When the Secretary-General chooses not to accept this order, he must pay compensation as an alternative to replace (in-lieu) such rescission or specific performance. Hence, the most important factor to consider in this context is the pecuniary value of such rescission or specific performance for the staff member in question. In case of rescission of a non-renewal decision, it is reasonable for the UNDT to focus on the seniority and type of appointment held by the staff member, and particularly the chance of renewal of

Compensation for moral harm

30. Regarding the alleged moral damage, the UNDT noted that Mr. Yavuz provided medical reports dated 5 April, 2 July and 8 July 2019 describing the conditions suffered by referring to alleged harassment only, bu1.9 (uz7SWc39h)-3.3 (a)8 79613.9 (d (h)2.1 (e)-3.9 ( c)5.3 ( da)0.7 s da1.1 (al 2)Tj

36. Although the most part of the nine months falls into the time as of June 2018 when Mr. Yavuz's appointment was extended on a monthly basis for the purpose of the completion of the rebuttal process, a short part also falls into the time after the contested non-renewal decision had been issued (on 23 January 2019). At least for this short period of time Mr. Yavuz has demonstrated the necessary direct nexus between the nonrenewal decision and his moral harm. We find it appropriate to award USD 2,000 as compensation under Article 9(1)(b) of the UNAT Statute (Article 10(5)(b) of the UNDT Statute).

Judgment

37. Mr. Yavuz's appeal is partly granted, and the UNDT Judgment No. UNDT/2021/062 is modified. The Secretary-General is additionally ordered to pay Mr. Yavuz USD 2,000 as compensation for moral harm. All other aspects of Mr. Yavuz's appeal are dismissed.

Original and Authoritative Version: English

Decision dated this 1<sup>st</sup> day of July 2022.

(Signed)

Judge Knierim , Presiding  
Hamburg, Germany

(Signed)

Judge g