



Judgment No. 2017-UNAT-803



Counsel for Mr. Kalashnik: Self-represented

Counsel for Secretary-General: John Stompor

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20. Alternatively, and in any event, even if the decision was reviewable, Mr. Kalashnik's application is not receivable as it is time-barred and not receivable *ratione temporis*

Article 8(1)(c) of the UNDT Statute compels a referral to management evaluation as a jurisdictional condition precedent to the UNDT assuming jurisdiction in an application.

25. However, all that is compulsory in the management evaluation process is the referral to the MEU. There is no legal obligation on the MEU to deal with the request, to consider it or to respond. That much is evident from Article 8(1)(d) of the UNDT Statute which sets deadlines for the filing of applications with the UNDT. It provides that in cases where a management evaluation of the contested decision is required, the application must be filed within 90 calendar days of the applicant's receipt of the response by Management to his or her submission to management evaluation or alternatively within 90 days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The UNDT Statute thus explicitly anticipates that there need be no response to a request for management evaluation. The purpose of that provision is self-evident. The Administration may be inclined not to deal with a request because it prefers to engage with the matter in the formal processes or, alternatively, it may view the referral as without merit, frivolous, vexatious or unreasonable and consequently unworthy of a considered and time-consuming response.

26. In the recent decision of *Kalashnik*³ this Tribunal when dealing with the same point made by the present Appellant in another matter, definitively resolved the issue in the following terms:

... Accordingly, it is fair to say that the General Assembly when enacting the provisions of the UNDT Statute did not consider the Administration's response to a request for management evaluation to be a decision that "produced direct legal consequences" affecting a staff member's terms and conditions of appointment. To the contrary, as discussed above, "the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision" all support the conclusion that the Administration's response to a request for management evaluation is not a reviewable decision. The response is an opportunity for the Administration to resolve a staff member's grievance without litigation – not a fresh decision.

27. The requirement that only decisions having a direct legal effect may constitute an administrative decision is derived from the universally applicable principle that only final and consequential decisions ought to be subject to judicial scrutiny. If a decision involves

³ *Kalashnik v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-661, para. 29.

several steps to be taken by different authorities, only the last or one of which is directed at the affected person, all previous or additional steps taken within the sphere of the administration lack direct effect, and only the last or direct decision may be taken to court for review. The idea is to concentrate judicial review pragmatically on the more important administrative decisions. Instead of allowing challenges to preliminary, intermediate or complementary decisions, litigants are obliged to wait until a final consequential decision has been made and to direct their challenge accordingly. A response (or non-response) to a request for management evaluation is a decision or action of a complementary nature, lacking in the qualities of finality and consequence, and thus will not constitute “an administrative decision that is alleged to be in non-compliance with the terms of appointment or contract of employment” as contemplated in Article 2(1) of the UNDT Statute. The UNDT was accordingly correct and did not err in its finding that the application was not receivable

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28. The appeal is dismissed and Judgment No. UNDT/2017/030 is hereby affirmed.

Original and Authoritative Version: English

Dated this 27th day of October 2017 in New York, United States.

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Halfeld

Entered in the Register on this 8th day of December 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar