

Translated from French

UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2009-015

Kasmani

(Respondent/Applicant)

v.

Secretary-General of the United Nations

(Appellant/Respondent)

JUDGMENT ON AN APPLICATION FOR INTERPRETATION

Before:	Judge Jean Courtial, Presiding Judge Mark P. Painter Judge Luis María Simón
Judgment No.:	2010-UNAT-064
Date:	28 October 2010
Registrar:	Weicheng Lin

Counsel for Respondent/Applicant:	Brian Gorlick Katya Melliush Bart Willemsen
Counsel for Appellant/Respondent:	Amy Wood

Judge Jean Courtial, Presiding Judge

Synopsis

1. Mr. Kasmani submitted an Application for Interpretation of an Appeals Tribunal judgment of 30 March 2010. That judgment annulled a judgment in which the United Nations Dispute Tribunal had ordered the Secretary-General to suspend, until the substantive application had been heard and determined, the execution of the decision not to renew his appointment. The Appeals Tribunal considered in that judgment that the United Nations Dispute Tribunal was not competent to order the suspension of the administrative decision beyond the date on which the management evaluation had been completed.

2. In the present judgment, the Appeals Tribunal rejects as non-receivable the multiple applications submitted to it by Mr. Kasmani in what is supposedly an application for interpretation. It recalls that its judgments are final and without appeal. An application for interpretation is not receivable if its actual purpose is to contest a final judgment or to obtain comments on that judgment. It is only admissible if the wording of the judgment is not sufficiently clear, owing to ambiguity or incoherence, such that a party might, in good faith, be unsure of the meaning or scope of that judgment. Given that the reasons for the judgment are perfectly clear, the Appeals Tribunal considered that the purpose of Mr. Kasmani's multiple applications was either to challenge the judgment of 30 March 2010 or to obtain comments on the judgment from the Appeals Tribunal.

3. The Appeals Tribunal clarifies in the present judgment that its judgments take effect immediately on the date they are rendered. The obligations imposed on the administration by a judgment are executable on the date it receives notice; on that same date, it may also exercise any rights conferred on it by the judgment. The fact that notice is given to a staff member in a language other than that of the original application made to the Dispute Tribunal has no impact on the administration's rights and obligations.

Facts and procedure

4. On 30 March 2010 the Appeals Tribunal issued a judgment in the *Kasmani* case (judgment No. 2010-UNAT-011). The parties received the French version of the judgment on 26 April and the English translation on 7 May.

5. On 13 May 2010, Mr. Kasmani submitted an Application for Interpretation of the judgment, in accordance with article 11, paragraph 3, of the statute of the Appeals Tribunal. Mr. Kasmani requests clarification of the duration of the management evaluation, of the meaning of "annul", and of what legal effect the Appeals Tribunal's judgment had before receipt by Mr. Kasmani of the translation into the language in which he submitted his appeal. On 14 June, Mr. Kasmani's Application for Interpretation was conveyed to the counsel for the Secretary-General.

6. On 14 July, the Secretary-General submitted an answer. He maintains that the meaning and the scope of the judgment are unambiguous, requiring no interpretation.

Considerations

7. In accordance with the provisions of article 11, paragraph 3, of the statute of the Appeals Tribunal, article 25 of the rules of procedure provides that “Either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of a judgement [...]. The Tribunal will decide whether to admit the application for interpretation and, if it does so, it shall issue its interpretation.”

8. An application for interpretation is not receivable if its actual purpose is to have the Appeals Tribunal re-examine its decision, even though its judgments are final and without appeal, or to have it comment on its decision. It is only admissible if the wording of the judgment is not sufficiently clear, owing to ambiguity or incoherence, such that a party might, in good faith, be unsure of the meaning or scope of that judgment.

9. Firstly, this Appeals Tribunal determines that judgment No. 2010-UNAT-011 explicitly and clearly considers that the United Nations Dispute Tribunal exceeded the powers conferred on it by the provisions of article 2, paragraph 2, and article 10, paragraph 2, of its statute, namely “to suspend [...] the implementation of a [...] administrative decision” in favour of termination “that is the subject of a [...] management evaluation”, beyond the pendency of that evaluation.

10. It follows that Mr. Kasmani’s applications made under subparagraphs (a) to (g) of paragraph 30 of his appeal, with the purpose either of calling into question the decision or of having the Appeals Tribunal issue comments on the decision, are not receivable.

11. Secondly, Mr. Kasmani questions the meaning of the word “annul”, applied to a judgment. Although it is true that the French version of article 2, paragraph 3, of the statute of the Appeals Tribunal uses the words “*confirmer, infirmer ou modifier*” (corresponding to “affirm, reverse or modify”), in relation to judgments of the Dispute Tribunal, the language of administrative law in francophone countries more commonly refers to rejecting appeals and annulling or amending judgments. Therefore, use of the word “annul” cannot lead to confusion in the mind of a party in good faith. Mr. Kasmani’s application made under subparagraph (h) of paragraph 30 of his appeal is not receivable.

12. Finally, absent provisions of the statute or the rules of procedure of the Appeals Tribunal or a decision by the Tribunal indicating otherwise, there is no question that the judgment, which is final and without appeal, immediately takes effect on the date it is rendered. The obligations imposed on the administration by a judgment are executable on the date it receives notice; on the same date, it may also exercise any rights conferred on it by the judgment. The administration’s rights and obligations are unaffected if notice is given to a staff member in a language other than that of the original application made to the Dispute Tribunal. Therefore, Mr. Kasmani’s request for clarification contained in subparagraph (i) of paragraph 30 of his application is not receivable.

13. The Appeals Tribunal therefore rejects, in its entirety, the application for interpretation of judgment 2010-UNAT-011 as non-receivable.

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2010-UNAT-064

Judgment

14. Mr. Kasmani's application is rejected.

Dated this 28th day of October 2010 in New York, United States.

Original: French

(Signed) Judge Courtial
Presiding

(Signed) Judge Painter

(Signed) Judge Simón

Entered in the Register on this 29th day of December 2010
in New York, United States.

(Signed) Weicheng Lin, Registrar
