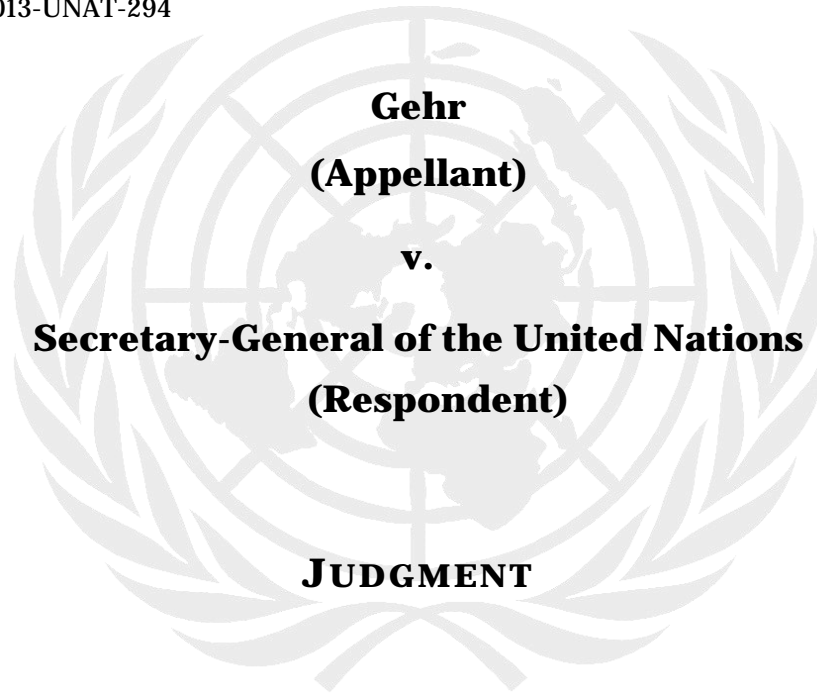




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2013-UNAT-294



**Gehr
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Richard Lussick, Presiding Judge Mary Faherty Judge Rosalyn Chapman
Case No.:	2012-325
Date:	28 March 2013
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Zarqaa Chohan

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Walter Gehr against Judgment No. UNDT/2012/069, issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 10 May 2012. Mr. Gehr appealed on 16 May 2012, and the Secretary-General answered on 17 July 2012.

Facts and Procedure

2. Mr. Gehr joined the United Nations Office on Drugs and Crime (UNODC) in Vienna in 2002. With effect from 1 November 2007, he was appointed under a fixed-term appointment to the post of Senior Terrorism Prevention Officer at the P-5 level in the Terrorism Prevention Branch (TPB) within the Division of Treaty Affairs (DTA).

3. In early November 2009, the Chief of TPB and the Officer-in-Charge of DTA (OIC/DTA), as Mr. Gehr's first and second reporting officers respectively, held a mid-point review with Mr. Gehr in the context of his 2009-2010 performance appraisal system (ePAS).

4. On 8 December 2009, the Chief of TPB and the OIC/DTA informed Mr. Gehr that, in connection with the reorganization of TPB, his post would be abolished and he would be reassigned to the new position of Senior Legal Advisor, which was to be created within the office of the Chief of TPB.

5. In January 2010, Mr. Gehr wrote to the UNODC Executive Director, claiming that the decision to abolish his post and reassign him was motivated by extraneous considerations and was, moreover, preceded by prohibited conduct, including harassment, on the part of his first and second reporting officers.

6. In December 2010, Mr. Gehr filed with the Ethics Office a complaint of retaliation which, he claimed, resulted from his report of prohibited conduct in 2009 and 2010. Specifically he alleged that his first and second reporting officers had made negative comments in his 2009-2010 ePAS; that he had been denied the right to rebut these ePAS; and, that his first and second reporting officers had threatened him with non-renewal of his contract. In February 2011, he submitted additional documents to the Ethics Office that, he claimed, constituted another report of prohibited conduct.

7. Not having received a clear response from the Ethics Office to his follow-up inquiries, on 5 August 2011, Mr. Gehr filed a request for management evaluation, but was informed that his request had been deemed irreceivable. On 30 September 2011, he filed an application with the Dispute Tribunal challenging the decision of the Ethics Office not to respond to his complaint of retaliation (Case No. 1).¹

8. On 17 October 2011, the Ethics Office notified Mr. Gehr that, following a preliminary review, it had determined that a credible *prima facie* case of retaliation had not been established.

9. On 18 November 2011, Mr. Gehr filed another request for management evaluation of the Ethics Office's determination not to pursue his complaint of retaliation, but was informed, on 15 December 2011, that the Management Evaluation Unit had no authority to evaluate the Ethics Office's determination, as the Secretary-General had taken the position that he could not be held liable for the acts or omissions of the Ethics Office.

10. On 26 December 2011, Mr. Gehr filed another application with the Dispute Tribunal challenging the determination made by the Ethics Office that a credible *prima facie* case of retaliation had not been established (Case No. 2).² Mr. Gehr was separated from service with effect from 31 December 2011 upon the expiry of his fixed-term appointment.

11. During a directions hearing held by the UNDT on 18 April 2012, Mr. Gehr asked that Case No. 1 be joined with Case No. 2.

12. In Judgment No. UNDT/2012/069, the Dispute Tribunal noted that Mr. Gehr had filed two applications, one against the Ethics Office's failure to respond to his complaint of retaliation (Case No. 1) and the other against the Ethics Office's decision not to pursue his complaint (Case No. 2). The UNDT found that Case No. 1 had been rendered moot by the Ethics Office's subsequent review and determination, and rejected that application. The Dispute Tribunal rejected Mr. Gehr's request to join Case No. 1 and Case No. 2, deeming to do so would not be appropriate for the fair and expeditious disposal of Case No. 2.

¹ UNDT Case No. UNDT/GVA/2011/064.

² UNDT Case No. UNDT/GVA/2011/090.

Submissions

Mr. Gehr's Appeal

13. The UNDT erred in law in not addressing the Secretary-General's contention that the Ethics Office's acts or omissions did not constitute appealable administrative decisions.

14. Mr. Gehr submits that the UNDT's position that, when the Administration takes an action that supersedes its prior decision, the applicant's allegations may become moot, has the effect of unlawfully extending the deadline for management evaluation.

Secretary-General's Answer

15. The UNDT correctly concluded that Mr. Gehr's first application was not receivable and that it was not appropriate to join Case No. 1 and Case No. 2.

16. The Secretary-General submits that the UNDT is not required under either its Statute or its Rules of Procedure to address every argument made by a party. Further, the UNDT is not prohibited from taking into account the events occurring after a request for management evaluation has been filed.

Considerations

17. The issue before the UNDT, in relation to the present appeal, was Mr. Gehr's application challenging the decision of the Ethics Office not to respond to his complaint of retaliation (Case No. 1), for which he sought compensation. At the UNDT hearing, Mr. Gehr also requested that Case No. 1 and Case No. 2 be joined.

18. The UNDT noted that after Mr. Gehr had filed the application before it, the Ethics Office notified him of the outcome of its preliminary review of his complaint, and that Mr. Gehr then filed another application challenging that outcome and complaining about the Ethics Office's delay in responding to his complaint (Case No. 2). Accordingly, the UNDT held that the application before it was moot because the issue raised by Mr. Gehr, that is, the Ethics Office's failure to respond to his complaint, was "no longer at stake". The UNDT ruled that the question of whether the delay in this process caused a significant injury to Mr. Gehr was an issue to be treated within the context of Case No. 2.

19. It is quite obvious that the point at issue in the present appeal (Case No. 1), that is, Mr. Gehr's challenge of the decision of the Ethics Office not to respond to his complaint of retaliation, ceased to exist when the Ethics Office notified him of the outcome of its preliminary review of his complaint. The only outstanding issue remaining was Mr. Gehr's claim for compensation.

20. We can find no error in the UNDT's finding that the application before it was moot and thus not receivable. Further, the UNDT's decision to dispose of the issue of compensation as part of Case No. 2 is a case management decision well within the discretion of the UNDT and causes no injustice to Mr. Gehr. The Appeals Tribunal has previously held that the UNDT is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and do justice to the parties and this Tribunal will not lightly interfere with the broad discretion of the UNDT in the management of cases.³

21. We make the observation that this Tribunal should never have been called on to review the UNDT's decision, since the fact that the application was moot was so obvious that no reasonable person could have arrived at any other conclusion. In our view, Mr. Gehr has manifestly abused the appeals process by filing an appeal that is blatantly frivolous. Mr. Gehr is fortunate on this occasion that the Secretary-General has not made an application for costs. However, should Mr. Gehr ever again bring an appeal with such lack of merit, then he should be prepared to face an award of costs pursuant to Article 9(2) of the Statute of the Appeals Tribunal.

22. It goes without saying that Mr. Gehr has not established that the UNDT fell into any error, and the appeal fails.

Judgment

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

³ *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062 (full bench, Judge Boyko dissenting.); see also Article 19 of UNDT Rules of Procedure.

Original and Authoritative Version: English

Dated this 28th day of March 2013 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Faherty

(Signed)

Judge Chapman

Entered in the Register on this 24th day of May 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar