

UNDT/2015/087, Kalashnik

UNAT Held or UNDT Pronouncements

The application was rejected as being manifestly inadmissible and not receivable.

Decision Contested or Judgment/Order Appealed

The Applicant contests the outcome of his requests to the management evaluation unit and requests an independent and impartial review of the conduct and outcome of the management evaluation.

Legal Principle(s)

Expedited consideration of manifestly not receivable cases. The General Assembly has requested in its resolution 66/237, adopted on 24 December 2011, that the Dispute and Appeals Tribunals 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 Rules of Procedure. Summary judgment. The appropriateness of an application for summary judgment under art. 9 of the Tribunal’s Rules of Procedure was discussed in Cooke UNDT/2011/216. A cursory overview of common law jurisdictions is indicative of the position that summary judgment is normally granted on the filing of affidavits on substantive claims, and is not a procedure normally used for disposal of matters on receivability or admissibility. However, the contextualization of an application for summary judgment, whilst determined by individual jurisdictional experience and familiarity, will also no doubt entail some general principles commonly adopted in multiple jurisdictions with a view to expediting proceedings where facts are not in dispute and the law is clear. Whatever nomenclature is given to the process, is not material as the Tribunal has dealt with matters summarily by striking out or

dismissal on the grounds of vexatiousness, frivolity, abuse of process, manifest inadmissibility, failure to disclose a cause of action. Summary judgment is unavailable where the facts are in dispute or the full facts have not been pleaded. Review of MEU decisions. It is settled law that the contested decision which may be reviewed by the Dispute Tribunal is not the decision of the MEU but the administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment of the staff member (Staedtler UNDT/2014/046). Principle of Lis Pendens. An applicant may not file multiple applications concerning the same administrative decision as this offends against the principle of lis pendens, which disavows simultaneous parallel proceedings between the same parties, concerning the same subject matter and founded on the same cause of action.

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Kalashnik

Entity

OIOS

Case Number(s)

UNDT/NY/2015/48

Tribunal

UNDT

Registry

New York

Date of Judgement

18 Sep 2015

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Subject matter (ratione materiae)

Applicable Law

UNDT RoP

- Article 9

UNDT Statute

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

UNDT/2011/216

UNDT/2014/046

2012-UNAT-275