

# 2012-UNAT-244, Bali

## UNAT Held or UNDT Pronouncements

UNAT considered the Secretary-General's appeal. UNAT held that, in converting on its own motion an application for suspension into an application on the merits, UNDT had taken an ultra petita decision, ordering measures not requested of it. UNAT held that, in taking the contested decision while a management evaluation was under way, UNDT had breached the provisions of Article 8 of its Statute, which makes prior management evaluation compulsory whenever one is requested. UNAT held that, in ordering the placement of the application for suspension on the list of cases to be considered on the merits and requesting the parties to file written documents on the merits, UNDT had clearly exceeded the jurisdictional powers conferred on it by its Statute and the competence inherent to any tribunal called upon to dispense justice in a system of administration of justice governed by law and respect of the rights of those within its jurisdiction. UNAT upheld the appeal and vacated the UNDT Judgment.

## Decision Contested or Judgment/Order Appealed

The Applicant filed an application for suspension of action of the decision to separate him from service. UNDT found that the application for suspension of action should be dismissed on the grounds that it did not fulfil one of the three conditions necessary for the grant of a suspension. UNDT found, however, that the non-fulfilment of one of the conditions did not extinguish an applicant's cause for action where an unlawful decision had been taken to his or her detriment, as was the case here. UNDT found that the contested decision not to transfer the Applicant from UNMIS to UNMISS was unlawful. UNDT ordered the application for suspension to be placed on the "general cause" list of cases to be considered on the merits. UNDT also requested the Applicant to file an exhaustive application on the merits within 28 days and requested the respondent to file a comprehensive reply within the 14 days following receipt of the application.

## Legal Principle(s)

UNAT has consistently held that, as a general rule, only appeals against judgments concerning matters of substance are receivable. Appeals against decisions taken during proceedings, however, denominated by UNDT (order, judgment, etc.), are not receivable save in exceptional cases where UNDT has clearly exceeded its competence. UNDT clearly exceeds its competence when it takes decisions on matters outside the area of the jurisdiction conferred on it by its Statute and the competence inherent in any tribunal called upon to dispense justice in a system of administration of justice governed by law and respect of the rights of those within its jurisdiction.

## Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Bali

Entity

UNMISS

Case Number(s)

2011-263

Tribunal

UNAT

Registry  
New York  
Date of Judgement  
29 Jun 2012  
President Judge  
Judge Courtial  
Language of Judgment  
French  
English  
Issuance Type  
Judgment  
Categories/Subcategories  
Jurisdiction / receivability (UNAT)  
Appeal  
Jurisdiction / receivability (UNDT or first instance)  
Manifest excess of jurisdiction  
Suspension of action / interim measures  
Termination (of appointment)  
Abolition of position  
Applicable Law  
UNDT Statute

- Article 10.2
- Article 2.1
- Article 2.2
- Article 8

#### Related Judgments and Orders

2010-UNAT-035  
2010-UNAT-062  
2010-UNAT-005  
2010-UNAT-008  
2010-UNAT-011  
2011-UNAT-159