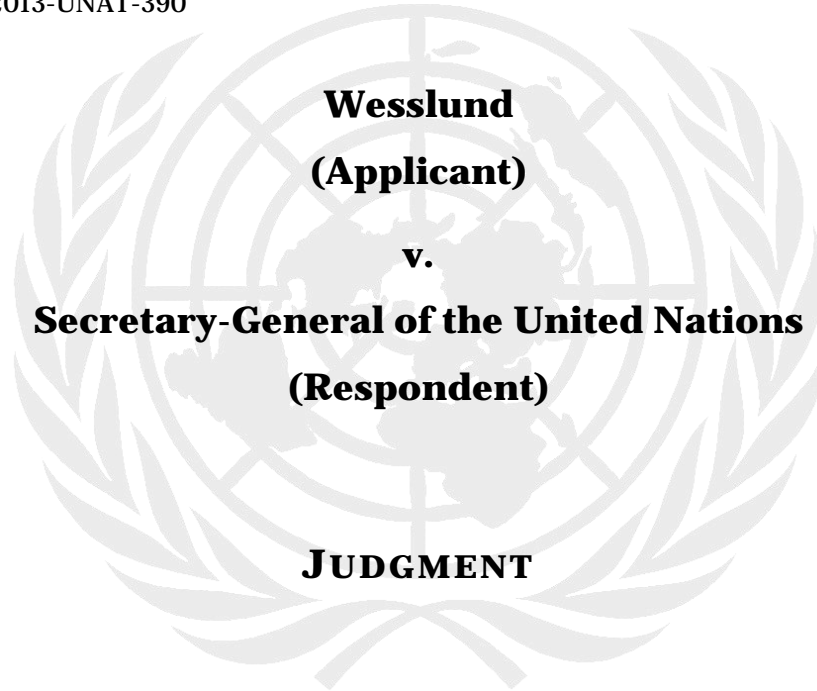




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2013-UNAT-390



**Wesslund
(Applicant)**

v.

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

JUDGMENT

Before: Judge Mary Faherty, Presiding
Judge Luis María Simón
Judge Richard Lussick

Case No.: 2013-506

Date: 17 October 2013

Registrar: Weicheng Lin

Counsel for Applicant: Self-represented

Counsel for Respondent: Paul Oertly

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it a “Motion for Writ of Mandamus” filed by Ms. Kristina Wesslund on 15 July 2013.

Facts and Procedure

2. The following facts reflected in Order No. 100 (NY/2013), issued by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in New York on 16 April 2013 in the case of *Wesslund v. Secretary-General of the United Nations*, are uncontested:

... By email dated 8 April 2013, the Registry of the Dispute Tribunal referred Ms. Wesslund to the filing procedures of the Tribunal set out on the website of the Tribunal, in particular the guidelines for the filing of an application. The Registry requested that Ms. Wesslund make use of the Tribunal's forms and to submit her application via the eFiling portal of the Tribunal.

... By email dated the same day, Ms. Wesslund responded the following: "On the issue of use of form, please, refer to para. 3 of my submission".

... The [Dispute] Tribunal notes that para. 3 of the document emailed by Ms. Wesslund states the following:

I submit that the application is structurally admissible, although it does [not] utilize any of the forms available on the UNDT website. The choice of non-utilization was conscious on my part and is permitted by art. 8(1) of the UNDT Rules insofar as the application contains the information required by art. 8(2) of the UNDT Rules.

... By email dated 10 April 2013, the Registry of the [Dispute] Tribunal advised Ms. Wesslund that her request to have the Tribunal treat her request for management evaluation as an application was not appropriate as the Tribunal does not have jurisdiction to consider appeals against management evaluation decisions. Ms. Wesslund was also advised that in accordance with the Practice Direction No. 4 on Filing of Applications and Replies, an application shall be submitted on the appropriate current form of the Dispute Tribunal and that the form specifically required the application to be limited to 10 pages. Ms. Wesslund was further advised that no submission is being processed unless it is made using the form approved by the Judges of the Tribunal, which must be then uploaded in the electronic case management system of the Tribunal.

... By email of the same day, Ms. Wesslund responded the following:

The request for and the decision on the request for management evaluation are integral to the instant appeal. The bench will decide where, how and to what extent. It is entirely outside the Registry's purview to comment on the content of the application. Of course, it does. In fact, in most cases admissibility of

applications hinges upon the completion of the management evaluation process (UNDT Statute, art. 8(c)). In any event, it is, once again, not within the Registry'[s] purview to determine the scope of the Tribunal's jurisdiction but within that of the bench (art. 2(6)).

Practice directions do not supersede the UNDT Rules of Procedure. I have cited the relevant article to you but here it is again: "[a]n application may be submitted on an application form prescribed by the Registrar" (UNDT Rules of Procedure, art. 8 (1)). The "may" gives me a choice of format insofar as the format of my choice is compliant with the following: (1) the title-sheet information required by art. 8(2); and (2) the format spelled out in art. 8(3). I submit that I have complied with these requirements in full. Under art. 8(4) it is within your purview to certify that the requirement of arts. 2-3 have been complied with. I submit that there is no reason to withhold this certification in the instant application.

As the form itself is not a requirement of the law, nor is the 10-page limit i[t] imposes. The law does impose a size limit on submissions. To the extent that practice directions are law the only limit imposed by them is that of the maximum size for electronically transmitted files (Practice Direction 4, art. 10).

There is equally no requirement [to] upload the application "in the electronic system of the Tribunal. The law is clear that application "may be electronically transmitted" (UNDT Rules of Procedure, art. 8(3)). To the extent practice directions are law, Practice Direction 4 gives the option of filing and outside the e-Filing Portal (art. 10).

As such, my original application satisfied the entirety of the applicable lawful requirements of the UNDT procedure." I am a nursing mother, with the deadline for another appeal coming up on May 8, 2013 and therefore will not participate in this nonsense if it is to continue. If it is your intention to do that, let's skip forward to my filing a complaint regarding the Registry's abuse of authority and obstruction of access to justice with the President of UNDT to whom you may direct me via email.

3. In Order No. 100 (NY/2013), the UNDT rejected Ms. Wesslund's motion, ruling that "only an application submitted by making use of the prescribed application form and the eFiling portal of the [UNDT] and meeting all the requirements in the Practice Direction 4 on the filing of applications and replies as well as those set out in the application form itself shall be considered for registration and transmitted to the [UNDT] by the Registry".¹

¹ Order No. 100 (NY/2013), para. 18.

4. On 15 July 2013, Ms. Wesslund filed a “Motion for Writ of Mandamus” with the Appeals Tribunal, and the Secretary-General answered on 22 July 2013.

5. On 30 July 2013, Ms. Wesslund filed a “Motion for Leave to file Additional Pleadings”. The Appeals Tribunal declines to grant that request, finding no “exceptional circumstances” such as would justify allowing Ms. Wesslund to respond to the Secretary-General’s Answer to the Motion.

Submissions

Ms. Wesslund’s Motion

6. Ms. Wesslund requests that the Appeals Tribunal order the UNDT to accept her applications. While a writ of mandamus is not explicitly listed as an available form of relief in the Statute of the Appeals Tribunal, the Appeals Tribunal may order such relief under Article 2(3) of its Statute and Article 18*bis* of its Rules of Procedure.

7. Ms. Wesslund submits that the UNDT was created to provide access to justice to the staff of the Organization “with no intent of subverting that access by format and method of submission-related arguments in its design”. Because of the immunity of the Organization, staff members are precluded from bringing claims against the Organization before national courts. Therefore, to deny Ms. Wesslund’s motion for writ of mandamus would have the effect of permanently foreclosing adjudication on the merits of her applications before the UNDT.

8. In addition, Ms. Wesslund requests that the Appeals Tribunal order an investigation into the actions taken by the UNDT Registry staff concerning her applications as well as “disciplinary action” and “administrative sanction” against the staff of the New York UNDT Registry, including its Registrar.

The Secretary-General’s Answer

9. The Secretary-General submits that Ms. Wesslund’s motion is time-barred. Her “motion” is in fact an appeal against Order No. 100 (NY/2013) and the filing date neither complies with the 30-day time limit for interlocutory appeals nor with the 60-day time limit for appeals against full judgments.

10. Furthermore, the motion fails to establish any clear excess of jurisdiction by the UNDT which would provide a recognized basis for an interlocutory appeal.

11. The Secretary-General requests the Appeals Tribunal to find that the motion is not receivable and to dismiss it accordingly.

Considerations

12. The Dispute Tribunal Order challenged by Ms. Wesslund was issued on 16 April 2013 and was styled “Order On Requirements For The Filing Of An Application”.

13. In answer to Ms. Wesslund’s Motion, the Secretary-General submits that the Motion is time-barred and therefore not receivable by the Appeals Tribunal. Alternatively, he contends that Ms. Wesslund has failed to establish any clear excess of jurisdiction on the part of the Dispute Tribunal.

14. In her “Motion for Writ of Mandamus”, Ms. Wesslund invokes the authority of the Appeals Tribunal, pursuant to Article 2(3) of its Statute to “issue all orders necessary or appropriate in aid of its jurisdiction and consonant with [its Statute]”. She also cites Article 18*bis*(1) of the Rules of Procedure of the Appeals Tribunal, which provides: “The President may, at any time, either on a motion of a party or on his or her own volition, issue any order which appears to be appropriate for the fair and expeditious management of the case and to do justice to the parties.”

15. Preliminarily, the powers contained in the above quoted Articles vest in the Appeals Tribunal in its capacity as an appellate body, and not by way of any inherent or original jurisdiction outside of the appellate jurisdiction conferred on the Appeals Tribunal by its Statute. Accordingly, the Appeals Tribunal considers Ms. Wesslund’s “Motion for Writ of Mandamus” to be an appeal against UNDT Order No. 100 (NY/2013). As such, a panel of the Appeals Tribunal was convened for the purpose of deciding whether Ms. Wesslund’s appeal was receivable.

Is Ms. Wesslund's appeal receivable, ratione temporis?

16. Paragraph 31 of General Assembly Resolution 66/237 expressly provides a 30-day deadline for the filing of appeals against interlocutory orders of the Dispute Tribunal. Ms. Wesslund filed her appeal on 3 July 2013, which is beyond the due date of 16 May 2013 for her appeal to comply with the aforesaid time limit.

17. Even if the Appeals Tribunal were to determine the 16 April 2013 Order to be a Judgment of the UNDT (which on its face it was not), Ms. Wesslund's appeal by way of "Motion of Writ of Mandamus" was received by this Tribunal on 3 July 2013, some 16 days beyond the expiry limit of 60 calendar days prescribed in Article 7(1)(c) of the Statute of the Appeals Tribunal.

18. Article 7(3) of the Statute of the Appeals Tribunal provides: "The Appeals Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Appeals Tribunal shall not suspend or waive the deadlines for management evaluation."

19. Article 30 of the Appeals Tribunal Rules of Procedure provides: "Subject to article 7.4 of the statute of the Appeals Tribunal, the President of the panel hearing a case may shorten or extend a time limit fixed by the rules of procedure or waive any rule when the interests of justice so require."

20. Ms. Wesslund did not apply to this Tribunal for an extension or waiver of the applicable time limits.

21. Thus, in all of the circumstances, the Tribunal finds her appeal of Order No. 100 (NY/2013) not receivable, *ratione temporis*, and dismisses it accordingly.

Judgment

22. The "Motion of Writ of Mandamus" is dismissed as not receivable.

Original and Authoritative Version: English

Dated this 17th day of October 2013 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Simón

(Signed)

Judge Lussick

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

(Signed)

Weicheng Lin, Registrar