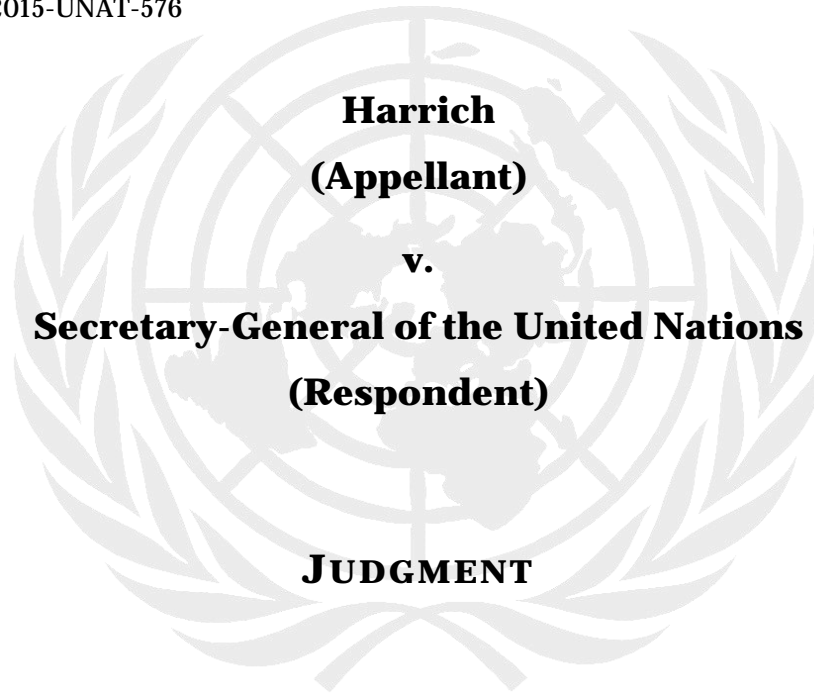




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2015-UNAT-576



**Harrich  
(Appellant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT**

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Before:	Judge Rosalyn Chapman, Presiding Judge Deborah Thomas-Felix Judge Luis María Simón
Case No.:	2014-670
Date:	30 October 2015
Registrar:	Weicheng Lin

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Counsel for Mr. Harrich:	Self-represented
Counsel for Secretary-General:	Noam Wiener

**JUDGE ROSALYN CHAPMAN, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by Mr. Martin Harrich against Judgment No. UNDT/2014/109 and Order No. 256 (NY/2014), issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 1 August 2014, and 4 September 2014, respectively, in the matter of *Harrich v. Secretary-General of the United Nations*. Mr. Harrich filed his appeal on 28 October 2014, which he perfected on 31 October 2014. The Secretary-General filed his answer on 10 December 2014.

**Facts and Procedure**

2. On 15 September 2012, Mr. Harrich, a staff member of the Preparatory Commission for the Comprehensive Nuclear Test Ban Treaty Organization (CTBTO) in Vienna, Austria, sought to file an application with the Dispute Tribunal contesting the administrative decision not to afford him a repatriation grant and a lump sum shipping allowance upon his separation from the Executive Office, Office for the Coordination of Humanitarian Affairs (OCHA) and requesting compensation for moral damages. He perfected his appeal through the UNDT's electronic filing system on 15 October 2012. The Secretary-General filed his reply on 23 November 2012, claiming the application was not receivable *ratione temporis*.

3. On 1 August 2014, the UNDT issued Judgment No. UNDT/2014/109, in which it determined that the application was timely filed and receivable *ratione temporis*, but there was no merit to Mr. Harrich's claims. Accordingly, the UNDT affirmed the administrative decision and dismissed the application. The UNDT also found that Mr. Harrich had abused the process before the UNDT by making numerous unsolicited submissions and not complying with the UNDT's orders, and thus awarded costs against him in the amount of USD 2,000.

4. On 5 August 2014, Mr. Harrich filed a motion for correction of Judgment No. UNDT/2014/109, which the Dispute Tribunal denied by Order No. 232 (NY/2014), dated 8 August 2014.

5. On 18 August 2014, Mr. Harrich filed a second motion for correction of Judgment No. UNDT/2014/109, arguing the UNDT made erroneous factual findings in the Judgment.

6. On 4 September 2014, the UNDT issued Order No. 256 (NY/2014) denying the second motion for correction of judgment. Additionally, the UNDT determined that Mr. Harrich had abused the litigation process by bringing the second motion for correction of judgment, which was without statutory basis and another attempt to relitigate the claims presented in his application, and awarded costs against him in the amount of USD 1,000.
7. On 29 October 2014, Mr. Harrich filed with the Appeals Tribunal an appeal against Judgment No. UNDT/2014/109 and Order No. 256 (NY/2014).
8. On 11 November 2014, Mr. Harrich filed a motion to submit an amended appeal brief, which sought to add information to paragraph 4 of his appeal brief. In Order No. 206 (2014), issued on 25 November 2014, the Appeals Tribunal granted Mr. Harrich's motion, and the Registry of the Appeals Tribunal (Registry) filed the amended appeal brief.<sup>1</sup>
9. On 10 December 2014, the Secretary-General filed his answer, which asserted, inter alia, that Mr. Harrich's appeal against the Judgment and the Order was not timely and not receivable.
10. On 12 December 2014, Mr. Harrich submitted a reply to the Secretary-General's answer to his appeal through the Tribunal's electronic filing system, without a motion requesting permission from the Appeals Tribunal to file the additional pleading. On the same day, the Registry advised Mr. Harrich that additional pleadings could only be filed in exceptional circumstances, and that he should file a motion setting out the reasons supporting his request to file an additional pleading. He was further advised to visit the Appeals Tribunal website for the appropriate form and to file the motion electronically in his case folder.
11. On 14 December 2014, Mr. Harrich advised the Registry that he had decided not to file a motion requesting leave to file an additional pleading.
12. On 31 July 2015, at the direction of the President of the Appeals Tribunal, the Registry served the Appellant's reply on the Secretary-General.
13. On 7 August 2015, the Secretary-General filed his observations opposing the filing of Mr. Harrich's additional pleading.

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<sup>1</sup> A review of the Appellant's amended appeal brief shows that the Appellant added the information to paragraph 4, as well as additional information to paragraph 6 of his appeal brief.

## **Submissions**

### **Mr. Harrich's Appeal**

14. The Appellant argues that his appeal of the UNDT Judgment is timely because it was filed within 60 calendar days of the issuance of Order No. 256 (NY/2014) denying his second motion for correction of judgment. Alternatively, the Appellant asserts that the Appeals Tribunal should grant him an exception to the time limits for filing an appeal since the Organization did not respond to his requests for information made after the Judgment was issued.

15. As to the merits of his claims, the Appellant contends that the UNDT erred on questions of fact in both the Judgment and Order No. 256 (NY/2014), which resulted in a manifestly unreasonable decision. Specifically, the Appellant asserts that the UNDT erred in finding that he was on secondment from OCHA during the period from 27 June 2011, when he started working with the CTBTO, until 9 January 2012, the date on which he separated from OCHA. The UNDT consequently also erred in finding that the Appellant was "transferred" from the United Nations Secretariat to the CTBTO as of January 2012, and was thus not eligible for relocation-related entitlements at the time of his separation.

### **The Secretary-General's Answer**

16. Mr. Harrich's appeal is not receivable under Article 7(1)(c) of the Appeals Tribunal Statute (Statute) in that it was not filed within 60 calendar days of his receipt of the UNDT Judgment and his appeal of Order No. 256 (NY/2014) was not filed within 30 days of the date the Order was issued. Since the appeal of the UNDT Judgment and Order No. 256 (NY/2014) was not timely filed, it is not receivable and the appeal should be dismissed.

## **Considerations**

### *Preliminary matter*

17. On 12 December 2014, the Appellant submitted a reply to the Secretary-General's answer to his appeal, without a motion requesting permission from the Appeals Tribunal to file the additional pleading. On 31 July 2015, at the direction of the President of the Appeals Tribunal, the Registry served the Appellant's reply on the Secretary-General. On 7 August 2015,

the Secretary-General filed his observations objecting to the filing of the additional pleading from the Appellant.

18. As an initial matter, the Appeals Tribunal admonishes the Appellant for not complying with the Appeals Tribunal's procedures and the Registry's directions and not filing a motion requesting leave to file his reply to the Secretary-General's answer, before submitting the pleading to the Registry. As is evident from his prior filing of a motion to amend his appeal brief, the Appellant was aware that he was required to request the express permission of the Appeals Tribunal; however, he refused to comply with the Appeals Tribunal's procedures. Such conduct may be considered an abuse of process for which the Appeals Tribunal can award costs against the Appellant, pursuant to Article 9(2) of the Statute.

