

# **2012-UNAT-243, Hersh**

## **UNAT Held or UNDT Pronouncements**

UNAT granted the Secretary-General's appeal on the basis that UNDT manifestly exceeded its jurisdictional powers by converting an application for suspension of action into an application on merits and inviting the parties to make submissions on the merits. UNAT held that UNDT took an ultra petita decision by ordering measures for which no claim had been made.

## **Decision Contested or Judgment/Order Appealed**

The staff member requested suspension of the administrative decision not to transfer her to UN Mission in South Sudan (UNMISS) when the UN Mission in Sudan (UNMIS) mandate expired. UNDT held that her application for a suspension of action order should be refused on the grounds that the application did not satisfy one of the three conditions required for granting it. Nonetheless, having judged that the impugned decision not to transfer the staff member to UNMISS was unlawful, it ordered her application for suspension of action to be transferred to the "general cause list" for a hearing on the merits.

## **Legal Principle(s)**

In general, only appeals against judgments on the merits are receivable. Appeals against decisions taken during proceedings are receivable only in exceptional cases where UNDT has manifestly exceeded its jurisdictional powers. UNDT has jurisdiction to order a suspension of action on an application filed by an individual requesting it to suspend, during the pendency of the management evaluation that is the subject of an ongoing management evaluation, the implementation of a contested administrative decision, where the decision appears i) prima facie to be unlawful, ii) in cases of particular urgency and iii) where its implementation would cause irreparable damage.

## Outcome

Appeal granted

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Hersh

## Entity

UNMIS

## Case Number(s)

2011-262

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

29 Jun 2012

## President Judge

Judge Courtial

## Language of Judgment

English

French

## Issuance Type

Judgment

## Categories/Subcategories

Jurisdiction / receivability (UNAT)

Interlocutory appeal

Manifest excess of jurisdiction

## Applicable Law

UNDT RoP

UNDT Statute

- Article 10.2
- Article 2.2

## Related Judgments and Orders

UNDT/2011/154

2010-UNAT-035

2010-UNAT-062

2010-UNAT-011

2011-UNAT-159

2010-UNAT-008

2010-UNAT-005