

Translated from French

UNITED NATIONS APPEALS TRIBUNAL

Case No. 2010-34

Ms. El-Khatib

(Appellant)

v.

**The Commissioner-General of the United Nations Relief and Works Agency for
Palestine Refugees in the Near East**

(Respondent)

CORRECTION OF JUDGMENT

Before: Judge Jean Courtial, Presiding

Judge Inés Weinberg de Roca

Judge Mark P. Painter

Judgment No.: 2010-UNAT-029bis

Date: 1 July 2010

Registrar: Weicheng Lin

Counsel for Appellant: Bart Willemsen

Counsel for Respondent: W. Thomas Markuszewski

UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2010-UNAT-029bis

Judge Jean Courtial, Presiding.

Synopsis

1. The appellant filed an application for “reconsideration” of the judgment dated 30 March 2010 in which this Tribunal had rejected her appeal. The Tribunal interpreted that application as a request for a correction of judgment. A correction was made to the judgment dated 30 March 2010. That correction does not overturn the decision to reject the appeal which was rendered on 30 March 2010.

Facts and procedure

2. On 30 March 2010, the Tribunal issued Judgment No. 2010-UNAT-029, in which the appeal filed by Ms. El-Khatib was rejected on the grounds that it had been filed late and was therefore not receivable. In that same judgment, the court noted that even if the appeal had been receivable, it was without merit.

3. On 30 April 2010, Ms. El-Khatib filed an application for “reconsideration” of UNAT Judgment No. 2010-UNAT-029.

Submissions

Appellant

4. Ms. El-Khatib submits that the Tribunal had erred in rejecting her appeal on the grounds that it had been filed late. She submits that the court’s error cannot be rectified by following the procedure for the revision of a judgment provided for under article 11 of its Statute. The appellant requests the Tribunal to reconsider its judgment, rule that her appeal is receivable and uphold the appeal on its merits.

Respondent

5. The respondent argues that that the provisions of the Appeals Tribunal’s Statute do not provide for applications for “reconsideration”. Moreover, the respondent states that the procedure for revision does not provide for consideration of the fact that the Tribunal had overlooked the extension of the deadline granted by the former United Nations Administrative Tribunal. Lastly, the respondent argues that, even if the Tribunal were to consider the extension of the deadline granted to Ms. El-Khatib, her appeal would still be time-barred: the deadline had been extended until 30 June 2009 and the appeal had been filed only on 6 July 2009. In any case, the court had already deemed the late appeal to be unfounded in an obiter dictum.

Considerations

6. On 30 April 2010, Ms. El-Khatib filed an application with the United Nations Appeals Tribunal, requesting that it reconsider its judgment dated 30 March 2010 in case No. 2010-34. That judgment had rejected Ms. El-Khatib’s appeal against the decision of 16 June 2009 of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, ruling that her appeal

was not receivable. The Commissioner-General had rejected Ms. El-Khatib's request for administrative review of the decision to withdraw her offer of appointment as a social worker dated 28 November 2002.

7. Ms. El-Khatib argues that, contrary to what was stated in the Appeals Tribunal judgment of 30 March 2010, the deadline for her to file an appeal had been extended until 30 June 2009 by the President of the former United Nations Administrative Tribunal. She argues that her appeal is receivable and well founded.

8. The material in the former United Nations Administrative Tribunal file reveals that, in a decision of 8 May 2009, the President of that Tribunal had extended to 30 June 2009 the deadline by which the appellant could file an appeal. A copy of that decision had not been placed in the file that was submitted to the Appeals Tribunal, which rendered its judgment without being aware of that decision.

9. However, Ms. El-Khatib's appeal, dated 30 June 2009, was received by the United Nations Administrative Tribunal on 6 July 2009, which is a later date than 30 June 2009, the last day of the extended appeal period and the last day on which new applications could have been filed with the former Administrative Tribunal. Accordingly, the error committed by the Appeals Tribunal does not alter the essence of the judgment. That error must be regarded as an inadvertent mistake which can be rectified in accordance with article 26 of the rules of procedure which states: "Clerical or arithmetical mistakes, or errors arising from any accidental slip or omission, may at any time be corrected by the Appeals Tribunal, either on its own initiative or on the application by any of the parties on a prescribed form."

10. Paragraph 15 of the judgment dated 30 March 2010 contains an error that must be corrected.

11. In addition, the court notes that in the second sentence of paragraph 16, the words "letter of notification" were used instead of the words "letter of appointment". This second error must be corrected ex officio.

Judgment

12. Paragraph 15 of the judgment dated 30 March 2010 in Case No. 2010-34 is amended as follows:

The material in the case file shows the Commissioner-General's decision definitively rejecting the recommendation of the Joint Appeals Board and confirming the withdrawal of the offer of appointment to be contained in a letter dated 16 January 2009. The appellant acknowledged receipt of this letter on 9 February 2009. The time limit of 90 days, which was extended to 30 June 2009 by a decision dated 8 May 2009 by the President of the former United Nations Administrative Tribunal, had expired by 6 July 2009, the date on which the appeal, dated 30 June 2009 and therefore sent to the Tribunal on a date such that it could not arrive on time, was filed with the Registry of the former United Nations Administrative Tribunal. After 1 January 2010, when Ms. El-Khatib's attention had been drawn to the time-bar issue by the reply, she did not request the new Appeals Tribunal for an exemption under article 7, paragraph 2, of the rules of procedure. In these circumstances, the respondent is justified in arguing that the appeal is time-barred and in requesting its dismissal on those grounds.

13. In the second sentence of paragraph 16 of the same judgment, the words “letter of notification” are replaced by the words “letter of appointment”.

(Signed) Judge Courtial, Presiding

(Signed) Judge Weinberg de Roca

(Signed) Judge Painter

Dated this 1st day of July 2010 in New York, United States of America

Original: French

(Signed)

(Signed)

(Signed)

Judge Courtial, Presiding

Judge Weinberg de Roca

Judge Painter

Entered in the Register on this 16th day of August 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar, UNAT
