

**Before:** Judge Ebrahim-Carstens

**Registry:** New York

## **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 cons/

## 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

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 Pal c1(21.)05115 0 TD.0003 Tc.3937 Twen th[(Tribuna foDuty J

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 24<sup>th</sup> day of August 2011