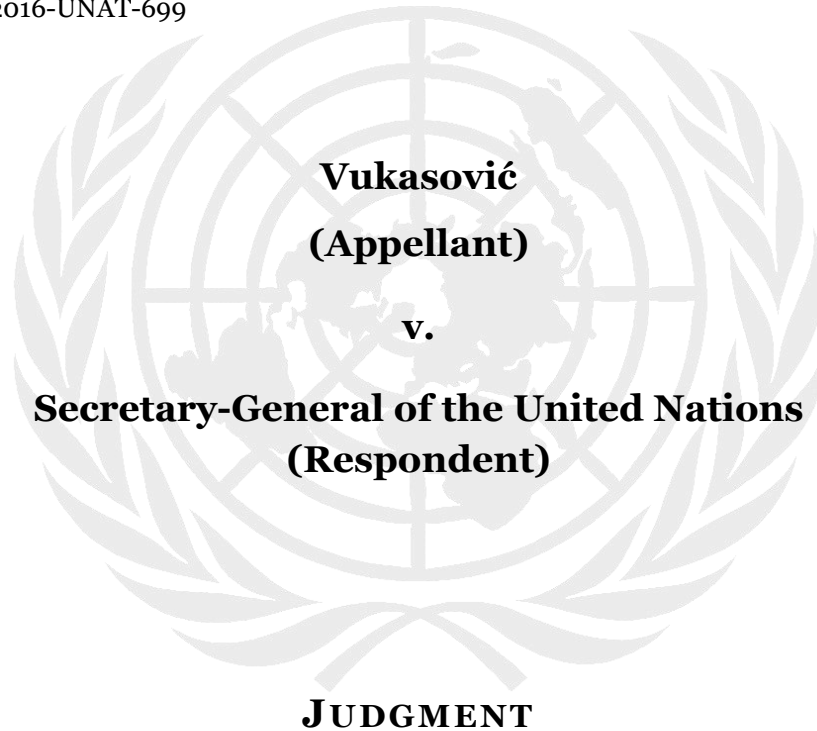




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2016-UNAT-699



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Before:	Judge Dimitrios Raikos, Presiding Judge Richard Lussick Judge John Murphy
Case No.:	2016-930
Date:	28 October 2016
Registrar:	Weicheng Lin

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Counsel for Mr. Vukasović:	Self-represented
Counsel for Secretary-General:	Carla Hoe

**JUDGE DIMITRIOS RAIKOS, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Zoran Vukasović of Summary Judgment No. UNDT/2016/046, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 27 April 2016, in the case of *Vukasovic v. Secretary-General of the United Nations*. Mr. Vukasović filed his appeal on 16 May 2016, and the Secretary-General filed his answer to the appeal on 15 July 2016.

**Facts and Procedure**

2. The following facts are taken from the UNDT Judgment:<sup>1</sup>

... In January 2016, the vacancy announcement for the [post of Communication Associate, G-6, United Nations High Commissioner for Refugees (“UNHCR”), Croatia] was issued, with a closing deadline of 22 January 2016. It required, *inter alia*, “[c]ompletion of the Secondary Education with post-secondary training in Social Science, Journalism, Humanities or related field”. The Applicant indicated that he was informed of his non-selection to the post in February 2016.

... By application submitted by email on 29 March 2016, subsequently completed and filed through the [Dispute] Tribunal’s e-Filing system (“CCMS”) on 5 April 2016, the Applicant contest[ed] his non-selection to the [above-referenced] post...

... In response to the Applicant’s email submission of 29 March 2016, the [Dispute] Tribunal asked him on 30 March 2016 to complete his submission, using the correct application form. It further encouraged the Applicant to get acquainted with the information on “decisions” and “preliminary steps” available on the [Dispute] Tribunal’s website.

... The Applicant filed the duly signed application form on 5 April 2016. He further stated that he had never formally asked for management evaluation.

... On 20 April 2016, the [Dispute] Tribunal wrote to the Applicant informing him that according to art. 8.1(c) of the [Dispute] Tribunal’s Statute, for an application to be receivable, an Applicant must previously have submitted the contested decision for management evaluation. The [Dispute] Tribunal further advised the Applicant that since he had not filed a request for management evaluation prior to filing his application, he may want to consider withdrawing it.

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<sup>1</sup> Impugned Judgment, paras. 1-6.

... The Applicant responded on 21 April 2016, stating that he never received a notification of any administrative decision for which he could formally file a complaint, and that “asking for management evaluation from the same persons that humiliated and discriminated [him] looks like a failure from the beginning”. He informed the [Dispute] Tribunal that he did not want to withdraw his application.

3. On 27 April 2016, the Dispute Tribunal issued a Summary Judgment in which it found the application non-receivable as Mr. Vukasović had not submitted a request for management evaluation of the non-selection decision.

4. The Dispute Tribunal noted that Mr. Vukasović had informed the Dispute Tribunal that he did not intend to submit a request for management evaluation of the non-selection decision. As a mandatory requirement for the application to be receivable was missing, the Dispute Tribunal found that it was not competent to consider it.

### **Submissions**

#### **Mr. Vukasović’s Appeal**

5. Mr. Vukasović requests that his e-mail correspondence with a UNHCR Regional Representative and UNHCR Regional Administrative Officer be considered as a request for management evaluation of the non-selection decision. In his e-mail correspondence, he raised numerous concerns and issues about his non-selection.

6. Mr. Vukasović also argues that “[t]here are no instructions in which form management evaluation should be addressed”. He also makes submissions on the merits of his case.

#### **The Secretary-General’s Answer**

7. The Secretary-General argues that the Dispute Tribunal correctly found that Mr. Vukasović had not complied with the mandatory requirement to request management evaluation of the non-selection decision.

8. The Secretary-General has delegated the authority to conduct management evaluations for UNHCR staff members to UNHCR’s High Commissioner and Deputy High Commissioner. UNHCR has circulated information to all staff members explaining how a staff member may request management evaluation, in particular, through a memorandum dated 1 July 2009 and its annual reports on the activities of the internal justice system.

9. Mr. Vukasović's e-mail correspondence with the UNHCR Regional Representative and UNHCR Regional Administrative Officer cannot be considered as a request for management evaluation. Requests for management evaluation are required to be addressed to UNHCR's Deputy High Commissioner. Mr. Vukasović was responsible for ensuring that he was aware of the applicable procedures regarding the administration of justice within UNHCR.
10. The Secretary-General requests that the Appeals Tribunal dismiss the appeal and affirm the UNDT Judgment.

### Considerations

11. The issue before this Tribunal is whether the UNDT correctly concluded, by way of summary judgment, that Mr. Vukasović's application was non-receivable *ratione materiae*, as he had not submitted a request for management evaluation of the contested administrative decision before filing his application with the UNDT. This Tribunal determines that the Dispute Tribunal's conclusions are correct.

12. Under Article 8(1)(c) of the UNDT Statute, an application shall be receivable if the applicant has previously submitted the contested decision for management evaluation where required. This obligation upon the applicant is also prescribed in Staff Rule 11.2(a), which provides that a staff member wishing to formally contest an administrative decision shall, as a first step, submit to the Secretary-General in writing a request for management evaluation. Pursuant to Staff Rule 11.2(c), a request for management evaluation is to be submitted to the Secretary-General within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. The Staff Rules and Staff Regulations are applicable to UNHRC *mutatis mutandis*.

13. It is settled case law that requesting management evaluation is a mandatory first step in the appeal process.<sup>2</sup> The Appeals Tribunal has noted many times that the requirement of management evaluation assures that there is an opportunity to quickly resolve a staff member's complaint or dispute without the need for judicial intervention.<sup>3</sup>

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<sup>2</sup> *Faye v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-654, para. 31; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-293, para. 27.

<sup>3</sup> *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521, para. 17, citing *Servas v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-349, para. 22 and cites therein.

14. The Appellant's argument that there are no instructions in which form management evaluation should be requested has no merit. Staff members are presumed to know the Regulations and Rules applicable to them. It is the staff member's responsibility to ensure that he or she is aware of the applicable procedure in the context of the administration of justice at the United Nations. Ignorance cannot be invoked as an excuse.<sup>4</sup>

15. Mr. Vukasović claims that he had exchanged several e-mails with UNHCR's Regional Representative and UNHCR's Regional Administrative Officer, which could be considered as a request for management evaluation of the said decision. This submission does not appear to have been put to the UNDT, where he admitted to not having requested such a management evaluation. Therefore, we do not permit the issue to be raised for the first time on appeal.<sup>5</sup> In any event, it does not assist Mr. Vukasović, since it falls well short of establishing that he has requested management evaluation.

16. We are satisfied that the Dispute Tribunal properly considered the facts and the applicable statutory law and jurisprudence in arriving at its decision that Mr. Vukasović's application was not receivable.

17. Having failed to demonstrate that the UNDT committed any error of law or fact, Mr. Vukasović's appeal must fail.

### **Judgment**

18. The appeal is dismissed and Summary Judgment No. UNDT/2016/046 is affirmed.

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<sup>4</sup> *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521, para. 18, citing *Kissila v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-470, para. 24, and cites therein.

<sup>5</sup> See *Hasan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-541, para. 18.

Original and Authoritative Version: English

Dated this 28<sup>th</sup> day of October 2016 in New York, United States.

*(Signed)*

Judge Raikos, Presiding

*(Signed)*

Judge Lussick

*(Signed)*

Judge Murphy

Entered in the Register on this 20<sup>th</sup> day of December 2016 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar