



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

**Saffir and Ginivan
(Respondents/Applicants)**

v.

**Secretary-General of the United Nations
(Appellant/Respondent)**

JUDGMENT

Before:	Judge Luis María Simón, Presiding Judge Rosalyn Chapman Judge Mary Faherty
Cases Nos.:	2013-537 & 2013-538
Date:	17 October 2014
Registrar:	Weicheng Lin

JUDGE LUIS MARÍA SIMÓN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against Judgments Nos. UNDT/2013/109 and 110, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 26 August 2013 in the cases of *Saffir v. Secretary-General of the United Nations* and *Ginivan v. Secretary-General of the United Nations*. The Secretary-General appealed on 25 October 2013. No answer has been received from Mr. Saffir and Mr. Ginivan.

Facts and Procedure

2. The facts established by the Dispute Tribunal in this case read as follows:¹

... It is common cause that the [United Nations Staff Union (UNSU)] held elections for its 44th Staff Council and Leadership on 7–9 June 2011. [Both Mr. Saffir and Mr. Ginivan voted in the elections as members of the Staff Union, but Mr. Ginivan also participated in them as a candidate for the post of the First Vice President on Leadership Ticket No. 2.] These elections were organized and conducted by UNSU polling officers, headed by a Chairperson. The polling officers, with the approval of the UNSU Staff Council, conducted the elections via email voting, engaging a company called Election Services Corporation. ... [Despite assurances that measures would be put in place to ensure voter confidentiality and the integrity of the ballot ... auditing services offered by the Election Services Corporation were not purchased and this security measure was therefore not in place.]

... [Mr. Saffir and Mr. Ginivan] essentially challenge ... the voting methodology and ensuing risks ... [The] ... use of the UN email system to conduct online email voting posed a serious security threat and breached the confidentiality of voters. ...

... [Mr. Saffir and Mr. Ginivan] also challenge ... the eligibility of nominees, in particular that of the successful candidate nominated for the position of President on Leadership Ticket No. 1. According to [them], UNSU Regulations allow officers of the Executive Board to serve two consecutive terms, after which a mandatory one term break shall apply before they may run for election again. [They] ... maintain ... that this candidate, having served two consecutive terms on the Executive Board of the Staff Union, was ineligible as she did not take a one term break as required by the rules. Therefore, acceptance of her candidature was a violation of the UNSU Regulations by the polling officers.

¹ The following facts are taken from Judgments Nos. UNDT/2013/109 and 110, paras. 7-23.

... By letter dated 7 November 2011, [Mr. Saffir and Mr. Ginivan] through [their] Counsel, requested the Secretary-General of the United Nations to conduct an investigation into the alleged irregularities surrounding the June 2011 elections, in light of the inadequacy of the Staff Union's internal arbitration process ...

...

... [On 13 February 2012, Mr. Saffir and Mr. Ginivan filed Applications with the Dispute Tribunal.]

3. On 16 February 2012, the Respondent filed a motion with the UNDT requesting leave to file a response on the limited issue of receivability, which leave was granted by Order of 6 March 2012.
4. On 30 March 2012, the Respondent submitted

may have touched upon matters affecting Mr. Saffir and Mr. Ginivan's right to freedom of association, the determination did not produce direct legal consequences to the legal order with respect to their rights and obligations as staff members.

11. The Secretary-General requests the Appeals Tribunal to dismiss Mr. Saffir's and Mr. Ginivan's applications to the UNDT in their entirety on the grounds that they were non-receivable *ratione materiae*.

Considerations

12. For reasons of judicial economy, this Tribunal consolidated both appeals.

13. The majority of the Appeals Tribunal holds that, contrary to the Secretary-General's submission, the present appeals are not receivable because the principles developed in our jurisprudence apply to the present cases: a party may not file an appeal against a judgment about a claim in which that party's position has prevailed.⁴ In the present cases, even if the Dispute Tribunal examined the merits of the applications that the staff members submitted before it and did not reject them *ratione materiae*, as the Secretary-General had urged, it ultimately dismissed the petitions. Therefore, the Administration prevailed before the UNDT.

14. The outcome of the suits was in favour of the Secretary-General, who had objected to the progress of the applications and saw his position prevail as a result of the procedure.

15. Thus, that outcome prevents the successful party from filing an appeal, which is an instrument to pursue a change of a judicial decision, in the form of modification, annulment or vacation, used as a way to repair a concrete grievance directly caused by the impugned judgment.

16. The concrete and final decision adopted by a court must generate the harm that constitutes the condition *sine qua non* of any appeal.

17. It is not enough to claim that the grievance comes from the reasoning of the judgment, from all or part of its motivation or from the rejection of certain or all of the arguments submitted by a party.

⁴ *Larkin v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-134; *Rasul v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-077; *Sefraoui v. Secretary-General of the United Nations*, Judgement No. 2010-UNAT-048.

27. Therefore, the circumstances of the present two cases do not deviate from the quoted jurisprudence, which is affirmed by the majority of this Tribunal and thus leads us to dismiss the appeals as not receivable.

28. It must be pointed out that the jurisprudence in *Sefraoui* and other cases was not set aside in *Ngoma-Mabialat*⁹ where this Tribunal distinguished the latter from *Sefraoui* and *Rasul*,

31. It must be taken into account that in the case of *Hunt-Matthes*, there were two judgments

receivability justify receiving appeals coming from a party that wins the case on the merits. Jurisprudential policies must not be established to consider the exceptional or hypothetical cases. Moreover, allowing non-receivable appeals just because a party seeks one argument to be declared valid affects procedural economy and judicial effectiveness.

Judgment

34. Both appeals are dismissed as not receivable by majority, with Judge Chapman dissenting.

Judge Chapman's Dissenting Opinion

1. I respectfully dissent. I would receive the Secretary-General's appeals.
2. Generally, "[o]nly one appeal should be filed, and that is after the entry of the final judgment".¹² This means, in the context of a judgment that addresses both the receivability and the merits of the application, that when the UNDT erroneously receives an application and addresses its merits, the Secretary-General generally must wait until the final judgment is rendered before he can file an appeal.¹³
3. The majority has determined, however, that since the Secretary-General prevailed on the merits of the cases before the UNDT, he is foreclosed from appealing the UNDT's erroneous receipt of the staff members' applications, based on our jurisprudence in *Sefraoui*.¹⁴ *Sefraoui* broadly holds that "[a] party in whose favour a case has been decided is not permitted to appeal against the judgment on legal or academic grounds".
4. *Sefraoui* is distinguishable on several grounds. First, the basis of our holding in *Sefraoui* does not apply to the present appeals. In *Sefraoui*, we rejected the Secretary-General's appeal because "[n]one of the grounds of appeal pleaded ... [we]re valid grounds under Article 2(1) of the Appeals Tribunal's Statute. Therefore, the appeal [wa]s not receivable under Article 7(1) of the Appeals Tribunal's Statute."¹⁵
5. Regarding the present appeals, the Secretary-General clearly states that the appeals are based on the grounds that the Dispute Tribunal "erred on a question of law and exceeded its competence in finding that it had jurisdiction *ratione materiae*". Article 2(1) of the Statute provides for review by the Appeals Tribunal of judgments "in which it is asserted that the Dispute Tribunal has: (a) Exceeded its jurisdiction or competence; ... [and] (c) Erred on a question of law". The Secretary-General raises both grounds for review.

¹² *Hunt-Matthes v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-444.

¹³ *Id.*

¹⁴ *Sefraoui v. Secretary-General of the United Nations*, Judgement No. 2010-UNAT-048.

¹⁵ *Id.*, para. 18.

6. Second, our reasoning in *Ngoma-Mabiala*¹⁶

must “have a direct impact on the terms of appointment or contract of employment of the individual staff member”.²⁰

10. The decisions challenged before the Dispute Tribunal did not produce direct legal consequences on the staff members or affect their terms and conditions of appointment. Although the Administration has a general obligation to facilitate the organizational rights of staff members, it cannot interfere with the staff unions’ or organizations’ elections. Accordingly, the Administration has no obligation or duty to investigate how the elections are conducted, and requesting an investigation by the Administration, which denies the request, does not create an administrative decision that is subject to judicial review.

11. Since the staff members’ applications should not have been received *ratione materiae*, the UNDT exceeded its jurisdiction or competence when it addressed the merits of the applications. If the Dispute Tribunal had properly dismissed the applications as not receivable, any judgments addressing their merits clearly would have been issued in excess of jurisdiction like the situation in *Ngoma-Mabiala*.

12. Apart from the Secretary-General’s right to judicial review under Article 2(1) of the Statute, the Secretary-General has an interest in establishing the correct legal standard for receiving applications challenging staff elections and procedures for such elections. Without review by the Appeals Tribunal, the UNDT Judgment, with its erroneous holding on receivability, remains a valid judgment. As such, it is foreseeable that other, similar applications challenging staff elections and election procedures will be filed by staff members and the Secretary-General will be forced to defend against those actions. It is preferable for the Appeals Tribunal to receive the Secretary-General’s appeals and to address the Secretary-General’s claim that the applications were improperly received *ratione materiae*, thereby giving guidance to the UNDT.

13. For these reasons, I wof7268 TI6 -1.7322 TD-.99 -1 Tc.4i4 1 Tf4 1 Tf 3P14 0 d becationsnci.00 Tc.043

Original and Authoritative Version: English

Dated this 17th day of October 2014 in New York, United States.

(Signed)

Judge Chapman

Entered in the Register on this 22nd day of December 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar