



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

Judgment No. 2015-UNAT-567

**Fedorchenko
(Applicant)**
v.
**Secretary General
of the International Civil Aviation Organization
(Respondent)**

JUDGMENT ON CORRECTION AND REVISION

Before: Judge Luis María Simón, Presiding
Judge Rosalyn Chapman
Judge Mary Faherty

Case No.: 2015-716

Date: 2 July 2015

Registrar: Weicheng Lin

Counsel for Applicant: Self-represented

Counsel for Respondent: Christopher M. Petras

JUDGE LUIS MARÍA SIMÓN, PRESIDING.

Facts and Procedure

1. On 17 April 2015, the United Nations Appeals Tribunal (Appeals Tribunal) issued Judgment No. 2015-UNAT-499, in the case of *Fedorchenko v. Secretary General of the International Civil Aviation Organization*. The Appeals Tribunal granted, in part, Mr. Alexander Fedorchenko's appeal and remanded the case to the Advisory Joint Appeals Board of the International Civil Aviation Organization (AJAB and ICAO, respectively) "for consideration on the merits".
2. On 6 May 2015, Mr. Fedorchenko filed an application for correction of judgment and an application for interpretation of judgment.
3. On 15 and 17 June 2015, ICAO filed comments on the applications.

Submissions

Mr. Fedorchenko's Applications

4. Mr. Fedorchenko requests correction of Judgment No. 2015-UNAT-499, claiming that his motion for exclusion of documentary evidence dated 5 May 2014 had been overlooked. He contends that the motion concerns the admissibility of certain documentary evidence (i.e., memoranda by the ICAO Ethics Officer dated 14 March and 29 October 2012), which was quoted in the Facts and Procedure section of the Judgment, and which the Respondent did not produce to him and produced only to the Appeals Tribunal long after the end of its illegal and protracted investigation. He claims that the Judgment's Facts and Procedure section was based on the dubious documentary evidence that created a false impression that would prejudice consideration of his claims on remand.
5. Mr. Fedorchenko also applies for interpretation of Judgment No. 2015-UNAT-499, on the grounds that the Judgment's Facts and Procedure section widely quotes from and relies on the Respondent's dubious and belated submissions, discussed above. Specifically, he claims that the documents (i.e. memoranda by the ICAO Ethics Officer dated 14 March and 29 October 2012) were withheld from him and belatedly submitted by the Respondent to the Appeals Tribunal. He reiterates his claims that those documents may have

been back-dated, adulterated or otherwise falsified to mislead the Appeals Tribunal and that, in the absence of any ruling on the motion, the Judgment creates a false impression that would prejudice consideration of his claims on remand.

6. Mr. Fedorchenko requests that the Appeals Tribunal clarify that it has never determined either the veracity or factual accuracy of the documents referred to in paragraphs 4, 6 and 7 of its Judgment and issue an interpretation of its Facts and Procedure section of the Judgment.

ICAO's Comments

7. ICAO notes that the parties did not agree upon any statement of facts prior to the filing of the appeal. ICAO also argues that the application for correction should be dismissed because Article 11(2) of the Appeals Tribunal Statute (Statute) and Article 26 of the Appeals Tribunal Rules of Procedure (Rules), which pertain to applications for correction, allow only for correction of clerical or arithmetical mistakes. There are no clerical errors in paragraphs 4, 6 and 7 of the Judgment. Moreover, the Appeals Tribunal effectively rejected Mr. Fedorchenko's 5 May 2014 motion in its Judgment; thus, it did not fail to address the motion. Mr. Fedorchenko is attempting to re-litigate his exclusionary motion, which is not the purpose of an application for correction.

8. ICAO also submits that Mr. Fedorchenko's application for interpretation should be dismissed because it does not relate to the "meaning or scope" of the Judgment, as required by Article 11(3) of the Statute and Article 25 of the Rules. Mr. Fedorchenko has not identified any sentences or words in the Judgment that are unclear or ambiguous. Once again, he is trying to re-litigate his motion to exclude evidence.

9. ICAO submits that Mr. Fedorchenko's unsupported and fanciful allegations of forgery are an affront to the earnestness of the proceedings and are an abuse of the appeals process. Since the applications are frivolous, ICAO requests an award of costs in the amount of USD 500 for each application, pursuant to Article 9(2) of the Statute.

Considerations

Applications for correction and interpretation

10. Article 11 of the Statute provides, in part:

2. Clerical or arithmetical mistakes, or errors arising [in the judgment] from any accidental slip or omission, may at any time be corrected by the Appeals Tribunal, either on its own motion or on the application of any of the parties.

3. Either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of the judgement.

11. Similar to Article 11(2) of the Statute, Article 26 of the Rules reads:

Clerical or arithmetical mistakes, or errors arising from any accidental slip or omission, may at any time be corrected by the Appeals Tribunal, either on its own initiative or on the application by any of the parties on a prescribed form.

12. And similar to Article 11(3) of the Statute, Article 25 of the Rules provides:

Either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of a judgement on a prescribed form. The application for interpretation shall be sent to the other party, who shall have 30 days to submit comments on the application on a prescribed form. The Appeals Tribunal will decide whether to admit the application for interpretation and, if it does so, shall issue its interpretation.

13. An application seeking review of a final judgment rendered by the Appeals Tribunal “can only succeed if it fulfils the strict and exceptional criteria established under Article 11 of its Statute”.¹ Mr. Fedorchenko’s applications do not come within the criteria set forth in these statutory provisions.

14. As to his application for correction of judgment, Mr. Fedorchenko does not cite any clerical or arithmetical mistake to justify a correction of Judgment No. 2015-UNAT-499 under Article 11(2) of the Statute.

¹ *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-497, para. 19, citing *Al-Mulla v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-394, para. 14.

15. Similarly, as to his application for interpretation of judgment, Mr. Fedorchenko has not identified any “meaning or scope” of the Judgment to justify interpreting Judgment No. 2015-UNAT-499. In fact, he does not identify which sentences or words in the Judgment are unclear or ambiguous.

16. For these reasons, Mr. Fedorchenko’s applications for correction and interpretation of the Judgment should be rejected.

Costs

17. In the comments to both applications, ICAO has requested costs in the amount of USD 500 per application, arguing that the applications are frivolous and filing them constitutes an abuse of process. Article 9(2) of the Statute provides that the Appeals Tribunal may award costs against a party for abuse of process. We are not inclined to award costs against Mr. Fedorchenko at this point – despite the burden on the Respondent in having to defend against the frivolous applications. Rather, we are content to advise Mr. Fedorchenko that he may be subject to an award of costs if he continues to file frivolous motions.

18. The Respondent’s requests for costs are denied.

Judgment

19. The applications for correction and interpretation of Judgment No. 2015-UNAT-499 are dismissed.

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Faherty

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar