



**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

---

Judgment No. 2013-UNAT-391

**Elasoud  
(Applicant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT ON APPLICATION FOR REVISION**

---

Before:	Judge Rosalyn Chapman, Presiding Judge Inés Weinberg de Roca Judge Sophia Adinyira
Case No.:	2012-323
Date:	17 October 2013
Registrar:	Weicheng Lin

---

Counsel for Applicant:	Winston Sims
Counsel for Respondent:	Amy Wood

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an application for revision of Judgment No. 2011-UNAT-173, issued on 2 December 2011 in the case of *Elasoud v. Secretary-General of the United Nations*. The application for revision was filed on 15 May 2012, and the Secretary-General filed his comments on 4 September 2013.

### **Facts and Procedure**

2. Mr. Mohamed Elasoud commenced employment with the United Nations Safety and Security Service (UNSSS) as a Security Officer at the G-3 level in October 1985 on a short-term appointment. He was granted a permanent appointment in February 1992. He was separated from service for health reasons in February 2004, after having been granted disability benefits.

3. Mr. Elasoud unsuccessfully applied for three vacant positions in 2000. In 2005, he sought administrative review by the Secretary-General of the recommendations made by the Chief of UNSSS regarding his applications for three vacant posts in 2000 (Departmental Recommendations); however, the Secretary-General did not reply. Then, Mr. Elasoud appealed the Departmental Recommendations to the former Joint Appeals Board (JAB), which concluded that the appeal was not receivable and recommended that the Secretary-General not receive it. In April 2007, the Secretary-General determined not to receive the appeal.

4. In July 2007, Mr. Elasoud filed an application with the former United Nations Administrative Tribunal, which subsequently transferred the application to the United Nations Dispute Tribunal (UNDT or Dispute Tribunal). On 24 June 2010, the UNDT issued Judgment No. UNDT/2010/111, finding Mr. Elasoud's application was not receivable. Specifically, the UNDT determined that the Departmental Recommendations were mere opinions of a supervisor or future supervisor and not appealable administrative decisions. The UNDT also concluded that, although Mr. Elasoud could have challenged the administrative decisions not to appoint him to the posts, he could not challenge the recommendations that were made "preliminary to the administrative decision not to appoint" him.

5. In Judgment No. 2011-UNAT-173, the Appeals Tribunal affirmed the Dispute Tribunal Judgment. It found that "the Departmental Recommendations did not constitute administrative decisions, subject to appeal" and further concluded that

Mr. Elasoud had “not demonstrated any error in the decision by the UNDT that his application [wa]s irreceivable”.

### **Submissions**

#### **Mr. Elasoud’s Application**

6. Mr. Elasoud raises numerous claims of error by the Appeals Tribunal, including its alleged failure to exercise appropriate jurisdiction, errors on questions of law, and errors on questions of fact. In particular, he claims that the Appeals Tribunal erred in determining that Departmental Recommendations are opinions.

7. Mr. Elasoud contends that the Appeals Tribunal failed to comply with Article 10(3) of the Appeals Tribunal Statute (Statute) by failing to state the reasons, facts and law on which its decision was based.

#### **Secretary-General’s Comments**

8. Mr. Elasoud’s claim that the Appeals Tribunal failed to exercise its jurisdiction is not a recognized ground for revision of a judgment under Article 11(1) of the Statute. Thus, the application for revision should not be received by the Appeals Tribunal.

9. Mr. Elasoud’s other claims also do not come within Article 11(1) of the Statute for revision of a judgment since he does not identify any *fact* that either he or the Appeals Tribunal was not aware of at the time the Judgment was issued. Instead, he merely repeats arguments he made on appeal, which cannot be a ground for revision of a judgment.

10. Mr. Elasoud’s challenges to the jurisprudence of the Appeals Tribunal also fail to meet the criteria for revision of a judgment under Article 11(1) of the Statute because they pertain to the law, rather than to the facts; they are merely an attempt to reopen the litigation.

### **Considerations**

11. The grounds for revision of a final judgment are set forth in Article 11(1) of the Statute and Article 24 of the Appeals Tribunal Rules of Procedure (Rules). More specifically, Article 11(1) of the Statute provides:

[E]ither party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

Article 24 of the Rules contains similar limited provisions.

12. This Tribunal has fully considered the grounds for revision set forth in the application for revision, and finds these grounds do not come within Article 11(1) of the Statute. Mr. Elasoud does not specify any *fact* that he and the Appeals Tribunal were not aware of when his appeal was considered, as required by Article 11(1). In this regard, Mr. Elasoud has raised numerous claims that do not come within the parameters of Article 11(1) of the Statute, many of which address the merits of his application to the UNDT. Mr. Elasoud, through his representative, has made no effort to tailor the claims he raises in the petition for revision to meet the statutory requirements for revision or the gravamen of the Appeals Tribunal's Judgment that he seeks to revise. Mr. Elasoud's representative's approach to revision is not acceptable practice and borders on being an abuse of process.

13. A review of the application shows that Mr. Elasoud merely disagrees with the decision of the Appeals Tribunal holding that his appeal was not receivable. Based on this disagreement, he appears to treat the application for revision as an appeal of some sort. However, an application for revision is not a substitute for an appeal.<sup>1</sup> And, as we have stated many times, no party may seek revision of a judgment merely because that party is dissatisfied with the pronouncement of the Tribunal and wants to have a second round of litigation.<sup>2</sup> Since the application for revision does not meet the requirements of Article 11(1) of the Statute, it must be dismissed.

### **Judgment**

14. The application for revision is dismissed.

---

<sup>1</sup> *Eid v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-145, para. 2.

<sup>2</sup> See *Massah v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-356, para. 15; *Muthuswami et al. v. United Nations Joint Staff Pension Board*, Judgment No. 2011-UNAT-102, para. 13.

Original and Authoritative Version: English

Dated this 17<sup>th</sup> day of October 2013 in New York, United States.

*(Signed)*

Judge Chapman, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Adinyira

Entered in the Register on this 19<sup>th</sup> day of December 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar