UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2014-UNAT-466

Saffir and Ginivan

(Respondents/Applicants)

v.

Secretary-General of the United Nations

(Appellant/Respondent)

JUDGMENT

Before:	Judge Luis María Simón, Presiding Judge Rosalyn Chapman Judge Mary Faherty
Cases Nos.:	2013-537 & 2013-538
Date:	17 October 2014
Registrar:	Weicheng Lin

Counsel for Messrs. Saffir and Ginivan:	Not represented
Counsel for Secretary-General:	Amy Wood

JUDGE LUIS MARÍA SIMÓN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against Judgments Nos. UNDT/2013/109 and 110, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 26 August 2013 in the cases of *Saffir v. Secretary-General of the United Nations* and *Ginivan v. Secretary-General of the United Nations*. The Secretary-General appealed on 25 October 2013. No answer has been received from Mr. Saffir and Mr. Ginivan.

Facts and Procedure

2. The facts established by the Dispute Tribunal in this case read as follows:[1]

> ... It is common cause that the [United Nations Staff Union (UNSU)] held elections for its 44th Staff Council and Leadership on 7–9 June 2011. [Both Mr. Saffir and Mr. Ginivan voted in the elections as members of the Staff Union, but Mr. Ginivan also participated in them as a candidate for the post of the First Vice President on Leadership Ticket No. 2.] These elections were organized and conducted by UNSU polling officers, headed by a Chairperson. The polling officers, with the approval of the UNSU Staff Council, conducted the elections via email voting, engaging a company called Election Services Corporation. ... [Despite assurances that measures would be put in place to ensure voter confidentiality and the integrity of the ballot ... auditing services offered by the Election Services Corporation were not purchased and this security measure was therefore not in place.]
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> ... [Mr. Saffir and Mr. Ginivan] essentially challenge ... the voting methodology and ensuing risks ... [The] ... use of the UN email system to conduct online email voting posed a serious security threat and breached the confidentiality of voters. ...
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> ... [Mr. Saffir and Mr. Ginivan] also challenge ... the eligibility of nominees, in particular that of the successful candidate nominated for the position of President on Leadership Ticket No. 1. According to [them], UNSU Regulations allow officers of the Executive Board to serve two consecutive terms, after which a mandatory one term break shall apply before they may run for election again. [They] ... maintain ... that this candidate, having served two consecutive terms on the Executive Board of the Staff Union, was ineligible as she did not take a one term break as required by the rules. Therefore, acceptance of her candidature was a violation of the UNSU Regulations by the polling officers.

[1] The following facts are taken from Judgments Nos. UNDT/2013/109 and 110, paras. 7-23.

... [Mr. Saffir and Mr. Ginivan] also challenge ... the successful candidate's ability to serve as President due to the time release restrictions placed by the General Assembly under resolution 51/226 that requires staff representatives to return to their UN career duties after four consecutive years of time release. The polling officers were put on notice prior to the election that the candidate would be unable to legally serve as President given the restrictions on time release, yet they accepted the nomination, constituting a further violation of the UNSU Regulations.

... [Mr. Saffir and Mr. Ginivan] further allege ... irregularity in the voters roll that was provided in advance to the contracted Election Services Corporation, some four months before the elections, whereby some retirees were wrongly included in the list, yet some new staff members employed during the interim period of four months were excluded. ...

... Similarly, staff members who did not have email addresses did not receive ballots and were unable to vote ... [As] no investigation has been conducted to confirm the accuracy of the list of eligible voters or to establish the number of would-be voters who had no access to the electronic voting ... the election results are not reliable ...

... [Mr. Saffir and Mr. Ginivan] complain ... that the results of the elections were published with undue haste ... thus effectively denying candidates the right to challenge the exercise. ...

... [Mr. Saffir and Mr. Ginivan] state ... that following the election, the unsuccessful candidate (the former President of the Staff Union), requested an investigation into election violations by the Office of Internal Oversight Services and no action was taken. [They] ... apparently [were] alerted to all this when the unsuccessful candidate sent a letter expressing grave misgivings on the fairness of the election process. [They] ... decided to appeal the results to the newly-elected Arbitration Committee of UNSU.

... [Mr. Saffir and Mr. Ginivan submitted complaints] to the Arbitration Committee on 5 and 8 July 2011[, respectively]. ... Having ascertained that the ... complaints were identical, the Arbitration Committee consolidated the two complaints and heard them jointly.

... [Mr. Saffir and Mr. Ginivan allege that the polling officers and the Chairperson committed violations in the conduct of the election, including *inter alia*, violation of the right to vote, violation of the right to secret ballot, disregard for candidate ineligibility, the lack of independent monitoring and oversight, and refusal to allow a challenge to the election results. They further allege that the Arbitration Committee also violated the UNSU Regulations by not dealing with the complaint within two weeks as per UNSU regulations, but transmitting its decision (dated 28 September 2011) to them on 6 October 2011, three months after they filed their complaint.] The Committee dismissed the ... complaint[s], finding that [they were] unsubstantiated by the facts.

... [Mr. Saffir and Mr. Ginivan] allege ... that the Arbitration Committee ... failed to investigate or adequately address the violations.

> ... By letter dated 7 November 2011, [Mr. Saffir and Mr. Ginivan] through [their] Counsel, requested the Secretary-General of the United Nations to conduct an investigation into the alleged irregularities surrounding the June 2011 elections, in light of the inadequacy of the Staff Union's internal arbitration process ...
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> ...
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> ... [On 13 February 2012, Mr. Saffir and Mr. Ginivan filed Applications with the Dispute Tribunal.]

3. On 16 February 2012, the Respondent filed a motion with the UNDT requesting leave to file a response on the limited issue of receivability, which leave was granted by Order of 6 March 2012.

4. On 30 March 2012, the Respondent submitted his "Reply on Receivability" arguing that, as the contested decision related to the "workings of internal Staff Union matters", it was not an appealable administrative decision and, consequently, the UNDT did not have jurisdiction *ratione materiae* to consider the applications.

5. In its Order of 1 August 2013, the UNDT determined that "the submissions before it were sufficient to determine the matter in full" and that it would consider the issues of receivability and merits in one judgment.

6. On 26 August 2013, the Dispute Tribunal rendered Judgments Nos. UNDT/2013/109 and 110. The UNDT found that the claims regarding the Staff Union's elections and, in particular, the claims for relief, were not properly before it.

7. With regard to the claims regarding the Secretary-General's decision not to conduct the requested investigation, the Dispute Tribunal found that the administrative decision was clearly identifiable, at least as an omission – the refusal to conduct an investigation – and that the applications with respect to the Secretary-General's refusal to carry out the requested investigation were receivable.

8. With regard to the merits, the Dispute Tribunal found that "neither staff rule 8.1 nor the [Dispute] Tribunal's case law appear to suggest, even implicitly, that the Secretary-General was obliged to intervene in the conduct of the UNSU elections of June 2011 or investigate them thereafter". The proper mechanism to deal with issues such as the alleged irregularities is the

Staff Union Arbitration Committee. This Committee had already examined and rendered a binding adjudication upon these issues. Mr. Saffir and Mr. Ginivan

> failed to show any proper legal basis in the legal framework regulating the UNSU and the Arbitration Committee that would even allow for the Secretary-General to interfere with the Committee's ruling. On the contrary, … in view of the principle of non-interference by management in union affairs, it would not be appropriate for the Administration to do so, including by opining on the validity of the ruling of the Arbitration Committee.[2]

Thus, the Dispute Tribunal found that the Secretary-General's refusal to initiate an investigation of the Staff Union elections of June 2011 was lawful.

Submissions

The Secretary-General's Appeal

9. The Secretary-General submits that the present appeal is receivable, notwithstanding that the Appeals Tribunal has held in *Sefraoui* that a party may not file an appeal in respect of a claim in which that party has prevailed.[3] The Secretary-General notes that the Appeals Tribunal has recently emphasized that any "exclusion of the right to appeal" must be considered in opposition to the general principle of the right to appeal and must, therefore, be "narrowly interpreted". In the present case, the UNDT, although it dismissed the application on the merits, rejected the Secretary-General's arguments that the application was not receivable *ratione materiae*. The Secretary-General submits that, in finding that his decision not to investigate the alleged 2011 Staff Union election irregularities constituted an administrative decision, the UNDT exceeded its competence. Accordingly, the Secretary-General submits that the Appeals Tribunal's ruling in *Sefraoui* does not preclude the filing of the present appeal.

10. The Secretary-General further submits that the Dispute Tribunal erred on a question of law and exceeded its competence in finding that the contested decision constituted an appealable administrative decision. The challenged decision in the present case does not meet the required fundamental components of an appealable administrative decision, that is, (i) the challenged decision must create direct legal consequences, and (ii) those legal consequences must relate to the individual rights and obligations of the concerned staff member. Although the Secretary-General's determination that he could not lawfully investigate Staff Union elections

[2] Judgments Nos. UNDT/2013/109 and 110, para. 54.
[3] *Sefraoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-048.

may have touched upon matters affecting Mr. Saffir and Mr. Ginivan's right to freedom of association, the determination did not produce direct legal consequences to the legal order with respect to their rights and obligations as staff members.

11. The Secretary-General requests the Appeals Tribunal to dismiss Mr. Saffir's and Mr. Ginivan's applications to the UNDT in their entirety on the grounds that they were non-receivable *ratione materiae*.

Considerations

12. For reasons of judicial economy, this Tribunal consolidated both appeals.

13. The majority of the Appeals Tribunal holds that, contrary to the Secretary-General's submission, the present appeals are not receivable because the principles developed in our jurisprudence apply to the present cases: a party may not file an appeal against a judgment about a claim in which that party's position has prevailed.[4] In the present cases, even if the Dispute Tribunal examined the merits of the applications that the staff members submitted before it and did not reject them *ratione materiae*, as the Secretary-General had urged, it ultimately dismissed the petitions. Therefore, the Administration prevailed before the UNDT.

14. The outcome of the suits was in favour of the Secretary-General, who had objected to the progress of the applications and saw his position prevail as a result of the procedure.

15. Thus, that outcome prevents the successful party from filing an appeal, which is an instrument to pursue a change of a judicial decision, in the form of modification, annulment or vacation, used as a way to repair a concrete grievance directly caused by the impugned judgment.

16. The concrete and final decision adopted by a court must generate the harm that constitutes the condition *sine qua non* of any appeal.

17. It is not enough to claim that the grievance comes from the reasoning of the judgment, from all or part of its motivation or from the rejection of certain or all of the arguments submitted by a party.

[4] *Larkin v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-134; *Rasul v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-077; *Sefraoui v. Secretary-General of the United Nations*, Judgement No. 2010-UNAT-048.

18. The right to appeal arises when the decision has a negative impact on the situation of the affected party. That means that a judgment can contain errors of law or fact, even with regard to the analysis of the tribunal's own jurisdiction or competence and yet, be not appealable.

19. If the errors attributed to the judgment do not have an impact on the final outcome of the process, an appeal concerning those errors would become moot because it would be merely academic or theoretical, since the adopted decision itself was taken in favour of the appellant without generating damage to the impugning party.

20. It is correct that Article 2 of the Statute of the Appeals Tribunal (Statute) grants the parties the right to file an appeal when they assert that the judgment contains one and/or more of the five appealable grounds: excess of jurisdiction or competence; failure to exercise jurisdiction; error on a question of law; error in procedure such as to affect the decision of the case; and error on a question of fact resulting in a manifestly unreasonable decision.

21. However, this does not mean that an appeal becomes receivable just because it contains the assertion of one or more of the listed errors, because the concept of an appeal, set forth in paragraph 1 of Article 2 of the Statute, carries the inherent requirement of a concrete grievance caused by the impugned decision, such as to justify the outcome of the appeal pursued by the appellant in the form of reversal, modification or remand of the judgment of the Dispute Tribunal.

22. If the Appeals Tribunal affirms the first-instance judgment, the appeal fails and this eventual outcome shows that an appeal must necessarily aim to obtain a change in the appealed decision which is the objective of the appeal process.

23. That goal cannot be reached if the outcome of the decision would be the same despite the appeal, a circumstance that logically leads to the conclusion that an appeal is not receivable if it does not identify a concrete grievance suffered by the appellant as a direct consequence of the outcome of the impugned decision, which warrants repair by an appellate court through a change in the decision by annulling, vacating it totally or partially and/or remanding the case for a trial *de novo*.

24. An appeal is "a proceeding undertaken to have a decision reconsidered by a higher authority: especially the submission of a lower court's or agency's decision to a higher court for review and possible reversal".[5] According to another scholar, an appeal is an "ordinary recourse granted to a litigant who affirms having suffered some grievance or damage from a judgment or decision taken by the lower court judge to claim because of it, looking to obtain its annulment by the higher court judge".[6] The internationally known author comments the etimology of the word, coming from latin "appellatio, appellationis" and these from the verb "appello-appellare", meaning to address somebody. The Spanish King Alfonso X (called the Wise) already used the word with its current meaning, so it is not a modern cultism nor a galicisim.[7] Enrique Vescovi explains that the grievance ("agravio" in Spanish) is the damage caused to a party who loses something because of the judgment, and constitutes the requirement of the appeal, which precisely seeks to repair the damage. The litigant must be partially or totally defeated to have the interest which justifies the submission of an appeal.[8] The mechanism was originated in the Late Roman Empire and survived through centuries in western civilization, both in civil and common law systems, in Europe and the Americas.

25. The conclusion reached by the UNDT about the issue of its own jurisdiction regarding the claims submitted by Messrs. Saffir and Ginivan may be considered simply as an error of law, which led it to examine the merits of the cases. Despite that possible error, the decisions on the merits upheld the Secretary-General's objective that the claims should not be granted. From that point of view, the UNDT decisions were adopted in favour of the Secretary-General, precluding the possibility of an appeal thereon.

26. The circumstance of the issues being solved in a way different than the one urged by the Secretary-General, even with regard to jurisdiction, does not allow that party to appeal the judgment. Whether or not related to jurisdiction, the ultimate solution did not have a negative impact on the outcome of the cases, which would have been the same if the UNDT had considered the claims not receivable *ratione materiae*.

[5] Black's Law Dictionary (Ninth Edition, 2009).
[6] Vocabulario Jurídico, Eduardo. J. Couture, Ed. Depalma, Buenos Aires (1983), page 97 (English translation provided by the Presiding Judge).
[7] *Ibid.*
[8] "Derecho Procesal", vol. VI, Ed. Idea, Montevideo, 1985, pages 76-77 *et alter.*

27. Therefore, the circumstances of the present two cases do not deviate from the quoted jurisprudence, which is affirmed by the majority of this Tribunal and thus leads us to dismiss the appeals as not receivable.

28. It must be pointed out that the jurisprudence in *Sefraoui* and other cases was not set aside in *Ngoma-Mabiala*t[9] where this Tribunal distinguished the latter from *Sefraoui* and *Rasul*, based on the reason that the UNDT was expected to pronounce a judgment exclusively about receivability, as a preliminary issue to be dealt with, due to a procedural option previously stated, and despite that, the UNDT exceeded its jurisdiction as it not only decided on the receivability issue but also added observations about the merits without in fact adjudicating on them. The situation was so exceptional that from a practical point of view, it seems that two judgments were adopted and not just one as expected. That clear excess of the scope of jurisdiction previously led the Appeals Tribunal to consider the appeal admissible because the "observations" inserted by the UNDT Judge were the equivalent of an adjudication on the merits which was completely unnecessary since the application was already determined to be not receivable in the same judgment.

29. For the majority of the panel, the present cases emanate from a different background and the quoted *Ngoma-Mabiala* Judgment does not apply. In the cases at bar, the UNDT decided to examine the issues of receivability and merits in one judgment. Logically, after having determined that it had jurisdiction over the issue of the failure to initiate an investigation the Dispute Tribunal had to proceed to analyze the merits of that administrative decision. That cannot be considered an excess of jurisdiction such as to allow an appeal against the same judgment.

30. The majority of this Tribunal also considered that the jurisprudence as embodied in *Sefraoui* and the like is consistent with the rationale underlying the *Hunt-Matthes* Judgment,[10] which states that after losing the challenge (decided as a preliminary matter) about the receivability of an application, the Administration must wait for the final judgment to be able to raise the issue again as a ground for an appeal. That principle does not contradict the requirement that a grievance must arise from the final judgment to make an appeal receivable, as decided in *Sefraoui*, which is common to any appeal.

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[9] *Ngoma-Mabiala v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-361.
[10] *Hunt-Matthes v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-444.

31. It must be taken into account that in the case of *Hunt-Matthes*, there were two judgments issued by the UNDT, both of which were against the Secretary-General, one on receivability and the other concerning the merits. This Tribunal even asked if a separate appeal on receivability was admissible and considered it receivable because the Secretary-General could have in good faith understood that filing two appeals to deal with two judgments from the UNDT was the way to do it. That reasoning confirms that even in that case, the jurisprudence was followed, because the adjudication on the merits could also cause grievance to the Secretary-General.

32. The situation was explained in the *Bertucci* full-bench judgment quoted in *Hunt-Matthes* as follows:

> The Appeals Tribunal concludes that our rationale in *Kasyanov* and its progeny applies equally to the situation presented in this case, in which the UNDT rendered separate judgments on receivability (concluding that the application was receivable) and on the merits. Only one appeal should be filed, and that is after the entry of the final judgment. This conclusion is consistent with our jurisprudence:
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>> As established in *Bertucci,* an interlocutory appeal is receivable where the UNDT clearly exceeded its jurisdiction or competence. This will not be the case in every decision by the UNDT concerning its jurisdiction or competence. The general rule that only appeals against final judgments are receivable does not apply where the UNDT dismisses a case on the grounds that it is not receivable under Article 8 of the UNDT statute, as the case cannot proceed any further and there is in effect a final judgment,
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>> The receivability of an interlocutory appeal from a decision of the UNDT allowing a case to proceed on the basis that it falls within its competence under the UNDT Statute is a different matter. If the UNDT errs in law in making this decision and the issue is properly raised later in an appeal against the final judgment on the merits, there is no need to allow an appeal against the interlocutory decision.[11]

33. Lastly, the majority of the Tribunal emphasizes that by declaring the present appeals not receivable, it is not at all determining that applications like the ones submitted before the UNDT are within the jurisdiction of that Tribunal. The issue of receivability of the claims of that kind would eventually be addressed when it is raised in a case properly before the Appeals Tribunal, which is not the case here. With due respect, we do not agree with the dissent that applications against potentially inadmissible or hypothetically erroneous holdings on

[11] *Id.*, para. 23 (internal citations omitted).

receivability justify receiving appeals coming from a party that wins the case on the merits. Jurisprudential policies must not be established to consider the exceptional or hypothetical cases. Moreover, allowing non-receivable appeals just because a party seeks one argument to be declared valid affects procedural economy and judicial effectiveness.

Judgment

34. Both appeals are dismissed as not receivable by majority, with Judge Chapman dissenting.

Original and Authoritative Version: English

Dated this 17th day of October 2014 in New York, United States.

(Signed)	*(Signed)*
Judge Simón, Presiding	Judge Faherty

Entered in the Register on this 23rd day of December 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar

Judge Chapman's Dissenting Opinion

1. I respectfully dissent. I would receive the Secretary-General's appeals.

2. Generally, "[o]nly one appeal should be filed, and that is after the entry of the final judgment".[12] This means, in the context of a judgment that addresses both the receivability and the merits of the application, that when the UNDT erroneously receives an application and addresses its merits, the Secretary-General generally must wait until the final judgment is rendered before he can file an appeal.[13]

3. The majority has determined, however, that since the Secretary-General prevailed on the merits of the cases before the UNDT, he is foreclosed from appealing the UNDT's erroneous receipt of the staff members' applications, based on our jurisprudence in *Sefraoui.*[14] *Sefraoui* broadly holds that "[a] party in whose favour a case has been decided is not permitted to appeal against the judgment on legal or academic grounds".

4. *Sefraoui* is distinguishable on several grounds. First, the basis of our holding in *Sefraoui* does not apply to the present appeals. In *Sefraoui*, we rejected the Secretary-General's appeal because "[n]one of the grounds of appeal pleaded … [we]re valid grounds under Article 2(1) of the Appeals Tribunal's Statute. Therefore, the appeal [wa]s not receivable under Article 7(1) of the Appeals Tribunal's Statute."[15]

5. Regarding the present appeals, the Secretary-General clearly states that the appeals are based on the grounds that the Dispute Tribunal "erred on a question of law and exceeded its competence in finding that it had jurisdiction *ratione materiae*". Article 2(1) of the Statute provides for review by the Appeals Tribunal of judgments "in which it is asserted that the Dispute Tribunal has: (a) Exceeded its jurisdiction or competence; … [and] (c) Erred on a question of law". The Secretary-General raises both grounds for review.

