



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/047/  
JAB/2008/091  
Judgment No.: UNDT/2009/050  
Date: 19 October 2009  
Original: English

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**Before:** Judge Michael Adams

**Registry:** New York

**Registrar:** Hafida Lahiouel

KODA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON**  
**ACCESS TO DOCUMENTS**

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**Counsel for applicant:**  
Mark S. Zaid

**Counsel for respondent:**  
Susan Maddox, ALU

## **Introduction**

1. In Judgment UNDT/2009/024, I dealt with the production of and access to the report of the investigating panel and reserved my decision as to access to the notes of the panel's proceedings (hereinafter the "Notes"). I have now read the notes and am in a position to give judgment on whether access to them should be given to the applicant.

## **Position of the respondent**

2. The respondent provided a copy of the redacted Notes to the Tribunal on 12 October 2009. The respondent objected to the disclosure of the notes, citing the following reasons:

"The Respondent submits that the disclosure of the notes should not be required. As the Tribunal will note the information contained in the notes of the investigators provide no evidence not contained in the Report relating to issues such as alleged bias of investigators or the investigators allegedly not respecting the Applicant's due process rights....Furthermore, the Respondent submits that as the notes were never before a decision-maker, they have no probative value in connection with the issue as to whether an administrative decision was properly made or not....Given the confidential and personal nature of some of the information contained in the notes and the tenuous probative value of the notes, the Respondent submits that fairness does not require the production to the Applicant of the notes of the investigation."

## **Finding**

3. For obvious reasons, it is not desirable that I set out in this judgment my own analysis of the Notes. However, I am satisfied that they contain material that is or may well be relevant to the applicant's case. The mere fact that the Notes were not before the decision-maker does not make them irrelevant. They disclose, amongst other things, the scope and nature of the investigation, the legitimacy of which is a significant issue in the case. The Notes should be provided to the applicant, subject to the making of appropriate confidentiality undertakings.

**IT IS ORDERED THAT—**

4. The respondent is to provide a copy of the Notes to the applicant within three days of receipt from the applicant of a confidentiality undertaking in the form approved by the Tribunal.

*(Signed)*

Judge Adams

Dated this 19<sup>th</sup> day of October 2009

Entered in the Register on this 19<sup>th</sup> day of October 2009

*(Signed)*

Hafida Lahiouel, Registrar, New York