UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2014/072
Judgment No.: UNDT/2014/124
Date: 13 October 2014
Original: English

**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** René M. Vargas M.

RAVNJAK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

# SUMMARY JUDGMENT

**Counsel for Applicant:**
William St-Michel
Lori Ann Wanlin

**Counsel for Respondent:**
ALS/OHRM

**Introduction**

1. By application filed on 3 October 2014, the Applicant, a Support Assistant (G-5) at the International Criminal Tribunal for the former Yugoslavia ("ICTY"), contests the decision of October 2011 not to convert her fixed-term appointment into a permanent one.

**Facts**

2. The Applicant was informed of the contested decision by letter dated 6 October 2011 from the ICTY Registrar. She filed a request for management evaluation, with the assistance of the ICTY Staff Union, who was helping other ICTY staff members in the same situation. The Applicant's request was among a total of 281 requests that were filed through that channel.

3. By memorandum dated 17 January 2012, which she received by email of 18 January 2012 from the Management Evaluation Unit ("MEU"), the Applicant was informed that the impugned decision had been upheld by the Secretary-General. According to the explanations given in her application, she then followed the instructions issued by the Staff Union and prepared the documents required to file an application to the United Nations Dispute Tribunal ("UNDT") and hand-delivered them to the office of the Staff Union at the end of March 2012.

4. The Applicant was on certified sick leave from 2 to 4 April 2012. As stated by her, on 5 April 2012, the Staff Union sent a reminder to those ICTY staff members who had initially filed a request for management evaluation but who had not yet registered an application with the Staff Union to be sent to the UNDT. While the Applicant was in the office on the day the reminder was sent, she argues not to have noticed it due to other urgent matters she had to attend.

5. The Applicant was again on certified sick leave from 9 through 16 April 2012. Another email reminder was sent by the Staff Union on 11 April 2012 to those staff members—including the Applicant—who had not yet registered with

the Staff Union an application to be sent to the UNDT. The email was entitled "FINAL REMINDER: UNDT permanent appointment application" and stated the following:

> The Staff Union has noted that we have still not received your UNDT application on the MEU negative decision against ICTY staff who were denied a permanent appointment with the United Nations. The deadline for submission of your application WAS COB ON 5 APRIL, but we will exceptionally give you an extension until NOON tomorrow, 12 April.
>
> NO APPLICATIONS WILL BE ACCEPTED AFTER NOON ON 12 APRIL, AND YOU WILL NOT BE ASKED ABOUT THIS AGAIN.

6. On 16 April 2012, an application on behalf of 261 ICTY staff members was filed with the Dispute Tribunal. The Applicant's name was not listed in it.

7. When on 16 April 2012 the Applicant came back from her sick leave, she saw the email reminders, but she did not react to them as she believed that they were "generic reminders" that did not apply to her. Indeed, she thought that her documents had been processed at the end of March 2012 when she hand-delivered them to the Staff Union office; hence she took no further action

8. The Applicant asserts that she learnt that she had not been included among the UNDT litigants only in November 2012, when preparations were made by the Staff Union to appeal the UNDT judgment issued on 29 August 2012 (*Ademagic et al.* UNDT/2012/131). Indeed, an email was sent by the Staff Union to the Applicant's colleagues, but not to her, informing them about the next action to take. She immediately contacted the office of the Staff Union, which informed her that her application from March/April 2012 to the UNDT had not been processed because it had not been received and, as a result, her case had been excluded from further actions.

9. The Applicant submits that between November 2012 and September 2014, she regularly inquired with the office of the Staff Union and her former counsel about how to remedy the situation. On 24 September 2014, she appointed a new counsel, who on 3 October 2014 filed the present application on her behalf, along

with a "Motion for waiver of time to file an application", requesting a "waiver or suspension of the 90-day deadline up to and including the filing date of this Motion and the accompanying application".

**Applicant's submissions**

10. The Applicant's principal contentions are:

a. She was not included in the list of litigants who submitted an application to the UNDT in April 2012 due to circumstances beyond her control, and which were still unknown to her. It was reasonable for her to believe that since she had hand-delivered hard copies of the required documents to the Staff Union at the end of March 2012, she had taken all the necessary steps to ensure that she would be included in the ongoing litigation;

b. Her "reasonable belief" that she was included in the UNDT application constitutes "exceptional circumstances" to grant her motion for waiver or suspension of the 90-day deadline to file an application. Indeed, after submitting it to the Staff Union, she did not have control over her application and, as a result of her being out of the office on sick leave, she was unable to see or react to the Staff Union's reminder emails. Furthermore, once she learned that she was not part of the joint application in November 2012, she acted with due diligence and made regular inquiries with the Staff Union and her former counsel about how to remedy the situation. Moreover, the fact that the ICTY litigation concerns hundreds of individuals is an exceptional factor in itself and has added a layer of complexity which does not exist in cases with a single or a few litigants. The prejudice caused to her, should her motion not be granted, is significant, while the prejudice to the responding party is minimal;

c. In view of the above, she asks the Tribunal to rescind the contested decision and to order that her case be remanded to the Administration for retroactive consideration of her suitability for conversion to a permanent

appointment, as well as to grant her an award of EUR3,000 for non-pecuniary damages.

**Consideration**

11. An application is receivable by the UNDT only if it is filed within the statutory time limits provided for in its Statute. It is well established jurisprudence that time limits are to be strictly enforced (*Al-Mulla* 2013-UNAT-394, *Samuel-Thambiah* 2013-UNAT-385, *Romman* 2013-UNAT-308). Article 8 of the UNDT Statute sets forth the requirements for an application to be deemed receivable *ratione temporis*; in particular, art. 8.1(d)(i) provides that the application must be filed within "90 calendar days of the applicant's receipt of the response by management to his or her submission".

12. In the instant case, the Applicant received a reply to her request for management evaluation on 18 January 2012, which upheld the impugned decision. Therefore, the 90-day statutory time limit ended in April 2012. By filing her application before this Tribunal only on 3 October 2014, *i.e.* more than two years later, the application is obviously time-barred.

13. Regarding the Applicant's motion for waiver or suspension of the 90-day timeline to file an application up to 3 October 2014, the Tribunal notes that art. 8.3 of the Tribunal's Statute provides that:

> [t]he Dispute 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.

14. Further, art. 7.5 of the Dispute Tribunal's Rules of Procedure states that:

> [i]n exceptional cases, an applicant may submit a written request to the Dispute Tribunal seeking suspension, waiver or extension of the time limits referred to in article 7.1 above. Such request shall succinctly set out the exceptional circumstances that, in the view of the applicant, justify the request.

15. As determined by the Appeals Tribunal, there is no legal difference between "exceptional circumstances" and "exceptional cases" as referred to in the two

provisions quoted above; furthermore, in line with the jurisprudence of the former Administrative Tribunal, "a delay can generally be excused only because of circumstances beyond an applicant's control" (*Diagne et al.* 2010-UNAT-067). The Tribunal holds that, in the present case, the Applicant failed to establish any such exceptional circumstances.

16. First, the two reminders addressed to the Applicant by the Staff Union despite the explicit warning they contained, failed to trigger any reaction from her when they came to her attention upon her return from sick leave on 16 April 2012 (see para. 5 above). The Tribunal considers that any person reading those emails should have been alerted, and should have taken immediate action to inquire about the whereabouts of his or her application. The Applicant failed to do so. It follows that it was not beyond the Applicant's control to file an application within the statutory time-limit, especially since she had received a first warning already on 5 April 2012. Whether or not she was busy with other matters on that day has no impact on her ability to act in a timely manner.

17. Secondly, even when the Applicant realized in November 2012 that she had not been included in the ICTY group of litigants, she did not immediately file her application with the UNDT in an attempt to preserve her rights. On the contrary, as per her own statement, she merely engaged in discussions with the Staff Union and sought further legal advice up to September 2014. Such an attitude can in no event be deemed to constitute an "exceptional circumstance" under the above-referenced provision and as per the applicable definition.

18. The Applicant learned in November 2012 that her application—which she alleges to have hand-delivered with the Staff Union—went missing; she filed the present application with the UNDT nearly two years after that date and more than two and a half years following receipt of the reply to her request for management evaluation. As exposed above, the reasons she puts forward to explain such a delay cannot be considered to have been "beyond her control". In particular, the alleged complexity of the ICTY conversion exercise case, which included an important number of litigants, is no excuse for an applicant not to show diligence and take all necessary steps to pursue his or her own case in due time.

19. Since the application is not receivable, the Tribunal may not assess its merits (see *Servas* 2013-UNAT-349). Furthermore, the Tribunal observes that since the only issue which it had to address was the receivability *ratione temporis* of the application—which is a matter of law and hence may be adjudicated even without serving the application to the Respondent for reply and even if not raised by the parties (see *Gehr* 2013-UNAT-313, and *Christensen* 2013-UNAT-335)—the disposal of this case by way of summary judgment is appropriate, in accordance with art. 9 of the Tribunal's Rules of Procedure and the jurisprudence of the Appeals Tribunal (*Chahrour* 2014-UNAT-406, *Gehr* 2013-UNAT-313).

**Conclusion**

20. In view of the foregoing, the Tribunal DECIDES:

The application is rejected in its entirety.

(*Signed*)

Judge Thomas Laker

Dated this 13th day of October 2014

Entered in the Register on this 13th day of October 2014

(*Signed*)

René M. Vargas M., Registrar, Geneva