



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1560

**Emma Reilly
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Nassib G. Ziadé Judge Abdelmohsen Sheha
Case No.:	2024-1890
Date of Decision:	27 June 2025
Date of Publication:	30 July 2025
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Robbie Leighton, OSLA
Counsel for Respondent:	Noam Wiener

JUDGE GRAEME COLGAN, PRESIDING.

1. Emma Reilly, a former staff member of the United Nations Office of the High Commissioner for Human Rights (OHCHR), contested before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) a decision to revise the findings and recommendations of the Alternate Chair of the Ethics Panel of the United Nations (EPUN) in his assessment of Ms. Reilly's 3 October 2019 request for protection from retaliation (2019 PAR Request); and the implied decision not to investigate on the basis of those findings and recommendations (contested decisions).
2. By Judgment No. UNDT/2023/122 dated 7 November 2023 (impugned Judgment),¹ the UNDT dismissed the application.
3. Ms. Reilly appealed the impugned Judgment to the United Nations Appeals Tribunal (UNAT or Appeals Tribunal). This Judgment may be read in conjunction with that delivered by us in the associated case, *Emma Reilly v. Secretary-General of the United Nations*, Judgment No. 2025-UNAT-1559. The two Judgments decide separate appeals against different aspects of the same process by which Ms. Reilly's 2019 PAR Request was addressed.
4. For the reasons that follow, we dismiss the appeal and affirm the impugned Judgment.

Facts and Procedure²

5. The relevant facts of this case follow the chronology set out in Judgment No. 2025-UNAT-1559. Because they provide contextual background to this appeal, we will restate them here although the issues in this case relate only to relatively small and discrete parts of the chronology.
6. On 14 August 2019, a former staff member of the United Nations made a complaint of misconduct against the former Deputy High Commissioner (the former DHC), OHCHR, to the High Commissioner (HC), OHCHR. Ms. Reilly was named in the complaint as a co-researcher of the supporting information and co-filer of it.

¹ *Reilly v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/122.

² The facts are drawn from paragraphs 3-27 of the impugned Judgment.

7. On 10 September 2019, Ms. Reilly filed with the Office of Internal Oversight Services (OIOS) a complaint of misconduct against the former DHC, OHCHR, on the same grounds as the above-mentioned 14 August 2019 complaint.

8. In October 2019, Ms. Reilly was transferred from the Human Rights Council Branch, OHCHR, to a P-3 position in the Human Rights Economic and Social Issues Section, OHCHR (the transfer decision).

9. On 3 October 2019, following the above-mentioned complaints, Ms. Reilly filed her 2019 PAR Request with the United Nations Ethics Office (Ethics Office or UNEO).

10. On 25 October 2019, the Ethics Office communicated to Ms. Reilly that it found the report against the former DHC, OHCHR, to be a protected activity but that it did not find a *prima facie* link to the transfer decision complained of (October 2019 EO determination).

11. Ms. Reilly requested review of the October 2019 EO determination, which was granted. However, consideration was delayed due to the retirement of one Alternate Chair of the EPUN and Ms. Reilly's lack of consent to review by another Ethics Advisor.

12. On 12 March 2020, Ms. Reilly's request for review of the October 2019 EO determination was assigned to the new Alternate Chair (the March 2020 Alternate Chair), EPUN, who was at the time the Director, UNEO, Office of the United Nations High Commissioner for Refugees.

13. On 27 July 2020, the March 2020 Alternate Chair issued his report and recommendations.

14. On 28 July 2020, the Director, UNEO, communicated the March 2020 Alternate Chair's report and recommendations to the Chef de Cabinet.

15. By note dated 30 July 2020, the Chef de Cabinet:

- a. Informed the Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC) that she had written to the then High Commissioner, OHCHR, to let her know the outcome of the March 2020 Alternate Chair's review, and that OHCHR would need to review the recommendations therein; and
- b. Requested the advice of the USG/DMSPC on the matter.

16. By note dated 21 September 2020, the USG/DMSPC responded to the Chef de Cabinet. The note reads, in its relevant part, as follows:

5. Pursuant to the instrument of delegation of authority issued by the Secretary-General and conveyed to me by note from you dated 6 February 2020, I am vested with authority to decide on appropriate measures to take in respect of recommendations under the [Protection Against Retaliation] Policy. Given the foregoing however, I do not accept the recommendations made by the Alternate Chair in this matter.

6. Accordingly, I will inform the Director, UNEO that the Administration is not prepared to implement the recommendations of the [March 2020 Alternate Chair]. Additionally, I will ask whether the Director, UNEO intends to transmit this matter for investigation to OIOS for review as is provided in the [Protection Against Retaliation] Policy.

17. On the same day, the USG/DMSPC addressed a note to the Director, UNEO, to inform the Ethics Office that the Organization would not implement the recommendations of the March 2020 Alternate Chair. One of the reasons that the USG/DMSPC cited in support of this decision was that the March 2020 Alternate Chair “exceeded his mandate in carrying out his review and making his findings”.

18. By note dated 5 October 2020, the Director, UNEO, *inter alia* informed the Chef de Cabinet that she believed there was “at least an appearance of conflict of interest in OIOS conducting an investigation into [Ms. Reilly’s] request for protection against retaliation”. Consequently, she recommended to the Secretary-General “that the complaint be referred to an alternative investigating mechanism [AIM], in accordance with Section 8.2 of ST/SGB/2017/2/Rev.1 [(Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations) (PAR Bulletin)]”. By memorandum also dated 5 October 2020, the Director, UNEO, communicated to Ms. Reilly:

- a. The Organization’s decision not to implement the recommendations of the March 2020 Alternate Chair;
- b. The decision to recommend to the Secretary-General to refer her complaint to an alternative investigative mechanism instead of to OIOS; and
- c. That the UNEO would contact her “to determine whether appropriate measures to safeguard [her] interests should be recommended to the Secretary-General, pending completion of the investigation”.

19. By note dated 16 October 2020, the USG/DMSPC responded to the above-mentioned 5 October 2020 note that the Director, UNEO, addressed to the Chef de Cabinet concerning referral to an alternative investigating mechanism. In her note, the USG/DMSPC, *inter alia*:

- a. Confirmed having the delegation of authority to decide on such recommendation; and

b. Conveyed the decision to have the Ethics Office refer the matter to OIOS instead of an alternative investigating mechanism.

20. By memorandum of 26 October 2020, the Ethics Office referred Ms. Reilly's case to OIOS for investigation.

21. By memorandum dated 11 January 2021, OIOS responded to the referral for investigation of Ms. Reilly's case. OIOS declined to investigate the matter on the grounds that the March 2020 Alternate Chair's report and recommendations did not comply with the PAR Bulletin and were *ultra vires*.

22. On 29 January 2021, the Chef de Cabinet suggested that in light of the defects in the March 2020 Alternate Chair's report, Ms. Reilly's request for review of the October 2019 EO determination be considered *de novo* by a new Alternate Chair of EPUN.

23. On 16 April 2021, Ms. Reilly filed an application with the Dispute Tribunal, challenging the failure to implement the recommendations for protection from retaliation.

24. On 4 June 2021, a new Alternate Chair of EPUN (2021 June Alternate Chair)³ informed Ms. Reilly that she would conduct a new and independent review of the October 2019 EO determination.

25. On 30 July 2021, the 2021 June Alternate Chair completed the *de novo* review of Ms. Reilly's 2019 PAR Request and the October 2019 EO determination. The June 2021 Alternate Chair concurred with the October 2019 EO determination that while Ms. Reilly had engaged in protected activities, there was no causal link to the complained-of transfer decision. Accordingly, there was no *prima facie* case of retaliation.

26. Following a request for management evaluation made on 15 June 2021, on 17 September 2021, Ms. Reilly lodged with the UNDT her proceedings leading to this appeal. Following the completion of two outstanding appeals in other but also related proceedings to the Appeals Tribunal, the UNDT commenced review of the underlying case in April 2023.

³ The June 2021 Alternate Chair was the then Ethics Advisor, UNFPA.

Impugned Judgment

27. On 7 November 2023, the UNDT issued Judgment No. UNDT/2023/122, dismissing Ms. Reilly's application. The UNDT concluded that the challenge to the findings of the June 2021 Alternate Chair was not receivable and that OIOS had acted within its lawful authority when it had decided not to investigate Ms. Reilly's complaint of retaliation.

28. In the impugned Judgment, the Dispute Tribunal first considered the Secretary-General's submission that the decision to overturn the March 2020 Alternate Chair's report and to conduct a new review was not receivable pursuant to Article 2 of the Dispute Tribunal Statute. The Dispute Tribunal recognized that under Section 10.3 of the PAR Bulletin as well as UNAT jurisprudence,⁴ such recommendations from the Ethics Office are not administrative decisions subject to judicial review.⁵

29. The Dispute Tribunal was not persuaded by Ms. Reilly's argument that in effect the decision to order a new review was indirectly made by the Administration, by means of the Administration's rejection of the March 2020 Alternate Chair's report as *ultra vires*. The Tribunal held that "[t]he mere rejection of a report by the Administration could not have been understood by the Ethics Office (...) to represent a request to conduct a review".⁶ The Tribunal found that the available evidence was that this decision was taken by the Ethics Office, albeit following exchanges with the Administration and OIOS, but that these exchanges "did not rise to the level of instructions" from the Administration.⁷ Accordingly, the Tribunal held that the decision to order a new review of the October 2019 EO determination of Ms. Reilly's 2019 PAR Request was not an administrative decision subject to judicial review.⁸

30. The Dispute Tribunal next considered the implied decision of OIOS not to conduct an investigation pursuant to the recommendation of the March 2020 Alternate Chair. The UNDT recognized that a decision not to investigate is subject to judicial review by the Tribunals. The UNDT considered Ms. Reilly's argument that OIOS had no discretion to refuse to investigate. The UNDT recalled that it had determined, in a companion judgment issued the same day,⁹ that the Administration had valid reasons for rejecting the recommendations of the March 2020 Alternate

⁴ *Emma Reilly v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1079, para. 35.

⁵ Impugned Judgment, paras. 44-45.

⁶ *Ibid.*, para. 46.

⁷ *Ibid.*, para. 47.

⁸ *Ibid.*, para. 48.

⁹ *Reilly v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/121.

Chair.¹⁰ Moreover, the UNDT agreed with the OIOS conclusion that “its investigations must be lawfully authorized” and not based on an EPUN assessment that is *ultra vires*.¹¹

31. The UNDT concluded that “requiring unquestionable compliance from actors with a flawed review process” such as this “would be atrocious, and certainly against the letter of the law”.¹² Since the March 2020 Alternate Chair’s report and recommendations, including the referral to OIOS, were validly rejected, the Dispute Tribunal found that OIOS properly exercised its discretion to decline to investigate because the referral arose from a flawed process.¹³ The impugned OIOS decision was thus upheld. Accordingly, the UNDT dismissed Ms. Reilly’s application in its entirety.

32. Ms. Reilly filed an appeal of the impugned Judgment on 8 January 2024, to which the Secretary-General responded on 11 March 2024.

Submissions

Ms. Reilly’s Appeal

33. Ms. Reilly submits that the UNDT erred in fact and law in finding that there was no decision by the Administration to instruct the June 2021 Alternate Chair to further review the report of the March 2020 Alternate Chair. The March 2020 Alternate Chair made findings of *prima facie* retaliation and ordered an investigation. The Ethics Office recommended investigation by an AIM due to a conflict of interest on the part of OIOS. The USG/DMSPC, acting *ultra vires*, refused the recommendation for investigation by an AIM and instructed the Ethics Office to refer the matter to OIOS. OIOS unilaterally informed the Ethics Office that they would not investigate on the basis that they considered the March 2020 Alternate Chair’s report to be *ultra vires*. Ms. Reilly emphasizes that while the Ethics Office’s determinations have traditionally been insulated from judicial review, OIOS decisions whether to investigate or otherwise have been routinely reviewed in the formal justice system. It follows that the decision to request further review of the March 2020 Alternate Chair’s report is a reviewable decision.

¹⁰ Impugned Judgment, paras. 56-57.

¹¹ *Ibid.*, para. 58.

¹² *Ibid.*, para. 60.

¹³ *Ibid.*, para. 61.

34. By memorandum dated 11 January 2021, OIOS informed the Ethics Office that they would not investigate and that they considered the matter closed. The Ethics Office response was not to remand the matter for review by another Ethics officer. It was to implore the Chef de Cabinet to order an investigation. The policy is clear that investigation is mandatory in cases of a *prima facie* finding of retaliation for a protected activity. The Administration understood the Ethics Office position to be that an investigation was required under the policy. The USG/DMSPC specifically advised that the matter be referred back to the Ethics Office requesting review by a new Alternate Chair EPUN. In such circumstances it is impossible to find support for the assertion that the decision to re-review the report of the March 2020 Alternate Chair emanated from the Ethics Office rather than from the Administration itself. The Ethics Office was in fact taking instructions from the Administration.

35. The fact that the USG/DMSPC's memorandum making this request was addressed to the Ethics Office suggests that even the USG/DMSPC considered any request ought to go through that office. The memoranda demonstrate a decision on the part of the Administration to secure further review of the report of the March 2020 Alternate Chair. Rather than await a determination by the Chef de Cabinet, three working days later, OIOS bypassed the Ethics Office and directly addressed its *de facto* request for a review to the June 2021 Alternate Chair. This document can only be viewed as a request for re-review. OIOS's decision to bypass the Ethics Office plainly derived from the fact that the Ethics Office had recommended the matter not be referred to OIOS due to conflict of interest and had later criticized its decision not to investigate. OIOS, aware it was unlikely to get the result it wanted from the Ethics Office, took matters into its own hands.

36. By e-mail to Ms. Reilly, the June 2021 Alternate Chair stated that it was "determin[ed] that the review of your matter conducted by the Alternate Chair was defective". Accordingly, the June 2021 Alternate Chair's re-review was pursuant to the Administration's determination. While the Administration claimed the March 2020 Alternate Chair's alleged failure to seek comments from the Administration rendered his report so defective as to require ignoring of all guarantees of independence to obtain a new review, Ms. Reilly had no recourse when the June 2021 Alternate Chair failed to consult her during the entire period of her review. It follows that, notwithstanding the purported independence of the Ethics Office, in circumstances where the Administration does not agree with a referral of a protection from retaliation request, it can simply have it reviewed by a different Ethics Officer. The finding that a decision to request a re-review, which is not foreseen in any policy, is not receivable by the formal justice system, and that the outcome of such a

re-review is not receivable, guarantees the Organisation can act with impunity and ignore its own written policy on requests for protection against retaliation.

37. Ms. Reilly submits that the UNDT erred in law by failing to attach any significance to the Ethics Office's independence. Most startling in this case, OIOS chose to make their request for a re-review not to the Ethics Office but directly to the June 2021 Alternate Chair, who had two weeks previously indicated she had a conflict of interest in addressing Ms. Reilly's case. Somehow the same individual had no problem receiving this unlawful request for a re-review, from an office found to have a conflict of interest, and overturning the March 2020 Alternate Chair's report and closing the matter without action. The UNDT's conclusion that "the impugned decision was taken by the Ethics Office" has precisely no support. It represents an error in fact and law leading to a manifestly unreasonable decision. By contrast, both the USG/DMSPC and OIOS requested that the matter be re-reviewed.

38. The UNDT erred in law and failed to exercise jurisdiction by finding that the decision of OIOS not to investigate based on the report of the March 2020 Alternate Chair, duly referred to it by the Ethics Office, should be reviewed as an exercise of discretion. The rules provide no discretion as to whether OIOS will choose if it will investigate a *prima facie* finding of retaliation. OIOS only has authority in so far as it is provided by the rules. Any action outside the rules, for instance an exercise of discretion where none is afforded, is plainly unlawful. The independence of the Ethics Office is specifically to prevent the Administration from influencing the outcome of retaliation issues.

39. Having erred in law in finding discretion accrued to OIOS to review the Ethics Office's reports, the UNDT exceeded its jurisdiction and further erred in law by proceeding to judicially review the March 2020 Alternate Chair's report. The UNDT erred in law in finding that the justifications presented for the non-implementation of the March 2020 Alternate Chair's recommendations applied to the decision not to investigate. The UNDT relied on the discretionary nature of any decision to implement recommendations. Such discretion does not apply to the decision to investigate. The referral for investigation is mechanical with no option to decline to investigate.

40. The UNDT erred in law by circumscribing the purview of the March 2020 Alternate Chair in drafting his report. Ms. Reilly at all times situated the retaliation against her as part of a pattern resulting from her first report of the Practice. When Ms. Reilly made her first request, the *prima*

facie review said the Practice was not misconduct.¹⁴ That position is now explicitly disagreed with by the UNDT which found the report of the Practice was a protected activity permitting external report. However, the same Judge finds fault with the March 2020 Alternate Chair's findings on the basis that he purportedly expanded his scope of review. It appears the principle is that the Administration may, but staff members may not, secure judicial review of Ethics Office findings. The UNDT erred in law by characterising the 2020 March Alternate Chair's referral as a "recommendation" akin to those made for interim protection. While the provision refers to the Alternate Chair EPUN making a recommendation to the Ethics Office, the onward referral by the latter is stated as being mandatory.

41. Ms. Reilly requests that the impugned Judgment be overturned. She requests that an order be made for the investigation ordered by the March 2020 Alternate Chair to be conducted by an AIM, or in the alternative, that the impugned Judgment be reversed and the March 2020 Alternate Chair's report be remanded to the Secretary-General for a decision regarding recommendations and investigation to be taken by the proper authority. Ms. Reilly requests compensation for harm caused by the mistreatment of her request for protection against retaliation. Had a proper independent investigation been conducted, as requested by the Ethics Office, Ms. Reilly would have been protected and would remain in employment with a route to repairing the reputational loss due to more than 10 years of defamation by the Administration following her accurate and substantiated reports.

The Secretary-General's Answer

42. The Secretary-General submits that the UNDT correctly found that Ms. Reilly's claim regarding the June 2021 Alternate Chair's determination to conduct a new review of the October 2019 EO determination was not receivable. The UNAT has consistently held that the determinations and recommendations of the Ethics Office are not administrative decisions and are not subject to review by the UNDT and the UNAT.

43. In the present case, the June 2021 Alternate Chair reviewed the March 2020 Alternate Chair report and the recommendations and determined that they were defective. The June 2021 Alternate Chair also determined that a new review of the October 2019 EO determination was required. Consequently, the June 2021 Alternate Chair undertook to conduct a review of the

¹⁴ "The Practice" refers to what Ms. Reilly alleged was a practice of disclosing to the Chinese government the names of intending Chinese delegates to Human Rights Council meetings.

October 2019 EO determination. At the conclusion of her review of that determination, the June 2021 Alternate Chair came to the same conclusions as the Ethics Office; namely, that while the complaint was a protected activity, there was no *prima facie* evidence of retaliation against Ms. Reilly. As with other determinations of the Ethics Office, or the Alternate Chair of the EPUN in cases of the review of the Ethics Office's determinations, the determinations of the June 2021 Alternate Chair did not have direct legal consequences and, therefore, were not administrative decisions subject to judicial review.

44. Upon review of Ms. Reilly's submissions and the extensive evidence before it in the present case, the UNDT found no indication that the Administration or OIOS instructed the June 2021 Alternate Chair to undertake a re-review of the October 2019 EO determination.

45. Furthermore, the Secretary-General submits that Ms. Reilly has failed to demonstrate that the UNDT committed an error in finding that her claim regarding the determination of the June 2021 Alternate Chair to conduct a new review of the October 2019 EO determination was not receivable. There are three more particular submissions in support of this contention.

46. First, Ms. Reilly's claim that the Administration or OIOS instructed the June 2021 Alternate Chair to review the Ethics Office's determination is not supported by the evidence. The exchange of correspondence between the Administration, OIOS, the Ethics Office and the June 2021 Alternate Chair simply does not contain such instructions. On the contrary, the exchange of correspondence demonstrates the respect given to the independence of the Ethics Office and the June 2021 Alternate Chair.

47. Second, there is no merit in Ms. Reilly's claim that a subsequent request by the Ethics Office to consider asking OIOS to reconsider its determination not to investigate, and the Administration's decision to refrain from making such request of OIOS, are evidence of collusion between the Administration, the independent Ethics Office and the independent OIOS to refrain from investigating Ms. Reilly's 2019 PAR Request. The documentary evidence points in exactly the opposite direction. The Ethics Office, the Administration, and OIOS, each acted independently, each in accordance with their respective mandates and reaching their own independent assessments.

48. Third, Ms. Reilly's contention that any of the independent offices of the Organization acted outside their mandate or were coerced into acting contrary to their understanding of their

obligations, is not supported by the evidence. The relevant correspondence clearly and explicitly demonstrates that the USG/DMSPC advised the Chef de Cabinet, and that OIOS wrote to the June 2021 Alternate Chair, because each was independently concerned that Ms. Reilly's right to a review of the 2019 October EO determination had not been complied with, because the March 2020 Alternate Chair's report was issued *ultra vires*. Neither communication contained instructions to the Ethics Office or the June 2021 Alternate Chair to act.

49. The Secretary-General submits that the UNDT correctly held that OIOS acted within its mandate in determining not to initiate an investigation based on the March 2020 Alternate Chair's report. It is inconceivable that in a structured review process, as the one under Section 9.2 of the PAR Bulletin is, an Alternate Chair's mandate to issue recommendations, including investigative ones, would be unrestricted in the way suggested by Ms. Reilly. In the present case, the March 2020 Alternate Chair's report was issued *ultra vires*. The UNDT conducted a thorough examination of the March 2020 Alternate Chair's report and the recommendations and correctly found that the report suffered from severe defects.

50. The Secretary-General contends that following its independent review of the March 2020 Alternate Chair's report, OIOS similarly determined that the report was issued *ultra vires* and as such it could not be used as the basis to initiate an OIOS investigation because the investigation itself would be based on an illegal premise. Consistent with the duty to correct errors, OIOS also determined not to investigate Ms. Reilly's 2019 PAR Request. Thus, the UNDT correctly held that OIOS acted within its mandate in determining not to initiate an investigation based on the March 2020 Alternate Chair's report and the recommendations.

51. The Secretary-General requests that the Appeals Tribunal dismiss the appeal and affirm the impugned Judgment.

Considerations

52. Despite the number and complexity of submissions, we discern two issues in this appeal as follows.

53. First, did the UNDT err in finding that Ms. Reilly's claim regarding the June 2021 Alternate Chair's determination to conduct a new review of the October 2019 EO determination, was not receivable?

54. Ethics recommendations (and related procedural steps) are not appealable administrative decisions as are decisions made following the recommendatory process.¹⁵ A contestable administrative decision must be one that produces legal consequences and is final.¹⁶ Intermediate steps and processes (including advice given that may lead to an administrative decision) do not constitute final reviewable administrative decisions.¹⁷ Authority for the proposition that an Ethics Office recommendation does not constitute an appealable administrative decision is also to be found in Ms. Reilly's own recent case where the Appeals Tribunal stated the following about UNEO recommendations:¹⁸

Section 10.3 of ST/SGB/2017/2/Rev.1 is consistent with and was intended to reflect the prevailing jurisprudence. This Tribunal has held on more than one occasion, and in a full bench, that since the Ethics Office is limited to making recommendations to the Administration, its acts or determinations are without direct legal consequences and are thus not administrative decisions subject to judicial review. Only actual retaliatory actions or decisions have direct legal consequences, not the recommendations of an investigation.

55. Ms. Reilly's current challenge brought to the UNDT was to a recommendation of the June 2021 Alternate Chair, not an administrative decision. It was correctly dismissed by the UNDT as unreceivable and we have not been persuaded it was wrong.

56. The second identified issue in the appeal advanced by Ms. Reilly (did the UNDT err in holding that OIOS acted within its mandate in determining not to initiate an investigation based on the March 2020 Alternate Chair's report?) was receivable as being a decision of the Administration. Given that we have concluded that OIOS was not conflicted (i.e., did not suffer from apparent bias) in our separate Judgment, we decide that the UNDT did not err, and we do not allow this part of the appeal. That is for the following reasons.

57. The staged process of addressing Ms. Reilly's requests is accumulative and each step depends for its lawfulness on the lawfulness of the preceding steps. Therefore, the legally flawed report and recommendations of the March 2020 Alternate Chair cannot be the foundation for a subsequent stage in the process, i.e., the decision to refer Ms. Reilly's 2019 PAR Request to OIOS

¹⁵ *Nguyen-Kropp & Postica v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-673, para. 42.

¹⁶ *Qasem Abdelilah Mohammed Qasem v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2024-UNAT-1467, paras. 62-63.

¹⁷ *Ibid.* See also *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 49.

¹⁸ *Emma Reilly v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1079, para. 35 (internal citations omitted).

for its investigation. The procedural flaws of the March 2020 Alternate Chair's approach caused his report and recommendations to be *ultra vires* and the subsequent referral to OIOS for investigation of the request was a nullity.

58. OIOS justified declining to commence an investigation of Ms. Reilly's 2019 PAR Request when it apprehended correctly that the March 2020 Alternate Chair's report and recommendations that triggered the referral to OIOS were legally flawed.

59. Ms. Reilly also contests what she says was an administrative decision to refer the matter of her request back to the Ethics Office for review. However, we agree with the UNDT's decision of this issue, namely that the Administration's rejection of the report could not have been understood by the Ethics Office to be a request to conduct a review. The evidence before the UNDT was that the decision was made by the Ethics Office following "exchanges" with the Administration and OIOS. These did not amount to instructions or directions from the Administration. The UNDT was correct that the decision to undertake a further review of the October 2019 EO determination of Ms. Reilly's 2019 PAR Request was not an administrative decision amenable to judicial review by the UNDT.

60. The solution to the issue of unlawfulness of the March 2020 Alternate Chair's report and recommendations was to undertake again, but lawfully, that flawed step. That was done in mid-2021 when the June 2021 Alternate Chair re-evaluated Ms. Reilly's 2019 PAR Request and the October 2019 EO determination upon the discovery of the flaws in the March 2020 Alternate Chair's report and recommendations. The UNDT has not been shown to have erred in this part of its Judgment.

61. Ms. Reilly's proceedings before the UNDT having been in part not receivable by it and in part decided correctly by the Dispute Tribunal, Ms. Reilly's appeal must be and is dismissed.

Judgment

62. Ms. Reilly's appeal is dismissed, and Judgment No. UNDT/2023/122 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 27th day of June 2025 in New York, United States.

(Signed)

Judge Colgan, Presiding

(Signed)

Judge Ziadé

(Signed)

Judge Sheha

Judgment published and entered into the Register on this 30th day of July 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar