

the method of depreciation adopted by the Headquarters Claims Board. In this connexion, the Tribunal has noted that the Applicant remained in Nicosia for some ten months after the loss of his effects.

IV. The Applicant has not established that the amount he was finally offered (\$5,259.00) fell short of the amount calculated according to the above principles. The Tribunal is therefore unable to award him anything in excess of that amount. The limit of \$10,000 referred to in the Assistant Secretary-General's letter of 16 January 1980 is accordingly not relevant.

V. Although Staff Rule 106.5 enables the Secretary-General to impose conditions on the payment of compensation, the Tribunal does not consider that this empowers him to impose upon the payment of a sum awarded by the Headquarters Claims Board the condition that the staff member must waive his statutory right of appeal to the Joint Appeals Board and to the Tribunal. The Tribunal takes note that the Secretary-General has now accepted the reservation made by the Applicant, in signing the release, of his right of appeal, and would deem it useful if Administrative Instruction ST/AI/149 were amended accordingly. The Tribunal considers that the Applicant was justified in wishing to reserve his right of appeal and therefore confirms the Joint Appeals Board's award of 6% interest on the sum in question, \$3,728.96, from 18 June 1975 until the date of payment of that sum to him, i.e. 19 December 1980.

VI. For the foregoing reasons, the Tribunal orders that 6% interest be paid to the Applicant on \$3,728.96 from 18 June 1975 to 19 December 1980.

VII. The other claims of the Applicant are rejected.

(Signatures)

Endre USTOR
Vice-President, presiding

Herbert REIS
Member

Arnold KEAN
Member

Jean HARDY
Executive Secretary

New York, 2 October 1981

Judgement No. 275

(Original: English)

Case No. 262:
Vassiliou

Against: **The Secretary-General
of the United Nations**

Request for payment of a special post allowance.

Respondent's contention that the application is not receivable because it was not submitted within

the time-limits set out in Staff Rule 111.3.—Contention rejected, since the case was considered by the Joint Appeals Board.

Consideration of the claim relating to the period from 14 October 1965 to 1 February 1969.—Staff Rule 103.11 (b).—The granting of a special post allowance is within the discretion of the Secretary-General.—The principle that promotion shall be the normal means of recognizing increased responsibilities.—Judgement No. 155.—The Applicant himself was aware that his demands could not be placed on a valid legal basis.—Claim rejected.

Consideration and rejection of the Applicant's arguments alleging non-observance by the Secretary-General of Staff Regulations 2.1, 4.2 and 4.4.

Consideration of the claim relating to the period from 1 February 1969 to 1 July 1978.—The Tribunal's conclusions in Judgement No. 76 are not applicable.—Absence of any evidence to establish that the general principle of "equal pay for equal work" was violated.—Claim based on the fact that the Respondent did not follow the recommendation of the Joint Appeals Board.—Extent of the Secretary-General's obligation with respect to "recommendations" of the Board.—The claim is rejected.

Request for the production of documents.—Request rejected, since the documents requested are not relevant to the proceedings.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, Vice-President, presiding; Mr. Samar Sen; Mr. Arnold Kean;

Whereas at the request of Simos G. Vassiliou, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 1 May 1981 the time-limit for the filing of an application to the Tribunal;

Whereas, on 29 April 1981, the Applicant filed an application the pleas of which read as follows:

"A. Preliminary Measures

*"7. Applicant requests the Administrative Tribunal to order the Respondent to produce copies of all documents stating advice or recommendations on which he relied when he made his decision to reject the 3 June 1980 recommendation of the Joint Appeals Board that for reasons of equity he should make an *ex gratia* payment to Applicant equivalent to a Special Post Allowance from P-5 to D-1 for the period 14 October 1965 to 1 February 1969. Applicant also requests an opportunity to amend his pleas on substance and the explanatory statement in light of the documents produced in response to the Tribunal's order.*

"B. Substantive Pleas

"8. The Applicant respectfully requests the Administrative Tribunal to find that the Joint Appeals Board erred in its Report to the Secretary-General, which concluded that there had been no non-observance of Applicant's terms of appointment, by failing to find that Respondent had neglected to properly implement Staff Regulation 2.1 which requires that he make appropriate provision for the classification of posts and staff according to the nature of the duties and responsibilities required, and to order the Secretary-General to pay Applicant a sum equivalent to a Special Post Allowance from grade P-5 to grade D-2 for the period 14 October 1965 to 1 February 1969, less 6 months in accordance with Staff Rule 103.11 (b), as compensation for the resulting injury to Applicant, who was not considered for nor

awarded a Special Post Allowance for that time period as a result of Respondent's negligence.

"9. Applicant requests the Administrative Tribunal *to find* that the Joint Appeals Board erred in its Report to the Secretary-General, which concluded that there had been no non-observance of Applicant's terms of appointment, by failing to find that Respondent had neglected to properly implement Staff Regulation 4.2, which requires that the paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity for securing the highest standards of efficiency, competence and integrity, and Regulation 4.4 which requires that the fullest regard shall be had, in filling vacancies, to the requisite qualifications and experience of persons already in the service of the United Nations, and *to order* Respondent to pay Applicant a sum equivalent to the Special Post Allowance from D-1 to D-2 for the period 1 February 1969 to 1 July 1978, as compensation for the resulting injury to Applicant, who was not considered for nor promoted to the vacant D-2 post whose duties he performed as a result of Respondent's negligence in allowing other considerations than those set forth in Regulation 4.2 to prevail so that the vacant post not only remained unfilled but was actually removed from an operational technical cooperation function and transferred to an administrative function.

"10. Applicant requests the Administrative Tribunal *to find* that the Secretary-General's refusal to accept the Joint Appeals Board recommendation that Applicant receive an *ex gratia* payment on grounds of equity was a result of his improper observation of Staff Regulation 11.1, which requires that he shall establish administrative machinery with staff participation to advise him in case of any appeal by staff members against an administrative decision alleging the non-observance of their terms of appointment, in that he failed to give appropriate weight to the advice of the Joint Appeals Board established in accordance with the regulation, and instead accepted the advice of the Personnel Department, whose own negligence was the subject of the Applicant's appeal, and *to order* Respondent to pay proper respect to the advice of the Joint Appeals Board, to not delegate his decision to act on the Joint Appeals Board advice to the Department whose opposition to Applicant's appeal already has been given due consideration in the Joint Appeals Board unanimous recommendation in favor of Applicant."

Whereas the Respondent filed his answer on 24 June 1981;

Whereas the Applicant filed written observations on 17 July 1981;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 6 January 1962 under a fixed-term appointment for two years at the P-4 level as an Economic Affairs Officer in the Department of Economic and Social Affairs. On 6 January 1964 his appointment was converted to probationary, his level reclassified to P-5 and his functional title changed to Senior Economic Affairs Officer. In October 1964 the Applicant was appointed Chief of the Technical Co-operation Section, Bureau of General Economic Research and Policies, Department of Economic and Social Affairs and on 1 January 1965 he received a permanent appointment. In October 1965 the Bureau of General Economic Research and Policies, of which the Technical Co-operation Section had formed a part, was reorganized into the Centre for Development Planning, Projections and Policies (CDPPP), comprising several organizational sub-units—an Office of the Director, three or four Branches, and a unit named the Development Planning Advisory Services (DPAS). The approved budget for the Centre provided for a D-2 post as Director, D-1s for the Branch Chiefs and a

D-2 for the responsible head of DPAS. The Applicant, on the effective date of this reorganization (14 October 1965), was assigned as "Acting Chief" of DPAS at his current grade of P-5. On 1 February 1969 he was promoted to D-1 and given the title of Assistant Director-in-Charge of DPAS. On 26 August 1975, in a letter to the Under-Secretary-General for Economic and Social Affairs, the Applicant claimed that he had since October 1965 been performing duties officially assessed at level D-2 while his own personal grade had been P-5 until February 1969 and D-1 thereafter; he accordingly asked for the "restoration" of what he considered to be his "lawful right in accordance with the Staff Rules". On 14 July 1976 he sent to the Secretary-General a petition which he concluded by stating

"(a) that the level of the duties and responsibilities pertaining to the post of Head of the Development Planning Advisory Services has all along been assessed at the D-2 level; (b) that a post at the D-2 level, in line with the above assessment, was established specifically for the Head of the Development Planning Advisory Services and was so included in the approved Budget Estimates; (c) that the post was never used for the purpose for which it was established; and (d) that I have been performing the duties of that post, although I have been at a lower grade, since 1965."

On 24 August 1976 the Under-Secretary-General for Administration and Management replied in part:

"...

"I understand that in 1965 and the two following years, the Development Planning Advisory Services was projected in the authorized budget to be headed by a person at the D-2 level. You were then still at the P-5 level and in the course of time and on the basis of a subsequent evaluation, the post was not retained at the D-2 level. I understand that when the Administrative Management Service [AMS] conducted its manpower survey of ESA [Economic and Social Affairs] it confirmed the classification of the post of the Chief of the Development Planning Advisory Services at the D-1 level.

"You will no doubt appreciate, having been long enough in the Secretariat, that levels of posts have changed from year to year and that one cannot maintain an expectancy for promotion because at some stage in the organization of the Secretariat a particular post was projected at a higher level. It is perhaps relevant to point out that the post was never encumbered by a Director at the D-2 level. It must be assumed therefore that subsequent evaluations resulted in a decision to adjust the level of the post downwards to the D-1 level.

"...

"I am sending copies of this memorandum of reply to the head of your Department, Mr. Van Laethem, to the Director of the Budget Division and to the Director of AMS. If it is the wish of your Department to have a re-evaluation made by an outside body of the proper level to be given to the post which you occupy, I will be glad to ask the Administrative Management Service to look into it. It would obviously be pointless to propose to the ACABQ [Advisory Committee on Administrative and Budgetary Questions] any change in classification which could not be fully justified and which did not have the full support of the Department and the Budget Division, based on an objective assessment by AMS."

On 9 September 1976 the Applicant addressed to the Under-Secretary-General for Ad-

ministration and Management a memorandum in which he referred to "the current anomalous situation which requires me as the Supervisor of the Unit to be remunerated at a salary level lower than about 25% of the professional officers supervised by me" and asked that his case be reviewed under Staff Rule 111.3 (a). In a reply dated 10 September 1976, the Under-Secretary-General, referring to Staff Regulation 11.1 and Staff Rule 111.3 (a), invited the Applicant to state in a letter to the Secretary-General the administrative decision against which he was lodging an appeal and the date when he had received notification of that decision in writing. On 27 September 1976 the Applicant requested the Secretary-General to make arrangements for an administrative decision to be taken on his claim. On 7 October 1976 his request was transmitted by the Assistant Secretary-General for Personnel Services to the Under-Secretary-General for Economic and Social Affairs under cover of a memorandum concluding as follows:

"In view of the fact that the question of the evaluation of Mr. Vassiliou's post, or his expectation in that regard, lies with the Department of Economic and Social Affairs, I would appreciate your Department's comments in order to enable me to respond to this appeal."

In a reply dated 21 October 1976 the Under-Secretary-General expressed his surprise at the fact that

"... when the staff member is asked to specify the administrative decision as described in Staff Regulation 11.1 against which he is making an appeal, he in turn realizes that none had been taken and asks that such a decision be taken so that he may then appeal against it. If no administrative decision had been taken, and this apparently corresponds to the facts, how can he make an appeal and what kind of decision does he want the administration to take? Is it the re-evaluation of the level of his post which was made years ago by my predecessor and established at D-1? In this case, I see no reason to modify now my predecessor's judgement and to request a new evaluation of the duties of that post. Is it a claim for promotion? In that case, a staff member having no 'right' to promotion to the D-2 level cannot make a claim for it and there does not exist any recourse or appeal procedure at that level."

On 9 December 1976 the Applicant, to whom a copy of this reply had been communicated, sent to the Secretary-General a memorandum reading in part:

"..."

"Mr. Van Laethem ... states that (1) there is no decision which I can appeal, (2) he sees no reason to modify his predecessor's judgement and (3) I do not have a 'right' to promotion at that level.

"Taking the last point first I wish to draw attention to the principle stipulated in Staff Rule 103.11 (b) according to which promotion shall be the normal means of recognising increased responsibilities and demonstrated ability. I have met all the conditions covered by this principle by assuming the duties and responsibilities of a post at a clearly recognisable higher level—in this case D-2 level—and while I am continuing to discharge these duties and responsibilities I have been denied promotion to that level.

"As regards the other two points in Mr. Van Laethem's memorandum, it seems to me that they are contradictory for the following reasons:

“(1) As a result of certain actions taken I am in my present situation experiencing certain deprivations.

“(2) I was never officially informed of those actions.

“(3) I find myself in an anomalous situation which leaves me worse off than before: doing the same job which was established at the D-2 level in 1965 and being unclear as to what my present situation could be attributable.

“(4) If, as Mr. Van Laethem states, there is no decision then the status quo ante should prevail.

“(5) If there is a decision I wish to know what it is, when it was taken and the criteria used for evaluating a post established at the D-2 level in 1965 when the level of responsibility attached to it was at base x and downgrading it to D-1 when at the presumed time of evaluation its level of responsibility probably rose to n (x) n.

“In view of the above I shall appreciate it, Sir, if you will review the case and provide the necessary clarification.”

On 15 March 1977 the Applicant reiterated his request in a further memorandum to the Secretary-General. On 10 May 1977 the Assistant Secretary-General for Personnel Services sent him the following reply:

“ . . .

“There is no dispute that there was, in 1965, a post at the D-2 level intended for the Head of the Development Planning Advisory Services. That post was never used for the purpose for which it was established and, as Mr. Davidson [Under-Secretary-General for Administration and Management] had pointed out previously, you were at that time still at the P-5 level. In June 1971, the Administrative Management Service brought out its Report on the Review of Management and Manpower Utilization in the Department of ESA. This Report centered more on the general structure of the Department and its programme of work rather than the staffing of the various units. In June 1973, AMS published another survey on the Manpower Utilization in ESA. Again in September 1975, there was a follow-up Report by AMS on Manpower Utilization in ESA. The AMS survey included recommendations concerning the Centre for Development Planning, Projects and Policies (CDPPP) and the Branches which belonged to and formed part of the Centre. The Development Planning Advisory Services (DPAS) was one of several sub-organizational units of the Centre. As you know, the Director of the Centre is headed by a D-2 and the Assistant Directors-in-Charge of the Branches and your Service are graded at the D-1 level.

“More specifically, the D-2 post created in 1965 was transferred to the Departmental Administration and Finance Office (DAFO) in October 1972 and has been encumbered since that date. The criteria used for evaluating the posts for the Branches and your Service in CDPPP were the same as those used in evaluating all other posts at that level throughout ESA. According to the evaluation of the AMS, which is based on the level of responsibility attached to it by the Department, the post you now encumber is at the D-1 level.

“As far as I am aware, there was no other administrative decision taken in connection with the level of your post at any other time.”

On 30 July 1977 the Applicant lodged an appeal with the Joint Appeals Board, which submitted its report on 3 June 1980. The Board's conclusions and recommendation read as follows:

"Conclusions and recommendation

"32. The Board finds that the appellant has failed to establish the existence of an administrative decision which contravened the terms of his appointment, and consequently makes no recommendation in support of the appeal.

"33. The Board nevertheless recommends, as an equitable measure of redress, that the appellant receive an *ex gratia* payment equivalent to the amount he would have received if a special post allowance under Staff Rule 103.11 (b) from the P-5 to the D-1 level had been granted to him in respect of the period of his service from 14 October 1965 to 1 February 1969."

On 29 July 1980 the Assistant Secretary-General for Personnel Services advised the Applicant that the Secretary-General, having re-examined his case in the light of the Board's report, had decided to take no further action in the case. On 4 May 1981 the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent's continuing neglect of duty in failing to develop published rules for the implementation of Staff Regulation 2.1 is the reason why the Applicant was neither appointed to the post whose duties he performed nor considered for or granted a special post allowance for the time he performed the duties.

2. The continuous, appealable decision the Respondent made was to not implement Staff Regulation 2.1 with respect to the Applicant.

3. The Respondent neglected his duty to recognize that the Applicant was performing D-2 level duties and thereby deprived the Applicant of the just fruits of his labour.

4. The apparent implementation of Staff Regulation 2.1 by transferring the D-2 post—from substantive technical co-operation to an administrative overhead function—was really a manifestation of the Respondent's failure to implement the Regulation.

5. Proper implementation of Staff Regulations 4.2 and 4.4 would have identified the fact that the D-2 post whose duties were being performed by the Applicant was actually filled by the Applicant on an irregular basis that easily could be regularized either by promotion or by payment of a special post allowance.

Whereas the Respondent's principal contentions are:

1. The claims of the Applicant are not receivable because they were not made within the time-limits specified in Staff Rule 111.3.

2. The Respondent's failure to pay the Applicant a special post allowance did not constitute a non-observance of his contract of employment or his terms of employment.

3. The Respondent's failure to promote the Applicant to the D-2 level did not constitute a non-observance of his contract of employment or of his terms of employment.

4. The reclassification of the Applicant's post to the D-1 level did not constitute a non-observance of his contract of employment or of his terms of employment.

The Tribunal, having deliberated from 21 September to 5 October 1981, now pronounces the following judgement:

I. The Respondent argues that the claims of the Applicant are not receivable because they were not made within the time-limits set out in Staff Rule 111.3. In this regard the Tribunal observes that the Staff Rule invoked governs the receivability of appeals addressed to the Joint Appeals Board against decisions of the Secretary-General. According to Staff Rule 111.3 (c) the time-limit for such appeals is one month from the time the staff member received notification of the decision in writing, and Staff Rule 111.3 (d) authorizes the Board to waive this time-limit in exceptional circumstances.

While the Board found that the Applicant failed to establish the existence of an administrative decision which contravened his letter of appointment, it nevertheless dealt with the Applicant's case on its merits.

The question of the receivability of applications submitted to the Tribunal is regulated by article 7 of the Tribunal's Statute according to which "an application shall not be receivable unless the person concerned has previously submitted the dispute to the joint appeals body provided for in the staff regulations and the latter has communicated its opinion to the Secretary-General . . .". As the Applicant's case was considered by the Joint Appeals Board and the Board made a report to the Secretary-General including a recommendation and as the time-limits prescribed in article 7 were observed by the Applicant, the Tribunal declares the application receivable.

II. In support of his request that the Tribunal order the Respondent to pay him a sum equivalent to a special post allowance from grade P-5 to grade D-2 for the period 14 October 1965 to 1 February 1969, less 6 months' salary, the Applicant relies *inter alia* on Staff Rule 103.11 (b).

This Rule reads as follows:

"Without prejudice to the principle that promotion under Staff Rule 104.14 shall be the normal means of recognizing increased responsibilities and demonstrated ability, a staff member who is called upon to assume the full duties and responsibilities of a post at a clearly recognizable higher level than his or her own for a temporary period exceeding six months may, in exceptional cases, be granted a non-pensionable special post allowance from the beginning of the seventh month of service at the higher level."

The Rule invoked by the Applicant clearly states that the granting of a special post allowance is within the discretion of the Secretary-General and that moreover it is limited to exceptional cases.

It is true that the Rule upholds the principle "that promotion under Staff Rule 104.14 shall be the normal means of recognizing increased responsibilities and demonstrated ability", and that this principle was not followed in the Applicant's case during a relatively long period of approximately two and $\frac{3}{4}$ years (calculated with the deduction of the first six months). However regrettable this fact may be, it does not give a sufficient legal ground for the Applicant's claim in question. In its Judgement No. 155 (*Belaineh*), paragraph VI, the Tribunal acknowledged that "the length of time during which the staff member assumed these increased responsibilities and the manner in which he discharged them could legitimately be included among the criteria for determining the existence of the exceptional cases mentioned in paragraph (b) of Staff Rule 103.11". The Tribunal is of the opinion, however, that, as in the *Belaineh* case, "these factors cannot on their own be considered as decisive and that in any event the Applicant has not proved the existence of prejudice in the case under consideration."

III. In his first written complaint dated 26 August 1975 (more than six years after the expiration of the period in question), the Applicant stated that "when the D-2 post was established it was obviously not intended for me". According to that letter, the Applicant raised the matter for the first time orally in 1970, i.e. after the expiration of that period, and for the second time in the course of a discussion in 1973. These circumstances show that the Applicant himself was fully aware that his demands could not be placed on a valid legal basis. This was clearly expressed in the aforementioned complaint as follows: "In making this claim I do not base my argument on what other people might call a legal technicality, i.e. the fact that the post is shown in the budget as D-2".

The Tribunal finds that the Applicant did not have any legal entitlement to the payment of a special post allowance for the period in question and his claim based on the assumption that he did, must fail.

IV. The Applicant puts forward further arguments pertaining both to the period 14 October 1965–1 February 1969 and to the period 1 February 1969–1 July 1978.

He claims that the Secretary-General has not implemented Staff Regulation 2.1 on classification of posts and staff and has not properly implemented Staff Regulations 4.2 and 4.4 on appointment and promotion in his case.

For the period 14 October 1965–1 February 1969, the Applicant's complaint is that he was neither promoted nor awarded a special post allowance. His claim to a special post allowance has been dealt with above. As regards promotion, the subject is within the discretion of the Secretary-General and, in the absence of a legal obligation binding on him, the Tribunal cannot enter into the merits of the Applicant's claim. (Judgement No. 134, *Fürst*, par. III). The Secretary-General's omission to implement Staff Regulation 2.1 by issuing Staff Rules has no relevance to this period.

V. As regards the period 1 February 1969–1 July 1978, the Applicant held the rank of D-1 and occupied a post which was reclassified from D-2 to D-1. The Applicant relies on paragraph XI of Judgement No. 76 (*Champoury*) in which the Tribunal found itself competent to interpret and apply Staff Regulation 2.1. However, this finding of the Tribunal is to be read in the light of paragraph XVII of the same judgement where the Tribunal pointed out that its conclusions were based "upon the circumstances peculiar to this case, where a thorough review of the facts has established that there exists in practice parity of duties and responsibilities of two groups of Professional staff members differently classified."

In the present case, however, the situation is different. On 1 February 1969 the Applicant was promoted to D-1. In October 1972 the post which he occupied was reclassified from D-2 to D-1. His first written complaint was not made until some three years later. He does not furnish any evidence to establish that in his case the general principle of equal pay for equal work was violated. The fact that he headed a large unit and that some members of this unit were high ranking officers does not in itself prove the violation of the said principle which in any event has not been expressly invoked by the Applicant.

VI. The claim of the Applicant based on the fact that the Respondent did not follow the recommendation of the Joint Appeals Board cannot be sustained. The obligation of the Secretary-General concerning "recommendations" of the Joint Appeals Board does not go beyond considering them in good faith and in the light of the relevant principles, regulations and rules. There is no indication that the Secretary-General failed to observe

his obligation in the present case or that his decision was tainted by prejudice or by any other vitiating factor.

VII. It is in this connexion that the Applicant requests the Tribunal to order the Respondent to produce copies of all documents stating advice or recommendations on which the Respondent relied when he made his decision to reject the recommendation of the Joint Appeals Board that the Applicant receive an *ex gratia* payment.

The Tribunal has held that "rules of equity and justice do require access to documents and information within the exclusive possession of the Administration in so far as it relates to the staff member concerned and is relevant to the proceedings under consideration. Unless access is given to 'relevant' documents to the Applicant, it would amount to lack of due process in the preparation and presentation of his case" (Judgement No. 74, *Bang-Jensen*, par. 9).

In the present case, however, production of the documents requested by the Applicant is not "relevant" to the proceedings inasmuch as the Secretary-General enjoys complete freedom to seek or act on the advice of either the Office of Personnel Services or the Department in which the Applicant served or both. Such a procedure cannot be considered an illegal delegation of authority or responsibility as the Applicant argues.

VIII. For the foregoing reasons, the application is rejected.

(Signatures)

Endre USTOR
Vice-President, presiding

Samar SEN
Member

New York, 5 October 1981

Arnold KEAN
Member

Jean HARDY
Executive Secretary

Judgement No. 276

(Original: French)

Case No. 260:
Badr

**Against: The Secretary-General
of the United Nations**

Request by a staff member that his period of service as a judge in the Republic of the Congo be counted as part of his contributory service for the purposes of the Pension Fund.

Arbitration procedure prescribed in the "judiciary contract".—Competence of the Tribunal in accordance with the precedent set in Judgement No. 176.

The Applicant's claim that his contractual status in the Congo was that of a technical assistance expert.—Principle according to which an Applicant cannot use his factual status as an argument to claim a legal status different from his contractual status.—Consideration of the relevant terms of the "judiciary contract".—Nature of the functions performed by the Applicant in the Congo.—The Applicant's claim is