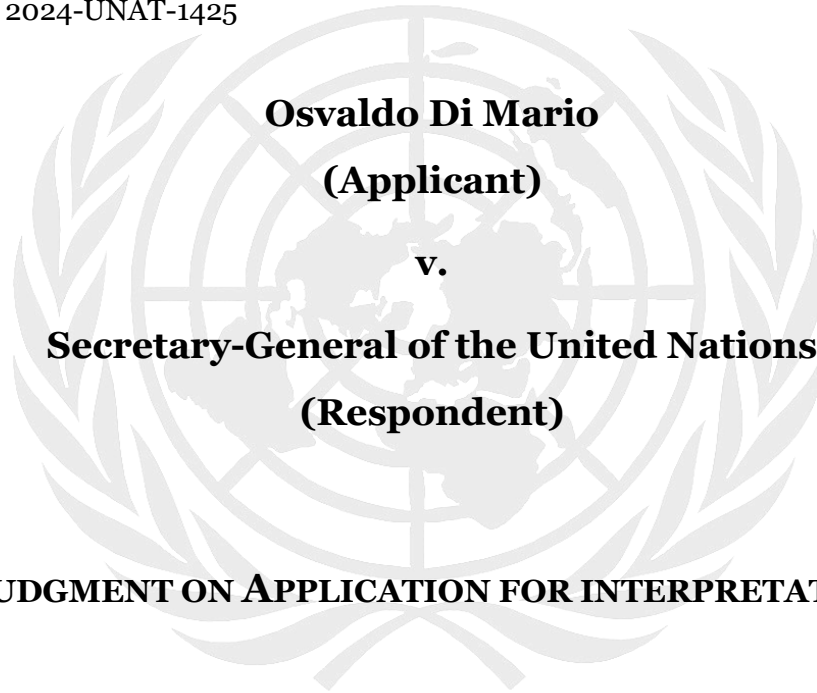




**UNITED NATIONS APPEALS TRIBUNAL**  
**TRIBUNAL D'APPEL DES NATIONS UNIES**

---

Judgment No. 2024-UNAT-1425



**Oswaldo Di Mario**

**(Applicant)**

**v.**

**Secretary-General of the United Nations**

**(Respondent)**

**JUDGMENT ON APPLICATION FOR INTERPRETATION**

---

Before:	Judge Nassib G. Ziadé, Presiding Judge Leslie F. Forbang Judge Abdelmohsen Sheha
Case No.:	2023-1808
Date of Decision:	22 March 2024
Date of Publication:	1 May 2024
Registrar:	Juliet E. Johnson

---

Counsel for Applicant: Michel Celi Vegas

Council for Respondent: Angélique Trouche

**JUDGE NASSIB G. ZIADÉ, PRESIDING.**

1. On 28 October 2019, Mr. Osvaldo Di Mario (Mr. Di Mario or the Applicant) filed an application with the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) challenging the decision of the Administration of the Office of the United Nations High Commissioner for Refugees (UNHCR) of 23 July 2019 imposing the disciplinary measure of separation from service with compensation in lieu of notice and one-half of the termination indemnity.
2. On 24 March 2023, the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) issued Judgment No. 2023-UNAT-1331 (Judgment of the Appeals Tribunal),<sup>1</sup> confirming Judgment No. UNDT/2021/163<sup>2</sup> and affirming the legality of the disciplinary measure imposed on Mr. Di Mario. In its Judgment, the Appeals Tribunal also referred the case to the High Commissioner for possible action to enforce accountability.
3. Mr. Di Mario has filed an application for interpretation of the Judgment of the Appeals Tribunal with UNAT.
4. For the reasons set forth below, the Appeals Tribunal dismisses Mr. Di Mario's application for interpretation.

**Facts and procedure**

5. Mr. Di Mario commenced employment with UNHCR on 16 July 1984. At the time of his separation from service, he held a continuing appointment as a G-5 Senior Driver in the Office of the United Nations High Commissioner for Refugees.
6. On 6 March 2019, an incident that had taken place on the same day involving Mr. Di Mario was reported to the Administration of UNHCR and to the Office of the Inspector General of UNHCR. Mr. Di Mario had gone to a service station in Geneva with the official car of the High Commissioner of UNHCR in order to refuel. However, he also filled a personal gas can. He then attempted to pay for the entire transaction using the credit card and the tax-exemption card of UNHCR. The owner and manager of the service station refused to authorize the

---

<sup>1</sup> *Di Mario v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1331.

<sup>2</sup> *Di Mario v. Secretary-General of the United Nations*, Judgment No. UNDT/2021/163.

transaction and informed him that this manoeuvre was not allowed. Mr. Di Mario acquiesced and paid the bill in cash.

7. The Office of the Inspector General conducted an investigation, finding that Mr. Di Mario had committed several acts of misconduct, including by diverting UNHCR gasoline for personal use over several years.

8. On 29 July 2019, Mr. Di Mario was served with a letter dated 23 July 2019 from the Administration of UNHCR imposing a disciplinary measure of separation from service with compensation in lieu of notice and one-half termination pay for having used the UNHCR credit card and tax exemption card more than 10 times to fill a personal gas can.

9. On 28 October 2019, Mr. Di Mario filed an application with the Dispute Tribunal challenging the decision of 23 July 2019. On 28 December 2021, in its Judgment No. UNDT/2021/163, the Dispute Tribunal dismissed Mr. Di Mario's application in its entirety.

10. Mr. Di Mario appealed the Judgment of the Dispute Tribunal to the Appeals Tribunal. On 24 March 2023, the latter dismissed the appeal and ordered that the matter be referred to the High Commissioner for possible action to enforce accountability.

*Judgment of the Appeals Tribunal*

11. The Appeals Tribunal found that it had been established that Mr. Di Mario had used the credit card and the tax exemption card of UNHCR for personal use, namely, to fill a personal gas can, and that the disciplinary measure imposed on him was proportionate to the seriousness of his misconduct. The Appeals Tribunal rejected Mr. Di Mario's argument that he had committed these acts in order to compensate for the use of his private car for official travel. The Appeals Tribunal found that the fact that this practice had been tolerated by Mr. Di Mario's supervisors did not constitute grounds for exonerating him.<sup>3</sup>

12. The Appeals Tribunal also found that it had been established that the regular use of private cars by certain UNHCR staff members for official purposes, compensated for by the reimbursement of gasoline expenses, was known to the Administration of UNHCR and, in particular, to Mr. Di Mario's supervisors. The Appeals Tribunal added that since "such

---

<sup>3</sup> *Di Mario v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1331, paras. 70, 71 and 75–83.

informal use of UNHCR drivers' private cars contrary to internal policies had become commonplace, it was incumbent upon the Administration of UNHCR to take the necessary steps to address the situation [and that] [t]he evidence in this case shows that no such arrangements were made but, on the contrary, that informality was the norm".<sup>4</sup>

13. Consequently, the Appeals Tribunal found that there had been apparent mismanagement and a breach of the policy on the use of vehicles in UNHCR and ordered that, in accordance with Article 9(5) of the Statute of the Appeals Tribunal, the case be referred to the High Commissioner for possible action to enforce accountability for possible misconduct by Mr. Di Mario's supervisors.<sup>5</sup>

14. On 10 October 2023, Mr. Di Mario filed an application for interpretation of the Appeals Tribunal's Judgment with the UNAT. The Secretary-General submitted his comments on 2 November 2023.

### **Submissions**

#### **Mr. Di Mario's application**

15. Mr. Di Mario asks the Appeals Tribunal to stipulate the terms and time limits in accordance with which the Administration of UNHCR should undertake to produce a report to establish accountability for possible misconduct by his supervisors. Mr. Di Mario also asks the Appeals Tribunal to order intervention by an independent body, the Office of Internal Oversight Services. Lastly, Mr. Di Mario asks the Appeals Tribunal to stipulate the scope of the potential report and give the parties an opportunity to comment on its content.

#### **Comments by the Secretary-General**

16. The Secretary-General submits that Mr. Di Mario's application for interpretation is not receivable and asks the Appeals Tribunal to dismiss it.

17. Drawing on the jurisprudence of the Appeals Tribunal, the Secretary-General submits that an application for interpretation is not receivable if its purpose is to invite the Appeals Tribunal to re-examine or comment on its judgment.<sup>6</sup> Indeed, in the present case, the

---

<sup>4</sup> *Ibid.*, para. 78.

<sup>5</sup> *Ibid.*, para. 84.

<sup>6</sup> *Kasmani v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-064, para. 8.

Secretary-General maintains that Mr. Di Mario's application for interpretation is not intended to clarify an ambiguity or inconsistency in the meaning or scope of the Appeals Tribunal's Judgment, but rather to obtain an amendment to this Judgment in order to accommodate his new claims concerning the disciplinary measure.

18. Lastly, the Secretary-General notes that, in any event, a possible action to enforce accountability will have no effect on the Judgment of the Appeals Tribunal.

### **Considerations**

19. In support of his application for interpretation of the Appeals Tribunal's Judgment of 24 March 2023, Mr. Di Mario maintains that it is imperative to specify the terms and time limits in accordance with which UNHCR should undertake to submit a report establishing the accountability referred to in paragraph 84 of the Judgment. Mr. Di Mario also maintains that it would be desirable for this Tribunal to determine the scope of the possible UNHCR report by giving the parties the opportunity to comment on its content before initiating any proceedings. Mr. Di Mario also asks that the Tribunal involve the Office of Internal Oversight Services as a body independent of UNHCR, to ensure that the investigation is carried out in compliance with the principles of autonomy, impartiality, equality of arms and adversarial proceedings.

20. The Tribunal must now consider whether the application for interpretation submitted by the Applicant is receivable.

21. The application is based on Article 11(3) of the Statute of the Appeals Tribunal, which allows either party to "apply to the Appeals Tribunal for an interpretation of the meaning or scope of the judgement".

22. According to the established case law of the Appeals Tribunal, an application for interpretation "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".<sup>7</sup> By contrast, if the judgment which is the subject of an application

---

<sup>7</sup> *Ibid.*

for interpretation is sufficiently clear, or if the Applicant is seeking, in a disguised way, to have the case retried, such an application should be dismissed.<sup>8</sup>

23. It is therefore necessary to determine whether the terms of the Appeals Tribunal's Judgment are sufficiently clear and unambiguous to be enforceable. A reading of the Judgment shows that this is indeed the case.

24. The reasoning of the Appeals Tribunal in dismissing Mr. Di Mario's appeal against the 28 December 2021 Judgment of the Dispute Tribunal is clear and unambiguous. In para. 77 of its judgment, the Appeals Tribunal clearly expressed its view that it had been established that Mr. Di Mario did indeed use his private car for official purposes, even though the conditions stipulated by paragraph 47 of the policy on the use of vehicles in UNHCR had not been established. The Appeals Tribunal continued its reasoning in paragraph 78, considering that the informal practice of using private cars for official purposes could not be justified under the policy on the use of vehicles in UNHCR. The Appeals Tribunal then stated unambiguously in paragraph 79 that inertia on the part of Mr. Di Mario's supervisors could not be used to justify his misconduct, and that the fact that the Administration of UNHCR tolerated an alleged common practice with respect to compensation for personal expenses incurred in the course of its drivers' duties was not grounds for exoneration for Mr. Di Mario.

25. Based on its reasoning, the Tribunal concluded that the facts established amounted to misconduct warranting the disciplinary measure imposed on Mr. Di Mario. There is therefore no ambiguity in the Appeals Tribunal's Judgment as to the correctness of the grounds for and the nature of the disciplinary measure taken by the Administration of UNHCR on 23 July 2019 against Mr. Di Mario.

26. Similarly, the Appeals Tribunal's reasoning in paragraph 84 regarding the referral of the case to UNHCR for possible action to enforce accountability is clear and unambiguous. In this paragraph, the Appeals Tribunal emphasized that the regular use of private cars for official purposes was known to Mr. Di Mario's supervisors and found that there had been apparent mismanagement and a breach of the policy on the use of vehicles in UNHCR. It therefore ordered that the case be referred to UNHCR for possible action to enforce accountability for possible misconduct by Mr. Di Mario's supervisors. By doing so, the Appeals Tribunal acted

---

<sup>8</sup> *Applicant v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1129, para. 15. See also *Abbasi v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-315, para. 18.

in accordance with Article 9(5) of its Statute, in line with which the Appeals Tribunal “may refer appropriate cases to the Secretary-General of the United Nations or executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability”. Here too, it follows that the Judgment of 24 March 2023 is perfectly clear regarding the referral to UNHCR for possible action to enforce accountability.

27. Based on the foregoing, Mr. Di Mario’s application should be declared non-receivable.

28. This Tribunal also considers that even if the application had been found receivable, it would have been devoid of legal effect by the very nature of the action to enforce accountability that it seeks to define.

29. The Appeals Tribunal, having found that there had been apparent mismanagement and a breach of the policy on the use of vehicles in UNHCR, had ordered that the case be referred to UNHCR for possible action to enforce accountability for possible misconduct by Mr. Di Mario’s supervisors. The Applicant asks, under the guise of interpreting the Judgment of the Appeals Tribunal, that the terms, time limits and scope of the Organization’s possible report on his supervisors’ accountability be established.

30. It should be noted in this respect that, according to the jurisprudence of the Appeals Tribunal, the Organization has discretionary power as to the measures to be adopted following a referral for action to enforce accountability. As the Appeals Tribunal stated in the case of *Elizabeth Dettori*:<sup>9</sup>

The referral constitutes a communication from the UNDT to the Secretary-General, and the Secretary-General is vested with the discretionary power to determine a course of action to adopt or not to adopt as sequel to the referral.

31. It follows that, in any event, it was not the role of the Appeals Tribunal to impose on UNHCR a specific time limit or scope of the action to enforce accountability, as requested by Mr. Di Mario, as such action was subject to the discretionary power of UNHCR and was not, in any case, mandatory or automatic.

32. In this respect, even though the decision to be taken on the action to enforce accountability falls within the discretionary power of the head of the Organization concerned,

---

<sup>9</sup> *Elizabeth Dettori v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1200, para. 44.

this Tribunal considers that it would be prejudicial to the good functioning of UNHCR and to its reputation if its governing bodies, under cover of the discretionary power vested in them, failed to exercise any diligence with regard to the conduct of certain officials who may have contravened the rules of law governing the Organization. The purpose of the action to enforce accountability would be twofold: to compensate for the damage suffered by the Organization as a result of the potential violation of the rule of law by its staff and, just as importantly, to strengthen respect for the rule of law and emphasize that there is little room for impunity within the Organization.

### **Judgment**

33. Mr. Di Mario's application for interpretation of Judgment No. 2023-UNAT-1331 is dismissed.

Original and Authoritative Version: French

Decision dated this 22<sup>nd</sup> day of March 2024 in New York, United States.

*(Signed)*

Judge Ziadé, Presiding

*(Signed)*

Judge Forbang

*(Signed)*

Judge Sheha

Published and entered in the Register on this 1<sup>st</sup> day of May 2024 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar