

UNDT/2009/005, Campos

UNAT Held or UNDT Pronouncements

The Judges of the UNDT and UNAT were not appointed by the IJC whose mandate was to identify suitable candidates for recommendation to the General Assembly. The Judges were elected by the General Assembly on 2 March 2009 and that process involved the participation of nearly 190 Member States of the United Nations. This guaranteed their independence. The Applicant's averment of lack of impartiality was based on the fact that the Judges of the UNDT and UNAT were selected by the IJC. The Applicant made general accusations of potential bias but did not give any precision on how this bias on the part of the Judges would arise except for the averment of an alleged professional relationship that would exist between the Judges and the IJC. The Applicant's misgivings on the impartiality and independence of the UNDT and UNAT could not be treated as objectively justified on the facts presented. Under the subjective test, there was not an iota of evidence or proof that the UNDT Judges or ultimately the UNAT Judges would act with personal bias in dealing with his case. The impartiality of the UNDT and the UNAT Judges was not open to doubt. The Applicant's misgivings were unjustified and did not meet the requirements on conflict of interest set out in art. 27.2 of the Rules of Procedure of the UNDT. The wholesale recusal of the Judges would have resulted in the annihilation of the UNDT and UNAT. Only the General Assembly has the power to remove one or more of the Judges for misconduct or incapacity.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the decision of the Secretary-General not to nominate him as a representative of the staff on the Internal Justice Council (IJC). He also challenged the application being heard by UNDT on the ground of a conflict of interest pursuant to article 27.2 (c) of the UNDT's Rules of Procedure.

Legal Principle(s)

Any person whose rights have to be determined is entitled to a fair hearing in public before an independent and impartial tribunal. This principle is embodied in a number of international instruments on human rights.; A conflict of interest is, "...any factor which may impair or reasonably give the appearance of impairing the ability of a Judge to independently and impartially adjudicate a case assigned to a Judge". It is well settled that impartiality is determined according to two tests, subjective and objective. The subjective test is based on the personal conviction of the judge in a given case, and the objective test is ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect". The mandate of the Internal Justice Council (IJC) was only to make recommendations on suitable candidates for the position of Judges at both Tribunals.; It is only the General Assembly that can remove a Judge for misconduct and incapacity.

Outcome

Dismissed on merits

Outcome Extra Text

The application was rejected because the Applicant's averments did not meet the requirements on conflict of interest set out in art. 27.2 of the Rules of Procedure of the UNDT.

Full judgment

[Full judgment](#)

Applicants/Appellants

Campos

Entity

UNOG

Case Number(s)

UNDT/NBI/2009/029

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

8 Dec 2009

Duty Judge

Judge Boolell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Judges

Conflict of interest

Applicable Law

GA Resolutions

- A/RES/59/283
- A/RES/62/228
- A/RES/62/253

Information Circulars

- ST/IC/2009/32

Other UN issuances (guidelines, policies etc.)

- A/61/205
- A/63/489

Secretary-General's bulletins

UNDT RoP

- Article 27
- Article 28

Related Judgments and Orders

UNDT/2009/010

2010-UNAT-001