

Introduction

1. On 22 October 2009, at 11.07 p.m., the Applicant, a former staff member of the United Nations Development Programme (UNDP), sent an email to the Geneva Registry of the United Nations Dispute Tribunal (UNDT), which read as follows:

“I kindly request for an extension of the time limit to submit application against the decision sent to me on July

effective 31 January 2009. Since her appointment was due to expire on 31 December 2008 and in order to grant the one-month notice promised in the meeting of 5 November 2008, the Applicant's contract was extended for a month until 31 January 2009.

5. By email dated 25 or 26 February 2009¹, the Applicant apparently wrote to the UNDP Administrator to request the administrative review of "the separation notice that [she] received on December 26th 2008 from the UNDP Skopje".

6. On 22 May 2009, the Applicant wrote to the Panel of Counsel (POC) requesting their assistance to file an appeal with the Joint Appeals Board (JAB). She noted that: "The deadline to [file an appeal] is 26th May and I apologize for contacting you so late, but I have just returned from my honeymoon."

7. On the same day, the Coordinator of the POC asked the Applicant to fill out the JAB "form and template", as well as the POC form, and to return them together with all relevant annexes before Tuesday 26 May a.m., since Monday 25 May was a holiday at Headquarters and they would only have Tuesday to finalize the submission to the JAB. The Coordinator further requested the Applicant's authorization to finalize and submit the appeal on her behalf.

8. By email dated 3 June 2009, the Respondent contacted the Applicant to acknowledge receipt of her request for administrative review as forwarded by the POC on 26 May 2009, noting that "no trace of receipt of [her earlier] request"

- (3) The acknowledgment of receipt of and the response to her request for review;
- (4) Her email dated 22 May 2009 to the POC;

She concluded that the above “explain[ed] in details the exceptional circumstances” justifiably

Parties' contentions

28. The Applicant's principal contentions are:

- a. The "transitional period of the UN internal justice system" and "the lack of communication from OSLA" have "caused a number of delays in [the] submission of [her] case";
- b. There were also personal reasons that prevented her from following up on her case in a timely manner, like moving to another country, not having access to the Internet on a daily basis, applying for jobs, etc.;
- c. She was aware of the time limits and "was not asleep" but she "expect[s] the Office of Staff Legal Assistance to provide legal help and assistance because [she has] signed all the relevant forms and authorizations for legal assistance with POC and [she] was informed and assured by the POC that the new OSLA and the legal officers will continue to assist [her]";
- d. She is entitled to legal assistance and needs such assistance to prepare and submit her case.

29. The Respondent's principal contentions are:

- a. In the decision of 24 July 2009, the Applicant was clearly informed, in plain, lay-man language, that if she wished to appeal that decision, she should do so within 90 days of having received the decision, that is, by 22 October 2009. She was also provided with the contact details of the UNDT Registry. Although OSLA advised the Applicant on 22 October 2009 to file a request for extension of time, the Applicant had already and in no uncertain terms been informed of the deadline for such submission as early as 24 July 2009;
- b. The Applicant first contacted OSLA about filing an appeal against the 24 July 2009 decision on 22 August 2009 and does not provide any explanation as to why it took her close to one month to do so.

On 15 September 2009, the Applicant was informed that OSLA was unable to represent her. On 13 October 2009, she wrote again to OSLA. While OSLA did not respond to that email, it remains nonetheless that the Applicant was aware that the deadline for filing an appeal, or at least requesting an extension to do so, was, at this time, starting to run short;

- c. The records of the case show that the Applicant, although no longer in the UN system, had adequate access to assistance and representation at all material times for the purpose of these proceedings;
- d. The Applicant did not set out exceptional circumstances justifying her request for an extension of the time limit to file an application. On the contrary, the Applicant's statement is misleading in that she contends that she did not hear anything from OSLA until 13 October 2009, which is not correct since she received a detailed response from OSLA on 15 September 2009. By not disclosing such communication, the Applicant did not fully ans

34. In judgment UNDT/2010/019, Samardzic et al., the Tribunal emphasized the importance of time limits in general. With regard to exceptions, it stated:

“29. It is necessary to recall that time limits are connected to individual action, i.e. submitting an application for legal remedy within a fixed time frame. Therefore, exceptions to the prescribed time limits must also be related to the individual conditions and circumstances of the person seeking legal remedy, not to the characteristics of the application. Of course, all relevant factors have to be considered (see UNDT/2009/036, Morsy). However, relevant factors for an Applicant’s failure to act within the prescribed time limits are confined to his individual capacities. Factors like the prospects of success on the merits and the importance of the case are extraneous to the requirement to submit an application within the prescribed time limits and should not be taken into account at this level. Thus, the “exceptional cases” mentioned in article 8, paragraph 3, of the UNDT statute also refer to the Applicant’s personal situation and not to the characteristics of the application.

“30. In other words, exceptional cases arise from exceptional personal circumstances. The former UNAT defined exceptional circumstances as those circumstances which are “beyond the control of the Appellant” (see judgement No. 372, Kayigamba (1986) and, generally, judgement No. 913, Midaya (1999) and judgement No. 1054, Obuyu (2002)). This definition rightly refers to the Appellant’s capacity to comply with the time limits. Whether circumstances are within or beyond the control of the Applicant should be assessed against individual standards, e.g. the Applicant’s educational level. All relevant facts have to be taken into account, e.g. technical problems, state of health, etc. No strict or general line can be drawn. Since it is in the Applicant’s interest to obtain a suspension,

36. Moving to another country, applying for jobs or not having access to the Internet on a daily basis are not exceptional circumstances within the meaning of article 8, paragraph 3, of the UNDT statute.

37. Normally, lack of counsel is not an exceptional circumstance either and,

40. Instead, the Applicant chose to wait until the last minute - i.e. 11.07 p.m. on 22 October 2009 - to request an extension of time to file an application, thus running the risk that if her request was rejected, any subsequent application on the merits would be time-barred.

41. On 24 October 2009, the Applicant sent to the Registry a more detailed submission than her initial email of 22 October 2009. Although such submission was made on a form entitled Application for extension of time to file an application, it contains some information as to the nature and author of the contested decision and therefore could be considered by the Tribunal as an application on the merits. However, even if considered as an application on the merits, it remains that it is time-barred and that the Applicant failed to set out exceptional circumstances that would warrant waiving the time limit for application.

Conclusion

42. In the light of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 8th day of February 2010

Entered in the Register on this 8th day of February 2010

(Signed)

Víctor Rodríguez, Registrar, UNDT, Geneva