



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

KALASHNIK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

**ON APPLICATION FOR
INTERPRETATION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat
Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. On 20 October 2015, the Applicant, an Investigator with the Investigations Division, Office of Internal Oversight Services (“ID/OIOS”), filed an application for interpretation of *Kalashnik* UNDT/2015/087.

2. In his reply of 19 November 2015, the Respondent submits that the application is not receivable as it does not meet the requirements of an application for interpretation of Judgment, in that the operative part of the judgment does not give rise to uncertainty or ambiguity regarding its meaning. The Respondent argues that if the Applicant is dissatisfied with the outcome of the Judgment, his remedy is to file an appeal with the United Nations Appeals Tribunal.

Consideration

3. Article 30 of the Rules of Procedure of the Dispute Tribunal states:

Article 30 Interpretation of judgements

Either party may apply to the Dispute Tribunal for an interpretation of the meaning or scope of a judgement, provided that it is not under consideration by the Appeals Tribunal. The application for interpretation shall be sent to the other party, who shall have 30 days to submit comments on the application. The Dispute Tribunal will decide whether to admit the application for interpretation and, if it does so, shall issue its interpretation.

4. In *Kalashnik* UNDT/2015/087, the Tribunal found that the Applicant’s challenge to “the outcome of two of his requests for management evaluation as endorsed by the Office of the Under-Secretary-General of the Department of Management (“USG/DM”) in regard to the recruitment process for the P-4 Resident Investigator Roster position, and several other additional positions in OIOS” was not receivable. Specifically, the Tribunal found that, in accordance with the jurisprudence of the Appeals and Dispute Tribunals as well as general

legal principles, an appeal is to be filed not against the process and outcome of a management evaluation, but against the preceding administrative decision(s) that the Administration is appraising in the management evaluation.

5. In his application for interpretation, the Applicant seeks “the interpretation of the meaning of paragraphs 9–16 and the scope of Judgment UNDT/2015/087, as well as an unequivocal pronouncement that the actions/decisions/omission to act by the [Under-Secretary-General for Management] are not subject to the [Dispute Tribunal’s] jurisdiction, as Judgment No. UNDT/2015/087 seems to state”. The Applicant makes this claim on the grounds that, “[n]either my May 2015 submission nor my August 2015 submission contests the findings of [the Management Evaluation Unit] ... Nor do my May 2015 and August 2015 submissions concern the same administrative decision”. The Applicant also introduces in the application for interpretation, new facts and contentions, including several alleged irregularities he claims would have been uncovered had a proper review been done by the USG/DM.

6. The United Nations Appeals Tribunal has held that an application for interpretation of judgment is receivable if the operative part of the judgment gives rise to uncertainty or ambiguity about its meaning (*Shanks* 2010-UNAT-065; *Dzuverovic* 2014-UNAT-490). The Appeals Tribunal has further held that an application for interpretation of judgment is not receivable if its purpose is to re-examine or comment on the decision and that the remedy for a party who is dissatisfied with a Dispute Tribunal’s judgment is to file an appeal against the judgment (*Kasmani* 2010-UNAT-064; *Abbasi* 2013-UNAT-315).

7. The application under review in Judgment No. UNDT/2015/087 was dismissed on the grounds that the Applicant did not challenge an administrative decision under art. 2(1) of the Tribunal’s Statute and was thus not receivable. There is no ambiguity in the wording and meaning of that Judgment. In particular,

the Judgment does not give rise to any uncertainty in terms of its execution or its binding effect under art. 32 of the Tribunal's Rules of Procedure.

8. In *Allen*, Order No. 42 (GVA/2010) dated 9 April 2010, citing ILOAT, Judgement No. 2483, the Tribunal stated that "the purpose of an application for interpretation is not to seek further justification of the grounds for a given decision, but to obtain clarification of the decision itself."

9. The Tribunal finds that the meaning of Judgment No. UNDT/2015/087 leaves no reasonable doubt as to the will of the Tribunal or the arguments leading to the Tribunal's decision, and thus does not require clarification. If the Applicant is of the view that the Dispute Tribunal misconstrued the nature of the administrative decision or the scope of the case, or is dissatisfied with the factual findings and reasoning in the judgement *Kalashnik* UNDT/2015/087, he may file an appeal with the Appeals Tribunal.

Conclusion

10. The application for interpretation is not receivable and is therefore rejected.

(Signed)

Judge Ebrahim-Carstens

Dated this 20th day of November 2015

Entered in the Register on this 20th day of November 2015

(Signed)

Hafida Lahiouel, Registrar, New York