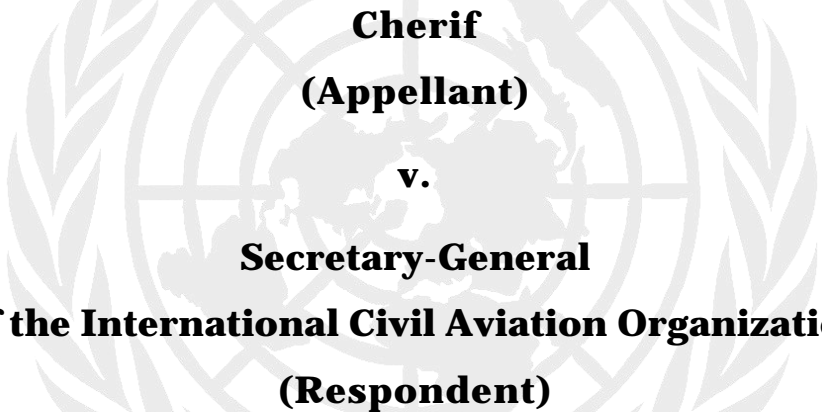




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2010-137



**Cherif  
(Appellant)**  
**v.**  
**Secretary-General  
of the International Civil Aviation Organization  
(Respondent)**

**ORDER**

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Before: Judge Mark P. Painter

Order No.: 36 (2011)

Date: 19 January 2011

Registrar: Weicheng Lin

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Counsel for Appellant: Not represented

Counsel for Respondent: John Augustin

**REQUESTS FROM APPELLANT AND RESPONDENT**

1. On 28 July 2009, Taieb Cherif (Cherif) filed an appeal with the former United Nations Administrative Tribunal against two decisions taken by the governing council of the International Civil Aviation Organization (ICAO) on 20 January 2009. Cherif is a former Secretary-General of ICAO.
2. The case file was transferred to this Court after the former Administrative Tribunal was abolished at the end of 2009. It should be noted that Cherif appealed to the former Administrative Tribunal without first having his case reviewed by a joint appeals body within ICAO.
3. The Appeals Tribunal has received procedural requests from the Appellant and the Respondent, respectively. By letter dated 4 December 2010, Cherif requests to submit additional documentary evidence. By letter dated 17 December 2010, ICAO requests the Appeals Tribunal to order Cherif to instruct Dr. Opatrny, an ICAO doctor, to respond to questions arising from a letter that she had prepared at Cherif's request.
4. I see no need to address these two requests before we resolve the preliminary issue as to whether Cherif's appeal is receivable. The above issues are properly addressed at the trial level; this Court is an appellate court.
5. Appeals by individuals having worked for ICAO are governed by Article 2(10) of the Statute of the Appeals Tribunal, which provides:

The Appeals Tribunal shall be competent to hear and pass judgement on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity concerned and the Secretary-General of the United Nations to accept the terms of the jurisdiction of the Appeals Tribunal, consonant with the present statute... Such special agreement may only be concluded if the agency, organization or entity utilizes a neutral first instance process that includes a written record and a written decision providing reasons, fact and law...

6. The Agreement between the United Nations and ICAO concluded on 6 January 2010 states, in Article 2(6)

An application shall not be receivable unless the person concerned has previously submitted the dispute to the neutral first instance process provided for in the Staff Regulations of the Organization and the latter has communicated its opinion to the Secretary General, except where the Secretary General and the applicant have agreed to submit the application directly to the Appeals Tribunal.

7. This is the case here. Cherif did not submit the dispute to ICAO's joint appeals body before he appealed to this Court. There is no evidence that ICAO and Cherif agreed on the stipulated facts and thus agreed to submit the appeal directly to the Appeals Tribunal.
8. Since there has been no submission on the receivability of Cherif's appeal, I need the parties to submit briefs on this issue for the benefit of this Court.

**ORDER**

9. The parties are to provide to this Court briefs setting forth their positions as to whether Cherif's appeal as presently submitted is receivable, within 15 calendar days as from the date upon which they receive this Order.

Dated this 19<sup>th</sup> day of January 2011 in Cincinnati, United States.

Original and authoritative version: English

*(Signed)*

Judge Painter, Duty Judge

Entered in the Register on this 19<sup>th</sup> day of January 2011 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar