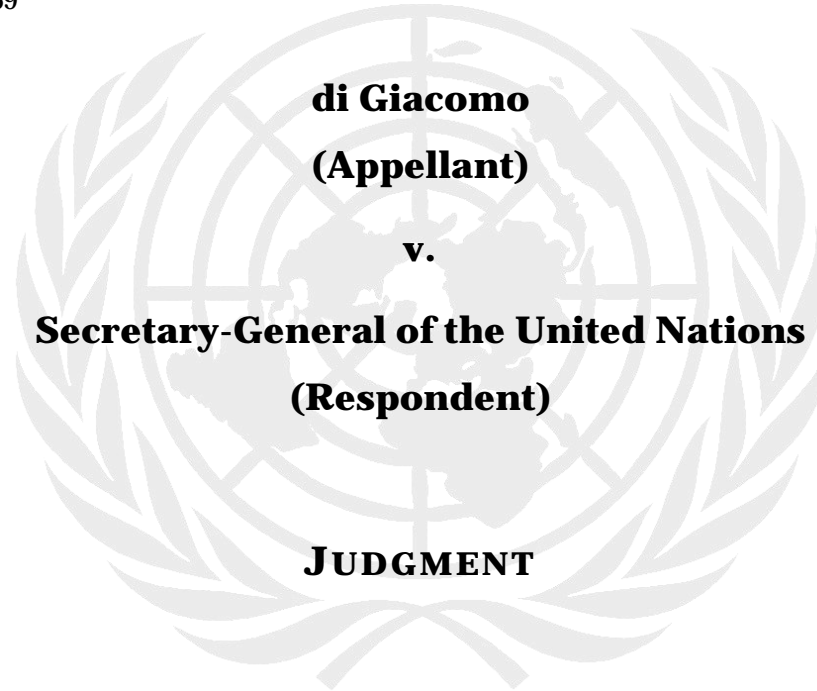




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2011-269



**di Giacomo  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Inés Weinberg de Roca, Presiding Judge Kamaljit Singh Garewal Judge Mary Faherty
Judgment No.:	2012-UNAT-249
Date:	29 June 2012
Registrar:	Weicheng Lin

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Counsel for Appellant: Self-represented

Counsel for Respondent: Stéphanie Cartier

**JUDGE INÉS WEINBERG DE ROCA, Presiding.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Mr. Vittorio di Giacomo against Judgment No. UNDT/2011/168 issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 26 September 2011.

### **Synopsis**

2. The UNDT did not err in law in finding that, pursuant to Articles 2(1) and 3(1) of its Statute, it had no jurisdiction to rule on the application by a former intern against a decision to impose restricted access to the United Nations premises under security escort.

### **Facts and Procedure**

3. From 10 April 2006 to 30 June 2006, Mr. di Giacomo served as an intern with the Department of Economic and Social Affairs (DESA) in New York.

4. On 10 April 2006, the first day of his internship, Mr. di Giacomo went to the office of an acquaintance, Ms. K, who was a staff member with the New York office of the World Health Organization. The meeting was confrontational and did not end amicably. On 17 April 2006, Ms. K. filed a complaint of harassment against Mr. di Giacomo, which was subsequently investigated by the Department of Safety and Security (DSS).

5. By letter dated 3 August 2006, the Office of Human Resources Management (OHRM) informed Mr. di Giacomo, whose internship had ended on 30 June 2006, of the allegations against him arising from Ms. K.'s complaint and the findings of the DSS investigation report. OHRM advised Mr. di Giacomo as follows:

Due to the fact that the Organization has no disciplinary jurisdiction over individuals who are not staff members, this matter cannot be pursued as a disciplinary case in accordance with ST/AI/371 on revised disciplinary measures and procedures. However, as the complainant and the investigation report would form part of your record at the United Nations, we would appreciate receiving, any written statement or explanations you might wish to give in response to the allegations that were made against you.

6. By e-mail dated 1 October 2006 to DSS, the Officer-in-Charge of the Administrative Law Unit (ALU), OHRM, expressed her concerns about the safety of Ms. K and another staff member of the New York office of the World Food Programme, and requested that the security

arrangement to allow Mr. di Giacomo access to the Organization's premises in New York only under security escort at all times be maintained.

7. By letter dated 20 November 2006, Mr. di Giacomo responded to OHRM's invitation to provide a statement or explanations to Ms. K's allegations of harassment. On 21 December 2006, OHRM informed Mr. di Giacomo of the decision to close the case, noting that he was not a United Nations staff member, and therefore the Organization had no disciplinary jurisdiction over him.

8. Further exchanges of communication between Mr. di Giacomo and OHRM ensued in 2007. In February 2008, Mr. di Giacomo requested administrative review, but was informed that the procedure of administrative review was not available to him as he was not a staff member, but an intern.

9. In August 2010, Mr. di Giacomo requested management evaluation under the new system of internal justice, but was informed that his request was not receivable on several grounds, one of which was that the management evaluation mechanism became available to interns only on 1 July 2009, but Mr. di Giacomo's internship had taken place prior to that date.

10. In November 2010, Mr. di Giacomo filed an application with the UNDT. In Judgment No. UNDT/2011/168 dated 26 September 2011, the UNDT dismissed the application, concluding that it had no jurisdiction to review Mr. di Giacomo's application in respect of either the decision not to pursue a disciplinary case against him or the decision to restrict his access to the United Nations premises under security escort.

11. Mr. di Giacomo appealed on 9 November 2011. The Secretary-General answered on 5 January 2012. Subsequently, Mr. di Giacomo filed a motion for removal of certain portions from the Secretary-General's answer and for confidentiality. Mr. di Giacomo's motion was granted. On 12 March 2012, the Secretary-General filed a revised answer.

### **Submissions**

#### **Mr. di Giacomo's Appeal**

12. Mr. di Giacomo submits that the UNDT erred in fact in determining that two decisions were under appeal. He was contesting only the decision to require him to be accompanied by a security escort while on the United Nations premises in New York.

13. Mr. di Giacomo also submits that the UNDT erred in law in concluding that no disciplinary proceedings had been initiated against him. The evidence shows that the procedures that were followed were those which normally apply in disciplinary matters.

14. Mr. di Giacomo further submits that the UNDT erred in law in dismissing his application. The UNDT should have considered his case receivable *ratione personae*, by virtue of its express authority or implicit powers, because it was submitted under the former internal justice system and it is not possible to dismiss his case on the basis of the provisions not in force at the time. In the view of Mr. di Giacomo, the UNDT's decision is contrary to the undertaking by The Legal Counsel that Mr. di Giacomo "must be provided an 'appropriate mode of settlement' of his dispute".

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

15. The Secretary-General submits that the UNDT correctly concluded that it did not have competence over Mr. di Giacomo, who was a former intern and did not have an offer or a letter of employment with the Organization. The UNDT's ruling is fully consistent with the UNDT Statute, and in full conformity with the jurisprudence of the Appeals Tribunal.

16. The Secretary-General maintains that Mr. di Giacomo was not deprived of an effective recourse as he had been informed of the exact nature of the allegations against him, the identity of the complainant, information about the investigation report, and the reasons for his restricted access to the United Nations premises.

17. The Secretary-General also submits that the UNDT properly declined to examine Mr. di Giacomo's claim regarding his restricted access to the UN premises as it was not receivable *ratione personae*. As a former intern, Mr. di Giacomo was a member of the general public. He

cannot complain that the decision to restrict his access is in violation of his terms of appointment or contract of employment.

### **Considerations**

18. The UNDT Judge did not err on the question of competence in finding that, pursuant to Articles 2(1) and 3(1) of the UNDT's Statute, it was limited to cases brought by staff members, former staff members or persons making claims in the name of incapacitated or deceased staff members of the United Nations.

19. In accordance with the purpose clearly enunciated by the General Assembly in paragraph 7 of its resolution 63/253 on the administration of justice at the United Nations, interns do not have access to the UNDT.<sup>1</sup>

20. Even though this Tribunal has recognized that access to the new system of administration of justice could be extended to a person who is not formally a staff member but who could legitimately be entitled to rights similar to those of a staff member,<sup>2</sup> this exception must be understood in a restrictive sense.

21. Although appropriate management evaluation under the new system of internal justice became available to interns on 1 July 2009, access to the UNDT or to the Appeal Tribunal is not recognized.<sup>3</sup>

### **Judgement**

22. The appeal is dismissed.

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<sup>1</sup> *Basenko v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-139.

<sup>2</sup> *Gabaldon v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-120.

<sup>3</sup> General Assembly Resolution 63/253, I (7).

Original and Authoritative Version: English

Dated this 29<sup>th</sup> day of June 2012 in Geneva, Switzerland.

*(Signed)*

Judge Weinberg de Roca, Presiding

*(Signed)*

Judge Garewal

*(Signed)*

Judge Faherty

Entered in the Register on this 12<sup>th</sup> day of September 2012 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar