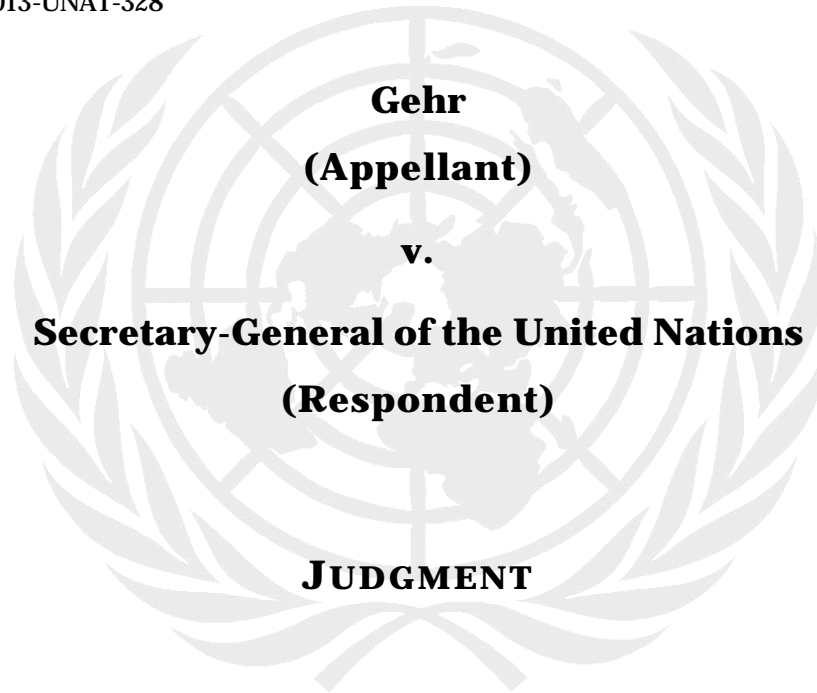




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2013-UNAT-328



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Before:	Judge Richard Lussick, Presiding Judge Inés Weinberg de Roca Judge Sophia Adinyira
Case No.:	2012-357
Date:	21 June 2013
Registrar:	Weicheng Lin

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Counsel for Appellant:	Self-represented
Counsel for Respondent:	Wambui Mwangi

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Walter Gehr against Judgment No. UNDT/2012/084, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 4 June 2012 in the case of *Gehr v. Secretary-General of the United Nations*. Mr. Gehr appealed on 31 July 2012, and the Secretary-General answered on 28 September 2012.

### **Facts and Procedure**

2. Mr. Gehr joined the United Nations Office on Drugs and Crime (UNODC) in Vienna in 2002. In 2007, he was appointed under a fixed-term appointment to the post of Senior Terrorism Prevention Officer at the P-5 level in the Terrorism Prevention Branch (TPB) within the Division of Treaty Affairs (DTA).

3. In early November 2009, the Chief of TPB and the Officer-in-Charge of DTA, as Mr. Gehr's first and second reporting officers respectively, held a mid-point review with Mr. Gehr in the context of his 2009-2010 performance appraisal system (ePAS).

4. In January 2010, Mr. Gehr rejected his reporting officers' request to finalize the mid-point review for his 2009-2010 ePAS. Mr. Gehr's reporting officers eventually prepared a written appraisal in place of the ePAS, with an overall rating of "Fully satisfactory performance". Mr. Gehr was provided with a final version of the written appraisal on 9 March 2011.

5. Mr. Gehr was separated from service at the end of December 2011 upon the expiry of his fixed-term appointment.

6. Following Mr. Gehr's submission of a rebuttal statement, a rebuttal panel was established. It issued a report on 23 March 2012, concluding that the original rating of "Fully satisfactory performance" should be maintained.

7. Before the rebuttal panel issued its report, on 4 March 2012, Mr. Gehr filed an application with the UNDT (first application), challenging the failure to finalize his ePAS. On 28 March 2012, he filed with the UNDT another application (second application), challenging the outcome of the rebuttal process and complaining about the delay in finalizing his 2009-2010 ePAS.

8. In Judgment No. 2012/UNDT/084, the UNDT rejected Mr. Gehr's first application as moot, because the subject matter, i.e., failure to finalize his 2009-2010 ePAS, was superseded by the issuance of the rebuttal panel report on 23 March 2012. The UNDT also rejected Mr. Gehr's request to join his first application with his second application.

### **Submissions**

#### **Mr. Gehr's Appeal**

9. The UNDT erred in law and failed to exercise the jurisdiction vested in it when it rejected his first application as moot. In the first application, he stressed that the issuance of the rebuttal panel report did not erase the consequences of the two-year delay in completing his ePAS. He requested compensation for the lack of due process and bad faith on the part of the Administration.

10. The UNDT Judgment should be vacated because the UNDT Judge failed to identify any grounds of irreceivability against his first application.

#### **The Secretary-General's Answer**

11. The UNDT correctly found that Mr. Gehr's first application was not receivable. When the impugned decision was superseded by subsequent administrative actions, there was no longer an administrative decision that could be said to be in non-compliance with a staff member's terms of appointment.

12. It should be noted that Mr. Gehr's first application was also not receivable because he failed to request management evaluation of the contested decision prior to filing with the UNDT.

13. Mr. Gehr has not established any other errors by the UNDT warranting a reversal of the Judgment.

### **Considerations**

14. Mr. Gehr requests the Appeals Tribunal to declare that the application he had lodged with the UNDT is receivable and to remand the case to the UNDT.

15. The application before the UNDT was one filed on 4 March 2012 contesting the Secretary-General's decision not to finalise his performance appraisal for the period from 1 April 2009 to 31 March 2010.

16. The UNDT noted that a rebuttal panel subsequently issued its report on 23 March 2012, whereby Mr. Gehr's performance appraisal was finalised. The UNDT also noted that on 28 March 2012, Mr. Gehr filed another application challenging the outcome of the rebuttal process and complaining of the delay in finalising his performance appraisal.

17. The UNDT decided that:

Having noted that the pleas put forward in the second application include those made in the first one and that the decision contested in the first application has been superseded by the issuance of the rebuttal panel's report, the Tribunal is of the view that the application which forms the subject of the present Judgment is moot.

18. The UNDT held that Mr. Gehr's application filed on 4 March 2012 was thus irreceivable.

19. Mr. Gehr challenges the UNDT's decision on the basis that it "committed *an error of law* and *failed to exercise the jurisdiction vested in it*". (Emphasis in original.) In particular, Mr. Gehr submits that the UNDT "failed to identify any grounds of irreceivability in accordance with Article 8 of the UNDT's Statute".

20. Obviously, the decision not to finalise Mr. Gehr's performance appraisal ceased to exist when the rebuttal panel issued its report. There was thus no administrative decision on which the UNDT was competent to pass judgment in terms of Articles 2 and 8 of the UNDT Statute.

21. We can find no error in the UNDT's finding that the first application before it was moot and thus not receivable.

22. This finding by the UNDT was sufficient to dispose of the case before it, and we note that the UNDT obviously did not consider it necessary to rule on another submission by the Secretary-General that Mr. Gehr's application was not receivable because he had failed to submit the contested administrative decision for management evaluation prior to applying to the UNDT.

23. Mr. Gehr raised other points in his appeal concerning the Secretary-General's delay and "the lack of due process and bad faith", which are not relevant to this appeal.

24. We consider that there were no grounds whatsoever for bringing this appeal. The appeal has no merit at all and cannot succeed.

25. The fact that Mr. Gehr's first application was moot should have been obvious to him. We find that in bringing this appeal, Mr. Gehr has manifestly abused the appeals process. We have previously foreshadowed to Mr. Gehr that he should be prepared to face an award of costs pursuant to Article 9(2) of the Statute of the Appeals Tribunal should he bring another appeal so lacking in merit.<sup>1</sup> It is therefore appropriate in this case to order Mr. Gehr to pay the sum of USD 100 towards the costs of the Secretary-General.

### **Judgment**

26. The Judgment of the UNDT is affirmed and the appeal is dismissed with an order for costs of USD 100 against Mr. Gehr in favour of the Secretary-General. Such costs are to be paid into the Registry for payment out to the Secretary-General within 30 days of the date of issuance of this Judgment, failing which this Tribunal will not entertain any further actions by Mr. Gehr.

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<sup>1</sup> *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-294.

Original and Authoritative Version: English

Done in New York, United States.

*(Signed)*

Judge Lussick, Presiding  
28 June 2013

*(Signed)*

Judge Weinberg de Roca  
21 June 2013

*(Signed)*

Judge Adinyira  
21 June 2013

Entered in the Register on this 26<sup>th</sup> day of August 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar