



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

---

Judgment No. 2017-UNAT-803

**Kalashnik  
(Appellant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT**

---

Before:	Judge John Murphy, Presiding Judge Richard Lussick Judge Martha Halfeld
Case No.:	2017-1088
Date:	27 October 2017
Registrar:	Weicheng Lin

---

Counsel for Mr. Kalashnik:	Self-represented
Counsel for Secretary-General:	John Stompor

**JUDGE JOHN MURPHY, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2017/030, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 26 April 2017, in the case of *Kalashnik v. Secretary-General of the United Nations*. Mr. Andrew Kalashnik filed his appeal on 27 June 2017, and the Secretary-General filed an answer on 23 August 2017.

**Facts and Procedure**

2. Mr. Kalashnik is an Investigator at the P-3 level in the Investigations Division, Office of Internal Oversight Services (OIOS), where he has worked since 2009.

3. On 5 December 2012 and 28 June 2013, Mr. Kalashnik submitted two separate requests for management evaluation to the Management Evaluation Unit (MEU) contesting the cancellation of two selection exercises for P-4 level positions of Investigator in OIOS that had been advertised under job opening numbers 21459 and 22597, respectively. The MEU acknowledged receipt of his requests under numbers MEU/795-12/R and MEU/643-13/R.

4. More than two years later, on 18 November 2015, Mr. Kalashnik wrote to the Under-Secretary-General for Management (USG/DM) seeking the production of management evaluations in response to his requests for management evaluation submitted in 2012 and 2013.

5. On 11 January 2016, Mr. Kalashnik submitted a request for management evaluation, contesting the USG/DM's failure to acknowledge his request of 18 November 2015 or to act on his request for the disclosure to him of MEU evaluations MEU/795-12/R and MEU/643-13/R.

6. In a letter dated 5 February 2016, the MEU informed Mr. Kalashnik that his 11 January 2016 request was not receivable on the ground that the MEU's failure to provide copies of a management evaluation outcome is not a contestable administrative decision. The MEU acknowledged that no evaluations had been completed for either MEU/795-12/R or MEU/643-13/R submitted in 2012 and 2013. It is therefore common cause that no evaluations were completed in respect of either request.

7. On 8 February 2016, Mr. Kalashnik wrote back confirming receipt of the 5 February 2016 letter and, in light of the admission that the MEU did not complete the two management evaluations, requested disclosure of the names of the individuals involved.

8. On 4 April 2016, Mr. Kalashnik submitted another request for management evaluation in which he contested the lack of action by the USG/DM or other relevant officials in relation to the two management evaluations, which, he maintained, were neither completed nor given full and fair consideration.

9. In a letter dated 22 April 2016, the MEU informed Mr. Kalashnik that his 4 April 2016 request was not receivable as it was repetitive of his prior 11 January 2016 request and the MEU letter dated 5 February 2016 did not constitute a separate administrative decision subject to management evaluation.

10. On 17 June 2016, Mr. Kalashnik filed an application with the UNDT contending that there had been “multiple failures/omissions” by the relevant officials to ensure that i) the requests for management evaluation were considered fully and fairly and were completed; and ii) the impugned decisions to cancel the recruitments for P-4 positions were rescinded. He complained furthermore that he had not been provided with “written and reasoned responses setting out the basis for the management evaluation, including a summary of the relevant facts of the requests and the comments on the request[s] provided by the decision-maker(s), the relevant internal rules of the Organization, relevant jurisprudence of the Tribunals, and the decision of the Secretary-General”. He also contended that there had been “[m]ultiple decisions” by the USG/DM or other officials “not to enforce accountability and not to act in order to protect and/or cover up for the USG for OIOS (...) not to hold the USG for OIOS accountable for her actions (...) to promote the culture of lawlessness and unaccountability and lack of integrity among OIOS senior management by failing to take appropriate action”.

11. As the UNDT saw the matter, Mr. Kalashnik essentially alleged “that his rights to request management evaluation, and to a full, fair and timely consideration of such requests in order to correct unlawful decisions in an efficient and timely manner, have been infringed by the conduct and/or inaction of the MEU and the Administration (...) to take appropriate action and to enforce compliance and accountability”.<sup>1</sup>

---

<sup>1</sup> Impugned Judgment, para. 2.

12. Before the UNDT, Mr. Kalashnik sought correction of the irregular conduct; a referral to the Secretary-General for accountability of the individuals involved; compensation for breach of his rights due to the repeated failures of officials to comply with their obligations; referral to the General Assembly to “have the MEU removed as a mandatory step” due to its failure to serve the intended objectives under the new system of administration of justice.

