

2022-UNAT-1282, Olexandr Maruschak

UNAT Held or UNDT Pronouncements

As to the appeal against the UNDT's Order for expungement of the impugned documents from its case file, UNAT found that it was receivable because, unless the documents were preserved for use at trial, they might be lost with the consequence that the Secretary-General would be unable to use them to establish his allegations of forgery and fraud as he was entitled to. UNAT found that the UNDT's Order was, in this respect, effectively irremediable; that this would be a manifestly unreasonable consequence of the Order for the Secretary-General; and that the circumstances were so rare and exceptional that it was just to allow this element of the Order to be appealed. UNAT further held that the UNDT erred when it directed that the impugned documents be expunged from its file. Those documents would be relevant, if not to Mr. Maruschak's case before the UNDT, then to the Secretary-General's case in opposition to Mr. Maruschak's claims and, for the Secretary-General's defense to the remedies claimed by Mr. Maruschak, and particularly in cross-examination of him. If the Secretary-General was successful in persuading the UNDT that these documents were forgeries perpetrated deliberately by Mr. Maruschak and/or that he had otherwise abused the judicial process, any resulting loss of his credibility and reputation might deprive Mr. Maruschak of remedies even if he established that his separation from service was wrongful. UNAT concluded that the impugned documents should have been and should now be retained by the UNDT to be available for use at the substantive hearing, if required by the Secretary-General. UNAT stated that it was for the UNDT to recover them; and that had they already been returned to Mr. Maruschak, then the Secretary-General may compel their re-production by Mr. Maruschak to the Dispute Tribunal. With respect to the UNDT's refusal to summarily dismiss Mr. Maruschak's case and its refusal to award costs, UNAT held that the appeal was not receivable as the UNDT was empowered to make such orders and if they were wrong, they would not be irremediable at a later stage.

Decision Contested or Judgment/Order Appealed

Mr. Maruschak filed with the UNDT a challenge to his separation from service for misconduct. His amended application was accompanied by a number of documents purporting to evidence his claimed losses. The Secretary-General, suspicious about the veracity of some of these documents, investigated their origins and concluded that they were forgeries and otherwise contained misleading and deceitful information. Mr. Maruschak then sought to withdraw the documents, tendering an innocent explanation for what he said was the mistaken filing by him of these documents. The Secretary-General sought to have Mr. Maruschak's proceedings dismissed, effectively by summary judgment in reliance on what he said were these forgeries and deceitful conduct by Mr. Maruschak. The Secretary-General also sought costs against Mr. Maruschak. In its Order on Case Management and Miscellaneous Motions, Order No. 174 (NBI/2021), the UNDT dismissed the Secretary-General's motions on grounds that Mr. Maruschak had, at his own instigation, withdrawn the impugned documents before the motion to dismiss his proceedings was filed and in circumstances in which the Secretary-General could not assert prejudice. The UNDT ordered the expungement from its case record of Mr. Maruschak's submissions and the documents alleged to have been forgeries and otherwise fraudulent. The motion for an order for costs was dismissed. The UNDT made a number of trial-preparation orders which were not in issue in the appeal.

Legal Principle(s)

Article 2 of the Statute refers to the UNAT's competence to pass judgment on an appeal "against a judgment rendered by" the UNDT. Whether a decision of the UNDT constitutes a "judgment" does not depend on the UNDT's description of that decision, although the label given is often indicative of the status of the decision. It will be the real nature and substance of the UNDT's decision which will determine whether it, or any part of it, was a "judgment", and thus amenable to appeal. With narrow and rare exceptions, this makes non-receivable appeals against interlocutory orders or directions. An exception is where the UNDT purports to make an order for which it has no jurisdiction or acts in clear excess of jurisdiction that it does have. In other cases, dissatisfied recipients of interlocutory orders must await the delivery of the UNDT's substantive judgment before being able to appeal against the impugned

interlocutory order as part of an appeal against the rendered “judgment”. The intention of this rule is to minimise judicial intervention and to expedite the progress of cases through the United Nations’ Internal Justice system. There is another, albeit narrow and rare, category of UNDT decision which amounts to a “judgment” and is therefore appealable. Where, in practice, an error by the UNDT is effectively irremediable by final UNDT judgment (or on appeal therefrom) and it would be manifestly unreasonable for the UNDT’s order or other decision to remain in effect, such a decision will be appealable. These are stringent tests, and cases in which such appeals will be allowed will be rare and exceptional.

Outcome

Appeal granted in part

Outcome Extra Text

That part of the appeal challenging the Order set out at paragraph 11 of the UNDT’s Case Management Order No. 174 (NBI/2021) which we conclude is receivable (directing the expungement of the documents filed by Mr. Maruschak) is reversed. The Secretary-General’s appeal is otherwise dismissed as not receivable.

Full judgment

[Full judgment](#)

Applicants/Appellants

Olexandr Maruschak

Entity

UN Secretariat

Case Number(s)

2021-1613

Tribunal

UNAT

Registry

New York

Date of Judgement

7 Dec 2022

President Judge

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abusive conduct

Costs

Interlocutory appeal

Interlocutory or interim appeal / Appeal of UNDT order to UNAT

Abuse of process before UNDT/UNAT

Jurisdiction / receivability (UNAT)

Applicable Law

UNAT Statute

- Article 2