



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2023-UNAT-1371

**Enrico Muratore Apro시오
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Kanwaldeep Sandhu Judge Gao Xiaoli
Case No.:	2022-1721
Date of Decision:	30 June 2023
Date of Publication:	1 August 2023
Registrar:	Juliet Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Patricia C. Aragonés

JUDGE GRAEME COLGAN, PRESIDING.

1. Enrico Muratore Apro시오, a former staff member of the United Nations Office for Project Services (UNOPS) contested the decision of the Administration not to renew his fixed-term appointment when it expired on 31 December 2020 (contested decision).
2. By Judgment No. UNDT/2022/065¹ (impugned Judgment), the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) concluded that the contested decision was lawful and not flawed by procedural irregularities or tainted by bias, prejudice, or improper motives.
3. Mr. Muratore Apro시오 has lodged an appeal against the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

5. In 2020, Mr. Muratore Apro시오 was employed as a Technical Expert Leave No One Behind/Equality and Non-Discrimination/Gender, Grade P-4, on a fixed-term appointment in the Global Policy and Innovation Unit of the Water Supply and Sanitation Collaborative Council (WSSCC), a UNOPS-hosted entity governed by a Steering Committee.
6. WSSCC had and operated under a Strategic Plan for the period 2017-2020. This included a requirement that it was to act with integrity, honesty and to uphold the highest principles of the United Nations. The Plan committed WSSCC to not shrinking from fighting stigma and discrimination.
7. The Steering Committee was led by a Chairperson. Its membership included, *ex officio* and in a non-voting capacity, the Executive Director (ED) of the WSSCC. The Steering Committee was required to meet twice annually in Geneva, Switzerland, or otherwise virtually. Its operating quorum was two-thirds of its voting membership in attendance at a meeting. The Steering Committee was empowered to hold closed sessions.

¹ *Muratore v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/065.

8. WSSCC's conflicts of interest policy for members, encompassing those holding office *ex officio*, included that such members were to have no financial contracts with UNOPS. Members serving on the Steering Committee were not to receive honoraria.

9. The ED was to act as the Secretary of the Steering Committee. The Chairperson of the Steering Committee was to be the ED's line manager and overseer of the ED's work performance in this Committee.

10. Starting in 2017, WSSCC underwent a restructuring process. As a result, Mr. Muratore Apro시오 was transferred to the WSSCC Technical Support Unit under the supervision of Ms. V.C.

11. From the beginning of 2018, Mr. Muratore Apro시오 alleged that he was a victim of harassment, abuse of authority and discrimination by Ms. V.C. From May to November 2018, Mr. Muratore Apro시오 reported several incidents involving Ms. V.C. and filed a formal complaint against her under the UNOPS internal grievance mechanism.

12. In the meantime, a new ED and Deputy ED (DED) joined WSSCC in March and July 2018 respectively. On 24 July 2018, by e-mail, Mr. Muratore Apro시오 brought to the attention of the new DED, his allegations against Ms. V.C.²

13. In January 2019, Mr. Muratore Apro시오 sought protection of the UNOPS Ethics Office alleging that, following the report of his allegations against Ms. V.C. in July 2018, the ED and the DED adopted a "repressive attitude" towards him.³

14. In February 2019, the Steering Committee called for the resignation of the ED and, in March 2019, Ms. S.C. was appointed as acting ED. Following her appointment, Ms. S.C. requested contract extensions of one year for all WSSCC staff members except Mr. Muratore Apro시오. After the intervention of the Office of the Ombudsman, his contract was eventually extended, but only for a period of three months, from 1 October 2020 to 31 December 2020. Moreover, his performance evaluation which had consistently been satisfactory for the past 20 years, was assessed for the first time as being unsatisfactory. Mr. Muratore Apro시오 alleged that the

² E-mail of 24 July 2018 from Mr. Muratore Apro시오 to the DED.

³ Impugned Judgment, para. 4.

discrimination against him lasted as long as Ms. S.C. remained as acting ED, a situation that led him to take two periods of sick leave.⁴

15. In September 2019, Mr. Muratore Apro시오 was again transferred, this time to the WSSCC Global Policy and Innovation Unit.

16. In November 2019, the Steering Committee decided to add some functions to the role of its Chairperson. With these additional responsibilities, the previous position of Chairperson became the position of Executive Chair and was to be compensated accordingly.

17. In February 2020, the decision to close WSSCC and to establish the Sanitation and Hygiene Fund (SHF) was announced at a meeting of the Steering Committee. This restructuring process was discussed with staff members during a Townhall meeting on 24 April 2020 as well as during Staff Forums on 5 June and 30 July 2020.

