



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/019  
Judgment No.: (UNAT 1601)  
UNDT/2010/075  
Date: 30 April 2010  
English  
Original: French

**Before:** Judge Jean-François Cousin

**Registry:** Geneva

**Registrar:** Víctor Rodríguez

GAHREMANI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for applicant:**  
Winston Sims

**Counsel for respondent:**  
Linda Starodub, UNOV

## **Introduction**

1. The applicant contests the decision of 12 March 2008 by which the Secretary-General, subsequent to a report by the Vienna Joint Appeals Board (JAB), rejected his appeal against the decision to refuse to provide his counsel access to his official status file and to other documents relating to the decision to bar him from the premises of the Vienna International Centre (VIC).
2. He requests the Tribunal to secure the documents sought by his counsel and to order the Administration to pay him three years' salary at the rate that would have been due to him at the time of the application and to pay his counsel the sum of 25,000 US dollars.

## **Facts**

3. The applicant joined the Organization at Vienna on 12 October 1983 as a Messenger at the G-2 level. On 31 December 1996, his fixed-term contract expired and he left the Organization. He subsequently held various short-term appointments, the last from 22 to 26 February 1999.
4. On 27 October 1999, the United Nations Office at Vienna (UNOV) barred the applicant from VIC for reportedly having brought a gun onto the premises and threatened colleagues with it. At the time he was working for the United Nations Industrial Development Organization (UNIDO) under a special services agreement covering the period 1 July-31 December 1999.
5. The applicant initiated arbitration proceedings as the holder of a special service agreement with UNIDO and the parties reached a settlement regarding the matter.
6. On 7 August 2000, the Chief, Office of the Director-General, UNOV, gave the applicant renewed permission to enter VIC.
7. On 6 August 2006, the applicant's counsel requested a copy of the applicant's official status file and of all documents related to the applicant

from January 1995 onwards. That request was refused on 8 and 9 August 2006.

8. On 4 October 2006, the applicant's counsel again requested access to his official status file. That request was also refused.

9. On 25 October 2006, the applicant's counsel asked the Secretary-General for administrative review of the decisions to refuse him access to the applicant's official status file and other documents. On 2 November 2006, the applicant requested administrative review of those decisions.

10. By letter dated 17 January 2007 and received on 19 February 2007 the applicant filed an appeal with the Vienna JAB against the decision not to give his counsel access to his official status file and other documents.

11. In its report, dated 21 January 2008, JAB concluded that the appeal was inadmissible both *ratione personae* and *ratione materiae*. The Secretary-General endorsed those conclusions in his letter of 12 March 2008.

12. On 9 June 2008, the applicant petitioned the United Nations Administrative Tribunal (UNAT) for the quashing of the decision of 12 March 2008 whereby the Secretary-General, subsequent to the JAB report, rejected his appeal against the Administration's refusal to give his counsel access to his official status file and to other documents related to his barring from VIC.

13. Having been pending before UNAT when that body was dissolved on 1 January 2010, the case was, pursuant to the transitional measures set out in General Assembly resolution 63/253, transferred to the United Nations Dispute Tribunal (UNDT).

#### **Parties' contentions**

14. The applicant's contentions are:

- a. The proceedings before JAB were improper. Both JAB and the Secretary-General ignored the fact that he had contested his barring from VIC;

- b. Neither JAB nor the Secretary-General examined the question whether his barring from VIC had infringed his rights;
  - c. The decision by the Director, Division for Management, UNOV, to deny him access to VIC constitutes an abuse of power;
  - d. Contrary to the respondent's contention, there was a legal relationship between the Administration and the applicant as a former staff member;
  - e. The parties did not raise the question of competence *ratione personae* and *ratione materiae* before JAB, but JAB raised it in favour of the respondent;
  - f. His terms of employment were affected by the decisions to bar him from the premises and to refuse him access to the documents he wanted.
15. The respondent's contentions are:
- a. The scope of the application is defined by the request to the Secretary-General for an administrative review, in which the applicant confined himself to contesting the decision to refuse his counsel access to his official status file and to other documents related to the decision to bar him from access to VIC;
  - b. No decision taken after the date on which the applicant ceased working at UNOV can affect his terms of employment there. The decision to bar him from access to VIC was taken in October 1999, whereas he left UNOV on 31 December 1996. Furthermore, the dispute was settled by agreement between the applicant and UNIDO;
  - c. The appeal against the decision to bar the applicant from access to VIC is time-barred because the decision was taken in October 1999;

- d. The appeal against the decision to grant his counsel access to the applicant's official status file and other documents is inadmissible *ratione personae* and *ratione materiae*.

### Judgment

16. It is very clear from the documents in the file submitted to the Tribunal, particularly the applicant's request of 2 November 2006 to the Secretary-General for administrative review, that the applicant confined himself therein to contesting the Administration's decision to deny his counsel access to his official status file and other documents related to his barring from VIC. The Tribunal must therefore declare as irreceivable all the arguments submitted against decisions other than that mentioned above.

17. By its resolution 63/253 the General Assembly decided to transfer to the present Tribunal the cases pending before the former UNAT. It must therefore be considered whether the former UNAT was competent to rule on the legality of the contested decision.

18. Article 2, paragraph 1, of the UNAT Statute provided that:

"The Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. The words 'contracts' and 'terms of appointment' include all pertinent regulations and rules in force at the time of alleged non observance, including the staff pension regulations".

19. The applicant, who was a UNOV staff member until 31 December 1996, was barred from access to VIC on 27 October 1999. Hence, even though he had signed a special services agreement with UNIDO, he was no longer subject on that date to the Staff Regulations and Rules.

20. If, as a former staff member, the applicant is entitled to have access either in person or through his counsel to his complete file, that entitlement exists only in so far as consultation of the file relates to events during the period when he was an employee and was therefore subject to the Staff Regulations and Rules. In the case in point, the request for access to the applicant's file relates to a decision of 27 October 1999 barring him from VIC which has no connection with his former status as a staff member.

21. Consequently, the contested decision cannot have adversely affected his terms of appointment as a former staff member and, pursuant to the above-mentioned provisions, the application was irreceivable before UNAT and is therefore irreceivable before the present Tribunal, which may only hear applications that were receivable before UNAT. The application must therefore be rejected.

**Decision**

22. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

*(signed)*

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Judge Jean-François Cousin

Dated this 30th day of April 2010

Entered in the Register on this 30th day of April 2010

*(signed)*

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Victor Rodríguez, Registrar, UNDT, Geneva