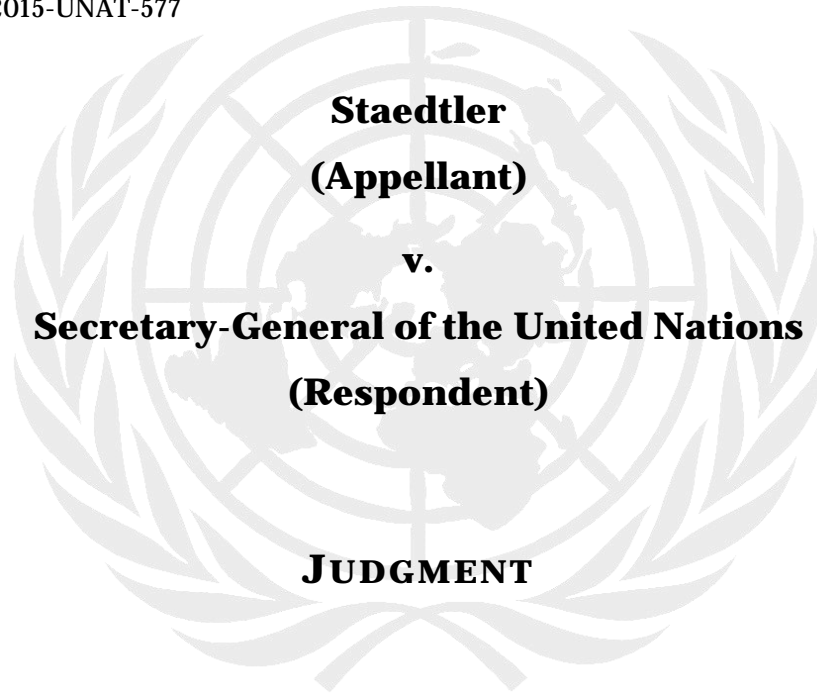




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2015-UNAT-577



**Staedtler  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Rosalyn Chapman, Presiding Judge Inés Weinberg de Roca Judge Richard Lussick
Case No.:	2014-671
Date:	30 October 2015
Registrar:	Weicheng Lin

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Counsel for Mr. Staedtler:	Self-represented
Counsel for Secretary-General:	Noam Wiener

**JUDGE ROSALYN CHAPMAN, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it the appeal by Mr. Marc Michael Staedtler of Judgment No. UNDT/2014/127, issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 21 October 2014, in the matter of *Staedtler v. Secretary-General of the United Nations*. Mr. Staedtler filed his appeal on 29 October 2014, and the Secretary-General filed his answer on 2 January 2015.

**Facts and Procedure**

2. Mr. Staedtler is a former staff member of the United Nations Human Settlements Programme (UN-Habitat).

3. On 14 October 2012, Mr. Staedtler requested legal representation from the Office of Staff Legal Assistance (OSLA) regarding, *inter alia*, UN-Habitat's alleged violation of the United Nations' procurement and project management rules and regulations, the possible non-renewal of his appointment due to retaliation against him, and other complaints he had about his treatment by UN-Habitat management.

4. On 21 November 2012, OSLA provided him with legal advice or assistance, including a detailed assessment of his complaints.

5. On 27 November 2012, Mr. Staedtler advised OSLA that he had received notice of the non-renewal of his appointment, effective 30 December 2012. On 3 December 2012, in a telephone conversation, a Legal Officer with OSLA advised Mr. Staedtler to request the reason for the non-renewal decision. Subsequently, on 5 December 2012, two Legal Officers from OSLA had an hour long telephone discussion with Mr. Staedtler about issues he had raised in relation to his performance appraisals (ePas) and suspension of action proceedings regarding the non-renewal decision.

6. On 6 December 2012, OSLA advised Mr. Staedtler that it would not provide him with legal representation if he brought suit.

7. On 20 May 2013, Mr. Staedtler filed an application before the UNDT contesting four alleged administrative decisions: (i) the Ethics Office's rejection of his claim of retaliation; (ii) the denial of his request to comment on his 2011-2012 ePas; (iii) the denial of his request to

comment on his mid-term review of the 2012-2013 ePas cycle; and (iv) the non-renewal of his fixed-term appointment beyond 31 December 2012. The UNDT Registry assigned the application Case No. UNDT/NBI/2013/21 (Case No. 1).

8. On 30 August 2013, Mr. Staedtler filed a second application before the UNDT challenging three alleged administrative decisions made in relation to his non-selection for a post to which he had applied: (i) the refusal to provide him with documents showing the professional roster process; (ii) the refusal to disclose to him the identities of the members of the Central Review Panel; and (iii) the refusal to include him in the professional roster. The UNDT Registry assigned the application Case No. UNDT/2013/61 (Case No. 2).

9. Case No. 1 and Case No. 2 were assigned to the same judge of the Dispute Tribunal. On 31 October 2013, the UNDT issued Order No. 240 (NBI/2013) in Case No. 1 and Order No. 235 (NBI/2013) in Case No. 2, both of which, *inter alia*, advised Mr. Staedtler “to seek legal counsel for the conduct of his case” and directed “service of the present Order on [OSLA] to facilitate the process”.

10. On 31 October 2013, Mr. Staedtler contacted OSLA requesting legal representation in Case No. 1 and Case No. 2 from an “experienced OSLA staff member who had not yet been involved in [his] case”. On 4 November 2013, a Legal Officer with OSLA, who had not previously been involved in his case, requested that Mr. Staedtler provide OSLA with the applications, appendices, replies, and any other submissions in the two cases, and Mr. Staedtler did as requested.

11. On 5 November 2013, OSLA advised Mr. Staedtler that “before OSLA agrees to represent a staff member, [they] attempt to determine whether [the] case would have a reasonable prospect of success with [their] representation. If [they] determine it would not, then any such representation would not be of assistance, and [they] decline to provide it”. OSLA then provided detailed reasons as to why it would not represent him in either Case No. 1 or Case No. 2.

12. On 6 November 2013,<sup>1</sup> Mr. Staedtler had a telephone conversation with a Legal Officer with OSLA about Case No. 1.

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<sup>1</sup> While Mr. Staedtler’s UNDT application states this occurred on 6 November 2013, the UNDT Judgment at para. 37, states this occurred on 7 November 2013.

13. On 12 November 2013, OSLA provided legal advice to Mr. Staedtler on key jurisprudence that might assist him in pursuing his claims, but advised him that it would not represent him. In response to Mr. Staedtler's further request to OSLA to reconsider its decision not to represent him in Case No. 2, OSLA declined. OSLA again explained that it could not represent him in Case No. 2, which "may be heard together or depend upon some of the same facts [as Case No. 1 when] we have declined assistance in [Case No. 1]".

14. On 3 December 2013, Mr. Staedtler submitted a request for management evaluation of OSLA's decision of 5 November 2013, to decline legal representation in Cases No. 1 and No. 2. The Management Evaluation Unit informed Mr. Staedtler that his request was not receivable on 20 December 2013.

15. On 30 December 2013, Mr. Staedter filed an application with the UNDT contesting OSLA's decision of 5 November 2013, declining to represent him in Case No. 1 and Case No. 2. The Secretary-General filed his reply on 4 April 2014.

16. On 1 July 2014, pursuant to Order No. 169 (NBI/2014), the matter was transferred from the Nairobi Registry to the Geneva Registry, where it was assigned Case No. UNDT/GVA/2014/52.

17. On 6 August 2014, and 19 August 2014, the UNDT issued Order No. 116 (GVA/2014)<sup>2</sup> and Order No. 126 (GVA/2014),<sup>3</sup> respectively, which Mr. Staedtler challenged by an appeal filed on 26 August 2014.<sup>4</sup>

18. On 21 October 2014, the Dispute Tribunal issued Judgment No. UNDT/2014/127 rejecting Mr. Staedtler's application. Mr. Staedtler filed an appeal of Judgment No. UNDT/2014/127 on 29 October 2014, and the Secretary-General answered on 2 January 2015.

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<sup>2</sup> The UNDT granted the Secretary-General's motion to participate in the proceedings and to accept his reply of 3 April 2014 as part of the UNDT record.

<sup>3</sup> The UNDT denied the "Applicant's motions for reconsideration [of Order No. 116] and for permission to respond to the Respondent's reply".

<sup>4</sup> See *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-560 (finding the interlocutory appeal was not receivable).

## **Submissions**

### **Mr. Staedtler's Appeal**

19. The Appellant claims that the Dispute Tribunal: “(i) committed errors of procedure, (ii) exceeded its competence in ignoring relevant matters placed before it by the parties, (iii) erred on questions of fact and (iv) erred on questions of law resulting in a manifestly unreasonable judgment”.

20. The Appellant complains that the UNDT “exceeded its competency when it failed to reflect in its summary of the procedural background that the Appellant had filed an Interlocutory Appeal” which the Appeals Tribunal had not decided before the UNDT issued its Judgment.

21. The Appellant claims that the UNDT erred in law in concluding that OSLA’s decision not to represent him in Case No. 1 and Case No. 2 was not unlawful. The proper standard for OSLA to decline legal representation is not whether a case has no reasonable prospect of success but whether a case is obviously frivolous.<sup>5</sup> As the Appellant’s cases were not obviously frivolous, OSLA’s decision was unlawful.

22. The Appellant asserts that the UNDT committed an error in procedure, exceeded its competence and erred on a question of fact and law when it failed to evaluate whether OSLA properly executed its discretion in declining legal representation in Case No. 2. Rather, its decision was based on personal prejudice and bias against the Appellant and a self-serving interest in defending its prior refusal of December 2012 to represent him.

23. The Appellant submits that the UNDT exceeded its competence and made errors of fact in paragraphs 21, 22, 48, 54, 56, 58, 59, 60, 61 and 62 of the Judgment and made further errors of fact when it failed to either include information or make certain findings in paragraphs 23, 24, 25, and 37 of the Judgment.

24. Lastly, the Appellant urges the Appeals Tribunal to “direct the appointment of an alternative Judge” and to hear all of his cases together in order to determine the overarching retaliation against him that amounts to institutional retaliation.

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<sup>5</sup> Citing *Kita v. Secretary-General of the United Nations*, Judgment No. UNDT/2010/025.

**The Secretary-General's Answer**

25. The UNDT is neither required to consider the Appellant's appeal of an interlocutory order in its Judgment, nor to suspend the proceedings or stay the issuance of its Judgment while the interlocutory appeal is pending. Accordingly, the UNDT did not exceed its competence when it did not consider the pending interlocutory appeal.

26. The UNDT correctly refused to intervene in OSLA's decision not to represent the Appellant. The UNDT properly limited its review to the questions whether OSLA had diligently reviewed the merits of the cases brought by the Appellant and whether OSLA had acted arbitrarily or had been motivated by bias. OSLA had two different Legal Officers independently review the Appellant's cases before making the decision not to represent him. Moreover, OSLA subsequently provided ongoing legal advice to the Appellant after becoming familiar with his cases. The Appellant has not shown that the decision was arbitrary or motivated by bias.

27. The Appellant has not established any errors of fact or law by the UNDT warranting a reversal of the Judgment. The UNDT is not required to address each and every argument by the parties; rather, pursuant to Article 11(1) of the UNDT Statute, it must set forth the reasons, facts and law on which its judgment is based. The Dispute Tribunal did this. The mere disagreement by the Appellant with the UNDT's statement of its reasons and the facts and law supporting its judgment is not a basis for overturning the Judgment.

28. The Respondent requests that the Appeals Tribunal dismiss the appeal and affirm the Judgment.

**Considerations**

29. As the Appeals Tribunal has noted, "OSLA was created by, and functions within, the Organization. It is therefore subject to the Organization's Charter and cannot be beyond accountability."<sup>6</sup> We have further recognized that the services provided by OSLA and the manner in which the representation is implemented can have an impact on a staff member's terms of

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<sup>6</sup> *Larkin v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-135, para. 15.

appointment and therefore can fall within the jurisdiction of the UNDT, without interfering with the professional independence of counsel.<sup>7</sup>

30. Staff Rule 11.4(d) provides that “[a] staff member shall have the assistance of counsel through the Office of Staff Legal Assistance if he or she so wishes [...] in the presentation of his or her case before the United Nations Dispute Tribunal”.<sup>8</sup>

31. Based on Staff Rule 11.4(d), the Appeals Tribunal has determined that “the right of staff members to receive assistance from OSLA does not amount to a right to be represented by OSLA”.<sup>9</sup> Nevertheless, we also found that “[t]he discretionary power of OSLA not to represent a person is not unfettered”.<sup>10</sup>

32. In his UNDT application contesting OSLA’s decision of 5 November 2013, to decline to provide him with legal representation in Cases No. 1 and No. 2, Mr. Staedtler claimed the decision: (i) was “substantively irregular” in that OSLA failed to give valid reasons to support its decision; (ii) violated his due process rights to “fair dealing, to act in good faith and to respect [his] dignity”; (iii) was an abuse of authority in that it incorporated personal prejudice and bias against him; and (iv) caused him severe emotional and professional damage, which requires monetary compensation.

33. The Dispute Tribunal found no merit to Mr. Staedtler’s claims, concluding that “OSLA provided [the Appellant] with legal assistance. Its refusal to provide legal representation was reasoned and appropriate and did not breach any lawful obligations of OSLA.”<sup>11</sup> For the reasons discussed below, the Appeals Tribunal determines that the Dispute Tribunal did not err in law or fact or exceed its competence in reaching this conclusion.

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<sup>7</sup> *Scheepers v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-211, para. 8; *Worsley v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-199, para. 31, citing *Larkin v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-135.

<sup>8</sup> To implement Staff Rule 11.4(d), Article 12(1) of the Dispute Tribunal Rules of Procedure provides that “[a] party may present his or her case to the Dispute Tribunal in person, or may designate counsel from the Office of Staff Legal Assistance or counsel authorized to practice law in a national jurisdiction”.

<sup>9</sup> *Worsley v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-199, para. 37.

<sup>10</sup> *Ibid.*, para. 36.

<sup>11</sup> Impugned Judgment, para. 63.

34. Initially, the UNDT rejected the Appellant's "contention that OSLA has no discretionary authority". It found that OSLA:<sup>12</sup>

has the discretion to decide if it should represent a client or not. However, there are limits to that discretion as noted by the Appeals Tribunal. These are the usual limits attached to the exercise of discretion in administrative law; the discretion must not be exercised in an arbitrary manner, it must not be motivated by extraneous considerations. [...]

35. The Appeals Tribunal cannot find fault with the UNDT's reasoning, which comports with our jurisprudence on the exercise of discretion in administrative matters.<sup>13</sup>

36. Next, the Dispute Tribunal reviewed OSLA's reasons for declining to represent Mr. Staedtler, namely that "[C]ase [No.] 1 had little chances of success and that [C]ase [No.] 2 was tenuous. In particular, [OSLA] did not want to [...] represent [the Appellant ...] in one [case] but not in the other".<sup>14</sup> In view of these reasons, the UNDT concluded that "[i]n exercising its discretion to decide whether to represent the [Appellant] in the two cases before the [Dispute] Tribunal, OSLA made a careful consideration of all the issues and provided valid reasons why it would not".<sup>15</sup> Once again, we conclude that the UNDT did not err in law or fact or exceed its competence in finding that the reasons for OSLA's decision were valid and not arbitrary. Moreover, as discussed below, there was no evidence presented by the Appellant to show that OSLA's decision was the result of bias or prejudice against him.

37. Third, the Dispute Tribunal found that OSLA had provided Mr. Staedtler with considerable legal advice or assistance in relation to his two cases. The UNDT discussed at length Mr. Staedtler's interactions in 2012 with OSLA's Legal Officers as a "background" to what occurred in 2013, stating:<sup>16</sup>

OSLA gave a considerable amount of advice to the [Appellant] while he was engaged in discussions through the Ombudsman and still a staff member facing separation. It gave the [Appellant's] cases considerable attention. Several Legal Officers looked into the cases and decided that OSLA would not represent him.

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<sup>12</sup> *Ibid.*, para. 54.

<sup>13</sup> *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40. See also *Ademagic et al. and McIlwraith v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-359, pp. 22-23.

<sup>14</sup> Impugned Judgment, para. 58.

<sup>15</sup> *Ibid.*, para. 59.

<sup>16</sup> *Ibid.*, para. 56.



38. The UNDT found that in 2013, before the contested decision was made, OSLA had conducted a “full review of the cases [...] at the express request of the [Appellant] by a Legal Officer who had not been previously involved” in 2012, and the review included “all the material supplied by the [Appellant]”.<sup>17</sup>

39. The UNDT further found that even “[f]ollowing the contested decision, OSLA explicitly stressed that it would remain at the disposal of the [Appellant] to provide him focused advice on specific legal questions. As such, it never closed its door to the [Appellant] and continued to provide specific assistance to him.”<sup>18</sup> Once again, the Appeals Tribunal determines that the UNDT did not err in fact or law in making any of these findings.

40. Additionally, the UNDT found that Mr. Staedtler, “who has the burden of proof, has not provided any evidence that OSLA made a manifest error of law or fact or that in the exercise of its discretion, OSLA acted arbitrarily or that the decisions were based on extraneous reasons or bias”.<sup>19</sup> In this regard, the UNDT noted that “the decisions of OSLA have been vindicated by the subsequent judgments of the [Dispute] Tribunal on the two cases in question”, which were both dismissed.<sup>20</sup> The Appeals Tribunal determines that the UNDT did not err in law or fact in concluding that Mr. Staedtler had failed to meet his burden to show bias or prejudice against him as the motive for OSLA’s decision.

41. Lastly, the UNDT found that OSLA’s decision did not prejudice the Appellant’s ability to pursue Case No. 1 and Case No. 2, noting that “[b]y 5 November 2013, both [cases] had already been through management evaluation and had been filed with the [Dispute] Tribunal”.<sup>21</sup> Accordingly, the Appellant could not show any harm caused by OSLA’s decision, thus negating his claim for compensation.<sup>22</sup>

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<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*, para. 57.

<sup>19</sup> *Ibid.*, para. 60.

<sup>20</sup> *Ibid.*, para. 61. The Appeals Tribunal subsequently affirmed Judgment No. UNDT/2014/057 in Case No. 1, and Judgment No. UNDT/2014/058 in Case No. 2 in *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-546 and *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547, respectively, issued on 20 August 2015.

<sup>21</sup> Impugned Judgment, para. 62.

<sup>22</sup> *Bastet v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-511, para. 59, citing *Oummih v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-420 and *Antaki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-095; *Nyakossi v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-254, para. 19.

42. On appeal, Mr. Staedtler raises two additional claims. He complains that the UNDT “exceeded its competency when it failed to reflect in its summary of the procedural background that the Appellant had filed an Interlocutory Appeal” which had not been decided by the Appeals Tribunal before the UNDT issued its Judgment. The Secretary-General reasonably interprets this claim to mean that the Appellant asserts that the UNDT exceeded its competence by issuing the Judgment while his interlocutory appeal was pending or, in other words, the interlocutory appeal should have stayed the UNDT proceedings so that a Judgment could not issue.

43. There is no legal authority for the Appellant’s contention, as the Secretary-General properly notes, and the Appellant cites no authority for his proposition. On 26 August 2014, when Mr. Staedtler filed his interlocutory appeal, Article 7(5) of the Appeals Tribunal Statute provided that “[t]he filing of appeals shall have the effect of suspending the execution of the judgement contested”.<sup>23</sup> That provision, however “appl[ie]d only to appeals against judgments; [it] ‘[did] not apply to interlocutory appeals’”.<sup>24</sup> Accordingly, there is no merit to this claim.

44. On appeal, Mr. Staedtler also asserts that numerous paragraphs in the Judgment do not correctly reflect the facts as he views them. A review of the paragraphs he claims are not factually correct does not show that the UNDT made any errors of fact and certainly no errors of fact that resulted in a manifestly unreasonable decision. There simply is no merit to Mr. Staedtler’s contention that OSLA’s decision to deny him legal representation was unlawful.

45. As the Secretary-General correctly argues, Article 11(1) of the UNDT Statute requires that the UNDT must set forth the reasons, facts and law on which its Judgment is based.<sup>25</sup> The Dispute Tribunal did this. The mere disagreement by the Appellant with the UNDT’s statement of its reasons or the facts and law supporting its Judgment is not a basis for overturning the Judgment.

46. For all these reasons, the appeal should be dismissed.

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<sup>23</sup> Article 7(5) of the Appeals Tribunal Statute was subsequently amended by General Assembly resolution 69/203 of 18 December 2014, para. 39.

<sup>24</sup> *Bastet v. Secretary-General of the United Nations*, Order No. 172 (2014), para. 13.

<sup>25</sup> *Rahman v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-260, para. 26. See also *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-309, para. 26.

**Judgment**

47. The appeal is dismissed and Judgment No. UNDT/2014/127 is affirmed.

Original and Authoritative Version: English

Dated this 30<sup>th</sup> day of October 2015 in New York, United States.

*(Signed)*

Judge Chapman, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Lussick

Entered in the Register on this 18<sup>th</sup> day of December 2015 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar