



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2012-383

Malmstrom et al.
(Respondents/Applicants)

v.

Secretary-General of the United Nations
(Appellant/Respondent)

ORDER No. 112 (2012)

1. On 4 October 2012, the Secretary-General filed a Motion seeking an extension of time to file an appeal against Judgment No. UNDT/2012/129, rendered by the United Nations Dispute Tribunal (UNDT) in Geneva on 29 August 2012 in the case of *Malmstrom et al. v. Secretary-General of the United Nations*. The Secretary-General requests that the time limit to file his appeal be extended for 15 days, from 29 October 2012 until 13 November 2012.

2. In support of his Motion, the Secretary-General submits that the Judgment raises important legal questions; that it will affect an important number of staff members; and that it will have significant financial implications for the Organization. On 2 October 2012, the Secretary-General was notified that the Appeals Tribunal would hold oral hearings in six cases, from 23 to 25 October 2012. Two of the legal officers assigned to the appeal of the Judgment will, collectively, be arguing all six cases. The Secretary-General avers that “[a]t this late stage, it is not possible to reassign the appeal of the [Judgment] given the complexity of the legal issues and the recent departure of one legal officer on maternity leave”.

3. Article 7(1)(c) of the Statute of the Appeals Tribunal (Statute) provides that an appeal must be filed within sixty calendar days of the receipt of the judgment of the

Dispute Tribunal. Pursuant to Article 7(3) of the Statute “[t]he 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 circumstances”. Article 7(2) of the Rules of Procedure of the Appeals Tribunal (Rules) provides that “[i]n exceptional cases, an appellant may submit a written request to the Appeals Tribunal seeking suspension, waiver or extension of the time limits referred to in article 7.1”.

4. The Appeals Tribunal has consistently held that it “has been strictly enforcing, and will continue to strictly enforce, the various time limits”.¹ In *Harding*, the Appeals Tribunal rejected a request for an extension of time by the Secretary-General. It noted that “[t]he Office of Legal Affairs representing the Secretary-General is composed of several legal officers and is expected to reasonably manage its workload and staff in order to comply with the time limits under the Statute of the Appeals Tribunal”. The Appeals Tribunal further noted that “[n]either the travel of legal officers nor the scheduling of an oral hearing by the Appeals Tribunal constitutes exceptional circumstances for extending a party’s statutory time limits”.²

5. On the facts of the present case, I find no exceptional circumstances warranting an extension of time. The Secretary-General was informed of the cases that the Appeals Tribunal would hear during its 2012 fall session on 24 September 2012 – five weeks before the expiration of the time limit to appeal. He was aware that in several cases the opposing parties had requested oral hearings. Similarly, he must have been aware well in advance that one of the legal officers would be on maternity leave during the relevant period of time. None of the events cited by the Secretary-General was unexpected.

6. Based on the information available to him, the Secretary-General should have managed his workload and staff in such way to allow him to meet all Court deadlines. The Office of Legal Affairs cannot operate and manage its workload assuming a best case scenario - which in the present case would have been the hearing of no or fewer appeals.

¹ *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-043.

² *Harding v. Secretary-General of the United Nations*, Order No. 44 (2011). Internal footnotes omitted.

7. For the foregoing reason, I deny the Secretary-General's request for an extension of time and order that his appeal, if any, remains due by 29 October 2012.

Original and Authoritative Version: English

Dated 18th day of October 2012 in Montevideo,
Uruguay.

(Signed)
Judge Luis María Simón, President

Entered in the Register on this 18th day of October
2012 in New York, United States.

(Signed)
Weicheng Lin, Registrar