



**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Hafida Lahiouel

KALASHNIK

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Alan Gutman, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

## **Introduction**

1. On 8 August 2015, the Applicant, an Investigator at the P-3, Step 14 level in the Investigations Division, Office of Internal Oversight Services (“ID/OIOS”), filed an application contesting 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. As relief, the Applicant requests an independent and impartial review of the conduct and outcome of the management evaluation as endorsed by management.

2. On 11 August 2015, the Registry served the application on the Respondent, advising that the Applicant had previously filed an incomplete application on 3 August 2015. In the reply filed on 11 September 2015, the Respondent contends that the application lacks merit and that the Applicant’s challenge to the outcome of his two requests for management evaluation is not receivable *ratione materiae* since the Applicant does not contest an administrative decision under art. 2.1(a) of the Tribunal’s Statute. Should the Tribunal identify an administrative decision that falls within its competence, the Respondent requests leave to file a meaningful defense thereafter.

## **Background**

3. The Applicant states that, on 12 October 2014, he submitted a request for management evaluation concerning the conduct of the recruitment process for the P-4 Resident Investigator Roster. He complains that, *inter alia*, the Management Evaluation Unit (“MEU”) misconducted and misconstrued the scope of his request, and also found his request not receivable on the basis that no final administrative decision was made. The Applicant alleges that the MEU

subsequently acknowledged the “contradiction” as the recruitment process had indeed been completed, and invited him to resubmit his request.

4. The Applicant thereafter resubmitted an updated request to the MEU on 9 January 2015, including requests for management evaluation of several other additional positions and post specific recruitments that had been completed by then. The Applicant complains that the further response he received misrepresented the scope and nature of his requests, dismissed and twisted information and facts provided by him, and generally simply accepted the responses given by senior management of the OIOS. The Applicant alleges that on 9 March 2015, in a meeting, MEU representatives admitted that additional recruitment processes he challenged had not been looked into.

5. On 23 April 2015, the Applicant submitted a further request “for management evaluation of the decision not to conduct a regular management evaluation of [his] January-February 2015 requests...” The Applicant lists further correspondence until August 2015 and alleges that the MEU also breached confidentiality, continued to misrepresent the scope and nature of his requests, and refused to receive any further requests on the grounds that they had been covered in his previous submissions. As relief, the Applicant requests “an efficient effective and impartial review” of his requests for management evaluation by parties who are not subject to conflict of interest and will not simply endorse the outcome of the MEU.

### **Consideration**

6. Whilst, in fairness to all parties, it is the practice of the Dispute Tribunal to deal with cases in chronological order of filing, the General Assembly has requested in its resolution 66/237, adopted on 24 December 2011, that the Dispute Tribunal and the Appeals Tribunal review their procedures in regard to the dismissal of “manifestly inadmissible cases”. It is a matter of record that

the Dispute Tribunal, even prior to the aforesaid resolution 66/237, entertained and continues to deal with matters of admissibility or receivability on a priority basis in appropriate cases, and also renders summary judgments in appropriate cases under art. 9 of the Tribunal's Rules of Procedure.

7. Article 9 of the Tribunal's Rules of Procedure provides that a party may move for summary judgment when there is no dispute as to the material facts of the case and a party is entitled to judgment as a matter of law. The Dispute Tribunal may itself determine, on its own initiative, that summary judgment is appropriate.

8. The appropriateness of an application for summary judgment was discussed in *Cooke* UNDT/2011/216, wherein the Tribunal indicated that if the receivability of a case is being challenged, the Tribunal cannot determine the facts of the application on the merits or even consider whether such facts are (T)w[( UNDT/1dgm)8.12that if728 a





disavows simultaneous parallel proceedings between the same parties, concerning the same subject matter and founded on the same cause of action.

**Conclusion**

16. In all the above circumstances, the Tribunal finds that the application is manifestly inadmissible.

17. Accordingly, the application is dismissed.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 18<sup>th</sup> day of September 2015

Entered in the Register on this 18<sup>th</sup> day of September 2015

*(Signed)*

Hafida Lahiouel, Registrar, New York