



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Santiago Villalpando

MARKOVIC

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON EXTENSION OF TIME TO FILE
AN APPLICATION**

Counsel for Applicant:
Duke Danquah, OSLA

Counsel for Respondent:
ALS/OHRM, UN Secretariat

Introduction

1. On 19 August 2011, the Applicant filed a motion for extension of time to file an application. In this motion, the Applicant explains:

- a. that, on 21 April 2011, the Applicant submitted a request for management evaluation to the Management Evaluation Unit (“MEU”);
- b. that MEU’s time limit to reply expired on 21 May 2011, for which reason the Applicant’s time limit for filing his application before the Tribunal expired on 19 August 2011;
- c. that MEU, nevertheless, has stated that they are still considering the Applicant’s request for management evaluation;
- d. that the delay was partly caused by a change in personnel in reviewing the Applicant’s case at MEU; and
- e. that, on 19 August 2011, MEU informed Counsel for the Applicant that the evaluation report was forthcoming shortly and that the exact date of its release would be known on Monday 22 August 2011.

2. In light of these observations, in his motion, the Applicant is requesting a 30-day extension of time to 19 September 2011 as the management evaluation might obviate the need for filing an application to the Tribunal.

3. On 23 August 2011, the Tribunal acknowledged receipt of the motion and served it on the Respondent, noting that “[a]n Order will follow soon”.

4. On the same date, Counsel for the Respondent filed and served a reply opposing the Applicant's request for an extension of time, contending that it is not based on “exceptional circumstances”.

Consideration

5. It is an established principle that “[a]n application is only receivable when a staff member has previously submitted the impugned administrative decision for management evaluation and the application is filed within the specified deadlines” (see, for instance, the judgment of United Nations Appeals Tribunal in *Ajdini et al.* 2011-UNAT-I08).

6. Pursuant to art. 8.1(d)(i)(b) of the Statute of the Dispute Tribunal and 7.1(b) its Rules of Procedure, an applicant shall submit her or his application to the Dispute Tribunal within 90 calendar days of the expiry of the relevant response period for management evaluation if no response to the request was provided.

7. Although it is noted that Counsel for the Applicant has failed to provide any documentation supporting his motion, including the actual request for management evaluation, the Respondent has not disputed any of the facts set out in the Applicant’s motion. Counsel for the Applicant alleges that his client filed a request for management evaluation on 21 April 2011 and that MEU has not yet responded to it for which reason his time limit expires on 19 August 2011. With reference to art. 8.1 (d)(i)(b) of the Statute, the Tribunal agrees with the Applicant’s reckoning of time and finds that the motion for extension of time was made before the deadline expired.

8. As for the Applicant’s motion for extension of time to file his application, article 7.5 of the Rules of Procedure states that:

In 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. The request shall not exceed two pages in length.

9. The Applicant’s request for an extension of time was filed prior to the expiration of the deadline for submission of his application. It is noted that in such situations the United Nations Appeals Tribunal has adopted a more flexible approach

with regard to requests for extension of time limits which are filed before the expiry of the deadline for filing (see, e.g., *Molari* Order No. 15 (UNAT/2010), *Kaddoura* Order No. 21 (UNAT/2010), and *Ishak* Order No. 22 (UNAT/2010)). Article 7.2 of the Rules of Procedure of the Appeals Tribunal states, similarly to the corresponding provision in the Rules of the Dispute Tribunal, that deadlines may be suspended only in “exceptional cases” and upon submission of “exceptional reasons” justifying the request. The Dispute Tribunal has also adopted the more flexible approach in similar cases (see for instance, *Applicant* Order No. 263 (NY/2011) and *Jaen* Order No. 331 (NY/2010)). The above does not mean, of course, that the-Tribunal will always grant an extension of time simply because an application has been made before expiry of the deadline.

10. In arguing that exceptional circumstances are present, the Applicant submits: that MEU has failed to provide a timely response to his request for management evaluation; that this was partly a result of a change in personnel reviewing his case at MEU; that this has caused a more than three months’ delay in MEU providing their management evaluation report; that MEU, nevertheless, is to provide such evaluation soon; and that this evaluation may make it redundant for him to file an application before the Tribunal. As noted above the Respondent in his reply does not oppose the Applicant’s outline of facts and therefore must be considered as conceding these.

11. In light of the Respondent’s admission that the delay in this case has been caused by MEU, the civil law maxim *nemo auditur propriam turpitudinem allegans* (“no one can be heard to invoke his own turpitude” or “no one shall be heard, who invokes his own guilt”) must surely apply in this instance.

12. Based hereon, regardless of which test one applies, the Tribunal finds that the circumstances surrounding the Applicant’s motion are exceptional as not only “out of the ordinary, quite unusual, special, or uncommon” (*Morsy* UNDT/2009/036), but evidently also beyond his control (see the Appeals Tribunal in *Diagne et al.* 2010-UNAT-067).

13. The Tribunal also observes that the relevant provisions in the Rules of Procedure of the Appeals and Dispute Tribunal regarding extension of time limits are parallel (in addition to arts. 7.2 and 7.5 mentioned in para. 8 above, see also art. 30 and 35 of the Rules of Procedure of the Appeals and Dispute Tribunals, respectively) and recalls that the Appeals Tribunal in its judgment in *Islam* 2011-UNAT-115 stated as follows:

20. Islam demands that the Appeals Tribunal “clarify the legal basis for having considered the Request” for extension of time “*ex parte* excluding him from the proceedings”.

21. The Statute and Rules of Procedure of the Appeals Tribunal do not specify whether requests for extension of time should be heard *ex parte* or on notice. For a fair and expeditious disposal of appeals this Tribunal adopted the practice for such applications to be dealt with *ex parte* except when the President of the Tribunal or Duty Judge determined that the application ought to be on notice.

22. We therefore find that the President of this Tribunal acted rightly in exercising his discretion to consider the Secretary-General’s request for extension of time limit *ex parte*.

14. As a general matter, for a more efficient and less burdensome internal justice system, the Tribunal encourages the Respondent to resolve issues such as the present one in a pragmatic manner with a view to expediting the formal process, particularly since the issue at hand apparently is the result of the Respondent’s own shortcomings, instead of adopting a knee jerk reaction and opposing motions such as the present one, which simply cause further delays to the system and are a waste of judicial resources.

15. Having considered the Applicant’s motion, in particular, taking into account the exceptional circumstances surrounding his motion (as set out in para. 10 above) and the possibility that the case may be solved at the MEU level, the Tribunal finds it appropriate to grant an extension of time to the Applicant.

IT IS ORDERED THAT:

16. The Applicant is to file and serve his application by 5 p.m., 19 September 2011. However, should the Applicant receive a response to his request for management evaluation before that date, the deadlines provided for under art. 8.1(d)(i)a. shall apply.

(Signed)

Judge Ebrahim-Carstens

Dated this 24th day of August 2011