

2013-UNAT-290, Mirkovic

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that there was no nexus between the emotional distress of preparing for the exam and the impugned decision as the preparation took place prior to the decision. UNAT held that UNDT's finding that the contradictory information received by Ms Mirkovic and the lack of responses from the Chief of the Examinations and Tests Section added to her stress and injury was not supported by the facts, noting that written confirmation of what the Chief had told her was not required in order for her to request management evaluation. UNAT held that the UNDT's decision to award compensation was flawed in that the reasons it gave for doing so were not well-founded. UNAT held that Ms Mirkovic's procedural rights were violated when she was told that she could not appeal the decision on her ineligibility, depriving her, at least temporarily, of the right to present her appeal to the Central Examinations Board. UNAT held that the impugned decision had no consequence for Ms Mirkovic, as she had never been eligible to sit the exam; even if she had been given the correct information, she had no chance of ever being able to sit the exam. UNAT held that any hurt experienced by Ms Mirkovic did not rise to the level of compensable damages. UNAT allowed the appeal and set aside the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision holding her ineligible to take the competitive examination for promotion from the General Service category to the Professional category ("G to P") exam for Human Rights. UNDT found that the application was moot by the subsequent reversal of the decision; however, UNDT awarded compensation for the violation of her due process rights and moral injury.

Legal Principle(s)

Not every violation will necessarily lead to an award of compensation; compensation may only be awarded if it has been established that the staff member actually suffered damages.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Mirkovic

Entity

ICTY

Case Number(s)

2012-318

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Mar 2013

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Evidence of harm

Non-pecuniary (moral) damages

Due process

Right to appeal

Related Judgments and Orders

UNDT/2012/030

2010-UNAT-009

2011-UNAT-123

2012-UNAT-201

2011-UNAT-109

2010-UNAT-095

2011-UNAT-172