

2020-UNAT-980, Colati

UNAT Held or UNDT Pronouncements

As a preliminary matter, UNAT granted the Appellant's motion to file additional pleadings in the form of submission that UNAT had decided previously that the MICT was a Secretariat entity and was thus precluded from holding to the contrary. On the merits, UNAT held that the Appellant was not eligible for a continuing appointment for three reasons: (1) he did not work for the Secretariat; (2) the MICT had no authority to grant a continuing appointment; and (3) he was not in active service in the Secretariat under a fixed-term appointment throughout the period of consideration. On consideration of his additional pleadings, UNAT held that there was no previous decision by UNAT finding that the MICT was a Secretariat entity. UNAT held that the Administration was entitled to withdraw its erroneous notification. UNAT held that UNDT was correct to dismiss the Appellant's second application as not receivable as the two applications concerned the same subject matter and the same cause of action between the same parties. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the refusal by MICT to grant him a continuing appointment, despite an earlier notification from OHRM that he had been granted a continuing appointment in the UN Secretariat. The Applicant filed two separate applications which were consolidated. UNDT dismissed the second application as not receivable on the basis that the Applicant was contesting the same decision as contested in the first application. UNDT found that the decision not to grant the Applicant a continuing appointment was lawful and dismissed the application.

Legal Principle(s)

A prior factual finding of UNAT resulting in issue preclusion could form the exceptional circumstances required to justify the granting of a motion to file additional pleadings. Where the Administration finds that it has made an unlawful or mistaken decision, it is entitled to take action to remedy the error.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Colati

Entity

IRMCT

Case Number(s)

2019-1278

Tribunal

UNAT

Registry

New York

Date of Judgement

27 Mar 2020

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Continuing appointment

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Administrative Instructions

- ST/AI/2012/3

GA Resolutions

- A/RES/65/247

Other UN issuances (guidelines, policies etc.)

- UNAT Practice Direction No.1

Secretary-General's bulletins

- ST/SGB/2011/9

Related Judgments and Orders

UNDT/2019/068

2013-UNAT-367

2018-UNAT-849

2019-UNAT-953