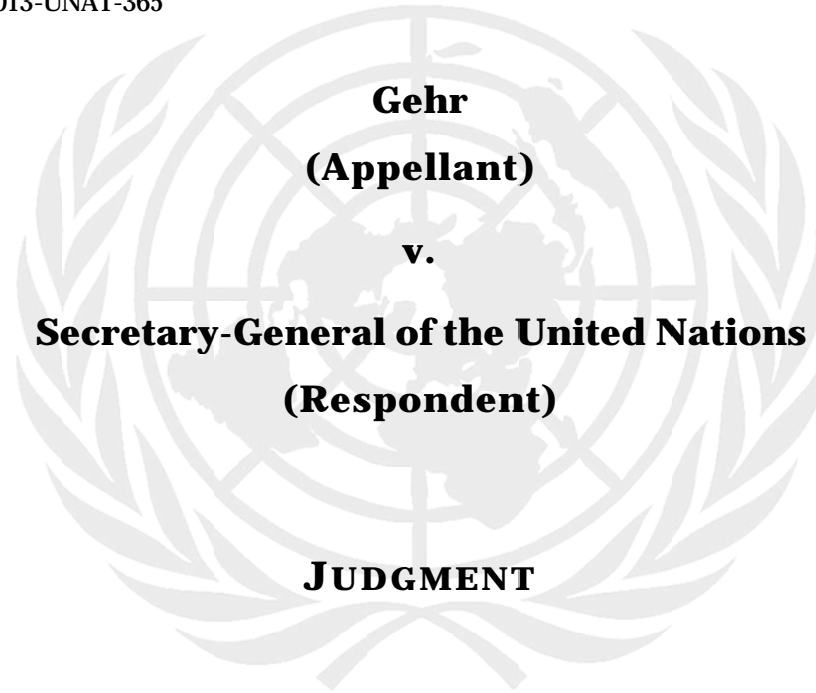




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2013-UNAT-365



**Gehr
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Richard Lussick, Presiding Judge Inés Weinberg de Roca Judge Sophia Adinyira
Case No.:	2012-413
Date:	17 October 2013
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Paul Oertly

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Walter Gehr against Summary Judgment No. UNDT/2012/144, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 1 October 2012 in the case of *Gehr v. Secretary-General of the United Nations*. Mr. Gehr appealed on 17 November 2012, and the Secretary-General answered on 22 January 2013.

Facts and Procedure

2. The Dispute Tribunal made the following findings of fact:¹

... On 5 November 2011, [Mr. Gehr], a former staff member of the United Nations Office on Drugs and Crime, filed an application for interpretation of a judgment. Shortly after filing this application, he sought recusal of the Judge assigned to the case.

... By Order No. 1 (PRES/2012) issued on 22 June 2012, the President of the [Dispute] Tribunal rejected [Mr. Gehr's] motion for recusal. This Order was published on the [Dispute] Tribunal's website under the section "President's Orders".

... In reply to his request for management evaluation, [Mr. Gehr] was informed by letter of 18 September 2012 that his request was not receivable.

3. On 25 September 2012, Mr. Gehr filed with the Dispute Tribunal an application in which he challenged the decision to publish Order No. 1 (PRES/2012) in a separate section of the Dispute Tribunal's website. He sought the removal of the Order from the Dispute Tribunal's website or, in the alternative, its publication in the same way as other decisions issued in relation to requests for recusal.

4. On 1 October 2012, in the absence of the Secretary-General's reply, the UNDT issued Summary Judgment No. UNDT/2012/144. The UNDT determined that a summary judgment was appropriate as the facts were not in dispute and the only issue to be addressed was the admissibility of the application. The UNDT rejected Mr. Gehr's application as the decision to publish Order No. 1 (PRES/2012) in the section "President's Orders" of the UNDT website did not constitute a challengeable administrative decision. In the view of the UNDT Judge, such decision related to "matters of internal organization which do not constitute acts adversely affecting staff members' rights".

¹ The findings of fact in this paragraph are taken from paragraphs 3-5 of Judgment No. UNDT/2012/144.

Submissions

Mr. Gehr's Appeal

5. Mr. Gehr submits that the UNDT erred in law when it held that the decision to publish the President's Order rejecting his recusal request was not an appealable administrative decision. Mr. Gehr insists that the contested decision has to be an administrative decision, because the UNDT Registry, which published the said order, is an "administrative" support unit of the UNDT.

6. Mr. Gehr also submits that the UNDT failed to differentiate between the publication of a judgment and the publication of a decision regarding recusal. The UNDT Statute and Rules of Procedure only require the publication of judgments. By publishing Order No. 1 (PRES/2012) on the UNDT website without his permission, the UNDT Registry acted *ultra vires*, singled him out for discriminatory treatment, demonstrated a lack of respect for his dignity, and violated his right to personal data protection.

7. Mr. Gehr further submits that, by issuing a summary judgment without giving the opposing party an opportunity to reply to his application, the UNDT disregarded the fundamental principle of *audi alteram partem*, substituted its own views for those of the Respondent, and committed a serious procedural flaw, which unduly influenced the outcome of the UNDT proceedings.

The Secretary-General's Answer

8. The Secretary-General maintains that the UNDT correctly concluded that the contested decision did not constitute an "administrative decision" within the meaning of Article 2(1)(a) of the UNDT Statute. The Secretary-General stresses that a decision of the UNDT or its registries is not a decision that is imputable to the Administration for purposes of judicial review. In the alternative, the Secretary-General argues that only those administrative decisions that have direct legal consequences on an individual's rights and obligations fall within the jurisdiction of the UNDT and Mr. Gehr did not identify how the contested decision had any such consequences.

9. The Secretary-General submits that Mr. Gehr has failed to establish that his rights to privacy or any other legal rights were violated by the decision to publish the President's Order on the UNDT website.

10. The Secretary-General also submits that should the Appeals Tribunal decide that the contested decision constituted an administrative decision, Mr. Gehr has not established any irregularity in such decision. Given that the UNDT website has published numerous UNDT orders on requests for recusal, Mr. Gehr's claim of violation of his right to equal treatment is without a factual basis. It is clearly within the UNDT Registrar's authority to publish UNDT orders on the UNDT website in the fashion he did.

11. The Secretary-General further submits that the UNDT's dismissal of Mr. Gehr's application by way of summary judgment was a lawful exercise of its discretion, and that Mr. Gehr has failed to identify any error of law or procedure in respect thereof.

Considerations

12. The issue for this Tribunal is whether the Dispute Tribunal was correct in law in finding that the decision to publish the President's Order rejecting Mr. Gehr's motion for recusal in the "President's Orders" section of that Tribunal's website did not constitute an appealable administrative decision.

13. Article 2(1) of the Dispute Tribunal Statute provides that the Dispute Tribunal is competent to hear and pass judgment on an application appealing "an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment".

14. We are satisfied that the Dispute Tribunal, in assessing whether the publication complained of constituted an administrative decision for the purpose of Article 2(1) of the UNDT Statute, correctly determined that Mr. Gehr had not identified any terms or conditions of his former employment which had been violated. We are further satisfied that the Dispute Tribunal, in reaching its decision, correctly assessed the publication of the President's Order against the definition of an administrative decision prescribed in *Andronov*² as applied in Dispute Tribunal jurisprudence.³ Accordingly, the Dispute Tribunal

² Former United Nations Administrative Tribunal Judgement No. 1157, *Andronov* (2003).

was correct in its finding that “[b]oth the determination that a ruling on a request for recusal should be issued in the form of an order or of a judgment and the decision to publish such rulings on the [Dispute] Tribunal’s website are matters of internal organization which do not constitute acts adversely affecting staff members’ rights” and that “the decision to publish Order No. 1 (PRES/2012) in the section ‘President’s Orders’ of the [Dispute] Tribunal’s website does not constitute a challengeable administrative decision”.⁴

15. Mr. Gehr has not demonstrated that the UNDT made any error of law or fact in rejecting his application.

16. Mr. Gehr’s submissions on summary judgment and *audi alteram partem* have no merit. The UNDT correctly determined that the criterion for summary judgment was met in accordance with Article 9 of the UNDT Rules of Procedure. Further, Mr. Gehr has not established any legal or factual basis for his submission that the principle of *audi alteram partem* had been disregarded by the UNDT.

Judgment

17. The appeal is dismissed and the Judgment of the UNDT affirmed.

³ See Judgment No. UNDT/2012/144, para. 9.

⁴ *Ibid*, paras. 13 and 14.

Original and Authoritative Version: English

Dated this 17th day of October 2013 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Adinyira

Entered in the Register on this 19th day of December 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar