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Case No.: UNDT/GVA/2011/074

Judgment No.: UNDT/2012/106

Date: 13 July 2012



## Introduction

1. On 5 November 2011, the Applicant, a staff member of the United Nations Office on Drugs and Crime (“UNODC”), filed an application for interpretation of Judgment Gehr

Applicant's 2010-2011 performance had been appraised on the basis of a work plan which was consistent with the requirements set out in ST/AI/2010/5.

6. On 5 November 2011, the Applicant filed the instant application for interpretation of Gehr UNDT/2011/178, which was registered under Case No. UNDT/GVA/2011/074.

7.

11. The Respondent's principal contentions are:
  - a. Following Gehr UNDT/2011/178, the Office of Human Resources Management in New York undertook a review of the classification decision which is still ongoing. However, the outcome of this review will have no material impact on the grading of the Applicant's post or his job description;
  - b. In Gehr UNDT/2011/178, the Tribunal considered that the Applicant's functional title and responsibilities had been changed to those of Senior Legal Adviser and that his duties had been described with sufficient precision in draft terms of reference which had been shared with him. It further found that his main functions were reflected in his work plan. Thus, the Applicant was and still is fully aware as to what his duties and responsibilities were.

#### Consideration

12. Article 12.3 of the Tribunal's Statute provides:

Either party may apply to the Dispute Tribunal for an interpretation of the meaning or the scope of the final judgement, provided that it is not under consideration by the Appeals Tribunal.
13. In Allen Order No. 42 (GVA/2010), the Tribunal held:
  10. [A] request for interpretation of a judgment is receivable only if the operative part of it gives rise to uncertainty or ambiguity about its meaning or import. This has been consistently held by other international administrative tribunals which were vested, before UNDT, with the power to interpret their own judgments (see e.g. ILOAT, Judgment 802, In re Van Der Peet (No. 10); Judgment

14. In view of the above, the Tribunal considers that the instant application for interpretation must be deemed irreceivable, for the operative part of Gehr UNDT/2011/178 is not ambiguous or misleading as to its practical implications.

15. The operative part is further clarified in that Judgment as the Tribunal explained that the classification decision in relation to the Applicant's post of Senior Legal Adviser was rescinded because UNOV did not have a valid delegation of authority. As to the Applicant's contention that his 2010-2011 performance had been appraised on the basis of draft terms of reference which were different from those used in the context of the classification process, the Tribunal considered that administrative instruction ST/AI/2010/5 (Performance Management and Development System)—which applied to the Applicant's 2010-2011 performance appraisal—did not require that staff members' performance be appraised on the basis of terms of reference but on the basis of individual work plans. It further found that the Applicant's work plan "included clear goals, actions to undertake to achieve each goal and measurement through a statement of success criteria" and it accordingly rejected the Applicant's contention.

16. It would be contrary to the letter and spirit of article 12.3 of the Tribunal's Statute to seek a reversal or modification of a final judgment under cover of interpretation. The correctness of a judgment is not a matter to be dealt with in this framework, as interpreting, by definition, means shedding light on the original meaning, as opposed to altering it. The proper avenue to challenge a judgment issued by the Dispute Tribunal is the filing of an appeal before the Appeals Tribunal, a possibility that the parties to Case No. UNDT/GVA/2011/024 chose not to make use of.

Conclusion

17. In view of the foregoing, the Tribunal DECIDES:

The application for interpretation of Judgment Gehr UNDT/2011/178 is rejected.

(Signed)

Judge Thomas Laker

Dated this 13<sup>th</sup> day of July 2012

Entered in the Register on this 13<sup>th</sup> day of July 2012

(Signed)

René M. Vargas M., Registrar, Geneva