13. The UNDT dismissed the application as not receivable *ratione materiae*. The UNDT noted that it has jurisdiction in terms of Article 2(1) of the UNDT Statute in respect of appeals against “administrative decisions” in non-compliance with the contract or imposing a disciplinary measure. It found that in this matter the crux of Mr. Kalashnik’s case turned on the issue of the MEU’s alleged failure, or omission, to respond to his requests for additional information and management evaluation, and the alleged inaction of other higher competent officials involved in the management evaluation process.<sup>2</sup> On the basis that the management evaluation process is directed at a settlement avoiding judicial review of an administrative decision, and hence does not produce direct legal consequences affecting a staff member’s terms and conditions of employment, the UNDT held that the Administration was not required to respond to a request for management evaluation, and additionally that the Administration’s response, or lack thereof, to a request for management evaluation is not a judicially reviewable administrative decision, with the consequence that it lacked jurisdiction.

14. As mentioned, Mr. Kalashnik filed his appeal on 27 June 2017, and the Secretary-General filed an answer on 23 August 2017.

### **Submissions**

#### **Mr. Kalashnik’s Appeal**

15. Mr. Kalashnik submits that the UNDT erred in fact and law and abused its discretion when it dismissed his application as non-receivable *ratione materiae*; and additionally failed to consider the record fully and fairly; instead, it one-sidedly decided on the scope of the application, misconstruing its contentions. He maintains that the application is receivable as he complied with the requisite steps: having been informed in February 2016 of Management’s failure to act, he filed a timely request for management evaluation on 4 April 2016 contesting this implied decision and, following the MEU’s response thereto, timely filed on 17 June 2016 his

---

<sup>2</sup> *Ibid.*, para. 14.

UNDT application. Contrary to the UNDT's finding, he did not challenge the content of the MEU's letter or its procedures; but, rather, the repeated "failure to take appropriate measures" which, in his submission, is a reviewable implied decision.

16. As the General Assembly emphasized in its adoption of a definition of accountability in 2016, the Secretary-General and his staff are to "be answerable for all decisions made and actions taken by them, and to be responsible for honouring their commitments, without qualification or exception". Under the provisions of Secretary-General's Bulletin ST/SGB/2010/9 (Organization of the Department of Management), the USG/DM is responsible for the conduct of the management evaluation process and is under a mandatory obligation to provide a written response to a staff member's request for management evaluation. He also challenges the decisions of this Tribunal providing that a decision must have "direct legal consequences" before it may be categorized as a reviewable administrative decision.

17. The new internal justice system at the United Nations was established, *inter alia*, to "ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike". Mr. Kalashnik's claims the practice is "a complete opposite" because the UNDT "has (...) distorted, reviewed formalistically, or dismissed" his challenges in prior cases and again in the present case. The UNDT's holding results in unaccountability of senior management for their failure to properly execute their authority, duties and responsibilities and results in his being denied a full, fair and impartial consideration of his requests for management evaluation.

18. Mr. Kalashnik requests the Appeals Tribunal to vacate the impugned Judgment, refer for accountability the "parties responsible", and award him "with the possibility of donation to a non-for-profit entity of his choice, an appropriate and commensurate compensation for the recurrent breach of his rights and terms of employment and for exploitation and abuse of process and position by the Administration".

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

19. The Secretary-General submits that the UNDT correctly dismissed the application as not receivable on the basis that it failed to contest a reviewable decision. Its decision is in accordance with the prior decisions of this Tribunal that the MEU's response to a request for management evaluation is not an administrative decision subject to judicial review.

20. Alternatively, and in any event, even if the decision was reviewable, Mr. Kalashnik's application is not receivable as it is time-barred and not receivable *ratione temporis*. Mr. Kalashnik's request for management evaluation dated 4 April 2016 essentially repeated his prior request for a management evaluation dated 11 January 2016. Accordingly, the request dated 4 April 2016 did not set a new deadline for filing an application with the UNDT. On 5 February, the MEU responded to Mr. Kalashnik regarding his 11 January 2016 request and, pursuant to Article 8(1)(d)(i)(a) of the UNDT Statute and Staff Rule 11.4(a), he had 90 days (or until 5 May 2016) to file an application with the UNDT. Mr. Kalashnik filed his application on 17 June 2016, more than 40 days past the deadline.

21. Mr. Kalashnik has failed to establish that the UNDT made any error warranting a reversal of its dismissal of the application as not receivable. Contrary to Mr. Kalashnik's assertions, the UNDT did not one-sidedly decide on the scope of his application but rather it granted him an opportunity to address issues of receivability and the scope of his contentions and addressed them in its Judgment.

22. The Secretary-General requests that the Appeal Tribunal affirm the impugned Judgment and dismiss the appeal in its entirety.

### **Considerations**

23. Mr. Kalashnik's contention that the UNDT mischaracterized and narrowed the scope of his complaint is not correct. His complaint is quite evidently directed at the failure of the MEU to respond to his requests and challenges to the two decisions cancelling the job vacancy announcements. It is premised upon his incorrect understanding that the MEU is obliged to respond to his request. In that, Mr. Kalashnik evinces a repeated and obtuse failure to grasp the purpose of management evaluation.

24. The process of management evaluation is aimed at affording the Administration the opportunity to correct an erroneous or flawed administrative decision so as to avoid unnecessary judicial review, and also perhaps to persuade a staff member to reconsider the merits of an impugned decision before taking it on review. It provides an opportunity for both parties to reconsider the merits of the decision before engaging the more formal dispute resolution mechanisms. To ensure that the parties are properly availed of that opportunity,

Article 8(1)(c) of the UNDT Statute compels a referral to management evaluation as a jurisdictional condition precedent to the UNDT assuming jurisdiction in an application.

25. However, all that is compulsory in the management evaluation process is the referral to the MEU. There is no legal obligation on the MEU to deal with the request, to consider it or to respond. That much is evident from Article 8(1)(d) of the UNDT Statute which sets deadlines for the filing of applications with the UNDT. It provides that in cases where a management evaluation of the contested decision is required, the application must be filed within 90 calendar days of the applicant's receipt of the response by Management to his or her submission to management evaluation or alternatively within 90 days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The UNDT Statute thus explicitly anticipates that there need be no response to a request for management evaluation. The purpose of that provision is self-evident. The Administration may be inclined not to deal with a request because it prefers to engage with the matter in the formal processes or, alternatively, it may view the referral as without merit, frivolous, vexatious or unreasonable and consequently unworthy of a considered and time-consuming response.

26. In the recent decision of *Kalashnik*<sup>3</sup> this Tribunal when dealing with the same point made by the present Appellant in another matter, definitively resolved the issue in the following terms:

... Accordingly, it is fair to say that the General Assembly when enacting the provisions of the UNDT Statute did not consider the Administration's response to a request for management evaluation to be a decision that "produced direct legal consequences" affecting a staff member's terms and conditions of appointment. To the contrary, as discussed above, "the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision" all support the conclusion that the Administration's response to a request for management evaluation is not a reviewable decision. The response is an opportunity for the Administration to resolve a staff member's grievance without litigation – not a fresh decision.

27. The requirement that only decisions having a direct legal effect may constitute an administrative decision is derived from the universally applicable principle that only final and consequential decisions ought to be subject to judicial scrutiny. If a decision involves

---

<sup>3</sup> *Kalashnik v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-661, para. 29.

several steps to be taken by different authorities, only the last or one of which is directed at the affected person, all previous or additional steps taken within the sphere of the administration lack direct effect, and only the last or direct decision may be taken to court for review. The idea is to concentrate judicial review pragmatically on the more important administrative decisions. Instead of allowing challenges to preliminary, intermediate or complementary decisions, litigants are obliged to wait until a final consequential decision has been made and to direct their challenge accordingly. A response (or non-response) to a request for management evaluation is a decision or action of a complementary nature, lacking in the qualities of finality and consequence, and thus will not constitute “an administrative decision that is alleged to be in non-compliance with the terms of appointment or contract of employment” as contemplated in Article 2(1) of the UNDT Statute. The UNDT was accordingly correct and did not err in its finding that the application was not receivable *ratione materiae* and that it hence lacked jurisdiction.



**Judgment**

28. The appeal is dismissed and Judgment No. UNDT/2017/030 is hereby affirmed.

Original and Authoritative Version: English

Dated this 27<sup>th</sup> day of October 2017 in New York, United States.

*(Signed)*

Judge Murphy, Presiding

*(Signed)*

Judge Lussick

*(Signed)*

Judge Halfeld

Entered in the Register on this 8<sup>th</sup> day of December 2017 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar