



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

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Case No. 2011-258



**De Kermel  
(Appellant)**

**v.**

**Secretary-General  
of the International Maritime Organization  
(Respondent)**

**ORDER No. 85 (2012)**

**ON APPLICATION BY THE**

**FEDERATION OF INTERNATIONAL CIVIL SERVANTS' ASSOCIATIONS**

**TO FILE FRIEND-OF-THE-COURT BRIEF**

Applicant:

Marie Conilh de Beyssac

Counsel for Appellant:

Laurence C. Fauth, Esq.

Counsel for Respondent:

Christopher Young

## **JUDGE LUIS MARÍA SIMÓN, DUTY JUDGE.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an application to file a friend-of-the-court brief, submitted by the Federation of International Civil Servants' Associations (FICSA) on 10 February 2012 in the case of *De Kermel v. Secretary-General of the International Maritime Organization*. The International Maritime Organization (IMO) filed objections to FICSA's application on 17 February 2012.

### **Impugned Decisions**

2. By letter dated 27 June 2011, the Secretary-General of the IMO informed Ms. Valerie de Kermel that he endorsed the Joint Appeals Board's (JAB) recommendation which concluded that her two appeals "one, against the three administrative decisions made by the Organization in the context of [her] election to the post of FICSA General Secretary; and a second, against the Organization's decision to place [her] on special leave without pay" were without merit.

3. On 29 September 2011, Ms. de Kermel appealed the IMO Secretary-General's decisions to the Appeals Tribunal, and on 8 November 2011, the IMO Secretary-General filed his answer.

### **Submissions**

4. FICSA submits that it is a "staff association" within the meaning of Article 17 of the Rules of Procedure of the Appeals Tribunal (Rules). It contends that it was directly affected by the IMO Secretary-General's decision to place Ms. de Kermel on special leave without pay (SLWOP) during the third year that she was acting as General Secretary of FICSA. It submits that the friend-of-the court brief will assist the Appeals Tribunal during its deliberations on the factual and legal issues, "i.e. the impact of the decision on FICSA". FICSA submits that IMO's failure to fund the release of Ms. de Kermel to serve as the elected General Secretary of FICSA during her last year constitutes a breach of the right to freedom of association and of its independence.

5. IMO objects to FICSA's application. IMO submits that the suggested arguments fall outside the scope of Ms. de Kermel's appeal. It submits that the suggested arguments

introduce issues which were not considered by the JAB and could only be fairly deliberated in a forum in which all of the affected United Nations' agencies could be represented and could express their views.

6. IMO also submits that FICSA filed its application at a late stage in the proceedings which prolongs the resolution of the case and constitutes an abuse of process. It also submits that FICSA supported Ms. de Kermel with her appeal, inter alia, by drafting her submissions, and since FICSA merely supplements Ms. de Kermel's appeal, it should be bound by the time limits imposed for the filing of the appeal brief.

### Considerations

7. Article 17 of the Rules provides as follows:

1. A person or organization for whom recourse to the Appeals Tribunal is available and staff associations may submit a signed application to file a friend-of-the-court brief, which may be transmitted electronically. [...].

2. The President or the panel hearing the case may grant the application if it considers that the filing of the brief would assist the Appeals Tribunal in its deliberations. [...].

8. As a preliminary matter, I note that FICSA is a "staff association" within the meaning of Article 17 of the Rules, and that accordingly it has standing to file a motion under this provision. I will therefore proceed to consider the substance of its motion.

9. A decision on an application to file a friend-of-the-court brief is within the discretion of the Appeals Tribunal, and the primary criterion for the Appeals Tribunal in determining whether to grant leave is whether such submissions would assist the Appeals Tribunal in its consideration of the questions at issue on appeal.

10. In *Masri*, the Appeals Tribunal held:

The purpose of a friend-of-the-court brief will generally be to address matters other than the law. The Appeals Tribunal is composed of experienced, professional Judges who are able to ensure that proper deliberations are held concerning the general principles of law that are applicable in the case with the benefit of the parties' submissions, the UNDT Judgment and the judicial work of the Tribunal itself, without the need for additional contributions from friends-of-the-court.

If the issues in a case raise very specific or particular questions of law which are not generally within the expertise of counsel or the Judges, an application to file a friend-of-the-court brief may be granted. [...].<sup>1</sup>

11. In the present case, Ms. de Kermel challenges several administrative decisions taken by the IMO Secretary-General in the context of her election to the post of FICSA General Secretary, as well as his decision to place her on SLWOP. In my view, this appeal does not raise issues that would require or benefit from a clarification by a friend-of-the-court and can be decided on the basis of the parties' submissions and the case record.

12. FICSA submits that it was directly affected by the decision of IMO and that the friend-of-the-court brief will assist the Appeals Tribunal during its deliberations on the factual and legal issues, "i.e. the impact of the decision on FICSA". Accordingly, it seeks to address in its brief the relationship between FICSA and the (member) agencies, and IMO in particular.

13. None of the issues that FICSA intends to raise are relevant to Ms. de Kermel's case and I do not find that the suggested brief would assist the Appeals Tribunal in its deliberations. In my view, the title of FICSA's motion "application to file a friend-of-the-court brief" is misleading, if not a misnomer, as in reality FICSA's motion is an application to intervene in the present matter for the purpose of presenting its own case.

### Conclusion

14. For the foregoing reasons, FICSA's motion to file a friend-of-the-court brief is rejected.

Original and Authoritative Version: English  
Dated this 29<sup>th</sup> day of March 2012  
in Montevideo, Uruguay.

*(Signed)*  
Judge Simón, Duty Judge

Entered in the Register on this 29<sup>th</sup> day of March 2012  
in New York, United States.

*(Signed)*  
Weicheng Lin, Registrar

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<sup>1</sup> *Masri v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-098, paras. 25, 26.