

# 2013-UNAT-360, McIlwraith

## UNAT Held or UNDT Pronouncements

UNAT considered an appeal of judgment No. UNDT/2012/131. UNAT noted that Mr McIlwraith raised claims substantially similar to, if not identical to, those raised by the other International Criminal Tribunal for the former Yugoslavia (ICTY) staff members who appealed judgment No. UNDT/2012/131, as well as the staff members who appealed judgment No. UNDT/2012/129 and judgment No. UNDT/2012/130. UNAT held that, since it had rescinded the UNDT judgment against which the staff members appealed, the majority of their claims were rendered moot. UNAT held that its reasoning in *Malmström et al.* (judgment No. 2013-UNAT-357) applied to the Appellant's claims, that UNDT erred in awarding compensation in lieu that was too low, and that the claims were moot for the reasons set forth in paragraph 76 of *Malmström et al.*, which UNAT incorporated by reference. On the issue of non-pecuniary or moral damages for the fundamental procedural violation of his rights during the conversion process, UNAT adopted paragraphs 78-82 of *Malmström et al.*, which it applied, *mutatis mutandis* to the Appellant's case, where UNAT found that the substantive due process breaches were of such a fundamental nature, that they gave rise to an award of moral damages, by virtue of the harm to the employee and awarded compensation in the amount of 3,000 Euros to each of the staff members. UNAT awarded the Appellant compensation in the amount of 3,000 Euros.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to convert his fixed-term appointment to a permanent appointment. In judgment No. UNDT/ 2012/131 (*Ademagic et al.* ), UNDT found that the Secretary-General had made a procedural error during the consideration of the Applicants for conversion, and ordered that the decisions not to convert them be rescinded or, alternatively, in lieu compensation in the amount of 2,000 Euros, plus interest, be paid to each staff member.

## Legal Principle(s)

Damages for moral injury may arise from a breach of the employee's substantive entitlements arising from his or her contract of employment and/or from a breach of the procedural due process entitlements therein guaranteed (be they designated in the Staff Regulations and Rules or rising from the principles of natural justice); where the breach is of a fundamental nature, the breach may of itself give rise to an award of moral damages, not in any punitive sense for the fact of the breach having occurred, but rather by virtue of the harm to the employee.

## Outcome

Appeal granted in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

McIlwraith

## Entity

ICTY

## Case Number(s)

2012-408

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

17 Oct 2013

## President Judge

Judge Faherty

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Appointment (type)

Permanent appointment

Compensation

Non-pecuniary (moral) damages

## Applicable Law

UNDT Statute

- Article 10.5(a)

## Related Judgments and Orders

UNDT/2012/131

2013-UNAT-359

2013-UNAT-346

2013-UNAT-309