



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

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Judgment No. 2025-UNAT-1559

**Emma Reilly  
(Appellant)**

**v.**

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

## **JUDGMENT**

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Before:	Judge Graeme Colgan, Presiding Judge Nassib G. Ziadé Judge Abdelmohsen Sheha
Case No.:	2024-1888
Date of Decision:	27 June 2025
Date of Publication:	30 July 2025
Registrar:	Juliet E. Johnson

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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) the decision not to implement recommendations of the Alternate Chair of the Ethics Panel of the United Nations (EPUN), not to provide her with interim protection measures, and to refer her retaliation case for investigation by the Office of Internal Oversight Services (OIOS). Ms. Reilly also claimed compensation for the wrongs allegedly committed against her.
2. By Judgment No. UNDT/2023/121 dated 7 November 2023 (impugned Judgment),<sup>1</sup> the UNDT dismissed the application.
3. Ms. Reilly has appealed the impugned Judgment to the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons that follow, we dismiss the appeal.

**Facts and Procedure**

5. In the case now on appeal, the UNDT found the following relevant facts which we adopt and set out after some brief contextual background.
6. On 15 July 2016, Ms. Reilly submitted a request for protection against retaliation to the United Nations Ethics Office (UNEO) (2016 PAR Request). She contended that she had been retaliated against due to her reporting of a so-called “Practice” of OHCHR. This Practice was the alleged sharing of information by OHCHR with the Chinese government of the names of human rights activists from China who were scheduled to attend meetings of the Human Rights Council.
7. In October 2016, the UNEO concluded in response to the 2016 PAR Request that there was no *prima facie* retaliation.
8. In January 2017, Ms. Reilly advised the UNEO that she had been contacted by a journalist who claimed to have documents related to her 2016 PAR Request. Ms. Reilly blamed the UNEO

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<sup>1</sup> *Reilly v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/121.

for the leak. The Administration subsequently issued a press release to address the Practice and the leak, which led to litigation with Ms. Reilly (the Press Release case).<sup>2</sup>

9. In 2017-2018, there were two reviews of the UNEO's October 2016 determination that there was no *prima facie* retaliation as alleged in Ms. Reilly's 2016 PAR Request. In the second review, the Second Alternate Chair of the EPUN determined that Ms. Reilly had not established a *prima facie* case of retaliation. However, the Second Alternate Chair made several recommendations to resolve the issues between Ms. Reilly and the Administration.<sup>3</sup>

10. Ms. Reilly challenged before the UNDT the alleged failure to implement the latter recommendations. The UNDT rejected her claims in Judgment No. UNDT/2020/097.<sup>4</sup> On appeal, the UNAT affirmed, finding "no merit in Ms. Reilly's contentions that the Administration unreasonably failed to comply with the recommendations of the Second Alternate Chair".<sup>5</sup>

11. On 14 August 2019, a former staff member of the United Nations made a misconduct complaint to the High Commissioner, OHCHR. That complaint was against the former Deputy High Commissioner (the former DHC) of OHCHR. The complaint alleged that the former DHC had misrepresented her academic credentials. Ms. Reilly was named in the complaint as a co-researcher of the supporting information and co-filer of it.<sup>6</sup>

12. On 10 September 2019, Ms. Reilly filed her own complaint of misconduct against the former DHC with OIOS on the same grounds as the earlier complainant's grounds.<sup>7</sup>

13. In October 2019, Ms. Reilly was transferred from one section of OHCHR to another section of OHCHR (transfer decision). Ms. Reilly alleged that the transfer decision was taken in retaliation for her complaint against the former DHC.<sup>8</sup>

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<sup>2</sup> In *Emma Reilly v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1309, the Appeals Tribunal affirmed (at paragraph 90) that the UNDT had correctly concluded that the press release had not produced direct adverse legal consequences affecting Ms. Reilly's terms and conditions of employment and that it was a reasonable and lawful exercise of the Administration's discretion.

<sup>3</sup> Impugned Judgment, paras. 6-9.

<sup>4</sup> *Reilly v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/097, paras. 124 and 151.

<sup>5</sup> *Emma Reilly v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1079, para. 45.

<sup>6</sup> Impugned Judgment, para. 11.

<sup>7</sup> *Ibid.*, para. 12.

<sup>8</sup> *Ibid.*, para. 13.

14. On 3 October 2019, following the above-mentioned complaints, Ms. Reilly filed a new request for protection against retaliation with the UNEO. In her request, she expressed her belief that “the entire EPUN ... has a clear conflict of interest” and requested “immediate external referral of [her] complaint” (2019 PAR Request). Ms. Reilly’s allegations of conflict of interest of the EPUN arose from the handling of her 2016 PAR Request described above.<sup>9</sup>

15. On 5 October 2019, the Ethics Office communicated to Ms. Reilly that it did not consider itself conflicted to address her request.

16. On 25 October 2019, the Ethics Office advised Ms. Reilly that while it found her report against the former DHC to be a protected activity, it did not find a *prima facie* link to the transfer decision complained of.

17. On the same day, pursuant to Section 9.1 of ST/SGB/2017/2/Rev.1 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations) (PAR Bulletin), Ms. Reilly requested a review of this determination to be undertaken by the Alternate Chair, EPUN. Consideration of Ms. Reilly’s request was reassigned twice, due to the retirement of one Alternate Chair and Ms. Reilly’s lack of consent to review by another Ethics Advisor.<sup>10</sup>

18. Ultimately, Ms. Reilly’s request for review was carried out by the then Director of the Ethics Office, Office of the United Nations High Commissioner for Refugees (the March 2020 Alternate Chair).

19. On 27 July 2020, the March 2020 Alternate Chair issued his report and recommendations.<sup>11</sup> He considered not just Ms. Reilly’s complaint against the former DHC, but also Ms. Reilly’s original complaints dating back to 2013 about the Practice, the Press Release, and related events. He made a *prima facie* finding of retaliation, opining that retaliation had been constant since 2013 and that the latest protected activity was just the most recent incident.<sup>12</sup>

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<sup>9</sup> *Ibid.*, para. 14.

<sup>10</sup> *Ibid.*, paras. 17-18, 20.

<sup>11</sup> *Ibid.*, para. 22.

<sup>12</sup> Appeal, annex 7 (Independent Review of the Determination of the United Nations Ethics Office in relation to Ms. Emma Reilly’s request for Protection against Retaliation), para. 21.

20. The March 2020 Alternate Chair made recommendations “pursuant to [S]ection 9.2” of the PAR Bulletin. He reiterated that his determination was based on Ms. Reilly being a whistleblower regarding the Practice for which, in his view, she continued to suffer consequences.

21. The March 2020 Alternate Chair stated that if OHCHR accepted the *prima facie* determination of retaliation, then he had three recommendations, including that (i) Ms. Reilly be placed in a regular budget P-3 post commensurate with her skills, (ii) any entry in her personnel file that was impeding her consideration for posts in the Organization be removed, and (iii) she be placed on the roster for genuine consideration in all upcoming P-4 posts for which she chose to apply.<sup>13</sup>

22. If, on the other hand, OHCHR did not accept the *prima facie* determination and the outlined recommendations, the March 2020 Alternate Chair stated that Ms. Reilly’s case should be referred to OIOS for investigation.<sup>14</sup>

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

24. By note dated 30 July 2020, the Chef de Cabinet communicated the March 2020 Alternate Chair’s report to the High Commissioner, OHCHR. The Chef de Cabinet noted that if OHCHR accepted the recommendations, then referral for investigation would not be warranted.

25. On the same day, the Chef de Cabinet informed the Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC) that she had written to the then High Commissioner, OHCHR, regarding the outcome of the March 2020 Alternate Chair’s review, and that OHCHR would need to review the recommendations therein. In addition, the Chef de Cabinet requested the advice of the USG/DMSPC on the matter.

26. By note dated 21 September 2020, the USG/DMSPC responded to the Chef de Cabinet. The note reads, in its relevant part, as follows:<sup>15</sup>

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

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<sup>13</sup> *Ibid*, para. 26.

<sup>14</sup> *Ibid.*, para. 27.

<sup>15</sup> Impugned Judgment, para. 25.

[Protection Against Retaliation] Policy. Given the foregoing [addressing the impermissible scope of the report and its recommendations as assessed by the USG/DMSPC and as summarised below in paragraph 33] however, I do not accept the recommendations made by the Alternate Chair in this matter.

27. The basis for the USG/DMSPC’s rejection of the March 2020 Alternate Chair’s report and recommendations were three-fold. One, the Alternate Chair had reviewed matters that were not part of Ms. Reilly’s complaint against the former DHC but addressed matters that had been previously determined by the UNEO and reviewed and finally decided by the UNDT.<sup>16</sup> Two, contrary to Section 9.2 of the PAR Bulletin, the Alternate Chair had failed to seek comments from the Administration during his review and relied entirely on Ms. Reilly’s version of events. Three, the Alternate Chair did not make a separate recommendation to refer the matter for investigation as required under the PAR Bulletin but instead made such referral contingent on whether OHCHR accepted or rejected his recommendations. The USG/DMSPC also stated that the Alternate Chair had made a series of factual conclusions for which there was no evidentiary basis.

28. For the foregoing reasons, the USG/DMSPC stated that the Administration was not prepared to implement the March 2020 Alternate Chair’s recommendations, and would ask the Director, UNEO, if they intended to transmit the matter for investigation to OIOS.

29. By note dated 5 October 2020, the Director, UNEO, among other things informed the Chef de Cabinet that he believed there was “at least an appearance of conflict of interest in OIOS” conducting the investigation into Ms. Reilly’s matter. Consequently, the Director, UNEO, recommended to the Secretary-General that the complaint be referred to an alternative investigating mechanism (AIM), in accordance with Section 8.2 of the PAR Bulletin.

30. By memorandum also dated 5 October 2020, the Director, UNEO, informed Ms. Reilly of:<sup>17</sup>

- a. The Organization’s decision not to implement the recommendations of the March 2020 Alternate Chair;
- b. UNEO’s decision to recommend to the Secretary-General that her complaint be referred to an AIM 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”.

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<sup>16</sup> *Ibid.*, para. 26.

<sup>17</sup> *Ibid.*, para. 28.

31. By note dated 16 October 2020, the USG/DMSPC responded with her decision that, contrary to the recommendation of the Director, UNEO, the matter should be referred for investigation to OIOS instead of an AIM. The USG/DMSPC pointed to the Director, UNEO's statement that there was no actual or possible conflict of interest in OIOS performing the investigation. The USG/DMSPC stated that the "appearance" of a conflict of interest was an insufficient basis on which to refer the matter to an AIM.<sup>18</sup>

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

33. Although events involving the parties continued after 26 October 2020, they are the subject of our companion Judgment issued under Case Number 2024-1890.

34. Following the completion of two outstanding appeals to the Appeals Tribunal, the UNDT commenced review of the underlying case in April 2023. On 7 November 2023, the UNDT issued the impugned Judgment.

#### *Impugned Judgment*

35. In the impugned Judgment, the UNDT first determined that Ms. Reilly's application was receivable as to three decisions taken by the Administration: (i) the decision not to implement the recommendations of the March 2020 Alternate Chair, (ii) the decision not to provide interim protective measures to Ms. Reilly, and (iii) the decision to refer the matter to OIOS for investigation.<sup>19</sup>

36. The USG/DMSPC's decision not to implement the recommendations of the March 2020 Alternate Chair was because he had acted outside the scope of his mandate, in that he had examined not just Ms. Reilly's 2019 PAR Request (related to her complaint about alleged misrepresentations made by the Deputy HC regarding her academic credentials), but also Ms. Reilly's 2016 PAR Request that followed after she made reports about the Practice. Moreover, the March 2020 Alternate Chair had not sought comments from the Administration, in breach of Section 9.2 of the PAR Bulletin.<sup>20</sup> Further, the March 2020 Alternate Chair had made remedial or

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<sup>18</sup> *Ibid.*, para. 29.

<sup>19</sup> *Ibid.*, para. 49.

<sup>20</sup> Section 9.2 reads in part: "The alternate Chair of the Ethics Panel will seek comments from the complainant *and the Administration* on the request for review and undertake his or her own independent review of the matter ...." (emphasis added).

corrective recommendations that were premature; such recommendations can only follow an investigation and a conclusion that retaliation had occurred, as per Section 8.5 of the PAR Bulletin.<sup>21</sup>

37. To determine whether the USG/DMSPC's decision to reject the March 2020 Alternate Chair's recommendations was an arbitrary exercise of discretion, the UNDT reviewed the foregoing grounds of the decision.

38. The UNDT found that pursuant to Section 9.1 of the PAR Bulletin, the complainant was able to have "the matter" reviewed further by an Alternate Chair, and in this case "the matter" was the alleged falsification by the former DHC of her academic qualifications. The UNDT was persuaded that the USG/DMSPC had reasonable grounds to decline to implement the recommendations when the March 2020 Alternate Chair decided to examine the purported "pattern of retaliation" against Ms. Reilly.<sup>22</sup> The UNDT also found that the March 2020 Alternate Chair did not follow the proper procedure in Section 9.2 when he did not seek the views of the Administration.<sup>23</sup> Finally, the UNDT was convinced that the third ground for declining to implement the recommendations was also valid, as no recommendations should have been made when retaliation had not yet been established.<sup>24</sup>

39. The UNDT rejected Ms. Reilly's claims that the USG/DMSPC and the Chef de Cabinet had conflicts of interest in reviewing the March 2020 Alternate Chair's recommendations. The UNDT did not find any evidence that either official had been "instrumental" in Ms. Reilly's transfer.<sup>25</sup> Moreover, the UNDT concluded from the available evidence that the decision to transfer Ms. Reilly "was made collaboratively and in good faith".<sup>26</sup>

40. The UNDT next considered Ms. Reilly's allegations that the USG/DMSPC's decision to reject the March 2020 Alternate Chair's recommendations was *ultra vires*, that is beyond the USG/DMSPC's power in law to decide. The UNDT noted that pursuant to Section 8 of the

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<sup>21</sup> Section 8.5 reads in part: "If the Ethics Office considers that there has been retaliation against a complainant, it may, *after taking into account any recommendations made by OIOS* or other concerned office(s) and after consultation with the complainant, recommend to the head of department or office concerned appropriate measures aimed at correcting negative consequences suffered as a result of the retaliatory action ...." (emphasis added).

<sup>22</sup> Impugned Judgment, paras. 66 and 68.

<sup>23</sup> *Ibid.*, para. 75.

<sup>24</sup> *Ibid.*, para. 79.

<sup>25</sup> *Ibid.*, para. 88.

<sup>26</sup> *Ibid.*, para. 93.

PAR Bulletin, the Secretary-General had the authority to: refer an investigation to an AIM instead of OIOS (Section 8.2); to take appropriate measures to safeguard the interests of a complainant pending completion of an investigation (Section 8.3); and to decide on recommendations of the Ethics Office after an investigation, if the Ethics Office is not satisfied with the response of the concerned head of department or office (Section 8.8).<sup>27</sup>

41. The UNDT found that there was a *lacuna* or gap in the law, as there was no provision in the PAR Bulletin which envisaged a decision to accept or reject recommendations of the Alternate Chair in this posture. So, while it was true that the USG/DMSPC acted without legal authority, this was due to a deficiency in the PAR Bulletin. The UNDT held that it was not prepared to vitiate the USG/DMSPC's decision on the basis of a lack of legal authority, when the decision was a reasonable one.<sup>28</sup> Moreover, the UNDT concluded that the Organization was just exercising its discretion when it decided to reject the recommendations.<sup>29</sup>

42. The UNDT held that in these circumstances, the Tribunal would uphold the USG/DMSPC's decision under principles of equity and the maxim that there can be no wrong that is irremediable.<sup>30</sup> The UNDT said that its determination was reinforced by the fact that Ms. Reilly's right to have her complaint reviewed was respected to the fullest extent.<sup>31</sup>

43. The UNDT held that the USG/DMSPC had acted within her authority, and by a reasonable exercise of her discretion, in deciding not to provide interim measures. The USG/DMSPC did so on the grounds that the report and recommendation were flawed in material respects.<sup>32</sup> The UNDT also rejected Ms. Reilly's arguments that because the Ethics Office recused itself in 2017 in an unrelated PAR request, having done so meant that the Ethics Office was also conflicted in relation to her October 2019 PAR request.<sup>33</sup>

44. The UNDT assessed whether the USG/DMSPC had the authority to decide whether the matter should be referred to OIOS or an AIM. Ms. Reilly argued that the USG/DMSPC had no such authority because her allegation of retaliation was against an Assistant Secretary-General (ASG), and the 6 February 2020 revised delegation of authority from the Secretary-General to the

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<sup>27</sup> *Ibid.*, para. 102.

<sup>28</sup> *Ibid.*, para. 106.

<sup>29</sup> *Ibid.*, para. 108.

<sup>30</sup> *Ibid.*, para. 113.

<sup>31</sup> *Ibid.*, para. 114.

<sup>32</sup> *Ibid.*, paras. 118-119.

<sup>33</sup> *Ibid.*, para. 123.

USG/DMSPC extended only to “where an allegation of retaliation is reported by or against a staff member up to and including the D-2 level”.<sup>34</sup> The UNDT held that the use of the word “or” implied that the requisite conditions were not cumulative. The UNDT found that the USG/DMSPC had delegated authority in two scenarios – (i) when the allegation of retaliation is reported by a staff member below or equal to the D-2 level, *or* (ii) when the allegation of retaliation is reported against a staff member below or equal to the D-2 level. As Ms. Reilly was at a level below D-2, she fell within the scenario (i) and thus the USG/DMSPC had delegated authority to decide on whether to refer the matter to OIOS or an AIM.<sup>35</sup>

45. The UNDT also considered whether OIOS was conflicted and thereby precluded from conducting an investigation and determined that it was not. Ms. Reilly premised her conflict-of-interest allegation on the Director of the Ethics Office opining that while OIOS did not have an “actual or possible” conflict of interest, there might be an “appearance” of a conflict of interest. The UNDT held that the USG/DMSPC’s conclusion that an appearance of a conflict was an insufficient reason to refer the matter to an AIM rather than OIOS was not arbitrary.<sup>36</sup>

46. In summary, having found that the USG/DMSPC’s decisions not to implement the recommendations of the March 2020 Alternate Chair, not to provide interim protection measures, and to refer the retaliation case to OIOS rather than an AIM, were taken in reasonable exercise of her discretion, the Dispute Tribunal dismissed Ms. Reilly’s application.

47. On 8 January 2024, Ms. Reilly filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Secretary-General submitted an answer on 11 March 2024.

## **Submissions**

### **Ms. Reilly’s Appeal**

48. Ms. Reilly argues that the UNDT erred because the USG/DMSPC did not have the delegated authority to make determinations related to the recommendations and report issued by the March 2020 Alternate Chair in accordance with the PAR Bulletin. She bases her claims on the wording of the 30 July 2020 communication between the Chef de Cabinet and the USG/DMSPC, in which the Chef de Cabinet requested “advice” from the USG/DMSPC regarding the report and

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<sup>34</sup> *Ibid.*, para. 126.

<sup>35</sup> *Ibid.*, paras. 129-132.

<sup>36</sup> *Ibid.*, paras. 139-140.

recommendations. By using the word “advice,” she argues that this plainly demonstrates that the Secretary-General had assumed authority over the process.

49. Ms. Reilly submits that the UNDT erred because the USG/DMSPC had no authority to decide not to implement the March 2020 Alternate Chair’s recommendations, because such authority only arises during the pendency of an investigation under Section 8.3 of the PAR Bulletin. Specifically, Ms. Reilly argues that because the report and the recommendations posited either implementation of the recommendations or the commencement of an investigation as an alternative to the implementation of the recommendations, and as no investigation was pending, the USG/DMSPC had no authority to decide not to implement the recommendations.

50. Ms. Reilly contends that the UNDT erred by conducting a judicial review of the report and the recommendations. The UNDT erred in determining that the scope of the report and recommendations should have been limited to Ms. Reilly’s 2019 PAR Request, and that the March 2020 Alternate Chair acted outside the scope of his mandate when he examined her 2016 PAR Request. The scope of the review could have included any and all previous and unrelated retaliation, as the alleged retaliation following her complaint against the former DHC should have been considered as part of a pattern.

51. Ms. Reilly claims that the UNDT erred in finding that her 2019 PAR Request was lawfully referred to OIOS for investigation. The UNDT erred because the USG/DMSPC had no authority to take decisions on the referral of the matter to OIOS because the authority that the USG/DMSPC had been delegated by the Secretary-General did not extend to Ms. Reilly’s case. Moreover, OIOS was conflicted and should not have investigated her PAR Request as a result of the allegations she had made against OIOS.

52. Ms. Reilly submits that the delegation of authority to the USG/DMSPC to address questions related to alternative investigative mechanisms in complaints against retaliation is limited to cases in which *both* the complainant and the subject of the complaint are at the D-2 or lower level. Specifically, she alleges that because the subject of the complaint was the former DHC, who served at the ASG level, the USG/DMSPC did not have the delegated authority to make decisions in the case. The UNDT’s interpretation of the delegation renders it over-broad as the only cases outside the authority of the USG/DMSPC would be cases in which *both* the complainant and the subject of the complaint are at the ASG level or above.

53. Ms. Reilly asserts that the UNDT erred in holding that no conflict of interest limited OIOS's ability to investigate her 2019 PAR Request. A partial transcript of a conversation regarding the best way to conduct investigations related to alleged retaliation, in which the former Director of the OIOS Investigations Division took part, proves that OIOS is conflicted from investigating her complaint. In addition, the Ethics Office found that OIOS had a conflict of interest. Ms. Reilly further argues that because the former Director of the OIOS Investigations Division was being considered for promotion, OIOS was further conflicted from investigating her complaint.

54. Ms. Reilly argues that because the USG/DMSPC had a role in the recruitment process for the position to which the former Director of the OIOS Investigations Division had applied, the former Director of the OIOS Investigations Division had an interest in concluding the investigation of her 2019 PAR Request in accordance with the USG/DMSPC's wishes. In support of her contention, Ms. Reilly refers to the *Messinger* case, which she contends is identical to her own.

55. Ms. Reilly requests that the impugned Judgment be reversed and that an order be made that the investigation ordered by the March 2020 Alternate Chair be conducted by an AIM. In the alternative, Ms. Reilly requests the impugned Judgment be reversed and the Alternate Chair's report be remanded to the Secretary-General for a decision regarding its recommendations and investigation to be undertaken by the proper authority. Ms. Reilly requests compensation for harm caused by the mistreatment of her request for protection against retaliation. She has now been separated for speaking out concerning the Practice and her subsequent treatment. 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 regarding the Practice.

### **The Secretary-General's Answer**

56. The Secretary-General submits that the UNDT correctly found that the USG/DMSPC had lawfully decided not to implement the March 2020 Alternate Chair's recommendations or to otherwise provide interim protection measures with respect to Ms. Reilly's 2019 PAR Request. Under Section 8 of the PAR Bulletin, the Ethics Office (or the Alternate Chair of the EPUN in accordance with Section 9) may make recommendations to the Secretary-General for measures to protect the interests of a complainant while the investigation into a complainant's request for

protection against retaliation is underway. The Secretary-General has further delegated the authority to decide on such recommendations to the USG/DMSPC. The authority of the Secretary-General to decide whether to implement the recommendations of the Ethics Office (or the Alternate Chair of the EPUN, when applicable) cannot be limited or conditioned by the Ethics Office.

57. The USG/DMSPC reviewed the March 2020 Alternate Chair's report and recommendations and found them to suffer from a host of procedural and substantive flaws, including the failure by the March 2020 Alternate Chair to seek the Administration's input in the preparation of the report and the recommendations; the review of allegations outside the scope of the case which had been reviewed and adjudicated by the UNDT and the UNAT; and the fact that the recommendations were of a permanent remedial nature, based on the incorrect assumption that a full investigation by OIOS had already been concluded and a finding of retaliation established. Accordingly, the USG/DMSPC decided not to implement the recommendations. The USG/DMSPC's decision was fully in accordance with the PAR Bulletin and grounded on a reasonable factual basis, namely the conclusion that the report and the recommendations were issued *ultra vires*. The UNDT, therefore, correctly found that the USG/DMSPC had lawfully decided not to implement the recommendations or to otherwise provide interim protection measures with respect to Ms. Reilly's 2019 PAR Request.

58. The Secretary-General submits that the UNDT correctly found that Ms. Reilly's 2019 PAR Request was lawfully referred to OIOS for investigation. Section 8.1 of the PAR Bulletin provides that if the Ethics Office (or the Alternate Chair of the EPUN, as applicable) considers that there is a credible case of retaliation or threat of retaliation, it will refer the matter to OIOS for investigation. In accordance with Section 8.2 of that Bulletin, if the Ethics Office considers that there may be a conflict of interest in OIOS conducting the investigation, the Ethics Office may recommend to the Secretary-General to refer the investigation to an AIM. As noted above, the USG/DMSPC was delegated, on 6 February 2020, authority to make decisions under Section 8.2 of the PAR Bulletin. The revised delegation instrument provided that the USG/DMSPC has authority to decide "on action in response to the recommendation of the Ethics Office to refer a complaint to an alternative investigating mechanism, where an allegation of retaliation is reported by or against a staff member up to and including the D-2 level".

59. In the present case, the USG/DMSPC disagreed with the Director of the Ethics Office regarding the referral of the matter to OIOS noting that an appearance of a conflict of interest is

not a sufficient basis on which to refer the matter to an AIM. In view of the foregoing, the UNDT correctly found that the USG/DMSPC, in accordance with the authority delegated to her by the Secretary-General, was authorized to exercise the Secretary-General's authority under Section 8.2 of the PAR Bulletin. The UNDT further correctly found that it was satisfied with the rationale of the USG/DMSPC. Ms. Reilly's allegations that OIOS intended to sabotage investigations into requests for protection against retaliation were unfounded and merely raising such allegations did not give rise to a conflict of interest on the part of OIOS. Thus, the UNDT correctly found that Ms. Reilly's 2019 PAR Request was lawfully referred to OIOS for investigation.

60. The Secretary-General asks that the Appeals Tribunal dismiss the appeal in its entirety and affirm the impugned Judgment.

### **Considerations**

61. We begin by stating some fundamental principles by which Ms. Reilly's appeal must be decided. More than a few of Ms. Reilly's arguments invoke and apply these principles which is why we describe them generally and at the outset.

62. Several of Ms. Reilly's points on appeal are not referable to the UNDT's conclusions in its Judgment. Unless these were arguments advanced but which were not addressed by the Dispute Tribunal, they cannot be brought for the first time on the appeal.

63. Some of Ms. Reilly's submissions invite us to assume or to engage in conjecture about the causative or contributory links between known events. While it can on occasion be appropriate to infer evidentially that something is consequential on some earlier event (what are known as inferential conclusions of fact), there must be a sufficient evidential foundation for drawing such an inference. Speculation alone is insufficient. Cases are more usually decided by the acceptance of facts established directly through witnesses or by reliable documents. Care needs to be taken to determine important issues inferentially.

64. Next and as already referred to, because these cases are part of a connected series of proceedings brought by Ms. Reilly, a number of which have been before the UNAT previously, it is important to record that some issues have already been decided finally in previous judgments and cannot be revisited by us in this appeal. This is by the application of the legal doctrine known as *res judicata*. Both parties are fixed with those decisions and their consequences.

65. Fourth, we address the issue of what was described both in rules and policies and in correspondence as “conflict(s) of interest”. A conflict of interest that a decision-maker may have, or appear to have, is one possible element of the wider legal notion of bias. Simply because someone alleges that another is, or would be, conflicted (has a conflict of interest or may in law be, or appear to be, biased) if that other were to deal with an issue which requires an objective, detached and independent examination of and/or a recommendation or decision about the issue, that alone does not establish that there is or would be such a conflict or bias. Administrative decisions must be made, and challenges to their makers’ entitlement in law to do so on grounds of bias must be robustly scrutinized. Grounds for an assertion of conflict of interest or bias must be established and assessed objectively. The existence and significance of a conflict of interest or bias is a matter of fact and degree in each case.

66. Associated with this issue, conflict or bias can exist in two forms. The first is actual bias such as, for example, where a decision-maker who must be objective, dispassionate and neutral has, contrary to these requirements, previously expressed a view against one party on the issue to be decided subsequently. Another example of actual bias may be that of a decision-maker who stands to benefit financially from the decision, in addition to the proper remuneration that their decision-maker role might attract.

67. The second form of bias, and that which occurs more commonly in practice than actual bias, is apparent bias. It may be more nuanced than actual bias and less easily identified and addressed. Apparent bias may arise where, even in the absence of actual bias, all the circumstances may cause a reasonable, objective, and informed observer to conclude that those circumstances might bring about a biased decision in favour of, or against, one party or another, so that the merits of the parties’ cases might not receive a neutral, dispassionate, and objective assessment and decision.

68. Unless a conflict-of-interest bias can be managed justly and effectively, a biased decision-maker, whether actually or apparently biased as described, should stand or be stood aside and replaced by an unbiased decision-maker. A decision made under such bias will be reviewable judicially and may be set aside.<sup>37</sup>

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<sup>37</sup> The examples of actual and apparent bias used by us in these paragraphs are only illustrative of the principles and are by no means an exhaustive list of such biases.

69. Finally in this broad recitation of judicial and appellate principles, we recall that our function is not to conduct a general appeal but is rather one of review and, if established, correction of errors of the tribunal at first instance, in this case the UNDT. The onus of identifying UNDT error lies on the Appellant in this case. This being an appeal from a judicial body (the UNDT), an appropriate degree of deference must be given to the advantages enjoyed by the first instance Judge, especially on questions of fact-finding. Although the Appeals Tribunal will not hesitate to intervene where errors of law, significant and consequential errors of fact, errors of procedure affecting decisions of cases, or absences or excesses of jurisdiction are established by an appellant, these appeals are not an opportunity to re-run or patch up an unsuccessful case. We approach the decision of this appeal accordingly.

70. Because these proceedings address in detail the nature of the United Nations Ethics bodies, their functions, their relationships with other parts of the United Nations dispute resolution mechanism, and their roles in relation to protection against retaliation, we will summarise how the relevant regulations, rules, and bulletins deal with these issues.

71. The United Nations Ethics Office enjoys a significant degree of independence from the Administration. To reinforce this, among other things the head of an Ethics Office (EO) may, at any time, refer an applicable matter to the Chairperson of the EPUN for advice and guidance. The UNEO can call upon either OIOS or an AIM to undertake investigations of, and to report on, applications for protection from retaliation and the measures to implement those protections. Those investigation/reporting delegates can be internal, that is from another United Nations agency separate from that within which a complainant and/or an accused retaliator works, or even in appropriate cases, external to the Organization. As this case illustrates in practice, the mechanisms for doing so contemplate and make provision for a number of alternates for these tasks to ensure that they can continue to operate efficiently and justly in all the circumstances.

72. We turn now to the rules and procedures laid down for investigating, reporting and decision-making in such cases. The PAR Bulletin addresses the role of an EO in cases of claims for protection against retaliation for engagement in protected activities, i.e. reporting misconduct or for cooperating with authorised audits or investigations. Section 7.1 directs the EO to conduct a preliminary review of the complaint to determine whether the complainant was engaged in a protected activity and whether there is a *prima facie* case that the protected activity was a factor contributing to the alleged retaliation or a threat thereof. The Administration and staff must cooperate with the EO in its investigations. There is an expectation that a preliminary investigation

will be concluded within 30 days of the receipt of all information relating to the complaint (Section 7.4). If it finds no *prima facie* case of threatened or actual retaliation, the EO must notify the complainant in writing (Section 7.5).

73. If the EO considers that there is an actual or potential conflict of interest in his/her reviewing a request for protection against retaliation, he/she must decide whether it is possible to refer the request to an alternative reviewing body which may include a referral to an Alternate Chair of the EPUN (Section 7.7).

74. Where a *prima facie* case of retaliation is found, Section 8.1 of the PAR Bulletin mandates the referral of the complaint to OIOS for investigation and requires that advice of this be given accordingly to the complainant. There is an expectation that the OIOS investigation will be completed and reported on by OIOS to the EO within 120 days of referral.

75. If the EO considers, however, that there may be a conflict of interest for OIOS to investigate and report, then pursuant to Section 8.2, the EO may recommend to the Secretary-General that the investigation referral be to an AIM. It is such a referral to, and investigation by, an AIM that Ms. Reilly contends should have occurred and the refusal to so refer her complaints caused the outcome of them to be tainted and unlawful.

76. Upon receipt of the OIOS's or AIM's report, the EO is to conduct an independent review thereof to determine whether it discloses, by clear and convincing evidence, that the Administration would have taken the alleged retaliatory action absent the complainant's protected activity, or that the alleged retaliatory action was not taken to punish, intimidate or injure the complainant (Section 8.4).

77. We turn now from general statements and analyses about the issues in this appeal to its particulars. Ms. Reilly's appeal focuses particularly (but not exclusively) on the report and recommendations of the March 2020 Alternate Chair, its validity, and the lawfulness of the way in which it was rejected and others refused to act upon it. Ms. Reilly says that the March 2020 Alternate Chair's report and recommendations vindicated her position and would, if acted upon, have resulted in an independent and lawful investigation of her allegations and the implementation of measures to protect her from further retaliation.

78. From Ms. Reilly's submissions, we have identified four distinct issues. They are:

- (i) Did the Secretary-General withdraw delegated authority to the USG/DMSPC to decide the matters in this case, when the Chef de Cabinet sought “advice” from the USG/DMSPC?
- (ii) Did the UNDT err in concluding that although the USG/DMSPC did not have delegated authority to reject the March 2020 Alternate Chair’s report and recommendations, the USG/DMSPC’s actions were nonetheless lawful?
- (iii) Did the UNDT err by conducting a judicial review of the report and the recommendations of the March 2020 Alternate Chair?
- (iv) Did the UNDT err in determining that Ms. Reilly’s 2019 PAR Request was lawfully referred to OIOS for investigation? This issue encompasses two sub-parts, namely, did the USG/DMSPC have the delegated authority to make this determination, and was there a conflict of interest that prevented OIOS from investigating the matter?

79. With respect to issue (i), we observe that Ms. Reilly argues for the first time on appeal that by the Chef de Cabinet seeking “advice” from the USG/DMSPC about the March 2020 Alternate Chair’s report and recommendations, the Secretary-General had reasserted authority over the process. This new argument may not be considered on appeal when it was not raised before the Dispute Tribunal. We would simply observe that Ms. Reilly may be reading too much into the Chef de Cabinet’s use of the word “advice” when forwarding the March 2020 Alternate Chair’s report and recommendation to the USG/DMSPC. There is a formal process for withdrawing or reassigning delegated authority and this cannot be achieved by what we consider was the mere courteous use of the word “advice” in a transmittal note.

80. Turning to issue (ii), we consider whether the UNDT erred in concluding that although the USG/DMSPC did not have delegated authority under the PAR Bulletin to reject the March 2020 Alternate Chair’s report and recommendations, the USG/DMSPC’s decision to do so was lawful. The UNDT concluded that the USG/DMSPC acted without express legal authority as a result of the fact that there was a *lacuna* or gap in the PAR Bulletin which did not contemplate the state of affairs presented by the March 2020 Alternate Chair’s report and recommendations. The UNDT took the approach that in the absence of an express power in the PAR Bulletin, principles of equity supported the USG/DMSPC’s decision not to accept the March 2020 Alternate Chair’s report and

recommendations.<sup>38</sup> The UNDT's determination was buttressed by that Tribunal's parallel conclusion that the USG/DMSPC's decision to reject the report and recommendations was not arbitrary and represented a proper exercise of discretion.<sup>39</sup> Moreover, Ms. Reilly received multiple opportunities to have her PAR requests reviewed.

81. Although we agree with the outcome reached by the UNDT, we arrive there by different reasoning. We begin our analysis from the recommendations that were made by the March 2020 Alternate Chair. These recommendations were of a permanent and corrective nature, namely that Ms. Reilly should be transferred to a regular budget P-3 post commensurate with her qualifications and experience; that she should be placed on a roster for any upcoming P-4 posts that she chose to apply for; and that any entries in her personnel file that might impede her applications be removed. Turning to the PAR Bulletin, we note that recommendations for corrective measures are made first to the head of department or entity concerned (Sections 8.5 and 8.7), and, if the response from the head of department is unsatisfactory, the Ethics Office may make recommendations to the Secretary-General for a final decision (Section 8.8). In other words, ultimate authority for the decision on corrective measures rests with the Secretary-General.

82. We recognize that, pursuant to Section 8.8 of the PAR Bulletin, the Secretary-General would not have a role unless the Ethics Office was dissatisfied with the response from the head of the department or office concerned, here OHCHR. However, we note that the Chef de Cabinet transmitted the March 2020 Alternate Chair's report and recommendations to OHCHR on 28 July 2020 and there is no evidence in the record of the proceedings of any response from OHCHR during the intervening period until the date on which the USG/DMSPC decided to reject the March 2020 Alternate Chair's report and recommendations on 21 September 2020, or approximately two months later.<sup>40</sup> This apparent silence from OHCHR implied an unsatisfactory response, an implied decision of rejection. In any event, as Ms. Reilly is still contesting the non-implementation of these measures, this means that OHCHR's dissatisfaction with the recommendations of the Ethics Office had not changed. As OHCHR showed its dissatisfaction, the decision on the permanent measures rested therefore with the Secretary-General.

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<sup>38</sup> Impugned Judgment, para. 113.

<sup>39</sup> *Ibid.*, para. 115.

<sup>40</sup> Ms. Reilly argued that Section 8.7 of the PAR Bulletin applied and also submitted that no response was received from OHCHR (appeal brief, paras. 30-32). Where we disagree with Ms. Reilly is with her conclusion that because no response was received, no authority accrued to the USG/DMSPC.

83. Finally, the 6 February 2020 revised delegation of authority from the Secretary-General to the USG/DMSPC includes the delegation of authority under Section 8.8. The annex to the revised delegation of authority presents a table of actions that were delegated to the USG/DMSPC under the PAR Bulletin, with “references” to the relevant Sections.<sup>41</sup> Although the table refers to Section 8.7, the operative text in the table corresponds to the actions in Section 8.8. That is, that the USG/DMSPC has the delegated authority to “decid[e] on recommendation[s] of the Ethics Office for protective measures where response from the head of office/department is not satisfactory”. We consider therefore that the USG/DMSPC acted lawfully in rejecting the March 2020 Alternate Chair’s recommendations.

84. In any event, the Appeals Tribunal affirms the UNDT’s conclusion that in the absence of an express provision that was a perfect fit to address the unorthodox situation created by the March 2020 Alternate Chair’s report and recommendation, the Administration was empowered impliedly to decline to act on a report that it considered, rightly, as having exceeded its authorised parameters. We consider that such an exceptional power must be found to exist in such circumstances and that the UNDT cannot be faulted for finding as it did that the Administration proceeded lawfully and reasonably. It is also important, as the UNDT concluded and we agree, that doing so did not close off finally Ms. Reilly’s opportunities to have her claims considered, as they were. Ms. Reilly has not persuaded us that there was such an error by the UNDT that subsequent steps taken in the process were tainted by the unlawfulness of this decision.

85. With respect to issue (iii), we conclude that the UNDT did not conduct a judicial review of the report and the recommendations of the March 2020 Alternate Chair and thus did not err. While the UNDT was not entitled in law to conduct a direct judicial review of an Ethics report and its recommendations,<sup>42</sup> that is not what the UNDT did in this case. As clearly stated in the impugned Judgment, the UNDT was reviewing whether the Administration’s decision to reject the March 2020 Alternate Chair’s report “was arbitrary”. To consider whether that decision was lawfully taken, the UNDT necessarily had to examine the nature and content of the report and recommendations, which it did. There were several flaws and excesses in the March 2020 Alternate Chair’s process and report which were not permitted by the PAR Bulletin’s specific requirements and prohibitions. They were of such significance that they were incapable of isolation from the rest of the report which might then have been applied. Taking only one of several

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<sup>41</sup> Appeal, annex 6.

<sup>42</sup> *Emma Reilly v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1079, para. 32.

examples identified by the UNDT, the March 2020 Alternate Chair failed, in breach of the requirement under Section 9.2 of the PAR Bulletin, to consult with the Administration about his review of Ms. Reilly's request for redetermination on her 2019 PAR Request. His report and recommendations were, thereby, so deficient and one-sided that they could not be relied on even absent other breaches of his terms of reference. We are satisfied that the UNDT reached the correct conclusion thereon. There were, as mentioned, other excesses and failings that the UNDT identified, which we have summarised in our account of the impugned Judgment, and with which we agree. It is clear that the March 2020 Alternate Chair did exceed his mandate and in these circumstances the Administration acted reasonably and in a non-arbitrary manner to reject his recommendations as a nullity.

86. With regard to issue (iv), we also conclude that the UNDT did not err in determining that the referral to OIOS for investigation was lawful. Ms. Reilly first contended that the USG/DMSPC did not have the requisite authority under the PAR Bulletin to decide this matter. This is based on her interpretation of the 6 February 2020 revised delegation of authority from the Secretary-General to the USG/DMSPC with regard to taking actions under Section 8.2 of the PAR Bulletin. Ms. Reilly claims that the delegation of authority precluded the USG/DMSPC from deciding on a recommendation from the Ethics Office to refer a complaint to an AIM in cases where *either* the complainant or the accused occupied a role higher than D-2. Here, the former DHC was at the ASG level, and thus according to Ms. Reilly, only the Secretary-General himself could decide whether to reject the recommendation to have her complaint investigated by an AIM. We are satisfied that the UNDT interpreted the delegation correctly.<sup>43</sup> It is only when *both* parties hold roles higher than D-2 that the USG/DMSPC would not have delegated authority. That was not the case here, as Ms. Reilly was at the P-3 level. The UNDT has not been shown to have erred in concluding that so long as one of the individuals was at the D-2 level or below, the USG/DMSPC had the authority to make decisions under Section 8.2 of the PAR Bulletin.

87. Finally, we also agree that the UNDT did not err in determining that no conflict of interest prevented OIOS from investigating Ms. Reilly's 2019 PAR Request. In a note to the Chef de Cabinet, the Director, UNEO opined that while there was no actual or potential conflict of

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<sup>43</sup> The Update to Delegation of Authority to the Under-Secretary-General for Management Strategy, Policy and Compliance provides that the USG/DMSPC had delegated authority to "decid[e] on action in response to the recommendation of the Ethics Office to refer a complaint to an alternative investigative mechanism, where an allegation of retaliation is reported by or against a staff member up to and including the D-2 level".

interest in OIOS conducting the investigation, there was at least an appearance of a conflict of interest due to some media reports about a partial transcript of a recording of the former Director of the OIOS Investigations Division, speaking of ways to reduce the time frames for retaliation investigations. Ms. Reilly relied on this opinion and developed her case based on it. This assertion of bias impresses us as altogether too vague and tenuous a connection to support a reasonable assertion of apparent bias by OIOS. Likewise, while Ms. Reilly is correct that the UNDT did not address her other allegation of bias against the Director of the Investigations Division, namely that he was engaged in a recruitment to a new position in which the USG/DMSPC was involved and therefore would want to please the USG/DMSPC, we conclude that this submission is inadequately founded on reliable evidence, is only speculative, and is thereby without merit.

88. Even if, however, there had been sufficient evidence to support a requirement to recuse OIOS, that issue almost immediately became moot when OIOS itself declined to investigate Ms. Reilly's application for protection from retaliation because of the legally flawed process leading to its involvement. OIOS did not exercise its powers under the Bulletin and so Ms. Reilly could not have been prejudiced by any bias by OIOS in the USG/DMSPC's favour.

89. We conclude that the UNDT's decision on this point was not erroneous.

90. For the reasons set out above, Ms. Reilly's appeal cannot succeed and must be dismissed.

**Judgment**

91. Ms. Reilly's appeal is dismissed, and Judgment No. UNDT/2023/121 hereby affirmed.

Original and Authoritative Version: English

Decision dated this 27<sup>th</sup> 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 30<sup>th</sup> day of July 2025 in New York, United States.

*(Signed)*

Juliet E. Johnson,  
Registrar