



**Before:** Judge Teresa Bravo

**Registry:** Geneva

**Registrar:** René M. Vargas M.

GELSEI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for Applicant:**

Evelyn W. Kamau, OSLA

**Counsel for Respondent:**

Elizabeth Brown, UNHCR  
Francisco Navarro, UNHCR

## **Introduction**

1. On 5 September 2019, the Applicant, represented by Counsel from the Office of Staff Legal Assistance (“OSLA”), filed an application contesting two disciplinary sanctions imposed on him by the United Nations High Commissioner for Refugees.
2. The application was served on the Respondent the following day. On 9 September 2019, the Respondent, pursuant to Article 9 of UNDT’s Rules of Procedure, filed a motion for summary judgment on receivability arguing that the application was not receivable *ratione temporis*.
3. Also on 9 September 2019, the Tribunal instructed the Applicant to provide comments on the Respondent’s motion.
4. On 16 September 2019, the Applicant filed:
  - a. Comments and supporting documents on the Respondent’s motion; and
  - b. A request for waiver of time limit to submit an application with supporting documents, pursuant to article 7 of the UNDT’s Rules of Procedure.

## **Parties’ submissions**

5. The Applicant’s principal contentions are:
  - a. On 6 June 2019, he was notified of the contested decision;
  - b. On 13 July 2019, he sought OSLA’s assistance to challenge the contested decision;
  - c. On 4 September 2019, the Application was finalized and submitted for filing by his OSLA Counsel. However, due to “technical challenges and an internal oversight”, his application was not filed on that day; and
  - d. To avoid miscarriage of justice and in the interests of justice the Applicant requests a waiver of the time limit to file the application.

6. The Respondent's principal contentions are:

a. A staff member wishing to formally contest a decision to impose a disciplinary measure is not required to request management evaluation. However, an application must be filed with the Dispute Tribunal within 90 calendar days of receipt of the contested decision;

b. The Applicant was notified of the contested decision on 6 June 2019. Accordingly, he was required to file his application no later than Wednesday, 4 September 2019;

c. Although the application is dated 4 September 2019, the Applicant only filed it on 5 September 2019. The message from the Tribunal's Geneva Registry transmitting the application to the Respondent specifies that the Tribunal received the Application on 5 September 2019; also, its electronic records show that the Applicant's personal details form was created at 1:01 pm on 5 September 2019 and that the Application was filed 31 minutes later;

d. The Appeals Tribunal has consistently held that the principle of legal certainty requires that deadlines are strictly met; and

e. Article 8.3 of the Tribunal's Statute grants the Tribunal discretion to suspend or waive time limits for a limited period and only in exceptional cases. Unless a written request is made, the Dispute Tribunal cannot waive the filing deadline. Moreover, the UNDT cannot exercise its discretion under the above-mentioned article when a written request for suspension or waiver of time limit is filed after the statutory time limit to file an application has elapsed.

**Consideration**

*Applicant's request to waive time limits and receivability of the application*

7. In the present case, the Tribunal must adjudicate on receivability and the Applicant's request to waive time limits under Article 7.5 of the UNDT's Rules of

Procedure. Since the issues at stake relate to the same legal framework and identical factual circumstances, the tribunal will handle them together.

8. The Tribunal is competent to review *ex officio* its own competence or jurisdiction *ratione personae*, *ratione materiae*, and *ratione temporis* (*Pellet* 2010-UNAT-073; *O'Neill* 2011-UNAT-182; *Gehr* 2013-UNAT-313; *Christensen* 2013-UNAT-335).

9. In its motion for Summary Judgment, the Respondent argues that the application is not receivable *ratione temporis* because the Applicant did not file it within 90 calendar days from the date he was notified of the contested decision.

10. On the other hand, the Applicant (after filing the Application one day after the time limit had elapsed) has also requested waiver of time limits, under article 7.5 of the UNDT Rules of Procedure.

11. It is uncontested that a) the Applicant should have filed his Application by 4 September 2019 (Geneva time) and b) he only filed it on 5 September 2019. The Applicant's Counsel argues that "technical difficulties" and an "internal oversight" prevented OSLA from timely filing the application.

12. In support of his request to reject the Respondent's motion and to be granted a waiver of the time limit to file an application, the Applicant's Counsel argues that, in similar cases, applicants were allowed to file their applications at a later stage and refers the Tribunal to the following five cases:

a. UNDT/NBI/2019/104 (*Shegula*), which concerns the filing of an application for suspension of action with its annexes by email due to technical difficulties with the Tribunal's e-Filing system ("CCMS");

b. UNDT/2018/021 (*Abou Hanna*), which relates to OSLA's failure to timely file a response to an Order and its request for an extension of time to file;

c. UNDT/NBI/2019/088 (Duval), which also concerns the filing of an application for suspension of action and its annexes in connection of which OSLA emailed the respective Registry advising of technical issues to file;

d. UNDT/NBI/2019/086 (Maruschak), which concerns the filing of an application on the merits contesting a disciplinary decision that OSLA did by email on the day the filing deadline was to expire; and

e. UNDT/NBI/2019/103 (Eltatawi), where OSLA timely filed an application on the merits and exchange emails with the respective Registry to ensure that the application had gone through.

13. The Tribunal's CCMS records show that the application was filed on 5 September 2019 at 1.01 p.m. (Geneva time). Also, the screen shot of the "error message" provided by the Applicant does not have a time stamp or any other element proving that there was an effective attempt to *timely* file the Application, namely by 4 September 2019.

14. The screen shot does not even refer to the name of the Applicant to allow the Tribunal to conclude that the "error message" was related to a failed attempt to timely file the application.

15. The Applicant's Counsel recognises it was not possible to file the Application on time due to an "an internal oversight" but provides no proper and convincing explanation in relation to what sort of problems OSLA faced.

16. The Tribunal finds that the reasons provided by the Applicant and or his Counsel do not support granting a time-limit waiver.

17. Turning to the five cases to which the Applicant's Counsel refers the Tribunal to back up her request of a time-limit waiver (see para. 12 above), the Tribunal, after examination of its CCMS records, finds that they do not support nor justify missing the 4 September 2019 filing deadline.

18. Two of them are applications for suspension of action where there is no statutory initial filing deadline to meet and where both were timely filed; two other cases concern the filing of applications on the merits also made on time. If at all, these four cases show that OSLA acted timely when faced with technical challenges upon filing closed to the expiration of a deadline. The fifth case concerns a response to an Order where the Tribunal was not convinced by grounds such as “administrative oversight”.

19. The Tribunal also concludes that the Applicant’s Counsel failed to demonstrate the existence of “exceptional circumstances” to justify the late filing of the application.

20. Finally, the Tribunal reiterates that the Appeals Tribunal’s jurisprudence has consistently held that “whether a deadline is missed by several minutes, several hours or several days is irrelevant” (see, *Ruger* 2016-UNAT-693) and that the principle of legal certainty requires that deadlines must be respected (see, *Hijaz* 2010-UNAT-055, *Christensen* 2012-UNAT-218).

### **Conclusion**

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

- a. To reject the Applicant’s request for waiver of time limit to submit an application; and
- b. To dismiss the Application as irreceivable *ratione temporis*.

*(Signed)*

Judge Teresa Bravo

Dated this 20<sup>th</sup> day of November 2019

Entered in the Register on this 20<sup>th</sup> day of November 2019

*(Signed)*

René M. Vargas M., Registrar, Geneva