[12] *Hunt-Matthes v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-444.
[13] *Id.*
[14] *Sefraoui v. Secretary-General of the United Nations*, Judgement No. 2010-UNAT-048.
[15] *Id.*, para. 18.

6. Second, our reasoning in *Ngoma-Mabiala*[16] applies to the present appeals. In *Ngoma-Mabiala,* we distinguished *Sefraoui* and allowed the Secretary-General to appeal a judgment in which the application had been dismissed as not receivable. We held that the Secretary-General was allowed to appeal the judgment because the UNDT had erred in law and exceeded its jurisdiction in commenting upon the merits of the case although it had dismissed the application as not receivable.[17]

7. The present appeals are similar to *Ngoma-Mabiala* because, in my opinion, the UNDT erred in law and exceeded its jurisdiction or competence by erroneously receiving the staff members' applications, which were not receivable *ratione materiae,* and then further exceeded its jurisdiction or competence by addressing the merits of the applications.

8. The staff members' applications should not have been received *ratione materiae* because they did not challenge appealable administrative decisions. We have repeatedly and consistently applied the definition of an appealable administrative decision set forth in *Andronov:*

> It is acceptable by all administrative law systems, that an "administrative decision" is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules and regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.[18]

9. The Dispute Tribunal erred in law and failed to properly apply the foregoing definition of an appealable administrative decision.[19] The key characteristic of an appealable administrative decision is that the decision must "produce[] direct legal consequences" affecting a staff member's terms and conditions of appointment; the administrative decision

[16] *Ngoma-Mabiala v. Secretary General of the United Nations*, Judgment No. 2013-UNAT-361.
[17] *Id.*
[18] Former Administrative Tribunal Judgment No. 1157, *Andronov* (2003) V.
[19] See *Wasserstrom v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-457; *Al-Surkhi v. Commissioner-General of the United Nations Works and Relief Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-304; *Andati-Amwayi v. Secretary-General of the United Nations*, Judgment No, 2010-UNAT-058.

must "have a direct impact on the terms of appointment or contract of employment of the individual staff member".[20]

10. The decisions challenged before the Dispute Tribunal did not produce direct legal consequences on the staff members or affect their terms and conditions of appointment. Although the Administration has a general obligation to facilitate the organizational rights of staff members, it cannot interfere with the staff unions' or organizations' elections. Accordingly, the Administration has no obligation or duty to investigate how the elections are conducted, and requesting an investigation by the Administration, which denies the request, does not create an administrative decision that is subject to judicial review.

11. Since the staff members' applications should not have been received *ratione materiae*, the UNDT exceeded its jurisdiction or competence when it addressed the merits of the applications. If the Dispute Tribunal had properly dismissed the applications as not receivable, any judgments addressing their merits clearly would have been issued in excess of jurisdiction like the situation in *Ngoma-Mabiala*.

12. Apart from the Secretary-General's right to judicial review under Article 2(1) of the Statute, the Secretary-General has an interest in establishing the correct legal standard for receiving applications challenging staff elections and procedures for such elections. Without review by the Appeals Tribunal, the UNDT Judgment, with its erroneous holding on receivability, remains a valid judgment. As such, it is foreseeable that other, similar applications challenging staff elections and election procedures will be filed by staff members and the Secretary-General will be forced to defend against those actions. It is preferable for the Appeals Tribunal to receive the Secretary-General's appeals and to address the Secretary-General's claim that the applications were improperly received *ratione materiae*, thereby giving guidance to the UNDT.

13. For these reasons, I would find the Secretary-General's appeals to be receivable and I would address his claim that the Dispute Tribunal erred in law and exceeded its competence in receiving *ratione materiae* the staff members' applications and addressing the merits of those applications.

[20] *Andati-Amwayi v. Secretary-General of the United Nations*, Judgment No, 2010-UNAT-058, para. 17.

Original and Authoritative Version: English

Dated this 17th day of October 2014 in New York, United States.

(Signed)

Judge Chapman

Entered in the Register on this 22nd day of December 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar