



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

Case No. 2010-095

**Masri
(Respondent/Applicant)**

v.

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

**ORDER ON APPLICATION FOR LEAVE TO FILE
FRIEND-OF-THE-COURT BRIEF**

Before: Judge Jean Courtial, President

Order No.: 13 (2010)

Date: 5 October 2010

Registrar: Weicheng Lin

Applicants: Brian Gorlick
Katya Melliush
Amal Oummih
Bart Willemsen
Esther Shamash

JOINT APPLICATION TO FILE FRIEND-OF-THE-COURT BRIEF

1. On 14 September 2010, the Appeals Tribunal's Registry distributed to the relevant stakeholders a list of cases to be considered by the Appeals Tribunal during its 2010 fall session. The list includes the Secretary-General's appeal against Judgment No. UNDT/2010/056 in the case of *Masri v. Secretary-General of the United Nations* rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) on 7 April 2010.

2. On 24 September 2010, five staff members of the Office of Staff Legal Assistance (OSLA and Applicants, respectively) filed a "Joint application to file a friend-of-the-court brief" in this case (joint application). On 24 September 2010, the Registry of the Appeals Tribunal forwarded the joint application to both parties pursuant to Article 17(1) of the Appeals Tribunal's Rules of Procedure (Rules). The Secretary-General filed his observations on the joint application on 29 September. On 1 October 2010, Masri filed his observations on the joint application. The same day, the Applicants filed a "response" to the Secretary-General's observations.

Submissions

3. The Applicants note that in his appeal the Secretary-General, inter alia, alleges that the Dispute Tribunal (i) erred in law in holding that the Secretary-General must substantiate charges of misconduct against Abdul Karim Masri (Masri) pursuant to a higher standard than a balance of probabilities, and (ii) erred in law and exceeded its competence by going beyond a review of whether there was a reasonable basis for the Secretary-General's determinations.

4. The Applicants request leave to file a friend-of-the-court-brief under Article 17 of the Rules. They argue that they qualify as friends-of-the-court, because they are persons "for whom recourse to the Appeals Tribunal is available"; and are also lawyers from OSLA for whom there is a particular interest in the issue at the heart of the present appeal. The issue is so fundamental and important that any decision in favour of the Secretary-General will have a huge impact on the staff of the United Nations at large.

5. The Secretary-General submits that the Applicants are not qualified to appear as friends-of-the-court, whether in their capacity as lawyers from OSLA, or on the basis of their status as staff members of the United Nations. He submits that OSLA is neither a person nor an organization “for whom recourse is available” under Article 17 of the Rules. Should the Appeals Tribunal decide to permit OSLA staff members to file a friend-of-the-court brief on the basis of their status as staff members of the United Nations, then all staff members should be notified about the Appeals Tribunal’s docket and thereby be informed of the opportunity to file a friend-of-the-court brief.

6. The Secretary-General further submits that if Masri’s appeal was provided to the OSLA staff members by Masri himself, granting the joint application would provide him with an opportunity to supplement his pleadings, in collaboration with OSLA. If the Appeals Tribunal were to grant the request, the Secretary-General should at least be permitted 30 days to respond to the amicus curiae brief.

7. The Applicants request leave to file a response to the Secretary-General’s observations in order to assist the Appeals Tribunal in adjudicating the matter. The Applicants clarify that they filed the joint application in their capacity as United Nations’ staff members and not on behalf of OSLA. Contrary to the Secretary-General’s contention, Article 17 of the Rules precisely provides for the possibility of all United Nations’ staff members to file friend-of-the-court briefs.

8. The Applicants agree that the Secretary-General should be allowed adequate time to respond to the amicus curiae brief. The amicus curiae brief could be filed before 6 October 2010, which would allow the Secretary-General a period of approximately two weeks to respond. The Applicants further contend that the Secretary-General’s claim that Masri is collaborating with OSLA to “supplement his pleadings” in breach of the Secretary-General’s rights is “unpersuasive at best”.

9. Masri submits that he has no objection to the Applicants’ joint application.

Considerations

10. According to Article 17 of the Rules, “[t]he President or the panel hearing the case *may* grant the application [to file a friend-of-the-court brief] if it considers that the filing

of the brief would assist the Appeals Tribunal in its deliberations”.¹ Having carefully considered the pleadings in this case and the submissions of the Applicants and the parties, I do not find that a friend-of-the-court brief would assist the Appeals Tribunal in its deliberations.

ORDER

11. For the foregoing reason, I, Judge Jean Courtial, President of the Appeals Tribunal, reject the joint application in its entirety.

Dated this 5th day of October 2010 in Paris, France.

Original: English

(Signed)

Judge Courtial, President

Entered in the Register on this 5th day of October 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar

¹ Emphasis added.