



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NY/2010/103  
Order No.: 331 (NY/2010)  
Date: 20 December 2010  
Original: English

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**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Santiago Villalpando

JAEN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON REQUEST FOR EXTENSION OF  
TIME**

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**Counsel for Applicant:**  
Nicholas Christonikos

**Counsel for Respondent:**  
Christine Graham, ALS/OHRM, UN Secretariat

## **Background**

1. On 14 December 2010 the Applicant filed a request for an extension of time to file an application before the Dispute Tribunal in respect of a decision to deny her request for conversion of her fixed-term appointment to a permanent appointment. She is seeking an extension of time pending the outcome of her request to the Secretary-General for an exception to the Staff Rules.

2. In her request the Applicant identified 21 September 2010 as the date of the contested decision. However, 21 September 2010 is the date the Applicant was provided with an answer to her request for management evaluation, filed on 20 August 2010. Therefore, the actual contested decision was taken prior to 20 August 2010, although it is unclear from the Applicant's request on which date it was made and when and how it was communicated to her. In any event, the deadline for the filing of the Applicant's application expires on 20 December 2010 (i.e., 90 days after she was provided with the management evaluation), per art. 8.1 of the Statute of the Dispute Tribunal.

3. The Applicant provided the following reasons for her request for extension of time:

I am hereby requesting a 30-day extension of time beyond 20 December 2010 to file a complete Application with the United Nations Dispute Tribunal, if necessary, regarding the restoration of my tenure in the Organization. In short, I held a permanent appointment for more than 28 years before surrendering it for a fixed-term appointment on 1 January 2004. On 21 September 2010, the Management Evaluation Unit informed me that the Secretary-General concluded that the Administration acted in conformity with the applicable rules in deciding not to recommend me for conversion to a permanent appointment. On 6 December 2010, I wrote a letter to Ms. Angela Kane, Under-Secretary-General, Department of Management, requesting the Secretary-General to make an exception to the rules. A 30-day extension of time would appear to be sufficient time for receiving a reply from the Respondent and to file a complete Application, if necessary.

4. On 15 December 2010 the New York Registry of the Dispute Tribunal transmitted the Applicant's request to the Respondent for preparation of a brief reply.

5. On 17 December 2010 the Respondent filed his reply to the Applicant's request, stating that arts. 7.1(a) and 7.5 of the Rules of Procedure of the Dispute Tribunal provide that an extension of time to file an application may be justified in exceptional cases. The Respondent argued that the letter dated 6 December 2010 does not meet the criteria of an exceptional case as there is nothing special, extraordinary or unusual about it. According to the Respondent, requests similar to that in the Applicant's letter dated 6 December 2010 "fall within the same category of actions as an application seeking a dialogue, negotiation or reconsideration [of a decision]", which do not constitute exceptional circumstances justifying an extension of time to file an application. The Respondent further referred the Dispute Tribunal to *El-Khatib* 2010-UNAT-029 and *Samardzic* UNDT/2010/019, which, according to the Respondent, interpreted "exceptional circumstances" as "events beyond the applicant's control". The Respondent requested the Tribunal to deny the Applicant's request.

### **Consideration**

6. Article 8.3 of the Dispute Tribunal's Statute provides that "[t]he Dispute Tribunal may decide ... to suspend or waive the deadlines for a limited period of time and only in exceptional cases". Article 7.1 of the Rules of Procedure provides, *inter alia*, that applications shall be submitted to the Dispute Tribunal within 90 calendar days of the receipt by the applicant of the management evaluation. Article 7.5 states that an applicant may request suspension, waiver, or extension of this time limit "[i]n exceptional cases" and that he or she must succinctly set out the exceptional circumstances justifying the request.

7. Article 35 of the Rules of Procedure provides that "[s]ubject to article 8.3 of the statute of the Dispute Tribunal, the President, or the judge or 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”.

8. Article 19 of the Rules of Procedure of the Dispute Tribunal provides that the Tribunal “may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties”.

9. I find it inappropriate to apply the test of “events beyond the applicant’s control”, proposed by the Respondent, to a case of a staff member who files a request for an extension of time to file an application *prior* to the expiration of the deadline for submission of his or her application. Such case would be clearly distinct from a case of an applicant who seeks a retroactive waiver of an expired time limit. In the first case, the Tribunal would be dealing with a good faith, diligent, and timeous effort by the applicant to file a meaningful submission and, possibly, avoid unnecessary litigation, whereas in the second case, the Tribunal would be dealing with a missed deadline. My view that there is a distinction between the two cases is supported by the case law of the United Nations Appeals Tribunal (“UNAT”). UNAT has allowed extensions of time for submission of an appeal in a number of cases that did not involve circumstances beyond the applicant’s control (see, e.g., *Molari* Order No. 15 (UNAT/2010), *Kaddoura* Order No. 21 (UNAT/2010), and *Ishak* Order No. 22 (UNAT/2010)). (The Statute and the Rules of Procedure of UNAT state, similarly to those of the Dispute Tribunal, that deadlines may be suspended only in “exceptional cases” and upon submission of “exceptional reasons” justifying the request (see art. 7.3 of the Statute and art. 30 of the Rules of Procedure of UNAT).)

10. I am also not persuaded by the Respondent’s submission that the Applicant’s letter to the Secretary-General, dated 6 December 2010, was an attempt to informally negotiate the matter or that it was a request for reconsideration of the decision. From the submissions before me, it appears that it was a request to the Secretary-General to

exercise his discretion under staff rule 12.3(b) (Amendments of and exceptions to the Staff Rules), which states:

Exceptions to the Staff Rules may be made by the Secretary-General, provided that such exception is not inconsistent with any Staff Regulation or other decision of the General Assembly and provided further that it is agreed to by the staff member directly affected and is, in the opinion of the Secretary-General, not prejudicial to the interests of any other staff member or group of staff members.

Therefore, it appears that the Applicant's letter dated 6 December 2010 was a request for an exercise of discretionary authority of the Secretary-General within the framework of staff rule 12.3(b).

11. However, because of the particular circumstances of this case and the reasons stated below, I need not consider whether, in general, a request for an exception under staff rule 12.3 is an unusual, special, or uncommon occurrence justifying an extension of time to file an application. In this particular case, no representations have been made to the Applicant—and no submissions have been filed with the Tribunal—as to how long it will take the Secretary-General to decide on the Applicant's request. The Applicant's assessment that "[a] 30-day extension of time would appear to be sufficient time for receiving a reply from the Respondent" is based entirely on the Applicant's subjective assessment. It may take longer than 30 days, leading to further requests for extension of time. Further, it is unclear whether the Applicant's request of 6 December 2010 has any prospect of success. It is, indeed, possible that the Secretary-General's decision on the Applicant's request dated 6 December 2010 will be made in the coming days or weeks and that it will satisfy the Applicant and litigation will thus be avoided. However, the Tribunal cannot suspend the proceedings for what appears to be, in effect, a period of time of uncertain duration, based on the Applicant's subjective assessment of how long it will take the Secretary-General to consider her request for an exception to the Staff Rules (see *Bekele* Order No. 26 (UNAT/2010), rejecting a request for an extension of time for an unspecified period of time). Therefore, for the reasons stated above, I do not find that

the Applicant's request for an extension of time (potentially of an uncertain duration) should be granted.

12. I will, however, order a limited extension of time of one week to permit the Applicant to properly prepare her application. If the Applicant's request filed on 14 December 2010 is in any way indicative of the state of the application she intends to file, I should articulate that submissions to the Tribunal must be prepared in full conformity with the requirements for the filing of submissions before the Tribunal, as stated in the Rules of Procedure and articulated in this Order. The Applicant must use correct forms, available on the Tribunal's website (the Applicant utilised an incorrect form when filing her request dated 14 December 2010). The Applicant must also clearly state, in addition to the information concerning her request for management evaluation, the dates on which the actual contested decision was made and communicated to her. She must also attach all relevant documents. The limited extension of one week is given to the Applicant to ensure that her application is in full conformity with all procedural requirements and will not cause any unnecessary delays at the later stages of the proceedings.

13. I should also make it clear that the present case (Case No. UNDT/NY/2010/103) concerns only the decision that was subjected to the Applicant's request for management evaluation of 20 August 2010, and not the future decision that the Secretary-General may or may not make in response to the Applicant's letter dated 6 December 2010. Any decision in response to that letter would be a separate administrative decision with respect to which the Applicant would be required to file a separate request for management evaluation, should she decide to contest it.

14. The present Order is without prejudice to the Tribunal's determination of the issues of receivability and merit of the proposed application.

IT IS ORDERED THAT:

15. The Applicant shall file her application on or before **5:00 p.m. (New York time), Monday, 27 December 2010.**

*(Signed)*

Judge Ebrahim-Carstens

Dated this 20<sup>th</sup> day of December 2010