19. Article 31(1) of the Rules, Section II.A.3 of Practice Direction No. 1, and our jurisprudence provide that the Appeals Tribunal may allow an appellant to file a pleading after the answer to the appeal when there are exceptional circumstances justifying the motion.<sup>2</sup> The Appeals Tribunal finds *sua sponte* that there are exceptional circumstances that warrant allowing the Appellant to file his reply. As the Appellant's appeal brief solely addresses the merits of his claims and does not address whether the appeal is timely or receivable, which is the gravamen of the Secretary-General's answer, the Appellant will not have the opportunity to address the key issue before the Appeals Tribunal, namely the receivability of the appeal, unless the Appeals Tribunal permits the Appellant to file his reply.<sup>3</sup> Accordingly, the Appeals Tribunal orders the Registry to include the Appellant's reply as part of the case file.

*The appeal of Judgment No. UNDT/2014/109*

20. Pursuant to Article 7(1)(c) of the Statute, "[a]n appeal shall be receivable if [it] is filed within 60 calendar days of the receipt of the judgement of the Dispute Tribunal or, where the Appeals Tribunal has decided to waive or suspend that deadline in accordance with paragraph 3 of the present article, within the period specified by the Appeals Tribunal". The 60-days filing deadline was established by the General Assembly when it adopted resolution 66/237 on 24 December 2011.

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<sup>2</sup> *Nielsen v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-542, para. 51; *Utkina v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-524, para. 16; *Wu v. Secretary-General of the United Nations*, Order No. 225 (2015) of 1 July 2015; *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 36.

<sup>3</sup> See *Christensen v. Secretary-General of the United Nations*, Order No. 62 (2011); *Thiam v. Secretary-General of the United Nations*, Order No. 33 (2011).

21. The Dispute Tribunal issued Judgment No. UNDT/2014/109 on 1 August 2014, and it is not contested that the Appellant received it on that date. Accordingly, pursuant to Article 7(1)(c) of the Statute, the Appellant had 60 calendar days thereafter, or until 30 September 2014, to file his appeal. However, the appeal was not filed until 31 October 2014, more than a month after the expiration of the filing deadline. Thus, the appeal of Judgment No. UNDT 2014/109 is not receivable *ratione temporis*.

22. The Appellant argues, however, that his appeal is timely because the 60-days deadline for filing an appeal runs from the date his second motion for correction of judgment was denied on 4 September 2014. There is no merit to this argument. The language of Article 7(1)(c) of the Statute explicitly provides that an appeal must be “filed within 60 calendar days *of the receipt of the judgement of the Dispute Tribunal*”.<sup>4</sup> Article 7(1)(c) of the Statute does not allow for the limitations period to commence running from any date other than the date the judgment is received by the staff member.

23. In the context of filing an application before the UNDT, we have held that “[a] staff member cannot extend the statutory deadline for filing [...] by writing letters for reconsideration. Such conduct cannot and does not delay the running of the time limit.”<sup>5</sup> This rationale applies equally to the filing of an appeal of a UNDT judgment. To hold otherwise would allow the parties to set their own deadlines for appealing a Dispute Tribunal judgment by filing post-judgment motions. Moreover, to commence the running of the time to file an appeal from the date of the UNDT’s ruling on an unsuccessful post-judgment motion would undermine the mandatory nature of the statutory deadline set forth in Article 7(1)(c), as well as the Appeals Tribunal’s jurisprudence holding that statutory deadlines should be strictly enforced.<sup>6</sup>

24. The Appellant requests, in his reply to the Secretary-General’s answer, that the Appeals Tribunal make “an exception to the time limits” for filing his appeal and waive or suspend the deadlines, pursuant to Article 7(3) of the Statute, claiming that he “never received a response to [his] justified and valid question regarding [his] official status with the Organization

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<sup>4</sup> Emphasis added.

<sup>5</sup> *Cooke v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-275, para. 38. See also *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 31.

<sup>6</sup> *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 38 and cites therein; *Kissila v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-470, para. 23 and cites therein.

from 27 June 2011 – 9 Jan 2012” and that he should not be held responsible for the Organization’s lack of responsiveness.

25. However, any request for an exception or waiver of the time limit to appeal must be made to the Appeals Tribunal *prior* to the filing of an appeal.<sup>7</sup> For this reason alone, the Appellant’s request fails. Moreover, the Appeals Tribunal finds that the Appellant’s statement is insufficient to establish that his case is an “exceptional case” for the waiver or suspension of the statutory time limit to appeal the UNDT Judgment under Article 7(3) of the Statute. The Appellant’s attempt to obtain additional information after the issuance of the UNDT Judgment does not show an “exceptional case” which prevented him from filing a timely appeal of the UNDT Judgment.<sup>8</sup> There is no reason the Appellant could not have filed his appeal on time while he continued to seek information. Thus, the Appellant’s request is denied.

*The appeal of Order No. 256 (NY/2014)*

26. Article 12 of the UNDT Statute provides that parties may apply for revision, correction, interpretation or execution of a UNDT judgment. Subsection 2 of Article 12 provides that “[c]lerical or arithmetical mistakes, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Dispute Tribunal, either on its own motion or on the application of the parties”. Article 31 of the UNDT Rules of Procedure provides similarly and requires the party to use a prescribed form when applying for correction of judgment.

27. On 5 August 2014, Mr. Harrich filed a motion for correction of Judgment No. UNDT/2014/109, claiming the UNDT made an erroneous factual finding in the Judgment. The Dispute Tribunal denied the motion by Order No. 232 (NY/2014), dated 8 August 2014.

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<sup>7</sup> *Thiam v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-144, para. 18. See also *Czaran v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-373, para. 26; *Cooke v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-275, paras. 29-30.

<sup>8</sup> Cf. *Kamara v. Secretary-General of the United Nations*, Order No. 131 (2013). Where similar requests are denied, see *Lee v. Secretary-General of the United Nations*, Order No. 208 (2014); *O'Donnell v. Secretary-General of the United Nations*, Order No. 200 (2014); *Czaran v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-373.

28. On 18 August 2014, Mr. Harrich filed a second motion for correction of Judgment No. UNDT/2014/109, claiming the UNDT made several erroneous factual findings in the Judgment. On 4 September 2014, the UNDT issued Order No. 256 (NY/2014) denying the second motion for correction of judgment. The UNDT found:<sup>9</sup>

There can be no misapprehension as to the purpose of a request for correction of a Judgment, pursuant to art. 12.2 of the [Dispute] Tribunal's Statute and art. 31 of the [Dispute] Tribunal's Rules of procedure. The provisions regarding corrections to promulgated judgments are not intended to provide a party with a second or, as in this case, a third bite of the cherry. [Mr. Harrich's] request does not fall within the ambit of art. 12.2 of the [Dispute] Tribunal's Statute and art. 31 of the [Dispute] Tribunal's Rules of procedure.

29. The UNDT further found that Mr. Harrich had abused the litigation process by filing the second motion for correction of judgment and awarded costs against him in the amount of USD 1,000.

30. In *Gehr*, the Appeals Tribunal determined that an appeal of a UNDT judgment denying a post-judgment application for interpretation of a UNDT judgment is not receivable, finding that “[a]ny dissatisfaction with the meaning of a judgment by the UNDT may be raised in an appeal against the substantive judgment”.<sup>10</sup> The same rationale applies to an appeal of the denial of a post-judgment application for correction of a UNDT judgment.

31. Further, it makes no difference to the issue of receivability of the appeal of a denial of a post-judgment application for correction of judgment whether the UNDT issues its denial in the form of a judgment or an order. Denying an application for correction of judgment by issuance of an order does not mean that the order is an appealable “interlocutory order” under Article 7(1)(c) of the Statute, as amended by General Assembly resolution 66/237 of 24 December 2011.<sup>11</sup> The order is issued *after* the UNDT has resolved the parties’ controversy and, thus, by definition, cannot be “interlocutory”, i.e. issued *during* the pendency of the proceedings to decide a particular matter of procedure or law that is not the ultimate or main

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<sup>9</sup> Impugned Order, para. 5.

<sup>10</sup> *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-333, paras. 13-14. See also *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-010 (holding that an interpretation of a judgment “is not a fresh decision or judgment”; thus finding the appeal of the interpretation judgment not receivable).

<sup>11</sup> General Assembly resolution 66/237 of 24 December 2011, paragraph 31, also established a 30-days deadline for filing appeals of interlocutory orders.



issue of the controversy or to provide interim or temporary relief to prevent irreparable harm before the controversy is adjudicated.

32. For the foregoing reasons, the Appeals Tribunal determines that the appeal of Order No. 256 (NY/2014) is not receivable *ratione materiae*.

**Judgment**

33. The appeal of Judgment No. UNDT/2014/109 and Order No. 256 (NY/2014) is not receivable.

Original and Authoritative Version: English

Dated this 30<sup>th</sup> day of October 2015 in New York, United States.

*(Signed)*

Judge Chapman, Presiding

*(Signed)*

Judge Simón

*(Signed)*

Judge Thomas-Felix

Entered in the Register on this 18<sup>th</sup> December 2015 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar