



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

Case No. 2010-043



**Mezoui
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Mark P. Painter, Presiding Judge Kamaljit Singh Garewal Judge Rose Boyko
Judgment No.:	2010-UNAT-043
Date:	1 July 2010
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Phyllis Hwang

JUDGE MARK P. PAINTER, Presiding.

Synopsis

1. In a case limited to its specific facts, we emphasize that this court has been strictly enforcing, and will continue to strictly enforce, the various time limits. But Hanifa Mezoui (Mezoui) was caught in the transition between the old and new internal justice systems. The new United Nations Dispute Tribunal (UNDT or Dispute Tribunal) had not officially started, and the former Administrative Tribunal was winding down. At that point it is questionable if anyone could have granted the extension she sought. And there was some understandable confusion because the cases which would have been commenced before the former Administrative Tribunal were to be commenced before the new UNDT, not the new United Nations Appeals Tribunal. Because this case was directly in the path of the changeover, we grant some leeway and remand to the UNDT for consideration on the merits.

Facts and Procedure

2. Mezoui challenged the decision of the Secretary-General not to select her for the position of Director of the Office for Economic and Social Council Support and Coordination. On 31 October 2006, Mezoui requested an administrative review of the non-selection decision and later filed an application with the Joint Appeals Board (JAB) to contest the decision. In its report of 10 November 2008, the JAB determined that the Administration had omitted an essential fact in its evaluation of Mezoui's qualifications and recommended compensation in the amount of three months' net base salary. The Secretary-General accepted the JAB's recommendation and informed Mezoui accordingly on 4 February 2009.

3. On 17 April 2009, Mezoui requested an extension of the time-limit to file an application with the former Administrative Tribunal. On 28 April 2009, she was granted an extension until 30 June 2009 and was advised that, thereafter, any new applications would need to be submitted to the UNDT. On 16 June 2009, Mezoui sent another letter, with a copy of her letter of 17 April 2009 reiterating her request for an extension until 31 July 2009. The Registry of the former Administrative Tribunal received the letter on

8 July 2009 and, on the same day, responded by resending its letter of 28 April 2009. Mezoui contends, however, that her letter of 16 June was received by the former Administrative Tribunal on 20 June, though it may not have been opened until 8 July.

4. Mezoui filed her application on 14 July 2009 and, on 2 October 2009, the UNDT Geneva issued its Judgment No. UNDT/2009/026. The UNDT concluded that the application had not been submitted to the UNDT on a timely basis and rejected it as time-barred.

5. On 27 October 2009, Mezoui requested a revision of UNDT Judgment No. UNDT/2009/026. On 10 December 2009, the UNDT issued Judgment No. UNDT/2009/087, rejecting Mezoui's request for revision.

6. On 14 January 2010, Mezoui filed her appeal against both Judgments. By letter dated 21 January 2010, the Appeals Tribunal's Registry returned her appeal noting that it did not meet the formal requirements and requesting her to make the necessary changes. On 2 February 2010, Mezoui filed her revised appeal. The Secretary-General filed an answer on 19 March 2010. On 4 April 2010, Mezoui filed "comments" on the Secretary-General's answer.

Submissions

Mezoui's Appeal

7. As a preliminary matter, Mezoui requests an oral hearing. She wishes to testify on her own difficult personal circumstances in the period of January to July 2009, delaying the filing of her case until 14 July 2009. She also intends to call a JAB official to testify on the transfer of her case before the former Administrative Tribunal during the transition period; officials of bar associations to testify on "the confusion during the transition period and on the absence of staff at UNAT in New York, in June 2009"; and officials of the Office of Administration of Justice to confirm that the location of the UNDT Registry in New York was not known in late June and early July. In view of our decision, an oral hearing is unnecessary.

8. Mezoui alleges a violation of her due process rights. She contends that the UNDT Judgment was rendered in absentia, without a hearing and prior notification and without considering the exceptional reasons of her case. She asserts that under Article 14 of the International Covenant on Civil and Political Rights (ICCPR), she was entitled to a hearing in her case.¹

9. Mezoui requests the Appeals Tribunal to find that her letter to the Secretariat of the former Administrative Tribunal dated 17 April 2009 was filed within time-limits; and that between April and July 2009, she found herself in severe family, health, and repatriation hardship situations, without access to counsel, all of which constituted exceptional circumstances justifying her requests for extension.

10. Mezoui contends that all other UNDT judgments on receivability in similar circumstances as hers, with applicants “entrapped” during the transition period between the former Administrative Tribunal and the UNDT, declared the appeals receivable.

11. Mezoui further contends that Article 29 of the rules of procedure of the Dispute Tribunal (UNDT rules) compelled her to file a request for revision without waiting for Judgment No. UNDT/2009/026 to become executable. She alleges that she ascertained through the tracking system of the postal services that her second request for an extension of time to file an application with the former Administrative Tribunal had reached it on 19 June 2009 (the date of 20 June 2009 is also given in the appeal), rather than in July 2009, as indicated by the UNDT.

12. Finally, Mezoui requests the Appeals Tribunal to order the disclosure of the Senior Review Group minutes of May 2006 concerning her candidature to demonstrate the extent to which the record of her services and her qualifications were distorted or were not taken into account.

Secretary-General’s Answer

13. The Secretary-General claims that the appeal is time-barred and therefore not receivable. Judgment No. UNDT/2009/026 was issued on 2 October 2009 and Mezoui

¹ United Nations, *Treaty Series*, vol. 999, p. 171.

states that she received it on 13 October 2009. Judgment No. UNDT/2009/087 was issued on 10 December 2009 and sent to the parties by e-mail on 11 December 2009. Under Article 7 of the Tribunal's Statute, an appeal is receivable if it is filed within 45 calendar days of receipt of the judgment. The deadlines for filing the appeals were therefore 27 November 2009 and 25 January 2010, respectively. Because Mezoui presented her appeal only on 2 February 2010, it is out of time. But the Secretary-General was evidently unaware that the appeal was originally filed earlier, and sent back for a minor correction.

14. The Secretary-General next submits that the UNDT did not commit any error in determining the receivability of Mezoui's application without holding an oral hearing. Mezoui had no right to an oral hearing. Under Article 16 of the UNDT rules, the UNDT is not required to hold an oral hearing. Moreover, the right to a "fair and public hearing by a competent, independent, and impartial tribunal", as provided for by Article 14(1) of the ICCPR does not require an *oral* hearing of a case. The Secretary-General submits that in the present case, the UNDT limited itself to reviewing the issue of receivability, which was a matter that could be adequately resolved on the basis of the case file.

15. The Secretary-General claims that Mezoui has not established any error of law that would justify a reversal of the UNDT's conclusion that her appeal was time-barred. At best, she identified that there was an inconsistency in the approach of the UNDT with respect to whether or not time-limits need to be enforced. The Secretary-General submits that the correct approach is to maintain the jurisprudence of the former Administrative Tribunal, which has emphasized the importance of complying with mandatory time-limits.

16. The Secretary-General next claims that Mezoui's arguments regarding Article 29 of the UNDT rules do not justify the late submission of her application to the UNDT or her appeal to the Appeals Tribunal. Mezoui claims that she ascertained through the tracking system of the postal services that her second request for an extension of the deadline to file an application with the former Administrative Tribunal had reached the former Administrative Tribunal on 19 June 2009, rather than in July, as indicated by the UNDT. The Secretary-General submits that Mezoui has failed to provide any tracking information, and he is therefore unable to comment on the veracity of the claim. Even if her request was received by the staff of the former Administrative Tribunal, and not only

the United Nations mail room, this would not constitute a decisive factor requiring reversal of the UNDT's decision that her application was not receivable. Up until 30 June 2009, the only extension that was granted to Mezoui was until 30 June 2009 and, absent further extension, she had an obligation to file her appeal by that date.

17. Similarly, the Secretary-General submits that Mezoui's submissions regarding Article 29 of the UNDT rules do not justify the late filing with the Appeals Tribunal, since the filing of a request for revision does not preclude the filing of an appeal of the same judgment.

18. The Secretary-General finally submits that, should the Appeals Tribunal decide to reverse the UNDT's conclusion that the application was not receivable, the appropriate course of action would be to remand the case to the UNDT for a determination of the facts and the merits of the application. The Secretary-General therefore requests the Appeals Tribunal to deny Mezoui's request for an order to disclose the Senior Review Group minutes of May 2006.

Mezoui's "Comments" on the Secretary-General's Answer

19. Mezoui filed a document entitled "comments" on the Secretary-General's answer. Articles 8 and 9 Of the Appeals Tribunal's Rules of Procedure provide for an appellant to submit an appeal form, accompanied by a brief, and for a respondent to submit an answer form, accompanied by a brief. Only in exceptional circumstances may additional pleadings be allowed.² Mezoui has not demonstrated any exceptional circumstances justifying the need to file a reply to the Secretary-General's answer. Accordingly, it is stricken.

Considerations

20. Mezoui was caught in the transition between the old and new internal justice systems. In April of 2009 she requested an extension of the time-limit to file an application with the former Administrative Tribunal to 31 July. She contends that she received no answer, though one was surely sent. That letter granted an extension until 30 June, after which date the former Administrative Tribunal ceased to accept new cases. She sent another

² Article 6 of the Appeals Tribunal's Statute; Article 31(1) of the Appeals Tribunal's Rules of Procedure. See *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035, paras. 27-28.

letter on 16 June. At that point it is questionable if anyone could have granted an extension—the new UNDT had not officially started, and the former Administrative Tribunal was winding down. And there was some understandable confusion because the cases which would have been commenced before the former Administrative Tribunal were to be commenced before the new UNDT, not the new United Nations Appeals Tribunal.

21. This case is limited to its specific facts, and we emphasize that this court has been strictly enforcing, and will continue to strictly enforce, the various time limits. The old system was perhaps too generous in extending or waiving time—we will not be. But this case was directly in the path of the changeover, and we grant some leeway here. We remand to the UNDT for consideration on the merits.

22. We agree with the Secretary-General that, having sent the case back to the UNDT for a determination of the facts and the merits of the application, we should deny Mezoui's request for an order to the Secretary-General to disclose the Senior Review Group minutes of May 2006. That issue would be for the trial court to consider.

Judgment

23. The UNDT's Judgment finding the case non-receivable is reversed, and we remand to the UNDT for a hearing on the merits.

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

Original: English

(Signed)

Judge Painter, Presiding

(Signed)

Judge Garewal

(Signed)

Judge Boyko

Entered in the Register on this 17th day of August 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar
United Nations Appeals Tribunal