



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

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Judgment No. 2020-UNAT-1022

**Mohammed Abed AlRaheam ElShanti**  
**(Appellant)**

**v.**

**Commissioner-General**  
**of the United Nations Relief and Works Agency**  
**For Palestine Refugees in the Near East**  
**(Respondent)**

**JUDGMENT**

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Before:	Judge Dimitrios Raikos, Presiding Judge Sabine Knierim Judge John Raymond Murphy
Case Nos.:	2019-1344 & 2020-1349
Date:	26 June 2020
Registrar:	Weicheng Lin

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Counsel for Appellant:	Self-represented
Counsel for Respondent:	Rachel Evers

**JUDGE DIMITRIOS RAIKOS, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it two appeals filed by Mr. Mohammed Abed AlRaheem ElShanti, one against Judgment No. UNRWA/DT/2019/051 (on the merits) and the other against Judgment No. UNRWA/DT/2019/065 (on application for revision and interpretation), rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal and UNRWA or Agency, respectively) on 9 September 2019 and 12 November 2019. Mr. ElShanti filed his appeals on 19 December 2019 and 10 January 2020, and the Commissioner-General of UNRWA filed his answers on 5 March 2020 and 24 March 2020.

2. For reasons of judicial economy, the Appeals Tribunal consolidated the two appeals by Order No. 373 (2020). For reasons set out below, we dismiss the appeals and affirm the Judgments of the UNRWA DT.

**Facts and Procedure**

3. Mr. ElShanti was a staff member employed by the Agency under a fixed-term appointment (“FTA”) in the Gaza Field Office (“GFO”).

4. In a statement to staff members on 17 January 2018, the Commissioner-General (“CG”) announced that the Government of the United States was limiting its contribution to the Agency to 60 million USD in 2018, compared to its contribution of more than 350 million USD in 2017.

5. In a letter to all staff members in the GFO dated 6 March 2018, the Director of UNRWA Operations, Gaza (“DUO/G”) highlighted the financial difficulties the Agency was facing due to the sudden decrease in contributions to the Agency, specifically noting that “[t]he huge reduction in funding [...] that was expected in 2018 for both our Programme Budget and Emergency Appeals by UNRWA’s largest donor, the [United States of America], plunged the Agency into a dramatic and sudden existential crisis”.

6. Due to the Agency's financial crisis, in an interoffice memorandum dated 4 July 2018, the Deputy Commissioner-General ("D/CG") recommended to the CG that the CG authorise an increase of 548 part-time posts for the GFO, the redeployment of 280 staff members, and the separation of 113 staff members. The CG approved the D/CG's recommendation on 5 July 2018.
7. In an update to staff members on 7 July 2018 about the impact of the financial crisis, the CG described the aforementioned measures that the Agency was taking to better address the challenges of the funding cut.
8. By letter dated 25 July 2018, the DUO/G informed Mr. ElShanti of the Agency's decision to abolish his post.
9. Following an agreement reached on 1 September 2018 between the DUO/G and the Local Staff Union ("LSU") in Gaza, Mr. ElShanti's FTA was extended on a full-time basis until the end of September 2018.
10. On 18 September 2018, Mr. ElShanti submitted a request for review of the Agency's decision to abolish his post.
11. On 30 September 2018, Mr. ElShanti was separated from the Agency upon the expiry of his FTA.
12. On 22 November 2018, Mr. ElShanti submitted an application against the Agency's decision to "abolish" his post.
13. By Order No. 079 (UNRWA/DT/2019) dated 10 April 2019, the UNRWA DT granted the Respondent's motion for consolidation and consolidated Mr. ElShanti's application with three other applications.
14. On 9 September 2019, the UNRWA Dispute Tribunal issued its Judgment No. UNRWA/DT/2019/051 (*El Shanti and El Najjar v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*) dismissing the applications.
15. On 6 October 2019, Mr. ElShanti filed an application for revision and interpretation of Judgment No. UNRWA/DT/2019/051.

16. On 12 November 2019, the UNRWA DT issued Judgment No. UNRWA/DT/2019/065 dismissing Mr. ElShanti's application for revision but allowing his application for interpretation of Judgment No. UNRWA/DT/2019/051. In the Judgment, the UNRWA DT provided the necessary interpretation and clarification with respect to the contested decision.

### **Submissions**

*Case No. 2019-1344: Appeal of Judgment No. UNRWA/DT/2019/051*

#### **Mr. ElShanti's Appeal**

17. Mr. ElShanti alleges, in his lengthy submission, errors of facts, procedure and law, as grounds for appeal. His main contentions in this regard are summarized as follows:

18. The UNRWA DT erred in fact and law in its characterization of the impugned administrative decision. Mr. ElShanti contends that he did not contest the non-renewal decision and did not submit a decision review request in respect of the non-renewal decision. He has requested review of the administrative decision to abolish his post.

19. The UNRWA DT erred on a question of fact and law by consolidating the cases.

20. The UNRWA DT erred in fact and law in its consideration of the status of his fixed-term contract.

21. Mr. ElShanti requests that the Appeals Tribunal rescind the impugned Judgment and order payment of all his entitlements to salaries and benefits from 1 September 2018 to date. He is also seeking compensation for pecuniary losses and moral damages as well as an award of all the travel costs he has incurred.

#### **The Commissioner-General's Answer**

22. Mr. ElShanti presents numerous grounds of appeal in his appeal brief, most of which are either irrelevant or incoherent.

23. The issue with regard to the characterization of the impugned decision was the subject of Mr. ElShanti's application for revision and interpretation of the Judgment that he filed on 6 October 2019. By Judgment No. UNRWA/DT/2019/065 dated 12 November 2019, the

UNRWA DT in a reasoned judgment clarified the characterization of Mr. ElShanti's application as a challenge to the decision not to renew his fixed-term appointment.

24. Mr. ElShanti has not presented cogent arguments to support the conclusion that the characterization and reasoning of the UNRWA DT was incorrect in law.

25. Mr. ElShanti presents no arguments in support of the contention that the UNRWA DT erred in consolidating the cases. As such, the UNRWA DT's decision to consolidate the cases remains unassailed.

26. The Commissioner-General requests that the Appeals Tribunal dismiss Mr. ElShanti's appeal.

*Case No. 2020-1349: Appeal of Judgment No. UNRWA/DT/2019/065*

**Mr. ElShanti's Appeal**

27. Mr. ElShanti submits that the UNRWA DT erred in fact and law in its characterization of the impugned administrative decision as reflected in its Judgment on the application for revision and interpretation.

28. Mr. ElShanti contends that he did not contest the non-renewal decision and that he was clear in his decision review request that he contested the abolition of his post. The last notification he received from management was in relation to the abolition of his post, resulting in him being declared provisionally redundant.

29. The UNRWA DT erred in fact and law as the decision to abolish his post had a direct impact on his terms of employment.

30. Mr. ElShanti requests that the Appeals Tribunal rescind the impugned Judgment and order payment of all his entitlements to salaries and benefits from 1 September 2018 to date. He is also seeking compensation for pecuniary losses and moral damages as well as an award of all the travel costs.

**The Commissioner-General's answer**

31. Mr. ElShanti has not presented any cogent arguments to support his contention that the characterization and reasoning of the UNRWA DT was incorrect at law. He has not demonstrated in what respect the UNRWA DT—by its interpretation of portions of its previous judgment to clarify the characterization of the impugned decision—exceeded or failed to exercise its jurisdiction, erred on a question of law, committed an error in procedure or erred on a question of fact resulting in a manifestly unreasonable decision.

32. In relation to the application for revision, the UNRWA DT was cognizant of the applicable regulatory framework and correctly dismissed the application for revision, since Mr. ElShanti failed to satisfy the elements for an application for revision.

33. The Commissioner-General requests that the Appeals Tribunal dismiss Mr. ElShanti's appeal.

**Considerations**

*Preliminary issue*

34. Our Rules of Procedure (Rules) provide for the parties to file appeals, answers, cross-appeals and answers to cross-appeals. They do not, however, provide for an appellant to file comments on an answer. Nevertheless, other pleadings may be allowed under Article 31(1) of the Rules as well as Practice Direction No. 1. Under Section II.A.3 of Practice Direction No. 1, an appellant may make “[a] motion requesting the permission of the Appeals Tribunal to file a pleading after the answer to the appeal” and the Appeals Tribunal may grant such a motion “if there are exceptional circumstances justifying the motion”.

35. In the present case, on 23 May 2020 and 15 June 2020, Mr. ElShanti filed an “answer to cross-appeal” and a motion for additional pleadings, respectively, in both of which he attempted to rebut and comment on the arguments put forth by the Agency in this appellate proceeding. In essence, Mr. ElShanti repeated the grounds advanced in his appeals briefs and insisted on the unlawfulness of the UNRWA DT's Judgments under challenge.

36. In these circumstances, this Tribunal finds that Mr. ElShanti has not demonstrated exceptional circumstances for filing additional pleadings, either in his motion or in his “answer to cross-appeal”, which is a disguised form of such a motion. He simply reiterates the arguments already contained in his appeals briefs or seeks to provide additional details in response to the Commissioner-General’s answer. Thus, Mr. ElShanti’s “answer to cross-appeal” as well as his motion for additional pleadings are denied.

37. Moreover, the request of the Commissioner-General not to admit the additional documents annexed to Mr. ElShanti’s appeal (in the form of Annex 6: the Dubai visa), which Mr. ElShanti also rebuts in the above “answer to cross-appeal”, must be granted. These documents were not filed with the UNRWA DT and Mr. ElShanti, as already noted, has not been successful to make out any case, in terms of Article 2(5) of the Appeals Tribunal Statute, that exceptional circumstances justify the receipt of the additional evidence in the interest of justice and the efficient and expeditious resolution of the proceedings.

## **Merits**

### *The consolidation of the cases*

38. Mr. ElShanti takes issue with the UNRWA DT’s decision to consolidate<sup>1</sup> his application (UNRWA/DT/GFO/2018/202) with Mr. Ayman El Najjar’s application (UNRWA/DT/GFO/2018/521) against the decision of the Agency not to renew his FTA.

39. At the outset, we note that the UNRWA DT has broad discretion under its Rules of Procedure<sup>2</sup> in managing its cases. Our jurisprudence has consistently held that the Appeals Tribunal will not lightly interfere with the broad discretion conferred on the first instance tribunal in the management of its cases to enable cases to be judged fairly and expeditiously and for dispensation of justice. We will intervene only in clear cases of denial of due process of law affecting a party’s right to produce evidence.<sup>3</sup>

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<sup>1</sup> Impugned Judgment, para. 54.

<sup>2</sup> See Article 14 of the UNRWA DT Rules of Procedure.

<sup>3</sup> *Abdeljalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-960, paras. 42-43 (internal citations omitted).

40. In the instant case, we are not able to see that this discretion was abused and hence we reject Mr. ElShanti's argument that this threshold has been met.

*The characterization of the impugned administrative decision*

41. Mr. ElShanti claims that the characterization of the impugned administrative decision by the UNRWA Dispute Tribunal was not correct as he was contesting the decision dated 25 July 2018 to abolish his post. There is no merit in Mr. ElShanti's claim for the reasons that follow.

42. The Dispute Tribunal has the inherent authority to individualize and define the administrative decision impugned by a party in a specific case, by adequately interpreting and comprehending the application submitted by the moving party, whatever name the party attaches to the document.<sup>4</sup>

43. In the case at hand, as per the documents on file, by letter dated 25 July 2018, Mr. ElShanti was individually notified by the Administration that his post would be abolished. Following an agreement reached on 1 September 2018, between the DUO/G and the LSU in Gaza, Mr. ElShanti's FTA was extended on a full-time basis until the end of September 2018. The memorandum of the agreement indicated that: "[i]t must be understood that failure to mobilise additional resources on a significant scale would[,] on October 1[,] lead to implementation of the individual letters shared on July 25, i.e. moving 510 full time to part time contracts and 68 separations". As a result of the failure to mobilize additional resources, on 30 September 2018, Mr. ElShanti was separated from the Agency upon the expiry of his FTA.

44. In view of the surrounding factual elements, after reviewing Mr. ElShanti's application, as well as the Commissioner-General's reply, the UNRWA DT characterized the decision contested by Mr. ElShanti as the decision not to renew his fixed-term appointment upon its expiry. The UNRWA DT, bearing in mind that the Agency's decision to abolish Mr. ElShanti's post was not a reviewable decision as, on its own, it had no direct impact on his terms of appointment, and it merely constituted an act leading to the non-extension of Mr. ElShanti's

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<sup>4</sup> *Farzin v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-917, para. 39; *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-611, para. 16.

FTA, concluded that when Mr. ElShanti requested review of the administrative decision dated 25 July 2028, he was actually contesting the administrative decision not to renew his FTA.

45. In these circumstances, we hold that the UNRWA DT properly and reasonably exercised its duties to interpret and determine the scope and nature of Mr. ElShanti's application. The UNRWA Dispute Tribunal was not limited to the staff member's description of the contested or impugned decision; quite properly, it could consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed.

46. Hence, its conclusion in terms of the identification of the impugned administrative decision was correct and comports with the Appeals Tribunal's jurisprudence concerning the role of the Dispute Tribunal in individualizing and defining the administrative decision impugned by a party and the nature of an administrative decision that abolishes a post as an act leading to the non-extension or termination of a contract,<sup>5</sup> which is the executable administrative decision (*décision exécutoire*). Therefore, the UNRWA Dispute Tribunal did not err in law or fact in determining the decision that Mr. ElShanti contested.

47. In addition, we agree with the Commissioner-General's note that all of the above issues, with regard to the characterization of the impugned decision, were the subject of Mr. ElShanti's application for revision and interpretation of judgment he filed on 6 October 2019 and were properly explained to him by the UNRWA DT in Judgment No. UNRWA/DT/2019/065 dated 12 November 2019.

48. Turning to the remaining part of the appeal, whereby Mr. ElShanti appears to challenge, in an incoherent and predominantly not easily comprehensible way, the UNRWA DT's findings in terms of the status of his fixed-term contract and the non-extension of his FTA, we note that Mr. ElShanti's appeal brief altogether fails to identify which of the grounds of appeal set out in Article 2(1) of the Appeals Tribunal Statute he relies upon in challenging the Judgment on the merits. Mr. ElShanti's appeal brief solely expresses disagreement with the Judgment on the

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<sup>5</sup> *Al-Refaea v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-971, para. 24; *Al Saleh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-888, para. 10.

merits and repeats arguments already thoroughly considered and rejected by the UNRWA DT. The appeal thus constitutes an impermissible attempt to reargue the merits of his case.

49. Specifically, his other arguments raised in the appeal are essentially identical to those raised before the UNRWA DT. He has not identified any specific error made by the UNRWA DT. The Appeals Tribunal has consistently stated that the appeals procedure is of a corrective nature and is not an opportunity for a dissatisfied party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed in the lower court. Rather, he or she must demonstrate that the court below has committed an error of fact or law warranting intervention by the Appeals Tribunal.<sup>6</sup>

50. In any event, the UNRWA DT properly reviewed the contested decision in accordance with the applicable law. It noted that, pursuant to Area Staff Rule 109.5, a “fixed-term appointment shall expire without prior notice on the expiration date specified in the letter of appointment” and that Area Staff Circular No. 4/95 dated 5 April 1995, on Area Staff posts and appointments, provides in paragraph 6 that “Extension of appointment will depend on the Agency’s continuing need for the post, the availability of funding and the staff member’s performance”. The Appeals Tribunal had consistently affirmed the validity of the principle that fixed-term appointments or appointments of limited duration carry no expectation of renewal or conversion to another type of appointment.<sup>7</sup>

51. The UNRWA DT was cognizant of the Appeals Tribunal jurisprudence that an administrative decision not to renew a fixed-term appointment can be challenged on the grounds that the Administration has not acted fairly, justly or transparently with the staff member or was motivated by bias, prejudice or improper motive; the staff member has the burden of proving such factors played a role in the administrative decision.<sup>8</sup> The UNRWA DT was also aware<sup>9</sup> that, as the Appeals Tribunal has consistently held, an international

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<sup>6</sup> *Abu Salah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-974, para. 33; *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 19.

<sup>7</sup> *Abdeljalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-960, para. 20; *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 44.

<sup>8</sup> *Abdeljalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-960, para. 22; *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 47, citing *He v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-825, para. 43, in turn citing *Muwambi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-780, para. 27.

<sup>9</sup> Impugned Judgment, para. 62.

organization has the power to restructure some or all of its departments or units, which includes the abolition of posts, the creation of new posts and the redeployment of staff.<sup>10</sup>

52. Subsequently, in order to consider the rationale for the non-renewal, the UNRWA DT assessed the comprehensive documentary record before it, including, *inter alia*, the Commissioner-General's e-mail dated 7 July 2017 related to the financial difficulties faced by the Agency, a subsequent update dated 16 August 2018 about the internal measures adopted by the Commissioner-General to address the financial crisis, as well as the already mentioned letter to all staff members in the GFO dated 6 March 2018 from the DUO/G, who highlighted the financial difficulties the Agency was facing due to the sudden decrease in contributions to the Agency.<sup>11</sup>

53. Applying those principles to the specific facts of the case, the UNRWA DT concluded that:<sup>12</sup>

the rationale behind the non-renewal of the Applicants' appointments is clear from the CG's messages to staff members and from public information with respect to the significant decrease in funding from certain donors. As a result, it was within the Agency's discretionary authority to restructure some or all of its departments or units, including abolishing posts, creating new posts, and redeploying staff. It is clear from the CG's messages that the decrease in funding significantly affected the Agency's EA for the GFO and WBFO insofar as the CG decided to take some internal measures with respect to the Agency's community mental health programme and cash for work programme in Gaza in order to protect vital food assistance to a million refugees.

The UNRWA DT accordingly found that the challenged administrative decision was reasonable.

54. Moreover, the UNRWA DT examined whether the contested decision was ill-motivated and concluded that Mr. ElShanti and the other applicants in the consolidated case had "failed to sustain the burden of proof required to establish that the non-renewal decisions were

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<sup>10</sup> *Abdeljalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-960, para. 19; *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 34.

<sup>11</sup> In this letter, written *in tempore non suspecto*, the DUO/G stated that: "The huge reduction in funding of almost US\$ 300 million of more than US\$ 350 million that was expected in 2018 for both our Programme Budget and Emergency Appeals by UNRWA's largest donor, the USA, plunged the Agency into a dramatic and sudden existential crisis".

<sup>12</sup> Impugned Judgment, para. 62.

exercised arbitrarily or capriciously, were motivated by prejudice or other extraneous factors, or were flawed by procedural irregularity or error of law”.<sup>13</sup>

55. The Appeals Tribunal finds no reason to differ from these conclusions.

56. Having failed to establish any error of law or fact by the UNRWA DT, the appeal against Judgment No. UNRWA/DT/2019/051 fails.

*Appeal of the UNRWA DT Judgment on interpretation*

57. Article 12, paragraph 3, of the Statute of the UNRWA DT provides, as follows:

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.

58. Article 25 of the Rules of Procedure of the UNRWA DT provides:

Either party may apply to the Dispute Tribunal through the Registrar for an interpretation of the meaning or scope of a judgement provided it is not under consideration by the United Nations Appeals Tribunal. The application for interpretation shall be sent by the Registrar to the other party who shall have 30 days after receipt to submit comments on the application. The Dispute Tribunal will decide whether to admit the application for interpretation and, if so, shall issue its interpretation.

59. Article 2(1) of the Appeals Tribunal’s Statute provides:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

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<sup>13</sup> *Ibid.*, para. 67.

60. As the Appeals Tribunal has held:<sup>14</sup>

... The word “judgment” in article 2(1) of the Appeals Tribunal’s Statute includes a decision or order obtained in an action or in proceedings properly so called. It does not include the subsequent interpretation of such judgment; the literal meaning of the notion “interpret” is “to explain the meaning of something” and the word “interpretation” is “the particular way in which something is understood or explained”.

... The exercise of interpretation under Article 30 of the UNDT Rules of Procedure is not an avenue for review or the basis for a fresh judgment. Any dissatisfaction with the meaning of a judgment by the UNDT may be raised in an appeal against the substantive judgment.

... A party to a UNDT proceeding may choose to request an interpretation of the underlying judgment or appeal the underlying judgment to the Appeals Tribunal, but he or she cannot first request the UNDT for an interpretation and then appeal the interpretation judgment to the Appeals Tribunal.

61. As such, UNRWA Judgment No. UNRWA/DT/2019/065, in so far as it addresses Mr. ElShanti’s application for interpretation, was merely an explanation of its Judgment No. UNRWA/DT/2019/051 issued on 9 September 2019. It is not a fresh decision or judgment within the meaning of Article 2(1) of the Statute of the Appeals Tribunal.

62. This part of the appeal against Judgment No. UNRWA/DT/2019/065 is therefore not receivable.

*Appeal of the UNRWA DT Judgment on revision*

63. Turning to the part of the appeal that challenges Judgment No. UNRWA/DT/2019/065 in so far as the latter addresses the application for revision of the afore-mentioned Judgment No. UNRWA/DT/2019/051, we find it without merit for the reasons that follow.

64. Article 12, paragraph 1, of the Statute of the UNRWA DT provides:

Either party may apply to the Dispute Tribunal for a revision of an executable judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Dispute Tribunal and to the party applying

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<sup>14</sup> *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-333, paras. 12-14; See also, *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-010, para. 7.

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.

65. Article 24 of the Rules of Procedure of the UNRWA DT provides:

1. Either party may apply to the Dispute Tribunal through the Registrar for a revision of an executable judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence.
2. The application for revision must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.
3. The application for revision shall be sent by the Registrar to the other party, who has 30 days after receipt to submit comments to the Registrar.

66. Having reviewed Mr. ElShanti's application for revision of its Judgment No. UNRWA/DT/2019/051, the UNRWA DT stated:<sup>15</sup>

... As the United Nations Appeals Tribunal (the "UNAT") held in *Saeed* 2017- UNAT-719, paragraphs 10-11, the Applicant must show or identify a decisive fact which, at the time of the Judgment, was unknown to both the Tribunal and the Applicant. The Applicant must also demonstrate that such ignorance of the decisive fact was not due to the negligence of the Applicant and that the fact identified would have been decisive in reaching the Judgment. In the present case, the Applicant failed to do so. Therefore, the Applicant's application for the revision of the Judgment is dismissed

67. The Appeals Tribunal is satisfied that, in arriving at its conclusion, the UNRWA DT did not err in law or fact, resulting in a manifestly unreasonable decision.

68. Central to the question of whether a UNRWA DT Judgment should be open to revision is the discovery of a decisive fact, unknown to the UNRWA Dispute Tribunal and to the party applying for revision at the time of the Judgment;<sup>16</sup> that such ignorance was not due to the negligence of the applicant; and that the fact identified would have been decisive in reaching the decision.<sup>17</sup>

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<sup>15</sup> Impugned Judgment, para. 21.

<sup>16</sup> *Mbaigolmem v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-890, para. 13.

<sup>17</sup> *Saeed v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-719, para. 11; *El Saleh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-594, para. 34.

69. The Appeals Tribunal's jurisprudence on the issue of revision applications which come before it, under Article 11(1) of the Statute of the Appeals Tribunal, emphasizes that an application is receivable if it fulfils the strict and exceptional criteria set down in its Statute.<sup>18</sup> This principle also applies to revision cases before the Dispute Tribunal, in light of the similarity of its statutory provisions on revision to those of the Appeals Tribunal.<sup>19</sup>

70. Having given due consideration to the parties' submissions in this case (including the submissions before the UNRWA DT), we agree with, and uphold, the UNRWA DT's finding that Mr. ElShanti did not present to the UNRWA Dispute Tribunal any new decisive fact in order to succeed in his request for revision.

71. The grounds upon which Mr. ElShanti attempted to anchor his application for revision did not meet the strict test set out in Article 12(1) of the Statute of the UNRWA DT and Article 24 of the Rules of Procedure of the UNRWA DT, quoted above. In so far as Mr. ElShanti complained that the UNRWA DT erred in fact and law in its Judgment No. UNRWA/DT/2019/051 issued on 9 September 2019, such did not bring his application within the parameters of the above Articles of the Statute and Rules of Procedure of UNRWA DT.

72. In these circumstances, the Appeals Tribunal holds that the application for revision filed by Mr. ElShanti constituted in reality a disguised way to criticize UNRWA DT Judgment No. UNRWA/DT/2019/051 or to disagree with it. However, Articles 12(1) of the Statute and Article 24 of the Rules of Procedure of the UNRWA DT do not allow the use of an application for revision for such a goal or as a way to modify, complete or improve a judgment by the UNRWA Dispute Tribunal.

73. Then, Mr. ElShanti advances, in the course of his appeal, submissions claiming errors in law or fact on the part of the UNRWA DT in its Judgment No. UNRWA/DT/2019/051 in relation to the non-extension of his FTA by the Administration and the abolition of his post. Nevertheless, the Appeals Tribunal will not embark on a consideration of these complaints in the context of this appeal because the Appeals Tribunal is not competent to do so. Mr. ElShanti cannot use his appeal against the rejection of the application for revision to litigate this issue.<sup>20</sup>

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<sup>18</sup> *Mbaigolmem v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-890, para. 12; *Applicant v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-393, para. 14, citing *Beaudry v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-129, para. 16.

<sup>19</sup> *Abassa v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-484, para. 33.

<sup>20</sup> *Ibid.*, para. 36.

74. In the same line of reasoning, we dismiss Mr. ElShanti's contentions that the UNRWA DT erred in fact and law in its characterization of the impugned administrative decision as reflected in its judgment on the application for revision and interpretation, as he did not contest the non-renewal decision and that he was clear in his decision review request that he contested the abolition of his post.

75. The issues alleged by Mr. ElShanti did not fall within the material scope of the trial on the application for revision but were the subject of the application on the merits before the UNRWA DT and the core issues addressed by the UNRWA DT in its Judgment No. UNRWA/DT/2019/051. Hence, Mr. ElShanti's submissions constitute, in reality, another disguised way to challenge Judgment No. UNRWA/DT/2019/051, which is not acceptable by the Appeals Tribunal. As already stated, Mr. ElShanti 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>21</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>22</sup>

76. In any case, Mr. ElShanti had the opportunity to raise his complaints against Judgment No. UNRWA/DT/2019/051 by filing an appeal, which he did unsuccessfully.

77. In light of the above, we find no merit in the application for revision and, accordingly, Mr. ElShanti's appeal is dismissed.

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<sup>21</sup> *Eid v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-145, para. 2.

<sup>22</sup> *Elasoud v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-391, para. 13.

**Judgment**

78. The appeals are dismissed and Judgment Nos. UNRWA/DT/2019/051 and UNRWA/DT/2019/065 are affirmed.

Original and Authoritative Version: English

Dated this 26<sup>th</sup> day of June 2020.

*(Signed)*

Judge Raikos, Presiding  
Athens, Greece

*(Signed)*

Judge Knierim  
Hamburg, Germany

*(Signed)*

Judge Murphy  
Cape Town, South Africa

Entered in the Register on this 27<sup>th</sup> day of July 2020 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar