



Introduction

1. By his application of 13 April 2012, the Applicant contests the decision of the Deputy Secretary-General to reassign him from his temporary position in the Office for Partnerships of the United Nations Conference on Trade and Development (UNCTAD) in New York back to his former position in UNCTAD in Geneva.

2. Due to technical difficulties, the Geneva Registry of the United Nations Dispute Tribunal (“the Tribunal”) could only acknowledge receipt of the application on 4 May 2012. The application was then registered under Case No.

were located in Geneva, and that time and resources would be wasted as a result of the requested transfer.

7. Also on 23 May 2012, the Applicant filed a motion for change of venue in relation to Case No. UNDT/GVA/2012/034, ~~reiterating~~ stating that his duty station at the time of the contested decision was New York and emphasizing that both cases are closely related.

8. On 1 June 2012, the Tribunal issued Order Nd.03 (GVA/2012), outlining that “it is in the interests of expediency that both cases be decided in Geneva”, as well as rejecting the Applicant’s motions for change of venue pursuant to arts. 6.2 and 19 of the Tribunal’s Rules of Procedure.

9. On 6 August 2012, the Applicant filed ~~an~~ *parte* Motion for Recusal under art. 28(2) of the Tribunal’s Rules of Procedure, requesting the recusal of Judge Jean-François Cousin from these two cases.

10. The two cases concern the consequences of the Applicant’s June 2009 allegation of serious wrongdoing against ~~Kab~~ Chutikul, a senior advisor to the Secretary-General of UNCTAD, Supachai Panitchpakdi. At the time of the allegations the latter, a former Thai cabinet minister, was running for re-election. Chutikul, also a former Thai politician and a failed mayoral candidate of Bangkok, was managing Panitchpakdi’s political campaign.

11. The Applicant reported wrongdoing by Chutikul to the Office of Internal Oversight Services (OIOS) and subsequently filed a complaint to the Ethics Office against Supachai Panitchpakdi. The Ethics Office ~~found~~ *prima facie* case of retaliation, which they later ~~confirmed~~ following a further review by OIOS.

Applicant’s submissions

12. The Applicant submits that as Judge Cousin served as a paid advisor to the

Conflict of interest

1. The term “conflict of interest” means any factor that may impair or reasonably give the appearance of impairing the ability of a judge to independently and impartially adjudicate a case assigned to him or her.

2. A conflict of interest arises where a case assigned to a judge involves any of the following:

(a) A person with whom the judge has a personal, familiar or professional relationship;

(b) A matter in which the judge has previously served in another capacity, including as an adviser, counsel, expert or witness;

(c) Any other circumstances that would make it appear to a reasonable and impartial observer that the judge’s participation in the adjudication of the matter would be inappropriate.

18. It is trite law and a well settled principle that 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.

19. The Tribunal endorses what it said in *Campos*:²

It is well settled that impartiality is determined according to two tests, subjective and objective. The European Court of Human Rights held that “the existence of impartiality for the purpose of Article 6-1 must be determined according to a subjective test, that is on the basis of the personal conviction of the judge in a given case, and also according to an objective test, that is ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect.”³

20. On the objective test the European Court observed:

Under the objective test, it must be determined whether, quite apart from the judge's personal conduct, there are ascertainable facts which may raise doubts as to his impartiality. In this respect even appearances may be of a

¹ See for example Article 10 of the Universal Declaration of Human Rights; Article 6.1 of the European Convention on Human Rights; Article 14 of the International Covenant on Civil and Political Rights.

² *Campos* UNDT/2009/005.

³ *Saraiva v Portugal*, Judgment of 22 April 1994, Series A No. 286-B, p.38, paragraph 33.

certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public.

21. The European Court further stated that *that is decisive are not the subjective apprehensions of the suspect, however understandable, but whether, in the particular circumstances of the case, his fears can be held to be objectively justified*.⁵

Conclusions

22. The Tribunal would refer to the matter of Arbitration between The Republic of Mauritius and the United Kingdom of Great Britain and Northern Ireland.⁶ In that matter, Mauritius sought to challenge one of the arbitrators chosen by the United Kingdom government on the ground that he had previously served as an adviser to the British government and had on one occasion acted in an advisory capacity as a member of a Board to interview candidates for the post of Legal Adviser to the Foreign and Commonwealth Office.

23. The Arbitral Tribunal rejected the request for the recusal of the arbitrator. On the issue of an arbitrator having previously held a senior position in government or having acted as counsel before being nominated a judge or arbitrator, the Arbitral Tribunal observed that it was not aware of any case under the Law of the Sea Convention where a judge or arbitrator had been

to his impartiality and independence concerning the case to be decided by the Arbitral Tribunal”.⁹

24. The request for the recusal of Judge Cousin is based on the mere fact that he had served as an adviser at the Court in Thailand and nothing more. The Applicant has made general and vague averments of an alleged professional relationship that may have existed between Judge Cousin and the people who were based in the Court in Thailand, and in Thai politics, at the material time.

25. The Tribunal is not prepared and does not give any credence to those