

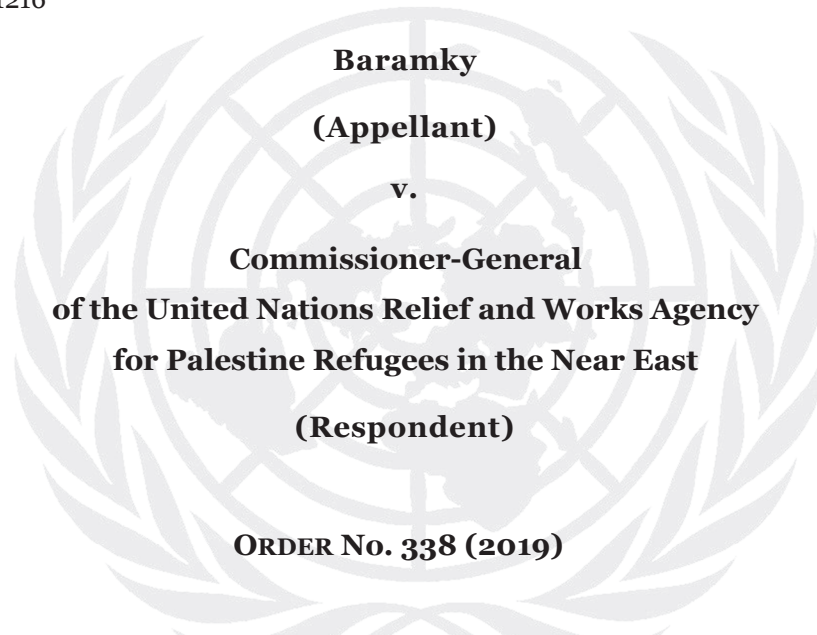


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# UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

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Case No. 2018-1216



**Baramky**  
**(Appellant)**

**v.**

**Commissioner-General**  
**of the United Nations Relief and Works Agency**  
**for Palestine Refugees in the Near East**  
**(Respondent)**

**ORDER No. 338 (2019)**

1. On 29 November 2018, the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT and Agency, respectively) issued Judgment No. UNRWA/DT/2018/065 in the case of *Baramky v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, dismissing Mr. Anton Suheil Baramky's applications against the decisions to 1) permanently transfer him from the Finance Department to the Cash for Work Programme and to 2) impose disciplinary measures on two staff members following the outcome of the investigations into Mr. Baramky's complaints against them.
2. On 7 December 2018, Mr. Baramky filed an appeal against the UNRWA DT Judgment. On 10 December 2018, Mr. Baramky filed a request for interpretation of judgment before the UNRWA DT asking that the UNRWA DT provide an interpretation of paragraph 55 of its Judgment in which the UNRWA DT rejected his request for moral damages on the ground that Mr. Baramky's moral damage was only attributable to the two staff members concerned and not to any fault of the Agency. By Order No. 230 (UNRWA/DT/2018) dated 11 December 2018, the UNRWA DT denied Mr. Baramky's request for interpretation of judgment holding that paragraph 55 of the Judgment "is clear and without need for interpretation".

3. On 7 January 2019, Mr. Baramky filed a Motion for Leave to File Additional Evidence before the United Nations Appeals Tribunal (Appeals Tribunal). Mr. Baramky seeks leave to submit the Convention on the Privileges and Immunities of the United Nations (Convention) as additional evidence on appeal and as support of his request to interpret paragraph 55 of the UNRWA DT Judgment in light of Article VIII, Section 29(b) of the Convention to the effect that the Agency compensate Mr. Baramky for moral damages in the amount of USD 3,900,000.00 as long as the Agency does not waive the judicial immunity of the two staff members.

4. The Registry of the Appeals Tribunal served the Motion on the Agency on 7 January 2019 with a request to file comments, if any, within ten days. On 17 January 2019, the Agency filed its comments. The Agency noted that both the time limit for filing an appeal and the time limit for filing an answer had not lapsed and that therefore, it would “consider the additional evidence submitted by [Mr. Baramky] as supplementary filing and reserves its right to comment on the same when it files its Answer”.

5. Article 2(5) of the Appeals Tribunal’s Statute (Statute) provides:

In exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony, it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings. Where this is not the case, or where the Appeals Tribunal determines that a decision cannot be taken without oral testimony or other forms of non-written evidence, it shall remand the case to the Dispute Tribunal. The evidence under this paragraph shall not include evidence that was known to either party and should have been presented at the level of the Dispute Tribunal.

Article 10(1) of the Appeals Tribunal’s Rules of Procedure (Rules) provides:

A party may seek to submit to the Appeals Tribunal, with an appeal or an answer, documentary evidence, including written testimony, in addition to that contained in the written record. In exceptional circumstances and where the Appeals Tribunal determines that the facts are likely to be established with such additional documentary evidence, it may receive the additional evidence from a party. On its own volition, the Tribunal may order the production of evidence if it is in the interest of justice and the efficient and expeditious resolution of the case, provided that the Appeals Tribunal shall not receive additional written

evidence if it was known to the party seeking to submit the evidence and should have been presented to the Dispute Tribunal.

6. In accordance with Article 31 of the Appeals Tribunal Rules of Procedure, “[a]ll matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Appeals Tribunal on the particular case, by virtue of the powers conferred on it by article 6 of its statute”.

7. At the outset, we note that the Agency cannot unilaterally extend its 10-day time limit to file its comments on the motion. Concomitantly, the Agency’s lack of substantive comments on the present motion does not impede or limit the authority of this Tribunal to dispose of it. At any rate, the Agency retains the right to, *inter alia*, consider any evidence, additional or not, submitted by Mr. Baramky, and to comment on the same when it comes to mount its defense in the main proceedings before this Tribunal.

8. On the merits, we reject Mr. Baramky’s motion seeking leave to provide additional evidence, because it does not meet the requirements of the law. Apart from the fact that Mr. Baramky does not demonstrate “exceptional circumstances” justifying the granting of his motion, the latter, to wit his request seeking leave to submit the Convention, essentially amounts to a request for leave to submit a legal instrument to support his appeal, which does not constitute evidence. It is incumbent on Mr. Baramky to furnish the facts of the present case which support his arguments and the relief sought by him (“*da mihi factum, dabo tibi ius*”), and it is the responsibility of the Judge to establish the applicable law (“*jura novit curia*”). However, on principle, only the first may constitute the subject matter of the evidentiary proceedings, not the latter, even though the notion of fact is understood in relation to the substantive rules which base the relevant claims or defenses of a party. Thus, Mr. Baramky’s motion should be denied.

**IT IS HEREBY ORDERED** that Mr. Baramky’s motion seeking leave to file additional evidence **IS DENIED**.

Original and Authoritative Version: English

Dated this 28<sup>th</sup> day of January 2019  
in Athens, Greece.

*(Signed)*  
Judge Dimitrios Raikos,  
President

Entered in the Register on this 28<sup>th</sup> day  
of January 2019 in New York, United States.

*(Signed)*  
Weicheng Lin, Registrar