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

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Case No. 2015-850

**Chemingui**

**(Appellant)**

**v.**

**Secretary-General of the United Nations**

**(Respondent)**

**ORDER No. 240 (2015)**

1. On 21 August 2015, the Secretary-General filed an appeal of Order No. 245 (NBI/2015) rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 28 July 2015, in the case of *Chemingui v. Secretary-General of the United Nations*. At the same time, the Secretary-General filed a Motion for Expedited Review of the appeal. On 9 September 2015, Mr. Mohamed Chemingui filed his answer to the appeal and his comments on the Motion.

2. Mr. Chemingui is a Senior Economist serving at the P-5 level in the Economic and Social Commission for Western Asia (ESCWA). By memorandum dated 5 May 2015, from the Director of the Administrative Services Division, ESCWA, Mr. Chemingui was informed that he would be laterally transferred to a different position, effective 1 June 2015. On 21 July 2015, Mr. Chemingui filed with the UNDT an application for suspension of action. Order No. 245 (NBI/2015) granted Mr. Chemingui's request for interim relief and ordered suspension of the contested decision "pending informal consultation and resolution between the Parties or the determination of the substantive application in the event that mediation fails".

3. The Secretary-General contends that, pursuant to Article 10(2) of the UNDT Statute, the UNDT has no jurisdiction to suspend a decision concerning matters of "appointment" beyond management evaluation and the suspension of action of a lateral transfer decision

falls into the category of “appointment” for the purpose of Article 10(2). Accordingly, the Secretary-General contends that, by ordering the suspension of the lateral transfer decision beyond management evaluation, the UNDT exceeded its jurisdiction in issuing Order No. 245 (NBI/2015). The Secretary-General further contends that the unlawful Order has a direct, negative, and continuing impact on the effective and efficient functioning of the Organization, which constitutes “exceptional reasons” warranting an expedited review of the appeal.

4. Mr. Chemingui, however, argues that there is no basis on which to request expedited review and asks that the Motion for Expedited Review be denied. The detriment that the Secretary-General fears as a result of “indeterminate” suspension is not present; no candidate has been selected nor have the rights of other staff members been affected by virtue of any delayed transfer. Moreover, the Secretary-General has not provided any evidence of any negative impact or ineffective functioning. In fact, if ESCWA is concerned about the post being vacant or any lapse of work due to any delay in his transfer, they can fill it with someone else. Moreover, the vacant spot cannot be the logical reasons to compel Mr. Chemingui’s transfer, because once they move him, his P-5 position would be vacant and would need to be filled.

5. Article 10(2) of the Statute of the UNDT provides that the UNDT may adopt interim measures at any time during the proceedings or once judicial proceedings have been initiated. Among those measures, it provides for the suspension of the contested implementation of an administrative decision, but prohibits such suspension in cases of appointment, promotion, or termination.

6. The Appeals Tribunal has consistently held that, as a general rule, only appeals against final judgments are receivable. Appeals against decisions or orders taken in the course of the proceedings are not receivable except in the exceptional cases where the UNDT has clearly exceeded its jurisdiction or competence.<sup>1</sup>

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<sup>1</sup> *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062; *Kasmani v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-011; *Onana v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-008; *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005.

7. In the present case, the Appeals Tribunal determines that the Secretary-General has not met his burden to show good cause to grant his motion for an expedited appeal. This Tribunal has previously held that a contested administrative decision regarding a lateral transfer is not a matter affecting appointment, promotion, or termination.<sup>2</sup> Accordingly, the Motion for Expedited Review should be denied.

**IT IS HEREBY ORDERED** that the Secretary-General's Motion for Expedited Review **IS DENIED**.

Original and Authoritative Version: English

Dated this 30<sup>th</sup> day of October 2015 in New York, United States.

*(Signed)*

Judge Rosalyn Chapman,  
President

*(Signed)*

Judge Inés Weinberg de Roca

*(Signed)*

Judge Mary Faherty

Entered in the Register on this 30<sup>th</sup> day of October 2015 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar

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<sup>2</sup> *Kaddoura v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-151; *Rantisi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-528.