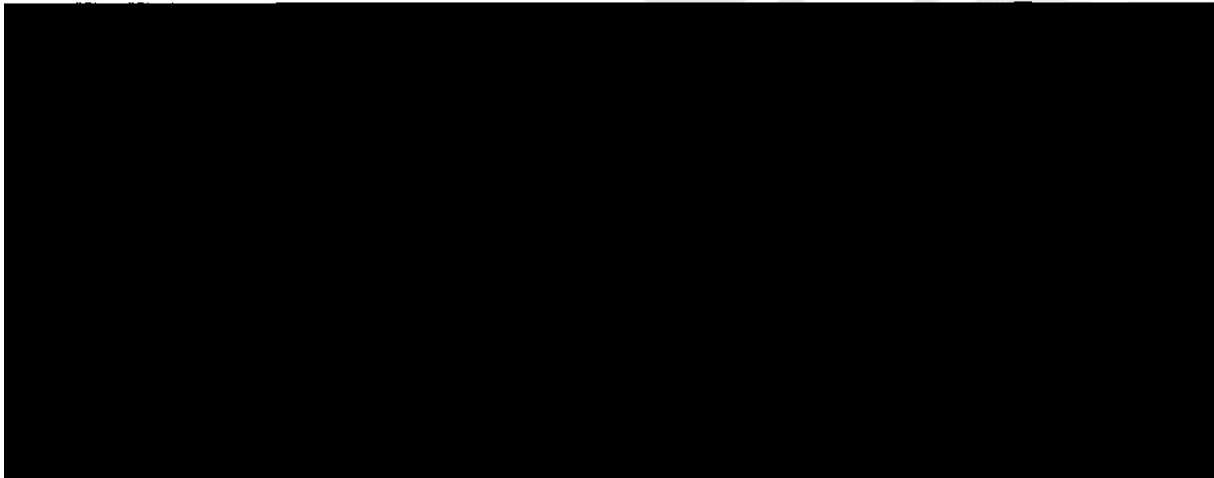




Judgment No. 2015-UNAT-512



Counsel for Mr. Kadri: Robert Appleton

Counsel for Secretary-General: Amy Wood

JUDGE RICHARD LUSSICK , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Ali Kadri against Judgment No. UNDT/2013/177, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi on 23 December 2013 in the case of Applicant v. Secretary-General of the United Nations .¹ On 19 February 2014, Mr. Kadri filed a motion for a 30-day extension of time to appeal the above-referenced UNDT Judgment. On 25 February 2014, this Tribunal rejected Mr. Kadri's motion, but exceptionally granted him five additional working days to file his appeal. Mr. Kadri filed an appeal on 3 March 2014, and the Secretary-General of the United Nations answered on 5 May 2014.

Facts and Procedure

2. Mr. Kadri was a staff member of the United Nations Economic and Social Commission for Western Asia (ESCWA) from 24 August 2002 until 24 August 2012.

3. In March 2010, he filed an application with the Dispute Tribunal in Geneva (Case No. UNDT/GVA/2010/079).

4. On 24 April 2010, Mr. Kadri entered into a Settlement Agreement with the Executive Secretary of ESCWA. Paragraph 17 of the Settlement Agreement signed by Mr. Kadri provided:

17. This Settlement Agreement is signed by Ali Kadri and [Mr. B] (On behalf of the Secretary-General of the United Nations) of their own free will and without any duress and takes effect on date of the execution of the Settlement Agreement.

5. On 27 April 2010, Mr. Kadri requested the UNDT Geneva Registry that his case, Case No. UNDT/GVA/2010/079, be closed as it had been satisfactorily resolved through mediation. On 3 May 2010, by Judgment No. UNDT/2010/079, the Dispute Tribunal closed Mr. Kadri's case.

6. On 15, 16 and 17 August 2012, Mr. Kadri requested management evaluation with respect to alleged breaches of the Settlement Agreement and continued harassment and discrimination by the ESCWA management, in particular in connection with the selection

¹ Mr. Kadri did not seek confidentiality of his name in proceedings before the Appeals Tribunal.

12. Mr. Kadri seeks unspecified moral damages for the Administration's breach of an essential term of the Settlement Agreement by barring him from being considered for further posts within the Organization, and also for its failure to remove negative information from his personnel file, thereby significantly heightening the risk for such negative information to be passed on to prospective employers.

The Secretary-General's Answer

13. The UNDT properly found Mr. Kadri's application not receivable. That finding is consistent with the well-established maxim that "there must be an end to litigation" to ensure the stability and efficiency of the judicial process. To allow Mr. Kadri to re-open issues and claims that were the subject of the duly executed Settlement Agreement would clearly contravene this rule.

14. Mr. Kadri's application before the Dispute Tribunal was not receivable, since it raises issues that had been resolved by the Settlement Agreement and he waived his right to bring future claims of harassment or discrimination against ESCWA as a term and condition of the Settlement Agreement. The filing of the UNDT application breached the clear terms and conditions of the Settlement Agreement.

15. Mr. Kadri failed to provide any evidence to show that the Administration had breached any of the terms and conditions of the Settlement Agreement. On the contrary, he accepted and benefitted from the full implementation of the Settlement Agreement.

16. There is nothing in the Settlement Agreement that obligates the Organization to remove any document or any other information from Mr. Kadri's official status file. Mr. Kadri did not provide any evidence that the Organization provided negative information to any prospective employer in breach of paragraph 14 of the Settlement Agreement.

17. Mr. Kadri's claim regarding his non-selection for the 2011 post is not receivable.

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and prejudicial and that the agreement is unreasonable because it was imposed upon him under duress and threat”.

25. In considering that case, the UNDT was cognizant of Article 8(2) of the UNDT Statute, which provides:

An application shall not be receivable if the dispute arising from the contested administrative decision has been resolved by an agreement reached through mediation. However, an applicant may file an application to enforce the implementation of an agreement reached through mediation, which shall be receivable if the agreement has not been implemented and the application is filed within 90 calendar days after the last day for the implementation as specified in the mediation agreement or, when the mediation agreement is silent on the matter, after the thirtieth day from the date of the signing of the agreement.

26. The UNDT noted that at paragraph 17 of the Settlement Agreement, Mr. Kadri had acknowledged that he had signed the agreement

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