



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

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Judgment No. 2025-UNAT-1529

**Olexandr Maruschak**  
**(Appellant)**

**v.**

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

## **JUDGMENT**

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Before:	Judge Leslie F. Forbang, Presiding Judge Kanwaldeep Sandhu Judge Abdelmohsen Sheha
Case No.:	2024-1900
Date of Decision:	21 March 2025
Date of Publication:	2 May 2025
Registrar:	Juliet E. Johnson

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Counsel for Appellant: Self-represented

Counsel for Respondent: Noam Wiener

**JUDGE LESLIE F. FORBANG, PRESIDING.**

1. Mr. Olexandr Maruschak, a former Field Security Officer with the United Nations Interim Force in Lebanon (UNIFIL), has filed an appeal of Judgment No. UNDT/2023/140 (impugned Judgment) rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal).<sup>1</sup>

2. In the impugned Judgment, the Dispute Tribunal granted Mr. Maruschak's application in part, in so far as the Tribunal found that the facts underlying the decision to terminate him from service (contested decision) were not established to the applicable standard. However, the UNDT declined to rescind the contested decision due to Mr. Maruschak's dishonesty in the Tribunal proceedings. In addition, the UNDT awarded USD 500 in costs against Mr. Maruschak for manifest abuse of proceedings.

3. Mr. Maruschak requests that the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) reverse the impugned Judgment in part, rescind the contested decision based on the UNDT findings and award him compensation for moral and reputational damage.

4. For the reasons set out herein, the Appeals Tribunal grants the appeal in part, reverses the impugned Judgment, and remands the case to the UNDT for a determination of the appropriate statutory remedy, and a redetermination of the amount of costs for abuse of judicial proceedings.

**Facts and Procedure**

5. Mr. Maruschak commenced service with the Organization on 1 July 2009.

6. On 24 October 2017, he organized an "unofficial meeting" at his office at the United Nations Headquarters in Naqoura, Lebanon with three Belorussian military personnel. The gathering lasted approximately five hours, from 17:34 to 22:24. Pizza, soft drinks and beer were available.<sup>2</sup>

7. Mr. Maruschak left the Headquarters at 22:24, driving his privately-owned vehicle (POV). Mr. Maruschak did not have a valid Lebanese driver's license.<sup>3</sup>

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<sup>1</sup> *Maruschak v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/140.

<sup>2</sup> 6 August 2018 Interoffice Memorandum from Office of Human Resource Management, UNIFIL to Mr. Olexandr Maruschak, re: Allegations of Misconduct (Allegations Memorandum), paras. 6-7.

<sup>3</sup> *Ibid.*, para. 8.

8. On his drive back home, at approximately 22:34, Mr. Maruschak collided with an Italian contingent United Nations armoured vehicle (UNAV).<sup>4</sup>

9. According to statements of the two Italian military personnel in the UNAV, Mr. Maruschak was traveling “with high speed” and there was “a very strong crash” when he collided with them. The Italian military personnel stated that Mr. Maruschak exited his vehicle, walked unsteadily and appeared confused. Mr. Maruschak retrieved a bottle of water from his trunk and drank it all. Mr. Maruschak asked the Italian military officer driving a second UNAV in the convoy, for a bottle of water, which he then promptly drank. This Italian sergeant said that Mr. Maruschak had a strong smell of alcohol. The witnesses further stated that Mr. Maruschak went to the side of the road and relieved himself.<sup>5</sup>

10. At 22:45, Mr. Maruschak called in the accident to the Security Information Operations Center (SIOC), and a security response team was immediately dispatched. The United Nations Military Police (UNMP) also came to the scene following a call from the Italian military personnel.<sup>6</sup>

11. An Investigator with the Special Investigations Unit (SIU) arrived and conducted a preliminary investigation. She observed a strong smell of alcohol coming from Mr. Maruschak’s mouth, and that he showed signs of visible impairment with balance and movement.<sup>7</sup>

12. The Investigator instructed a Military Police Officer to administer two breathalyzer tests to Mr. Maruschak.<sup>8</sup> Mr. Maruschak signed an acknowledgment statement consenting to the procedure. Mr. Maruschak stated he was in shock at the time.<sup>9</sup>

13. The first breathalyzer test produced a blood alcohol level via breath (BrAL) of .63 mg/l, and the second breathalyzer test produced a BrAL of .61 mg/l. This equates to an average reading of .124 per cent Blood Alcohol Concentration (BAC).<sup>10</sup>

14. The breathalyzer results were more than twice the .05 per cent limit prescribed by Lebanese Traffic Law, and more than three times the .04 per cent limit prescribed by

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<sup>4</sup> *Ibid.*, para. 9.

<sup>5</sup> *Ibid.*, paras. 12-14.

<sup>6</sup> *Ibid.*, para. 15.

<sup>7</sup> *Ibid.*, para. 16.

<sup>8</sup> *Ibid.*, para. 18.

<sup>9</sup> *Ibid.*, para. 33.

<sup>10</sup> *Ibid.*, para. 19.

Administrative Instruction UNIFIL AI/2001/007 (Compliance with Lebanese traffic regulations by owners and drivers of privately-owned vehicles bearing UNP or CD registration plates).<sup>11</sup>

15. On 25 October 2017, the SIU took over the investigation of the incident from the Military Police.

16. The investigators took statements from various witnesses, including Mr. Maruschak, the Italian military personnel, the security response team, United Nations Military Police Officers, SIOC Duty Officers and the Belorussian military personnel at Mr. Maruschak's "unofficial gathering" before the accident.<sup>12</sup>

17. The investigators obtained photographs and measurements of the accident scene, breathalyzer test results, breathalyzer confirmation forms, the breathalyzer training certificates of the Military Police Officers, CCTV video footage, and other documentation.<sup>13</sup>

18. The findings in the Investigation Report established that Mr. Maruschak had collided with a convoy of two Italian contingent UNAVs. Mr. Maruschak's statement that the Italian contingent UNAV had dim taillights and that when he finally saw the UNAV in front of him, he could not overtake the UNAV due to oncoming traffic, was not true based on the CCTV video footage. The Investigation Report confirmed that the breathalyzer test of the Italian military officer driving the Italian contingent UNAV was 0.00 mg/l, whereas the readings for Mr. Maruschak were .63 mg/l and .61 mg/l, more than three times the limit per the relevant UNIFIL Administrative Instruction.<sup>14</sup>

19. On August 6, 2018, the Officer-in-Charge, Office of Human Resource Management (OiC/OHR) informed Mr. Maruschak of the allegations of misconduct based on the Investigation Report.

20. The OiC/OHR alleged that Mr. Maruschak had operated his POV without a driver's license and without authorization at nighttime hours, drove his POV after having consumed alcohol, and caused his POV to collide with the Italian contingent UNAV causing damage estimated at USD 9,374.<sup>15</sup>

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<sup>11</sup> *Ibid.*, para. 20.

<sup>12</sup> United Nations Security Investigation Unit, Report, Road Traffic Accident – with Injuries/Impaired (Investigation Report), p. 2.

<sup>13</sup> *Ibid.*, pp. 25-27. See also impugned Judgment, para. 51.

<sup>14</sup> Investigation Report, pp. 27-28.

<sup>15</sup> Allegations Memorandum, para. 36.

21. Following review of Mr. Maruschak's comments, the Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC) determined that it had been established by clear and convincing evidence that on 24 October 2017 Mr. Maruschak drove his POV after having consumed alcohol and caused an accident with the Italian contingent UNAV, with damage estimated at USD 9,374. The USG/DMSPC dropped the allegations with regard to driving at night without a license.<sup>16</sup>

22. The USG/DMSPC concluded that the established conduct constituted serious misconduct in violation of Staff Regulations 1.2(f) and (q), Staff Rules 1.2(a) and 1.7; and paragraphs 5 and 9 of UNIFIL AI/2011/007 of 3 February 2011.<sup>17</sup>

23. The USG/DMSPC decided to impose on Mr. Maruschak the disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnity. She considered as an aggravating factor that as a Security Officer at the P-3 level he owed a special duty of care and responsibility. She concluded that there were no mitigating factors.<sup>18</sup>

*Initial Dispute Tribunal proceedings*

24. On 24 June 2019, Mr. Maruschak filed an application challenging the contested decision of separation from service.

25. On 15 March 2021, Mr. Maruschak filed a submission with the UNDT in support of amending the remedy he sought. These documents were purported to show his economic losses and medical harm suffered as a result of his separation. They included: (a) a personal statement; (b) the sale of a house; (c) an open-heart operation; (d) evidence of pancreatitis and diabetes; and (e) job refusals since separation.<sup>19</sup>

26. On 6 May 2021, Mr. Maruschak's counsel filed on his behalf further documentation purporting to show that Mr. Maruschak had undergone heart valve replacement surgery in the amount of EUR 78,310.

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<sup>16</sup> 21 March 2019 letter from USG/DMSPC to Mr. Maruschak (Sanction Letter), p. 2. See also impugned Judgment, para. 5.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> Applicant's Submission on Amended Remedy, para. 11.

27. On 25 May 2021, the Secretary-General's counsel contacted Mr. Maruschak's counsel and expressed concern that the documentation submitted was forged.

28. On 2 June 2021, counsel for Mr. Maruschak withdrew from representing Mr. Maruschak.<sup>20</sup>

29. On 8 June 2021, Mr. Maruschak filed a motion with the UNDT requesting that he be permitted to withdraw his submission on the amended remedy. He stated that this was "due to errors in the documents, compromised confidentiality of personal medical documents as well as because of [his] personal decision not to apply for any remedies".<sup>21</sup>

30. On 9 June 2021, the Secretary-General filed a motion for dismissal of the application and a cost award against Mr. Maruschak for manifest abuse of process and forgery.

31. On 26 August 2021, the UNDT ordered the expungement from the case record of Mr. Maruschak's submissions on an amended remedy and the attached documentation in Order No. 174 (NBI/2021).<sup>22</sup> However, in Order No. 186 (NBI/2021), the UNDT denied the Secretary-General's request for summary dismissal and an award of costs.

*The interlocutory appeal*

32. On 27 September 2021, the Secretary-General filed an appeal of Order No. 174 (NBI/2021) with the Appeals Tribunal. The Secretary-General argued that the UNDT should not be permitted to continue with the proceedings after the fraud perpetrated by Mr. Maruschak. The Secretary-General sought summary dismissal of Mr. Maruschak's application and an award of costs of USD 30,000 against Mr. Maruschak.

33. In Judgment No. 2022-UNAT-1282, the Appeals Tribunal recounted that interlocutory appeals are generally not receivable. However, the Appeals Tribunal considered that there was another "narrow and rare" category of UNDT orders that was appealable.<sup>23</sup> Specifically, when an error of the UNDT would be "effectively irremediable by final UNDT judgment (or on appeal

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<sup>20</sup> Mr. Maruschak's counsel was a counsel from OSLA.

<sup>21</sup> Applicant's Submission of Withdrawal of Motion for Amended Remedy, para. 1.

<sup>22</sup> *Maruschak v. Secretary-General of the United Nations*, Order No. 174 (NBI/2021) on Case Management and Miscellaneous Motions, para. 10.

<sup>23</sup> *Oleksandr Maruschak v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1282 (*Maruschak I* Judgment), para. 17.

therefrom) and it would be manifestly unreasonable for the UNDT's order or other decision to remain in effect", such orders were appealable.<sup>24</sup>

34. The UNAT concluded that the UNDT's order on the expungement of documents was appealable, because "unless the documents are preserved for use at trial, they may be lost with the consequence that the Secretary-General will be unfairly disadvantaged in being unable to use them to establish his allegations of forgery and fraud".<sup>25</sup>

35. The UNAT further opined:<sup>26</sup>

If the Secretary-General is successful in persuading the UNDT that these documents are forgeries perpetrated deliberately by Mr. Maruschak and/or that he has otherwise abused the judicial process, any resulting loss of his credibility and reputation may deprive Mr. Maruschak of remedies even if he establishes that his separation from service was wrongful.

36. The UNAT ordered the expunged documents to be returned to the case record.<sup>27</sup>

*Further Dispute Tribunal proceedings and the impugned Judgment*

37. Following the issuance of the *Maruschak I* Judgment, the UNDT decided to hold an oral hearing on the merits of his case. The UNDT heard from Mr. Maruschak, the Officer-in-Charge of the Security Information and Operations Center (OiC/SIOP/OPS), and from a Duty Officer at SIOC/OPS.

38. The UNDT concluded that there were two issues for determination. First, whether the Organization had discharged its burden of proof with respect to the alleged misconduct. Second, whether the UNDT should award costs against Mr. Maruschak for manifest abuse of process.<sup>28</sup>

39. The UNDT considered that the major element of the misconduct was that Mr. Maruschak had consumed alcohol. The UNDT further observed that for the purposes of the relevant UNIFIL regulations, suspicion of alcohol consumption was not sufficient, it must be proven through a breathalyzer test. Accordingly, the evidence from witness interviewed by SIU, who stated that they

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<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*, para. 21.

<sup>26</sup> *Ibid.*, para. 22.

<sup>27</sup> *Ibid.*, para. 23.

<sup>28</sup> Impugned Judgment, para. 34.

smelled alcohol on Mr. Maruschak or observed his unsteady walk at the scene of the accident, was not sufficient.<sup>29</sup> The UNDT found these witness statements “subjective and speculative”.<sup>30</sup>

40. The UNDT consulted the applicable UNIFIL Administrative Instruction, AI/2011/007, and noted the following section 9(b):<sup>31</sup>

UNIFIL Security Officers (*only*), on behalf of the mission, may on reasonable suspicion that an operator of a POV bearing UNP or CD registration plates is driving under the influence of alcohol, conduct breathalyzer tests and report compliance in this regard. ...

41. In this case, the breathalyzer test was administered by a United Nations Military Officer, not a UNIFIL Security Officer. Accordingly, the UNDT concluded that the Organization violated AI/2011/007.<sup>32</sup>

42. Relying on the Appeals Tribunal judgment in *Asghar*,<sup>33</sup> the UNDT held that the evidence of the breathalyzer test was illegally obtained. Moreover, the failure to observe AI/2011/007 was a substantial procedural irregularity which went to the root of the contested decision.<sup>34</sup>

43. Because the breathalyzer test was not administered by the proper official, the UNDT held that the Organization had failed to prove by clear and convincing evidence that Mr. Maruschak drove his vehicle after consuming alcohol.<sup>35</sup>

44. The UNDT observed that in subsequent submissions to the Tribunal, the Organization conceded that there was no financial loss to the Organization for damage to the Italian contingent UNAV in the collision.<sup>36</sup>

45. With respect to relief, the UNDT considered Article 10(5) of the Statute of the Dispute Tribunal (UNDT Statute), which provides that:<sup>37</sup>

[a]s part of its judgment, the Dispute Tribunal *may* only order one or both of the following:

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<sup>29</sup> *Ibid.*, para. 37.

<sup>30</sup> *Ibid.*, para. 59.

<sup>31</sup> *Ibid.*, para. 39 (emphasis added).

<sup>32</sup> *Ibid.*, para. 56.

<sup>33</sup> *Asghar v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-982, para. 43.

<sup>34</sup> Impugned Judgment, paras. 57-58.

<sup>35</sup> *Ibid.*, para. 55.

<sup>36</sup> *Ibid.*, para. 60.

<sup>37</sup> *Ibid.*, para. 63 (emphasis in original).

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to paragraph (b) of the present paragraph.

46. The UNDT observed that Article 10(5) uses the word “may”, accordingly, the Tribunal was permitted to exercise discretion as to whether to order rescission. When rescission is denied, no compensation in lieu is set.<sup>38</sup>

47. The UNDT declined to order rescission of the contested administrative decision.<sup>39</sup>

48. Turning to the allegations of abuse of process, the UNDT found that Mr. Maruschak “filed fake documents to support his claim for an award of moral damages. The false documents showed that he had used out of pocket money obtained from mortgaging his house to pay for heart surgery which he never had”.<sup>40</sup>

49. Although the UNDT found that “the documents were false”, the UNDT did not agree that a fraud was committed. Relying on *Asghar*, the UNDT recalled the UNAT’s guidance that it:<sup>41</sup>

should reach a finding of fraud only on the basis of sufficient, cogent, relevant and admissible evidence permitting appropriate factual inferences and a legal conclusion that each element of fraud (the making of a misrepresentation, the intent to deceive and prejudice) has been established in accordance with the standard of clear and convincing evidence.

50. The UNDT concluded that such sufficient and cogent evidence of fraud was not adduced in this case. It held that the “various documents pulled from the internet, excerpts from files and email correspondence without witnesses to attest under oath as to their accuracy or veracity may not be deemed clear and convincing evidence substantiating an allegation of fraud”. However, the UNDT deemed it sufficient to prove abuse of process.<sup>42</sup>

51. The UNDT found that the abuse by Mr. Maruschak was “so serious that if undetected [it] would have brought the integrity of the United Nations internal justice system into disrepute”. The

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<sup>38</sup> *Ibid.*, para. 64.

<sup>39</sup> *Ibid.*, para. 65.

<sup>40</sup> *Ibid.*, para. 74.

<sup>41</sup> *Ibid.*, para. 69 (quoting *Asghar* Judgment, *op. cit.*, para. 35).

<sup>42</sup> *Ibid.*, para. 77.

UNDT further found that Mr. Maruschak’s “plot to misrepresent facts was planned and calculated” and that the “motive was an attempt to mislead the Tribunal to award him” in excess of EUR 78,000.

52. The UNDT also considered that Mr. Maruschak made two attempts to file misleading documents. The UNDT acknowledged the waste of resources and the negative perceptions created about the efficiency of the United Nations internal justice system, given the intervening litigation about the fake documents, which dragged out the proceedings.<sup>43</sup>

53. The UNDT found that Mr. Maruschak’s abuse of process was “egregious” and the award of costs should be greater than that awarded by the UNAT in *Ntemde*, which was USD 300.<sup>44</sup>

54. In sum, the UNDT concluded that:<sup>45</sup>

- a. The application partly succeeds in so far as the facts on which the contested decision was not established under the applicable standard; and
- b. Through his conduct in these proceedings, [Mr. Maruschak] undermined his integrity particularly as an international civil servant and in his functional capacity as the Chief in the field of Security. He has destroyed the mutual trust and confidence necessary in an employment relationship. For these reasons, the rescission of the contested decision is declined; and
- c. The Tribunal awards USD 500 costs against [Mr. Maruschak] for manifest abuse of proceedings.

55. Mr. Maruschak filed an appeal of the impugned Judgment on 15 February 2024. The Secretary-General filed his answer on 19 April 2024.

## Submissions

### Mr. Maruschak’s Appeal

56. Mr. Maruschak submits that the Secretary-General never proved that the documents he submitted in connection with his request for an amended remedy were forgeries. Without any formal investigation, he claims that these documents can be legally considered only “suspected

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<sup>43</sup> *Ibid.*, para. 80.

<sup>44</sup> *Ibid.*, para. 81 (referring to *Ntemde v. Secretary-General of the United Nations*, Order No. 496 (2023)).

<sup>45</sup> *Ibid.*, para. 82.

forgeries”. Mr. Maruschak submits that there should have been an international team of professional investigators to examine whether the documents were forgeries.

57. Mr. Maruschak argues that the UNDT was correct to find that there was no sufficient and cogent evidence of fraud with regard to the documents.

58. Mr. Maruschak claims that the Secretary-General illegally obtained information through Internet research concerning his personal medical and financial information and then used this information as an instrument of pressure on the Dispute Tribunal.

59. Mr. Maruschak submits that he did not violate Article 4 of the Code of Conduct for Legal Representatives and Litigants in Person (Code of Conduct). He claims that when he realized his mistake with respect to the documents, he immediately withdrew them. He avers that the reason he withdrew the documents was based on his desire to speed up the process and avoid wasting time proving every document to be genuine.

60. Mr. Maruschak argues that the Secretary-General violated Article 4 of the Code of Conduct when it obtained information in an illegal way either through payments or unauthorized research into personal financial and medical data.

61. Mr. Maruschak requests that the UNAT ignore the Dispute Tribunal’s statement that it was convinced that Mr. Maruschak withdrew his documents because his dishonesty had been uncovered by the Secretary-General. Mr. Maruschak submits that this was unprofessional and abusive, and the Dispute Tribunal never legally proved his dishonesty.

62. Mr. Maruschak requests that the UNAT pronounce that his separation was wrongful, given that the UNDT found that the facts were not established to the applicable standard.

63. Mr. Maruschak requests that the UNAT grant the rescission of the contested decision, since the facts were not established to the applicable standard.

64. Mr. Maruschak seeks compensation for moral and reputational damage created by the Secretary-General’s illegal and unauthorized research into his private medical and financial circumstances.

65. Mr. Maruschak requests that the UNAT find that the Secretary-General violated the Code of Conduct by carrying out unauthorized research.

**The Secretary-General's Answer**

66. The Secretary-General makes a “motion to reserve the right to appeal”. The Secretary-General observes that under the Appeals Tribunal Judgment in *Sefraoui*,<sup>46</sup> he is not permitted to appeal the impugned Judgment, because the Secretary-General prevailed in the sense that the Dispute Tribunal did not rescind the contested decision.

67. The Secretary-General points out that because the UNDT did not rescind the contested decision, and upheld it on different grounds, the Secretary-General could not appeal the UNDT's finding that the facts underlying the misconduct were not established to the applicable standard.

68. The Secretary-General argues that he is also hamstrung from appealing the UNDT's finding that there was no fraud committed by Mr. Maruschak.

69. The Secretary-General requests that if the UNAT reverses the UNDT's ruling not to rescind the contested decision, that the UNAT permit his appeal of the impugned Judgment. The Secretary-General wishes to challenge the UNDT's holding that the contested decision was unlawful and the UNDT's holding that Mr. Maruschak did not engage in fraud by knowingly submitting forged documents to the record.

70. The Secretary-General submits that the UNDT correctly found that Mr. Maruschak did not file the forged documents by mistake. Mr. Maruschak claimed that these documents were “drafts” and that he mistakenly submitted them in place of genuine documents in his possession.

71. The Secretary-General argues that the documents could not be “drafts”. The documents bear signatures, dates and notary stamps that were allegedly affixed 12 – 18 months before Mr. Maruschak submitted them to the UNDT. Drafts are not dated, signed and notarized.

72. The Secretary-General contends that the idea that the purported executed real-estate contract or the medical documents allegedly signed by medical professionals were drafts has no rational connection to reality.

73. The Secretary-General points out that there is no rational explanation for how Mr. Maruschak could have submitted these documents “in error” or why he did not realize his

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<sup>46</sup> *Sefraoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-048.

“mistake” earlier. How could he have submitted the wrong documents twice, two months apart, to the UNDT?

74. The Secretary-General notes that Mr. Maruschak made detailed arguments about the content of the forged documents and their alleged relevance to his claim for compensation. It is inconceivable that he did so without noticing that they were mere “drafts”. The Secretary-General submits that Mr. Maruschak only came up with the “drafts” argument after the Secretary-General’s counsel alerted his counsel of Mr. Maruschak’s forgery, and after Mr. Maruschak’s counsel withdrew.

75. The Secretary-General submits that it was for the UNDT to determine whether the evidence provided by the Secretary-General sufficiently proved that Mr. Maruschak falsified the forged documents.

76. The Secretary-General claims that he relied on “open sources and freely available information” to show that Mr. Maruschak forged the documents. Mr. Maruschak has provided no evidence of any wrongdoing by the Secretary-General.

77. The Secretary-General submits that Mr. Maruschak never refuted any of the Secretary-General’s evidence as to the fraudulent nature of the forged documents.

78. The Secretary-General submits that the UNAT should hold that the UNDT was competent to determine that the evidence supported a finding that the forged documents were counterfeit.

79. The Secretary-General requests that the UNAT dismiss Mr. Maruschak’s unfounded allegations that the Secretary-General had somehow illegally obtained the evidence submitted to the UNDT to demonstrate the fraudulent nature of Mr. Maruschak’s documents.

80. The Secretary-General submits that the UNDT correctly found that, contrary to Mr. Maruschak’s claims, more than two of the documents that he submitted were counterfeit. The UNDT rightly concluded that Mr. Maruschak withdrew his motion for the amended remedy and related supporting documents only after he realized that his forgery had been discovered.

81. The Secretary-General submits that the UNDT was correct not to rescind the contested decision because Mr. Maruschak abused the judicial process.

82. The Secretary-General points out that the UNAT in *Chhikara* held that “if a party provides the Tribunal with decisive information that is wrong and misleading, this amounts to a manifest abuse of process of a very serious nature”.<sup>47</sup>

83. The Secretary-General argues that the UNAT explicitly held that the forged documents could be used by the Secretary-General to argue that Mr. Maruschak’s abuse of process could “deprive [him] of remedies even if he establishes that his separation from service was wrongful”.<sup>48</sup>

84. The Secretary-General concludes that Mr. Maruschak’s brazen attempt to falsify evidence to deceive the UNDT to secure undeserved moral damages is unusual and never been seen before. Notwithstanding the clear proof of Mr. Maruschak’s abuse of the judicial process and attempt to defraud the Organization, he shamelessly attempts to argue that he did nothing wrong.

85. The Secretary-General requests that the UNAT deny Mr. Maruschak’s appeal and uphold the UNDT decision not to rescind the contested decision and to fine him for abuse of process.

### Considerations

86. This appeal hinges on the determination of three principal issues: (1) whether the UNDT erred in not rescinding the contested decision after it found that the Secretary-General failed to establish the misconduct by clear and convincing evidence; (2) whether the UNDT correctly found that there was an abuse of the judicial process; and (3) whether the Secretary-General violated the Code of Conduct by conducting unauthorized research into documents submitted to the UNDT? We shall examine these issues *seriatim*.

*Whether the UNDT erred in not rescinding the contested decision after it found that the Secretary-General failed to establish the misconduct by clear and convincing evidence?*

87. The UNDT concluded that the Secretary-General failed to discharge his burden of proving by clear and convincing evidence that Mr. Maruschak drove his privately-owned vehicle (POV) after consuming alcohol and caused an accident with an Italian contingent UNAV.<sup>49</sup> As a result, it found the contested decision unlawful.

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<sup>47</sup> *Virendra Singh Chhikara v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1014.

<sup>48</sup> *Maruschak I* Judgment, *op. cit.*, para. 22.

<sup>49</sup> Impugned Judgment, para. 55.

88. Once an administrative decision is held to be unlawful, the usual practice, pursuant to Article 10(5) of the UNDT Statute, is for the Dispute Tribunal to order one or both remedies spelled out in that Article. Specifically, Article 10(5) provides:

As part of its judgment, the Dispute Tribunal may only order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to paragraph (b) of the present paragraph.

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalence of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of higher compensation for harm, supported by evidence, and shall provide reasons for that decision.

89. Our understanding of Article 10(5) of the UNDT Statute, as confirmed by our consistent jurisprudence, is that upon finding that the Secretary-General failed to prove the lawfulness of the contested decision, the court should rescind the contested decision in terms of Article 10(5)(a) and set (as it is obliged to do) compensation which the Secretary-General may elect to pay in lieu of rescission. It is only in very exceptional circumstances that rescission will *not* be ordered for an unlawful administrative decision.<sup>50</sup> In the present case, for reasons set out below, the UNDT erred by failing to rescind the contested decision for reasons that were improper and could not be considered exceptional. In addition to Article 10(5)(a), the UNDT, acting in terms of Article 10(5)(b), may award compensation for harm supported by evidence, which shall normally not exceed the equivalence of two years' net base salary of the applicant.

89. In this case, the UNDT did not pursue this ordinary course of action. Rather, it declined to rescind the contested decision (despite finding it unlawful) on the grounds that Mr. Maruschak had manifestly abused the judicial process. The UNDT observed that Mr. Maruschak had filed fake documents to support his claim for an award for material and moral damages, and on that basis declined to rescind the contested decision. The UNDT's derogation from the ordinary course constitutes the main issue for our determination here. The question is whether a court can decline

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<sup>50</sup> See *Alan George Blythe v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1404, paras. 68-69.

to grant a statutory remedy for an unlawful administrative decision on the basis that a party abused the judicial process during proceedings contesting that decision.

90. Our answer is in the negative for the reason that the Dispute Tribunal's jurisdiction under Article 2(1) of the UNDT Statute provides that the Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual to appeal an administrative decision imposing a disciplinary measure. Therefore, the Dispute Tribunal's competency is based on an appeal of an administrative decision. It is well-settled that an administrative decision is a unilateral decision of an administrative nature taken by the Administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another and produces direct legal consequences.

91. In the present case, the contested administrative decision that was the subject of the application before the UNDT was the Secretary-General's decision of 21 March 2019 to separate Mr. Maruschak from service, with compensation in lieu of notice and without termination indemnity, due to misconduct arising from the operation of his POV and the collision of 24 October 2017 with the Italian contingent UNAV.

92. The UNDT found that the facts on which the contested decision was made were not established by the Secretary-General to the required clear and convincing evidence standard. This means that the contested decision was held to be unlawful. However, the UNDT declined to order one of the main remedies under Article 10(5), namely rescission of the contested decision. By declining to rescind, the UNDT allowed an unlawful contested decision to subsist for an improper and unexceptional reason which was an error of law.

93. More specifically, the UNDT improperly based its refusal to rescind the contested decision on the conduct of Mr. Maruschak during the UNDT proceedings, conduct that the Tribunal concluded was an abuse of process. This was indeed an error of law. Mr. Maruschak's conduct during the UNDT proceedings is not an administrative decision that is a proper subject of judicial review. The UNDT erroneously confused two very important though separate issues: the unlawfulness of the contested administrative decision and Mr. Maruschak's actions before the Tribunal. The Dispute Tribunal cannot refuse to rescind a contested administrative decision as a sanction for a party's abuse of the UNDT's process in subsequent proceedings about that administrative decision. By doing so, the UNDT failed to exercise jurisdiction vested in it and erred

in law. The only remedy available for abuse of the UNDT's process is contained in Article 10(6) of the UNDT Statute.

94. Once the contested decision is held to be unlawful, the only remedies available to the UNDT are set out in Article 10(5) of the UNDT Statute, namely rescission of the contested decision with compensation in lieu of rescission and, if applicable, an award for damages for harm. The UNDT clearly failed to exercise jurisdiction vested in it and committed an error of law. Therefore, we reverse the UNDT's Judgment and remand the case back to the UNDT for determination of an appropriate remedy in accordance with our Judgment.

95. We recognize that in *Maruschak I*, we stated:<sup>51</sup>

If the Secretary-General is successful in persuading the UNDT that these documents are forgeries perpetrated deliberately by Mr. Maruschak and/or that he has otherwise abused the judicial process, any resulting loss of his credibility and reputation may deprive Mr. Maruschak of remedies even if he establishes that his separation from service was wrongful.

We acknowledge that the UNDT may have relied on these comments in the impugned Judgment, however, these comments were made in *obiter dictum* and are not binding on us or the UNDT for the purpose of this Judgment.

*Whether the UNDT correctly found that there was an abuse of the judicial process?*

96. The Dispute Tribunal concluded that Mr. Maruschak had manifestly abused the judicial process by filing forged documents before it, and as a consequence it took the Tribunal four years to resolve the case, which resulted in a waste of resources, and reflected negatively on the efficiency of the United Nations internal justice system.<sup>52</sup> The UNDT considered that an abuse of such dishonesty perpetrated by a career Security Officer with 12 years as an international civil servant was very serious because of the special duty of care owed to the Organization.<sup>53</sup> We agree with the UNDT. We have consistently held that misconduct can be grave considering the position a staff member holds and the responsibilities which he or she is entrusted.<sup>54</sup> Moreover, in this case,

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<sup>51</sup> *Maruschak I* Judgment, *op. cit.*, para. 22.

<sup>52</sup> Impugned Judgment, para. 80.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Massah v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-274, para. 48, *Haniya v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-024, para. 34.

Mr. Maruschak's dishonesty was perpetrated against the Tribunal as well, and his actions were an egregious breach of the Code of Conduct expected of legal counsel and self-represented litigants.<sup>55</sup>

97. In his defence, Mr. Maruschak raised the same arguments he made before the UNDT, e.g., that he filed the forged documents by mistake without any intent to defraud, and that he voluntarily withdrew the documents when he realized his mistake.<sup>56</sup> We note, under our consistent jurisprudence, in matters of this nature, dishonest or fraudulent intent is not required.<sup>57</sup> We do not think that Mr. Maruschak would have admitted he filed the forged documents by mistake had the UNDT relied on the fraudulent papers and awarded him the compensation he sought.

98. Further, in Mr. Maruschak's Submission on the Amended Remedy before the UNDT dated 15 March 2021, he tendered a purported contract for the sale of his house, a medical report following an open-heart surgery and other annexures in support of the remedy requested. He further stated that he would testify to the economic loss and other harm suffered during the oral hearing.<sup>58</sup> In the circumstances, we find that a party who alleges financial loss and claims moral damages in such an articulated manner cannot be later heard at trial to claim that he submitted evidence of such loss or damages in error. On the contrary, it would be a mistake not to submit such evidence, if it exists at all.

99. Mr. Maruschak also contends that both parties did not use the forged documents at trial, and therefore they should have had no effect on the UNDT's judgment.<sup>59</sup> The Secretary-General submits that such submission was tantamount to arguing that because Mr. Maruschak had not succeeded in his attempt to defraud the UNDT, he should not be held accountable for abusing the judicial process. We agree to the fact that the mere submission of misleading and incredible information or documents to a Court or Tribunal constitutes a tremendous abuse of the judicial process that puts the integrity of the entire judicial process into disrepute.

100. In *Chhikara* we stated that:<sup>60</sup>

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<sup>55</sup> Under Article 4, litigants representing themselves before the UNDT or UNAT are required to "maintain the highest standards of integrity" including acting "honestly" and "in good faith".

<sup>56</sup> Appeal Brief, para. 10.

<sup>57</sup> *Ganbold v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-976, para. 31; *Konate v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-334, para. 22.

<sup>58</sup> Applicant's Submission on Amended Remedy, para. 11.

<sup>59</sup> Appeal Brief, para. 5.

<sup>60</sup> *Virendra Singh Chhikara v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1014, para. 30 (internal citation omitted).

[I]f a party ‘provides the Tribunal with decisive information that is wrong and misleading, this amounts to a manifest abuse of process of a very serious nature. Basically, such action puts the entire integrity of the judicial system at risk – it may not only lead to undue and costly delays, but also lead to straightforwardly incorrect decisions’.

101. In the case at bar, the forged documents, if undetected, would have been decisive or crucial to the UNDT’s determination of Mr. Maruschak’s claim for material and moral damages. The UNDT would have been misled to award him money for pecuniary loss in excess of EUR 78,000. That would have made a mockery of the Tribunal’s proceedings, brought the integrity of the United Nations internal justice system into disrepute, and caused the Organization enormous financial loss. Therefore, we agree with the UNDT that an award of cost for abuse of process was absolutely necessary.

102. As noted, the Appeals Tribunal is satisfied that the UNDT correctly found that Mr. Maruschak manifestly abused the judicial process. However, we find that the UNDT erred in the quantum of award for costs for abuse of process. Relying on Article 10(6) of the UNDT Statute, the Dispute Tribunal awarded only USD 500 in costs against Mr. Maruschak. We suspect that this minimal sum was due to the Dispute Tribunal’s confusion of the remedy for an unlawful administrative decision and the remedy for abuse of its judicial proceedings. The UNDT purportedly and improperly sanctioned Mr. Maruschak’s abuse of process by both declining to rescind the contested decision and awarding 500 USD in costs against him. This means that the quantum of costs for abuse of judicial process did not fully reflect the UNDT’s appreciation of the gravity of Mr. Maruschak’s behaviour.

103. As this was an error in the proper methodology to sanction an abuse of process, we remand the case to the UNDT for a redetermination of the appropriate quantum for costs for abuse of process.

104. After the UNDT makes its determination on the Article 10(5) remedy for the unlawful administrative decision and the appropriate quantum for costs pursuant to Article 10(6), the UNDT will then have exercised its full jurisdiction and have finalized its judgment. The UNDT may wish to seek additional submissions from the parties on these points.

*Whether the Secretary-General violated the Code of Conduct by conducting unauthorized research into documents submitted to the UNDT?*

105. Mr. Maruschak submits that unauthorized research on medical and financial data of a private person is a clear violation of Article 4 of the Code of Conduct. As a result, he requests the UNAT to grant him compensation for moral and reputational damage created by the Secretary-General's supposedly illegal and unauthorized search of his personal data.

106. Article 4 of the Code of Conduct provides:

Legal representatives and litigants in person shall maintain the highest standards of integrity and shall at all times act honestly, candidly, courteously, in good faith and without regard to external pressures or extraneous considerations.

(...)

4. Legal representatives shall maintain the highest standards of professionalism and shall act in the best interest of the party they represent, subject always to upholding the interest of justice and ethical standards.

107. In this case, the evidence on record shows that the forged documents were submitted to the UNDT by Mr. Maruschak. The Secretary-General did not make any unauthorized search into his medical or financial records to get them as he claims. The Secretary-General merely acted diligently in using external and open sources available to him to verify the authenticity of the documents submitted to the UNDT. In order for the Secretary-General to prove that the medical report of the purported operation submitted by Mr. Maruschak was forged, the Secretary-General's legal representatives sought and received e-mail confirmation from the two doctors who supposedly conducted the surgical procedure on Mr. Maruschak in Germany. One of the doctors confirmed he never conducted any operation in Germany while the other is a cardiologist, not a surgeon. In the same light, to disprove the legality of the contract of sale of Mr. Maruschak's house notarized by a Ukrainian Notary, the Secretary-General retrieved online the list of Notary Registries in Ukraine, only to learn that the Notary Public who allegedly notarized Mr. Maruschak's contract of sale was not listed on that register.

108. We find the Secretary-General's external research and findings into the forgeries were done for the best interest of the party he represents (the Organization) as required by Article 4 of the Code of Conduct. The Organization was at risk of an enormous financial loss without the due

diligence of the Secretary-General's legal representatives. At the same time, the reputation and integrity of the internal justice system was at the verge of coming into disrepute, had Mr. Maruschak's scheme not been uncovered. Therefore, no rational Court or Tribunal would indict the Secretary-General for violating the Code of Conduct. The Secretary-General clearly acted to safeguard the overriding interest of the Organisation. Further, the documents examined were public documents and had been tendered in evidence by Mr. Maruschak, therefore his authorization was no longer required to double-check their authenticity. They were not his private documents as he represents.

109. Moreover, there does not appear to be any bar against the Organization attempting to verify the authenticity of documents through various means and using the tools and resources at its disposal. For example, in *Vijay Neekhra*,<sup>61</sup> the Administration used "Grammarly" as a tool to uncover plagiarism in a selection exercise.

110. Consequently, we find that the Secretary-General did not violate the Code of Conduct as alleged. Mr. Maruschak is therefore not entitled to moral and reputational damage for the Organization's legal representatives conducting research into documents that he submitted to the UNDT.

111. Mr. Maruschak's appeal is granted in part.

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<sup>61</sup> *Vijay Neekhra v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2023-UNAT-1335.

**Judgment**

112. Mr. Maruschak's appeal is granted in part, and Judgment No. UNDT/2023/140 is hereby reversed. The matter of the appropriate remedies is remanded to the UNDT to determine the following:

- a. the appropriate remedy for rescission of the contested decision; and
- b. the appropriate quantum for costs for abuse of process.

Original and Authoritative Version: English

Decision dated this 21<sup>st</sup> day of March 2025 in Nairobi, Kenya.

*(Signed)*

Judge Forbang, Presiding

*(Signed)*

Judge Sandhu

*(Signed)*

Judge Sheha

Judgment published and entered into the Register on this 2<sup>nd</sup> day of May 2025 in New York, United States.

*(Signed)*

Juliet E. Johnson,  
Registrar