18. On 7 July 2020, Mr. Muratore Apro시오 and two other staff members reported alleged senior staff, management, and governance misconduct to the UNOPS Internal Audit and Investigation Group (IAIG) in relation to the restructuring. Among other things, they alleged the issuing of illegal contracts, corruption, procurement fraud and conflict of interest involving Ms. S.C., other staff members of UNOPS and Steering Committee members, including an allegedly illegal USD 16,500 monthly payment to the Executive Chair in exchange for the placement of the DED in the new SHF organisational chart.⁵

19. On 21 July 2020, the Steering Committee approved the restructuring and the establishment of SHF.

20. By letter dated 30 September 2020, the Administration informed Mr. Muratore Apro시오 of the non-renewal of his fixed-term appointment. The letter stated that “WSSCC donors have decided to cease funding WSSCC with effect COB [close of business] 31 December 2020, and that all WSSCC posts will accordingly be abolished with effect COB 31 December 2020”. It also specified that “[s]hould SHF have, with effect 1 January 2021 (or earlier), a funded fixed-term post

⁴ *Ibid.*, para. 5. See also request for management evaluation dated 27 November 2020 and medical certificates of Mr. Muratore Apro시오.

⁵ Impugned Judgment, para. 8. See also report of wrongdoing dated 7 July 2020.

that is substantially the same as the WSSCC post you are presently encumbering, and no other staff member is encumbering a similar WSSCC post, you will be offered that SHF post”.⁶

21. On 27 November 2020, Mr. Muratore Apro시오 requested management evaluation of the decision not to renew his fixed-term appointment on 31 December 2020. On 4 January 2021, the General Counsel of UNOPS issued a written decision upholding the contested decision and confirming that the non-renewal decision was lawful.

22. On 25 February 2021, the IAIG informed Mr. Muratore Apro시오 and the two other complainants that after 27 weeks of investigation of their allegations of misconduct against the personnel of WSSCC and members of the Steering Committee, two allegations were substantiated. These were that:

- WSSCC personnel asked a WSSCC contractor to hire a former WSSCC intern and/or other individuals to do WSSCC work, with WSSCC increasing the contractor’s contract to cover the amount the contractor paid to these individuals; and
- Members of the UNOPS Portfolio Management Team and WSSCC misused contract modalities in multiple recruitment exercises.

23. The IAIG also informed the complainants (including Mr. Muratore Apro시오) that pursuant to Section 6.1 of Operational Instruction OI.IAIG.2018.01 (Investigations and Measures relating to Misconduct Allegations against UNOPS Personnel), the investigation report had been submitted to the Human Resources Legal Officer for consideration.⁷

24. On 1 April 2021, Mr. Muratore Apro시오 filed an application with the Dispute Tribunal challenging the contested decision.

Impugned Judgment

25. On 1 July 2022, the Dispute Tribunal issued the impugned Judgment. It stated some principles applicable to the case. It began by restating that pursuant to Staff Regulation 4.5(c) and Staff Rule 4.13(c), fixed-term appointments did not carry any expectation of renewal and that the Administration had wide discretion to carry out a genuine restructuring and abolish some posts.

⁶ Letter of non-renewal dated 30 September 2020.

⁷ Memorandum of 25 February 2021.

However, in such cases, the Dispute Tribunal noted that the Administration had the obligation to act fairly, justly, transparently and without bias, prejudice, or improper motive.⁸

26. The UNDT concluded that the evidence in the present case showed that the restructuring exercise was genuine. It observed that a significant number of WSSCC posts were abolished and that the decision to restructure had not only received the approval of the Steering Committee but had also received strong support from the WSSCC donors. It stated that this was a “good indication that the decisions that had been made about the restructuring [were] not due to personal agendas”.⁹

27. Turning to Mr. Muratore Aprosio’s argument that the manner in which the restructuring was conducted was so deficient that it rendered the contested decision unlawful, the Dispute Tribunal recalled that procedural irregularities do not “necessarily result in a subsequent finding of unlawfulness of the contested decision and the determination of whether a staff member was denied due process or procedural fairness must rest upon the nature of any procedural irregularity and its impact”.¹⁰ In the present case, it concluded that, for the reasons set out subsequently, Mr. Muratore Aprosio had failed to demonstrate that the alleged procedural irregularities rendered the non-renewal decision unlawful. The UNDT considered the following alleged irregularities.

28. First, regarding an alleged conflict of interest of the Executive Chair of the Steering Committee, the Dispute Tribunal held that the allegations of conflict of interest had been found unsubstantiated by the IAIG. The UNDT concluded that Mr. Muratore Aprosio had failed to demonstrate any conflict of interest of the Executive Chair. It added that, in any event, and even assuming that such a conflict existed, it would have had no impact on the decision not to renew his fixed-termed appointment.¹¹

29. The UNDT then addressed Mr. Muratore Aprosio’s specific argument that the Executive Chair had a conflict of interest because she was leading the Steering Committee, a governance body responsible for reviewing the restructuring process, while she was also performing the functions of ED. Comparing the Terms of Reference (ToR) of the Executive Chair with the Vacancy Announcement of the WSSCC ED, it concluded that, contrary to Mr. Muratore Aprosio’s

⁸ Impugned Judgment, paras. 27-30.

⁹ *Ibid.*, para. 34.

¹⁰ *Ibid.*, para. 39.

¹¹ *Ibid.*, para. 47.

contentions, the functions of Executive Chair and ED were different and that the Executive Chair did not perform the ED's duties. Consequently, such functions did not raise any conflict of interest.¹²

30. The UNDT also concluded that the Executive Chair did not try to influence improperly the members of the Steering Committee to ensure the approval of the new SHF organisational chart.¹³

31. Moreover, the Dispute Tribunal observed that the monthly amount of USD 16,500 received by the Executive Chair for her part-time consultancy functions was in compliance with the WSSCC regulatory framework. It further noted that even assuming that there was a conflict of interest, the Steering Committee agreed, in accordance with Section 3.5.3 of the WSSCC Governance Guidelines, that the Executive Chair should be compensated to perform her functions.¹⁴

32. Second, rejecting Mr. Muratore Apro시오's allegations that the decisions for the positions of ED and DED in SHF were taken before the recruitment of a consultant responsible for developing the new SHF organisational chart, the UNDT observed that these discussions (but not decisions) included different scenarios for several positions, not only the ED and the DED positions. The consultant was not bound by these discussions. Therefore, it concluded that these discussions did not affect adversely the right of staff members to be treated equally.¹⁵

33. Third, referring to the Townhall and Staff Forum meetings, the Dispute Tribunal concluded that the consultations with the staff members during the restructuring process were adequate.¹⁶

34. Fourth, the Dispute Tribunal concluded that, pursuant to Staff Rule 11.2 and Article 8(1) of the UNDT Statute, Mr. Muratore Apro시오's argument that consultants were irregularly recruited to perform tasks assigned to existing staff members, was not receivable. He had not requested management evaluation of these alleged irregularities after having received the conclusions of the IAIG on this matter.¹⁷ Moreover, the UNDT noted that even assuming that this claim was

¹² *Ibid.*, paras. 40-44. See also ToR of the Executive Chair position.

¹³ *Ibid.*, paras. 41, 42 and 46.

¹⁴ *Ibid.*, paras. 45-47. See also WSSCC Governance Guidelines.

¹⁵ *Ibid.*, paras. 48-53.

¹⁶ *Ibid.*, paras. 54-58.

¹⁷ *Ibid.*, paras. 59-64.

receivable, any procedural irregularity resulting from the recruitment process would have had no impact on the decision not to renew Mr. Muratore Apro시오's fixed-termed appointment.¹⁸

35. Finally, the Dispute Tribunal found no evidence that Mr. Muratore Apro시오's non-renewal was tainted by improper motives or was the result of discrimination against him. On the contrary, the UNDT observed that Mr. Muratore Apro시오 described Ms. S.C. in positive terms. He did not dispute that his post was actually abolished or that "a current post that was created during the restructuring exercise [was] substantially the same as the post that he was encumbering".¹⁹

Procedure before the Appeals Tribunal

36. On 18 August 2022, Mr. Muratore Apro시오 filed an appeal against the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 17 October 2022.

Submissions

Mr. Muratore Apro시오's Appeal

37. Mr. Muratore Apro시오 requests the Appeals Tribunal to reverse the impugned Judgment, rescind the contested decision, and order his reinstatement with "retroactive payment of salaries and entitlements from 1 January 2021 to the date of reinstatement, with interests, or, in the alternative, adequate compensation [of] (...) a minimum [of] two-year net-based salary". He also requests the Appeals Tribunal to award him a minimum of two years' net-based salary in compensation for the "extraordinary moral and physical damages" that he says he suffered as a result of the contested decision.

38. Mr. Muratore Apro시오 requested an oral hearing before the Appeals Tribunal to "ensure that, at least before the UNAT, his arguments are duly heard" and to "hear witnesses (...) who raised integrity and accountability issues [and] can testify first-hand about the widespread irregularities that irremediably flawed the restructuring process". This request was refused and we will give our reasons for this decision later in this Judgment.

39. With regard to the impugned Judgment, Mr. Muratore Apro시오 submits that the Dispute Tribunal erred in fact in dismissing his application and contends that his "key

¹⁸ *Ibid.*, para. 63.

¹⁹ *Ibid.*, paras. 65-69.

documentary evidence” was ignored by the UNDT. He submits that it “would have sufficed to read [his] annexes” for the UNDT to conclude that the Secretary-General failed to show a genuine restructuring.

40. Mr. Muratore Apro시오 submits that the UNDT erred in fact when it rejected his argument that the restructuring was “patently so deficient and characterized by widespread illegalities (...) [that] it render[ed] the non-renewal decision clearly unlawful”.

41. In this regard, Mr. Muratore Apro시오 contends that the Executive Chair received illegal payments and compensation to ensure that the new SHF organisational chart, which was in favour of Ms. S.C. and “her groups of acolytes”, would be approved by the Steering Committee. He refers more specifically to a “pact of corruption” between the Executive Chair and Ms. S.C., whom he describes as “her corrupter”. He contends that, in this context, the Executive Chair invited votes in the Steering Committee when a quorum was not present, attempted to manipulate the vote in favor without all members present, and exerted undue pressure on some Steering Committee members. He argues that several members raised questions to UNOPS and to the Executive Chair regarding the illegal payments, but that no answer was provided.²⁰ Therefore, Mr. Muratore Apro시오 contends that these illegal payments demonstrated that the restructuring process was flawed “as it pursued illicit private interests that had nothing to do with the officially stated objectives, and contradicted [United Nations] rules and values”.

42. Mr. Muratore Apro시오 also submits that for an entire month, the Steering Committee had not been informed of the decision to compensate the Executive Chair with a monthly amount of USD 16,500. He contends that this silence indicated that the Organisation was well aware that the payment was illegal and particularly in contravention of the WSSCC Governance Guidelines which prohibited the payment of both salaries and honoraria to Steering Committee members.²¹

43. He also observes that, pursuant to Annex III of Administrative Instruction ST/AI/2013/4 (Consultants and individual contractors), the amount of USD 16,500 was “more than 200% higher than the maximum authorized rate” for a part-time consultant.²²

²⁰ E-mail exchange regarding the Steering Committee concerns of July 2020 and e-mail exchange regarding the Executive Chair invoices of February and March 2020.

²¹ Mr. Muratore Apro시오 refers the Appeals Tribunal to WSSCC Governance Guidelines but does not mention any specific section.

²² E-mail of 10 July 2020 on honoraria.

44. Mr. Muratore Apro시오 also argues that the UNDT showed a “gross lack of diligence” when it failed to consider the evidence he submitted regarding the ToR of the Executive Chair. He contends that the ToR were illegal as they were only a non-approved draft “forged” by UNOPS after several members of the Steering Committee raised questions regarding the illegal payments made to the Executive Chair.²³ Therefore, relying on the conclusions of the IAIG investigation, he submits that the Administration misused contract modalities in the recruitment process of the Executive Chair.²⁴

45. Mr. Muratore Apro시오 contends that the Dispute Tribunal erred when it disregarded the witness statement of a member of the Steering Committee, Mr. K.B.²⁵

46. He argues that the UNDT erred in concluding that the restructuring was strongly supported by donors. Indeed, he contends that no funding was secured to support the establishment of SHF.

47. Mr. Muratore Apro시오 submits that the Dispute Tribunal erred when it held that he was not a victim of bias and that the contested decision was not tainted by improper motives. He argues that he was “victimized from the moment he reported harassment” and contends that his “exclusion [from the Organisation] was decided well before the restructuring process had begun”.

48. Furthermore, he raises the argument that his position was abolished even if his technical functions were prominent in the whole SHF strategy and that voting members (and partner organisations) voted against the new SHF organisational chart.

49. He also submits that the UNDT ignored the fact that, as of January 2021, WSSCC was not yet closed and that some staff members were still working for the Organisation.²⁶ He finally contends that the Dispute Tribunal ignored the evidence he submitted regarding the lack of consultations with staff members during the restructuring process.

²³ ToR of the Executive Chair.

²⁴ Memorandum of 25 February 2021.

²⁵ Written statement of Mr. K.B dated 25 November 2020.

²⁶ E-mail exchange from December 2020 to January 2021.

The Secretary-General's Answer

50. The Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

51. The Secretary-General notes that Mr. Muratore Apro시오's appeal is largely a reiteration of the arguments he raised before the Dispute Tribunal. He tries to impermissibly relitigate his case and, on this ground alone, his appeal should be denied.

52. The Secretary-General observes that it was not necessary for the Dispute Tribunal to address explicitly each and every claim made by Mr. Muratore Apro시오. In the present case, both parties' submissions were taken into consideration and, therefore, there was no basis for him to submit that his evidence was "plainly ignored".

53. The Secretary-General submits that the Dispute Tribunal did not err in fact, law or procedure when it dismissed Mr. Muratore Apro시오's application and that he failed to identify reversible errors in the impugned Judgment.

54. The Secretary-General submits that the Dispute Tribunal did not err when it rejected Mr. Muratore Apro시오's arguments regarding the way the restructuring process had been conducted.

55. First, the Secretary-General submits that Mr. Muratore Apro시오's argument that the Executive Chair received illegal payments and compensations to ensure the approval of the new SHF organisational chart is without merit, as there is no connection between this argument and the non-renewal decision.

56. Second, regarding Mr. Muratore Apro시오's claim that for an entire month the Steering Committee had not been informed of the decision to compensate the Executive Chair for a monthly amount of USD 16,500 which indicates, according to him, that UNOPS was well aware of this "illegal" payment, the Secretary-General contends that this argument is speculative and irrelevant to establish the lawfulness of the contested decision.

57. Third, the Secretary-General contends that the contracting and payment of the Executive Chair were not only approved by the Steering Committee and by UNOPS but also allowed within the Organisation's legal framework and that, therefore, there was nothing

“illegal” or “secret” about them. The Secretary-General also notes that Mr. Muratore Apro시오 did not refer to any specific section of the WSSCC Guidelines and failed to establish the relevance of these alleged irregularities or illegalities in the contracting and payment of the Executive Chair.

58. Fourth, the Secretary-General submits that Mr. Muratore Apro시오’s argument that the amount of USD 16,500 paid to the Executive Chair was “more than 200% higher than the maximum authorized rate” for a part-time consultant pursuant to Annex III of ST/AI/2013/4 similarly fails as this Annex does not alone demonstrate an excessive payment. Moreover, there is no connection between the alleged excessive payment and the non-renewal of his fixed-term appointment.

59. Fifth, regarding Mr. Muratore Apro시오’s claims concerning the ToR of the Executive Chair, the Secretary-General submits that they were not created after the fact by UNOPS. The fact that he relied on the conclusions of the IAIG investigation to demonstrate that the Administration misused contract modalities in the recruitment process of the Executive Chair is misplaced. In any event, the Secretary-General contends that Mr. Muratore Apro시오 also failed to demonstrate how these claims were relevant to the non-renewal decision.

60. Sixth, the Secretary-General submits that even if the UNDT disregarded Mr. K.B.’s speculative statement, it would not have been a reversible error as his statement did not undermine the lawfulness of the contested decision.

61. The Secretary-General contends that Mr. Muratore Apro시오’s submission that some donors declined to support the establishment of SHF does not demonstrate any error by the Dispute Tribunal or undermine its finding that the closing of WSSCC was supported by the donors.

62. The Secretary-General also submits that the Dispute Tribunal did not err when it found that Mr. Muratore Apro시오 had not been a victim of bias. Indeed, the Secretary-General argues that he did not demonstrate how the UNDT’s conclusions were erroneous or the relevance “of the evidence he relies upon to the Non-Renewal Decision let alone establish that it was ill-motivated”.

63. The Secretary-General further notes that there is no legal requirement for the Administration to consult with the staff members individually during a restructuring process and that, in any event, in the present case, consultations with staff representatives duly occurred.

64. Finally, regarding Mr. Muratore Apro시오's argument that his position was abolished even if his technical functions were prominent in the whole SHF strategy and that voting members (and partner organisations) voted against the new SHF organisational chart, the Secretary-General notes that this does not establish that his non-renewal was ill-motivated.

Considerations

65. We address first Mr. Muratore Apro시오's request for an oral hearing of his appeal including the evidence of two witnesses. We declined this request and now give our reasons for doing so.

66. Article 8(2) of the Appeals Tribunal Statute establishes a test of necessity ("required") in deciding whether the appearance of any person (including an appellant) at the hearing of an appeal should be allowed. Article 18 of the Appeals Tribunal Rules of Procedure provides more particularly that an oral hearing may be directed if such "would assist in the expeditious and fair disposal of the case".

67. Mr. Muratore Apro시오 appeared to wish to persuade us in person to consider the material he submitted to the UNDT in a way that he says the latter did not do. Whether that is true, we have all the material that was before the Dispute Tribunal and have considered it. In these circumstances, it would add nothing to his case presented in writing to hear from him in person.

68. Further, the UNAT is not permitted to hold a hearing of the evidence of witnesses. If it is appropriate that such evidence be heard, pursuant to Article 2(5) of the Appeals Tribunal Statute, the case must be remanded to the Dispute Tribunal for it to do so.

69. An appeal is not a rehearing of the issues that were put forward before the UNDT. Rather, it is an opportunity for an appellant to demonstrate errors by the UNDT based on the evidence and other documents that were before it, and the judgment issued by it. We were and are not persuaded that an oral hearing would assist in the expeditious and fair disposition of the case on appeal.

70. We turn now to the substance of the appeal. It is appropriate first to stand back from the detail of the case to consider and record what it is about in general terms. That is because the Secretary-General's submissions, as summarised above, repeatedly emphasise the lack of connection between Mr. Muratore Apro시오's complaints of unlawful conduct by others in the

Organisation and his complaint with regard to the contested decision. While this case concerns the lawfulness of the non-renewal of his fixed-term appointment, Mr. Muratore Aprosio's submission is that this situation came about because he repeatedly and expressly identified multiple illegalities that were not upheld and led to his non-renewal in retaliation for his having made such serious allegations against others. Those others were those who made the non-renewal decision, were influential in that decision or were otherwise representatives of the Organisation seeking to protect itself against, and to exonerate itself from, these attacks by Mr. Muratore Aprosio and other staff members.

71. While it is not our role to determine the truth or otherwise of Mr. Muratore Aprosio's particular allegations of misconduct by others, if we are satisfied that his non-renewal was unlawfully motivated or otherwise unlawfully executed, he may be entitled to remedies. Establishing the truth or otherwise of the allegations of corruption and other illegalities by others will, however, be up to the Organisation if we consider that these should be referred to it for consideration.

72. It is important to record again that the decision not to renew Mr. Muratore Aprosio's fixed-term appointment was conveyed to him on 30 September 2020. It follows that acts or omissions by others or the Organisation complained of by Mr. Muratore Aprosio which occurred after that date could not have affected that decision made, at the latest, on 30 September 2020 and which took effect on 31 December 2020 with his departure from the Organisation.

73. Mr. Muratore Aprosio's grounds of appeal are wide-ranging and allege institutional and personal corruption as well as a wrongful failure or refusal to extend his employment at the end of its fixed-term appointment. However, as the Secretary-General has submitted, the appeal cannot be an opportunity simply to reargue Mr. Muratore Aprosio's unsuccessful case before the UNDT:²⁷ error(s) in the impugned Judgment that would warrant a reversal of the outcome, or a remand to the Dispute Tribunal, must be established.

74. That said, an appellant alleging error by the UNDT will often have no alternative than to readvance the original argument either to establish error in the UNDT judgment, or otherwise to enable the Appeals Tribunal to determine the consequence on appeal of an apparent error. Appeals Tribunal jurisprudence establishes that an appellant cannot simply

²⁷ *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, paras. 28-29.

restate the case at first instance and expect the Appeals Tribunal to redecide that same case differently. Error by the UNDT must be established, but in doing so it will often be necessary for the appellate tribunal to understand the case at first instance, especially if the UNDT has either addressed it summarily or even not referred to it in its judgment. It is therefore not sufficient for the Secretary-General as respondent to simply contend that an appellant's submissions on appeal should be dismissed as they are merely a reiteration of the arguments made at first instance. More nuanced approaches and analyses are often required to be applied by the Appeals Tribunal.

75. In this case however, it must be said that much of the submissions advanced by Mr. Muratore Aprosio does indeed amount to a resubmission of the case put to the UNDT but which it did not accept. There are, in effect, references to the UNDT committing alleged errors, but no real analysis of how it did so other than to ask the UNAT to redecide arguments but in Mr. Muratore Aprosio's favour. That is impermissible.

76. Appeals Tribunal jurisprudence establishes the following propositions which, despite Staff Regulation 4.5(c) and Staff Rule 4.13(c) (the no expectation of renewal or conversion to another type of appointment for fixed-term appointment principle), allow non-renewal or conversion decisions to be challenged on grounds of unfair, unjust or non-transparent action by the Secretary-General or if there was bias, prejudice or improper motivation in these decisions.²⁸ Such decisions of the Secretary-General must also be legal, rational, procedurally correct and proportionate. They must take account of relevant considerations and cannot invoke irrelevant ones. They may not be absurd or perverse. However, short of such considerations being established, the correctness of the decision by the Secretary-General cannot be questioned or second-guessed by the tribunals and their judgments cannot be substituted for the proper exercise of the Secretary-General's discretion in accordance with the legal principles cited above.

77. A challenge to such a decision necessarily also raises the lawfulness of the reasons for its having been made. It follows, in such cases, that the tribunals may examine the circumstances surrounding the non-renewal or conversion of an appointment, to ensure that the impugned decision was not tainted by any abuse of authority.²⁹

²⁸ *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, paras. 47-49.

²⁹ *Ibid.*, para. 49.

78. As the UNAT wrote at paragraph 49 in *Nouinou*, in relation to a challenge to non-renewal of an appointment:³⁰

... As part of its judicial review, it is necessary to determine whether the decision was vitiated by bias or bad faith, that is, if it was taken for an improper purpose. A decision taken for an improper purpose is an abuse of authority. It follows that when a complainant challenges a discretionary decision, he or she by necessary implication also challenges the validity of the reasons underpinning that decision. In this respect, as applied to the present case, the Tribunals may examine the circumstances surrounding the abolition of the staff member's post to determine whether the impugned decision was tainted by abuse of authority.

79. Not every procedural unfairness or denial of due process will mean that such a decision is invalidated, that the non-renewal or non-conversion was unlawful, and that the staff member is entitled to remedies. The nature of the irregularity and its impact must be weighed in the balance, as must too whether any different outcome would have occurred had the decision been made and implemented lawfully.³¹ Breach of a directory provision, that is a failure to do something that the Organisation was required to do in relation to the decision affecting the staff member, may warrant judicial intervention: a lesser breach of a discretionary power having lesser consequences may not. Relevant context is very important in these assessments.³²

80. This appeal also raises the issue, argued by the Secretary-General, whether the UNDT is bound to consider and decide every issue raised by an applicant. The applicable principle, especially in cases where applicants are unrepresented professionally (although unlike in his appearance before us, Mr. Muratore Aprosio was represented by counsel from the Office of Staff Legal Assistance (OSLA) before the UNDT), is that the first instance tribunal is not required to address expressly each and every argument or piece of evidence put before it.³³ It should, of course, take these into account in its decision-making and ideally at least mention its conclusion thereon, even if briefly, as well as noting their absence of merit, to ensure that there can be no suggestion that a significant point was overlooked or ignored.

81. On the other hand, if there is a relevant, significant and potentially decisive or even influential issue raised by a party, it should be addressed. Failure to do so may in itself constitute

³⁰ *Ibid.*

³¹ Sometimes called the "no difference" principle.

³² *Sarwar v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-757, para. 87.

³³ *Mizyed v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-550, paras. 34 and 35.

a ground of appeal and may result in the case being remanded to the UNDT for reconsideration. Where a case raises serious questions of illegality and other misconduct by others at a senior level within the Organisation as Mr. Muratore Apro시오's case does, it is incumbent on the UNDT to address such matters because of their nature and the possible consequences (including of continuing uncertainty) for those against whom they have been made.

82. Having stated the foregoing principles by which we will, in relevant parts, decide this appeal, we turn now to Mr. Muratore Apro시오's particular arguments regarding alleged UNDT errors.

83. The first point addresses the principle mentioned above, namely the obligation for the UNDT to consider all relevant and significant evidence. Mr. Muratore Apro시오 asserts that the Dispute Tribunal erred in failing to take into account and in ignoring some of the evidence he submitted to it.

84. Just as it is totally unsatisfactory and insufficient for Mr. Muratore Apro시오 to simply attach a number of e-mail threads and other documents to his submissions and assert that this Tribunal should have discerned therefrom that the WSSCC restructuring must have been false, contrived and a travesty, so too was it equally wrong when he did so before the UNDT. We acknowledge that Mr. Muratore Apro시오 is unrepresented in his appeal before us, although we note that he was represented by counsel from OSLA before the UNDT. While some latitude can and should be afforded to him in these current circumstances, this methodology of proof of his assertions without explanation of the sources of these documents and how they evidence the very serious propositions he alleges, fails to establish those propositions or that the UNDT was in error in not doing so. It is true that the decision not to hold an in-person hearing pursuant to Article 16(1) of the Dispute Tribunal Rules of Procedure did, nevertheless, deprive the Dispute Tribunal of an opportunity to clarify the grounds of appeal and the evidence supporting them with Mr. Muratore Apro시오's counsel.³⁴

85. While it is sometimes appropriate to deal with a case without an in-person hearing, even one having the complexities and nuances as this one, the corollary of committing everything to paper must be that the Judge is sufficiently and clearly informed of a case if it is to be understood and upheld. United Nations Judges are simply not aware of the detail of particular workplaces and agencies and they cannot be assumed, without more, to understand

³⁴ Order No. 057 (GVA/2022).

a case presented to them as thoroughly as the parties do. That is especially so when very serious charges of impropriety and misconduct are levelled against other staff members and must be proven to a high standard.

86. There were, nevertheless, two early indicia which ought to have flagged the necessity for an especially careful and cautious approach to this case by the UNDT and which were indeed noted in its recitation of the relevant facts.³⁵ First, in March 2019 upon Ms. S.C. becoming the acting ED, she sought to have the employment contracts of all WSSCC staff members, except Mr. Muratore Aprosio's, extended by 12 months. Following the intervention of the Ombudsman's Office, his was extended but only by three months. Second, afterward, Mr. Muratore Aprosio's discriminatory treatment apparently continued as, for the first time in 20 years, he received an unsatisfactory work performance evaluation. This is not to conclude that these unusual occurrences were not warranted but rather, that they required reasonable and adequate explanation.

87. It is appropriate to refer to the notion of a "genuine" restructuring as a result of which there may be adverse effects on established and blameless staff members. Genuineness is an attribute that ensures that the restructuring is not a charade to achieve an ulterior motive, for example to rid the Organisation of staff members whom it does not wish to have continue in its employment. But even a genuine restructuring, as described, can still be a vehicle to achieve such an ulterior goal, particularly in relation to individual staff members, if their selection for non-renewal is proven to have been motivated by considerations which are extraneous to the genuine reasons for the restructuring. So not only must a restructuring be for genuine reasons, but individual decisions affecting individual staff members thereunder must be undertaken genuinely and lawfully.

88. The UNDT concluded that there was a genuine restructuring which affected staff members including Mr. Muratore Aprosio and we find no error in that conclusion. However, the controversial questions are whether the Administration's decisions to abolish the position held by Mr. Muratore Aprosio and not to retain him in the Organisation by not renewing his contract, were genuine decisions as we have previously defined them. One entity (WSSCC) was wound up and shut down but was replaced by another entity (SHF) which was, in reality, WSSCC's successor or replacement entity. This was not the situation, often

³⁵ Impugned Judgment, para. 5.

encountered, where an entity is shut down or downsized and staff members are simply “let go” and not reengaged within a replacement organisation. Here the WSSCC structure was closed down at the instigation of its donors who were said by the Organisation to have been dissatisfied with its progress and goals but was replaced by another organisation (SHF) which met with the approval of the donors to carry out much the same sort of work.

89. We conclude our review of the appeal by returning to Article 2(1) of the Appeals Tribunal Statute which establishes and limits the grounds on which an appeal can be granted. If his appeal is to be granted, Mr. Muratore Aprosio must establish that the UNDT: i) exceeded its jurisdiction or competence; ii) failed to exercise jurisdiction vested in it; iii) erred on a question of law; iv) committed an error in procedure, such as to affect the decision of the case; or v) erred on a question of fact, resulting in a manifestly unreasonable decision.

90. In the present case, the administrative decision challenged by Mr. Muratore Aprosio was that of, or made shortly before, 30 September 2020, not to renew his fixed-term appointment after the WCCSS ceased to exist on 31 December 2020.

91. Although Mr. Muratore Aprosio no doubt believes sincerely that this decision was tainted by bias and bad faith, was taken against him for his numerous and very serious complaints about the corrupt practices of others and was also made for the self-serving interests of those others, proof of these beliefs must be established to a high degree but has not been, even discernibly.

92. Perhaps the most coherent, concise and persuasive account of Mr. Muratore Aprosio’s case is contained in his request for management evaluation which was not accepted. Although this is not a judgment about the correctness of that assessment (because unsuccessful management evaluation does not create a separate cause of action for a staff member), what Mr. Muratore Aprosio wrote in that process is the best material we have to go on in deciding his appeal.³⁶

93. This account of his dissatisfactions makes it tolerably clear that Mr. Muratore Aprosio held many serious concerns about the way in which WSSCC and several senior people within it were operating and he had complained about these. The non-renewal of his fixed-term

³⁶ Request for management evaluation dated 27 November 2020.

appointment of which he had been advised some eight weeks previously and which had some four weeks to run (and which might still have been saved if he had been assigned to a role in the new organisation) was, however, barely mentioned in his management evaluation referral and was not linked to these other complaints he had made.

94. Ultimately, Mr. Muratore Aprosio has not persuaded us that the abolition of his post with WSSCC was not part of a genuine restructuring by UNOPS of this project, or that it was undertaken in violation of his due process rights or otherwise in a way that overcame the principle that fixed-term appointments carry no expectation of renewal. In the absence of established error by the UNDT, Mr. Muratore Aprosio's appeal must be dismissed.

Judgment

95. Mr. Muratore Apro시오's appeal is dismissed, and Judgment No. UNDT/2022/065 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 30th day of June 2023 in New York, United States.

(Signed)

Judge Colgan, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Gao

Judgment published and entered into the Register on this 1st day of August 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar