



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

---

Case No. 2010-070



**Trajanovska  
(Appellant)**

**v.**

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

**JUDGMENT**

---

Before:	Judge Kamaljit Singh Garewal, Presiding Judge Jean Courtial Judge Rose Boyko
Judgment No.:	2010-UNAT-074
Date:	27 October 2010
Registrar:	Weicheng Lin

---

Counsel for Appellant: Self-represented

Counsel for Respondent: Melanie Shannon

**JUDGE KAMALJIT SINGH GAREWAL**, Presiding.

### Synopsis

1. Boniela Trajanovska (Trajanovska) held a fixed-term appointment as an Administrative Assistant with the Interim Administration Mission in Kosovo (UNMIK). She was separated from service on the basis of a decision dated 8 April 2009, effective from close of business on 10 April 2009. She failed to seek administrative review of the decision within the two-month time limit under former Staff Rule 111.2, although she did agitate her grievance before other authorities. Her failure made her subsequent application to the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) non-receivable. The delay in filing administrative review (or management evaluation) cannot be waived under Article 8(3) of the Statute of the Dispute Tribunal (UNDT Statute). The Dispute Tribunal's Judgment in *Rosca*<sup>1</sup> is no longer good law, having been overruled by this Tribunal in *Costa*.<sup>2</sup> The appeal is dismissed.

### Facts and Procedure

2. From September 1997 to June 1999, Trajanovska served as an Administrative Assistant with the United Nations Preventive Deployment Force in the former Yugoslav Republic of Macedonia (UNPREDEP). She joined UNMIK in the Liaison Office of Skopje in June 1999 and worked as an Administrative Assistant until 10 April 2009.

3. Trajanovska was informed in writing on 8 April 2009 of the termination of her fixed-term appointment, which was due to expire on 30 April 2009, effective from close of business on 10 April 2009 in accordance with Staff Regulation 9.1. The termination of her contract followed a "comparative review process" undertaken by UNMIK.

4. According to Trajanovska, although her contract was terminated, the functions of her post continued and her post was filled by a colleague by the name of Aleksandar Zlatkov (Zlatkov), a Traffic Assistant and Dispatch Clerk. Zlatkov had no administrative experience in personnel and finance matters. Trajanovska believed that the administrative decision to terminate her contract was discriminatory.

---

<sup>1</sup> *Rosca v. Secretary-General of the United Nations*, Judgment No. UNDT/2009/052.

<sup>2</sup> *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-036.

5. Trajanovska acted promptly to air her grievance but did not go to the right quarters. On 9 April 2009, she submitted her complaint to the Personnel Officer of the Civilian Personnel Section of UNMIK requesting that an investigation be conducted, and the implementation of the decision be suspended “until the propriety of UNMIK Liaison Office comparative review process and [her] case can be determined.”

6. On 20 May 2009, Trajanovska submitted a similar complaint to the newly appointed Director of Mission Support, UNMIK, challenging the termination of her appointment and requesting an investigation and review of the comparative review procedure.

7. According to Trajanovska, she contacted the United Nations Ombudsman on 6 June 2009. She finally sought management evaluation on 15 July 2009. Through a letter dated 17 July 2009, she was informed by the Acting Chief, Management Evaluation Unit (MEU), that her request was not receivable as it was not made within 60 days from the date of notification of the decision as required by provisional Staff Rule 11.2(c).

8. Trajanovska appealed to the UNDT on 25 September 2009, submitting an incomplete application. A complete application was filed on 28 September 2009 and a new application was submitted to the UNDT Registry in Geneva on 16 October 2009. Trajanovska acknowledged in her application that her request for review of the administrative decision by the MEU was time-barred but blamed the UNMIK management for failing to guide her as to the appropriate procedures. She requested that the UNDT declare her application receivable.

9. In Judgment No. UNDT/2010/032, dated 24 February 2010, the UNDT held that Trajanovska’s application was non-receivable *ratione temporis*. Although the UNDT had the power under Article 8(3) of the UNDT Statute to waive the time limits under the former Staff Rules during the transition to the new system of internal justice, her case did not have any “exceptional circumstances”, for the purposes of former Staff Rule 11.2(f), which justified a waiver of the time limit. Trajanovska was expected to be aware of the time limits under the former Staff Rules, and the transition to the new system of internal justice did not constitute exceptional circumstances in her case as the time limit for making a request for administrative review expired under the former system. The UNDT also held that Trajanovska’s failure to make a timely request for administrative review could not be cured by her subsequent timely filing of an application before the UNDT.

10. On 10 March 2010, Trajanovska filed an appeal against the Judgment. After receiving the complete appeal on 27 March 2010, the Secretary-General filed an answer to the appeal on 13 May 2010.

### Submissions

#### Trajanovska's Appeal

11. Trajanovska submits that the administrative decision downsizing certain posts discriminated against her because she is a woman. She was immediately separated from service and her post was given to a less experienced man. This violated her human rights. Her case was not judicially examined as it was found to be non-receivable.

12. On the question of the UNDT's denial of her request to waive the time limit for making a request for administrative review, Trajanovska relies on *Rosca*. In that Judgment, Adams, J. held that in exceptional cases time limits could be waived under Article 8(3) of the UNDT Statute, even if the time limits under the old system were applicable. Trajanovska refers to the fact that she immediately disputed the decision with UNMIK management.

13. Trajanovska requests that the Appeals Tribunal make an order for her reinstatement.

#### Secretary-General's Answer

14. According to the Secretary-General, Trajanovska's appeal does not explain the legal basis of any of the five grounds of appeal set out in Article 2(1) of the Statute of the Appeals Tribunal (Statute). She merely relies on the *Rosca* Judgment and reiterates her request for administrative review of the impugned decision.

15. The Secretary-General submits that the UNDT correctly concluded that Trajanovska's application was time-barred, as she did not comply with the requirement to file a request for administrative review in a timely manner under former Staff Rule 111.2. She allowed the two-month time period to run out before 1 July 2009 when the new system of administration of justice came into effect.

16. Trajanovska relies on the *Rosca* Judgment, however she has not demonstrated that the UNDT erred in finding that there were no exceptional circumstances that justified the waiver of the time limit. In the alternative, the Secretary-General argues that the UNDT

erred in applying *Rosca* as it does not have the power under Article 8(3) of the UNDT Statute to waive or suspend the time limit for requesting administrative review under former Staff Rule 111.2.

17. The Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

### Considerations

18. The main argument in favour of Trajanovska is based on the UNDT's Judgment in *Rosca*. In that case, Adams, J. was dealing with the application of time limits where proceedings had commenced before the Joint Appeals Board (JAB) prior to 30 June 2009 but were subsequently transferred to the UNDT. The applicant in *Rosca* complained about two administrative decisions. The request for administrative review by the Secretary-General went against the applicant. The applicant stated that he did not receive the response to his request within two months, but this was disputed by the Secretary-General. The applicant had one month to appeal to the JAB from the date of receipt of a reply from the Secretary-General or three months to appeal from the date of the request for administrative review if he did not receive any reply. The Secretary-General submitted that, in either case, the time limit had not been complied with. After the case was transferred to the UNDT, the question arose as to whether the UNDT had jurisdiction to grant a waiver of a time limit imposed by former Staff Rule 111.2. If the Dispute Tribunal did have jurisdiction to waive the time limit, the next question was whether the waiver would be governed by former Staff Rule 111.2(f), or Article 8(3) of the UNDT Statute and Article 7(5) of the UNDT's Rules of Procedure (UNDT Rules). Depending upon which provision applied, the correct meaning of "exceptional circumstances" and "exceptional case" was also a legal issue to be decided.

19. Judge Adams held in *Rosca* that the UNDT has the power to waive time limits under the former Staff Rules, the applicable provision governing waiver is Article 8(3) of the UNDT Statute, and the case was an exceptional case justifying a waiver of the time limit. The learned Judge considered the Judgment of Shaw, J. in *Costa*<sup>3</sup> but disagreed with that decision. In *Costa*, the question was whether the time limit imposed by former Staff Rule 111.2(a) could be waived. The learned Judge held that the Dispute Tribunal had no

---

<sup>3</sup> *Costa v. Secretary-General of the United Nations*, Judgment No. UNDT/2009/051.

express power in the UNDT Statute to extend or waive the deadlines or other time constraints set by the Staff Rules and noted, “[t]o the contrary, Article 8.3 contains an express prohibition in relation to management evaluation deadlines.” According to Shaw, J., administrative review under the old system served the same purpose as management evaluation under the new system, namely, in substance to permit a wrong decision to be corrected. The Judge went on to hold that a significant change between the old and the new systems was that “the JAB – unlike the Dispute Tribunal – had the power to waive the time limits for submitting a request for a review in exceptional circumstances.” She concluded that, pursuant to Article 8(3) of the UNDT Statute, the Tribunal had no jurisdiction to extend the deadlines for either administrative review or management evaluation.

20. The *Costa* Judgment was cited before Adams, J. in *Rosca*, but he disagreed with it. The *Costa* Judgment was appealed by Costa, and this Tribunal affirmed the Judgment and specifically disapproved the Dispute Tribunal’s Judgment in *Rosca*.

21. We have also examined the Judgment of this Tribunal in *Mezoui*.<sup>4</sup> In this case, Mezoui was caught in the transition between the old and new internal justice systems. The Dispute Tribunal had not officially started, and the former Administrative Tribunal was winding down. There was some understandable confusion because cases which should have commenced before the former Administrative Tribunal were to commence before the new Dispute Tribunal. The facts were that Mezoui had made a request for administrative review on 31 October 2006 and later filed an application before the JAB. In its report of 10 November 2008, the JAB recommended compensation of three months’ net base salary, which was accepted by the Secretary-General. Mezoui was informed of this decision on 4 February 2009. On 17 April 2009, she requested an extension of the time limit to file an application before the former Administrative Tribunal. She was granted an extension on 28 April 2009, until 30 June 2009. She was advised that, thereafter, any new applications would need to be submitted to the UNDT. On 16 June 2009, she sent another letter, with a copy of her letter of 17 April 2009, reiterating her request for an extension until 31 July 2009. This letter was received by the Registry of the former Administrative Tribunal on 8 July 2009 and a response was sent on the same day by resending its earlier letter of 28 April 2009. Mezoui filed her application before the UNDT on 14 July 2009. From the

---

<sup>4</sup> *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-043.

above it can clearly be seen that Mezoui was certainly caught between the two systems in transition.

22. Trajanovska's case is quite different. She did seek to challenge the decision promptly with UNMIK management, but she did not submit her request to the Secretary-General for administrative review within the prescribed time limit of two months under former Staff Rule 111.2. The time ran out before the Dispute Tribunal came into existence. She could have sought a waiver of the time limit from the JAB later in the process under the old internal justice system. The Dispute Tribunal possessed no jurisdiction to waive the deadlines for administrative review, as held by this Tribunal in *Costa*, disagreeing with *Rosca*. It is unfortunate that no one in Skopje advised her to seek administrative review as a prelude to entering the justice system, whether old or new. One expects much better conduct from the people she approached to properly guide her but somehow she did not receive proper advice.

23. Therefore, the legal position which emerges is that time limits prescribed for administrative review (and management evaluation under the new system), which could be waived under the previous system, cannot be waived under Article 8(3) of the UNDT Statute, due to a specific prohibition in this respect contained in Article 8(3). We are aware that under Article 8(4) of the UNDT Statute, an application is not receivable if it is filed more than three years after the receipt of the contested administrative decision. But this provision will not help Trajanovska. This is a general provision which must yield to the specific provision under Article 8(3) of the UNDT Statute as interpreted by the UNDT in *Costa* and affirmed by this Tribunal.

24. In view of the above, we hold that Trajanovska's application was time-barred, and the delay in filing it could not be condoned. The Judgment of the Dispute Tribunal is affirmed.

**Judgment**

25. This appeal is dismissed and the Judgment of Dispute Tribunal is affirmed.

Dated this 27<sup>th</sup> day of October 2010 in New York, United States.

Original and authoritative version: English

*(Signed)*

Judge Garewal, Presiding

*(Signed)*

Judge Courtial

*(Signed)*

Judge Boyko

Entered in the Register on this 29<sup>th</sup> day of December 2010 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar