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

**di Giacomo**

**(Appellant)**

**v.**

**Secretary-General of the United Nations**

**(Respondent)**

## JUDGMENT

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| Before: | Judge Inés Weinberg de Roca, Presiding |
| | Judge Kamaljit Singh Garewal |
| | Judge Mary Faherty |
| Judgment No.: | 2012-UNAT-249 |
| Date: | 29 June 2012 |
| Registrar: | Weicheng Lin |

arrangement to allow Mr. di Giacomo access to the Organization's premises in New York only under security escort at all times be maintained.

7.      By letter dated 20 November 2006, Mr. di Giacomo responded to OHRM's invitation to provide a statement or explanations to Ms. K's allegations of harassment.  On 21 December 2006, OHRM informed Mr. di Giacomo of the decision to close the case, noting that he was not a United Nations staff member, and therefore the Organization had no disciplinary jurisdiction over him.

8.      Further exchanges of communication between Mr. di Giacomo and OHRM ensued in 2007.  In February 2008, Mr. di Giacomo requested administrative review, but was informed that the procedure of administrative review was not available to him as he was not a staff member, but an intern.

9.      In August 2010, Mr. di Giacomo requested management evaluation under the new system of internal justice, but was informed that his request was not receivable on several grounds, one of which was that the management evaluation mechanism became available to interns only on 1 July 2009, but Mr. di Giacomo's internship had taken place prior to that date.

10.      In November 2010, Mr. di Giacomo filed an application with the UNDT.  In Judgment No. UNDT/2011/168 dated 26 September 2011, the UNDT dismissed the application, concluding that it had no jurisdiction to review Mr. di Giacomo's application in respect of either the decision not to pursue a disciplinary case against him or the decision to restrict his access to the United Nations premises under security escort.

11.      Mr. di Giacomo appealed on 9 November 2011.  The Secretary-General answered on 5 January 2012.  Subsequently, Mr. di Giacomo filed a motion for removal of certain portions from the Secretary-General's answer and for confidentiality.  Mr. di Giacomo's motion was granted.  On 12 March 2012, the Secretary-General filed a revised answer.

## Submissions

### Mr. di Giacomo's Appeal

12.     Mr. di Giacomo submits that the UNDT erred in fact in determining that two decisions were under appeal.  He was contesting only the

cannot complain that the decision to restrict his access is in violation of his terms of appointment or contract of employment.

## Considerations

18.    The UNDT Judge did not err on the question of competence in finding that, pursuant to Articles 2(1) and 3(1) of the UNDT's Statute, it was limited to cases brought by staff members, former staff members or persons making claims in the name of incapacitated or deceased staff members of the United Nations.

19.    In accordance with the purpose clearly enunciated by the General Assembly in paragraph 7 of its resolution 63/253 on the administration of justice at the United Nations, interns do not have access to the UNDT.[1]

20.    Even though this Tribunal has recognized that access to the new system of administration of justice could be extended to a person who is not formally a staff member but who could legitimately be entitled to rights similar to those of a staff member,[2] this exception must be understood in a restrictive sense.

21.    Although appropriate management evaluation under the new system of internal justice became available to interns on 1 July 2009, access to the UNDT or to the Appeal Tribunal is not recognized.[3]

## Judgement

22.    The appeal is dismissed.

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[1] *Basenko v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-139.
[2] *Gabaldon v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-120.
[3] General Assembly Resolution 63/253, I (7).

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