



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2009/29  
Judgment No.: UNDT/2009/10  
Date: 12 August 2009  
Original: English

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**Before:** Judge Vinod Boolell

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

**CAMPOS**

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**  
Self Represented

**Counsel for Respondent:**

**Notice:** The format of this judgment has been modified for publication purposes in accordance with Article 26 of the Rules of Procedure of the United Nations Dispute Tribunal.

## 1. THE APPLICATION

**1.1** Mr. Campos (hereunder the Applicant) has been in the employment of the United Nations (UN) since 1979 with a few breaks. He is now a Senior Interpreter at the P-5 level. On 11 April 2008 he was elected Executive Secretary of the Staff Coordinating Council at the United Nations Office at Geneva until 27 April 2009. Since then the Applicant returned to his normal duties.

**1.2** On 16 May 2008, the Applicant filed a request for suspension of action and a first appeal on 17 July 2008 before the Geneva Joint Appeals Board (JAB) to challenge the decision of the Secretary-General not to nominate him as a representative of the staff on the Internal Justice Council (IJC)<sup>1</sup>. Thereafter, the Applicant filed a second appeal<sup>2</sup> on 11 November 2008 before the Geneva Joint Appeals Board (JAB) to contest all henceforth decisions taken by the IJC as in the Applicant's view the IJC was "*illegally constituted*".

**1.3** With the coming into effect of the new internal justice system on 1 July 2009 both cases were transferred to the United Nations Dispute Tribunal (UNDT) Geneva, pursuant to General Assembly Resolution 63/253 and the Secretary-General's Bulletin on 'Transitional Measures Related to the Introduction of the New System of Administration of Justice'.<sup>3</sup> For this purpose, JAB Case no. 609 was transferred to the UNDT under Case no. UNDT/GVA/2009/6 and JAB Case No. 627 was docketed under Case no. UNDT/GVA/2009/13. Before the first application was heard by the Geneva UNDT, the Applicant, by a letter dated 21 July 2009, objected to the hearing on the ground of a conflict of interest pursuant to Article 27.2 (c) of the Rules of Procedure of the UNDT. The matter was submitted to the President of the UNDT pursuant to Article 28.2 of the Rules of Procedure on 27 July 2009.

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<sup>1</sup> Geneva JAB Case no. 609

<sup>2</sup> JAB Case No. 627

<sup>3</sup> ST/SGB/2009/11. (See also Article 7 of the Statute of the Tribunal).

**1.4** In his letter of 21 July, the Applicant contends that he should have been appointed to sit on the IJC and that, by appointing Ms. [...] as staff representative, the Secretary-General did not accept the recommendation made by “*the overwhelming majority of staff represented by the UNSU, UNDP, UNOPS, UNFPA, UNHCR, UNFSU and UNOG staff association.*” He claims that the decision not to appoint him to the IJC Council amounted to interference by the UN management in the selection of the staff representative of the IJC. That interference has, according to him, “*tainted the independence and the impartiality of the new UN system of justice.*” In support of this submission the Applicant states,

*“[t]he fact is that the Dispute Tribunal judges who have been selected with the participation of Ms. [...] have had a “professional relationship” with her and clearly have a prima facie vested interest in the dismissal of my appeal. This circumstance “would make it appear to a reasonable and impartial observer that their participation in the adjudication of the matter would be inappropriate” as stated in article 27.2 (c) of the UNDT Rules of Procedure. The same applies, of course, to the UNAT judges selected by the illegally constituted IJC.”*

He also requests the recusal of all the Judges of the Dispute Tribunal as well as of those of the United Nations Appeals Tribunal (UNAT).

**1.5** By letters dated 21 July 2009 with respect to Case no. UNDT/GVA/2009/13 the Applicant and the Respondent were informed that the Tribunal had advised the five members of the IJC that they may have a legitimate interest in the outcome of the proceedings in the case pending before the UNDT Geneva and could consider the possibility of joining them as parties in the case. In response to that correspondence the Applicant contested such joining in a letter dated 23 July 2009 and repeated his motion on the appearance of conflict of interest and bias referred to his letter of 21 July and that all the Judges of the UNDT and the UNAT should be recused.

**1.6** In relation to the above, the Applicant stated,

*“This situation is to say, the least extraordinary. I must protest in the strongest terms against an extravagant proliferation of requests to join addressed to parties totally extraneous to my appeal. My complaint against the Secretary General is about the infringement of fundamental rights of staff. It is not a dispute inter partes concerning ius dispositivum. Furthermore, the request addressed to Mr. Koulov [the Respondent, Chief of Human Resources Management Services at UNOG] to refer to my case against the Secretary General in further correspondence is incomprehensible, considering that Respondent had already exhausted his observations concerning JAB cases No. 609 and No. 627 in November 2008”.*

*“As such, this situation reinforces the appearance of conflict of interest and bias referred to in my letter of 21 July 2009. Consequently, in the interest of justice and the appearance of justice and pursuant to article 28 of the UNDT Rules of Procedure, I reiterate my urgent request for the immediate recusal of all the judges of the Dispute Tribunal (as well as all the judges of the United Nations Appeals Tribunal).”*

**2. COMMENTS FROM JUDGE JEAN-FRANCOIS COUSIN**

**2.1** Judge Cousin of the UNDT Geneva to whom the case was assigned offered the following comments pursuant to Article 28.2 of the UNDT Rules of Procedure, in relation to the application for his recusal dated 21 July.<sup>4</sup>

- (a) The Judges were not appointed by the IJC but were elected by the General Assembly.

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<sup>4</sup> Letter from Judge Cousin dated 22 July 2009

- (b) The independence of the Judges is guaranteed by the General Assembly.
- (c) The election of the Judges cannot be questioned by the UNDT as the UNDT is not conferred such a power by the Statute of the UNDT.
- (d) The case of the Applicant was transferred to the UNDT Geneva pursuant to a General Assembly Resolution.
- (e) The recusal of all the UNDT Judges cannot be envisaged since there would be no other Tribunal to determine the Applicant's case and the end result would be a denial of justice.

**2.2** Following the letter of 23 July 2009 from the Applicant, Judge Cousin offered the same comments referred to at paragraph 2.1.<sup>5</sup>

### **3. FINDINGS OF THE TRIBUNAL**

**3.1** The members of the IJC were informed that the cases had been transferred to the UNDT and that they may have an interest to join in as parties in the case, pursuant to Article 11 of the Rules of Procedure. The UNDT Geneva also informed the Respondent that both cases had been transferred to the UNDT and that members of the IJC had been offered the opportunity to join the proceedings. The Applicant contested rather strongly to this fact in his submission dated 23 July 2009. The Tribunal will not enter into the merits of this procedural measure taken by the UNDT Geneva.

The Tribunal takes the view that the information communicated to the members of the IJC cannot be construed as amounting to any impropriety, less still a conflict of interest, within the meaning of Article 27 of the Rules of Procedure.

**3.2** Concerning the issue on the recusal of the UNDT and UNAT Judges, the Tribunal refers to its judgment No. 1 dated 12 August 2009<sup>6</sup> where the issue was determined. A copy of that judgment is annexed to the present one.

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<sup>5</sup> Letter from Judge Cousin dated 27 July 2009

#### 4. CONCLUSION

4.1 The present application which is a mere repetition of the 21 July 2009 application is therefore **rejected**.

Done in Nairobi, this 12<sup>th</sup> day of August 2009



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Judge Vinod Boolell, President

Entered in the register on 12 August 2009



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Jean-Pelé Fomété, Registrar, UNDT, Nairobi

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<sup>6</sup> Case No: UNDT/NBI/2009/29, dated 12 August 2009