

UNDT/2018/069, Bozic

UNAT Held or UNDT Pronouncements

The question of existence of an administrative decision capable of being reviewed by the UNDT in relation to the decision of 11 May 2017 had already been determined between the same parties by the virtue of final Judgment No. UNDT/2018/026. Therefore, based on *res judicata*, the application was rejected as irreceivable.

Decision Contested or Judgment/Order Appealed

The application was filed pursuant to staff rule 11.4(a) on the basis that a decision from 11 May 2017 was one requiring management evaluation, after the Applicant had obtained a management evaluation on 23 August 2017.

Legal Principle(s)

The notion of receivability of applications before UNDT under art. 8 of the UNDT Statute covers questions that are purely procedural (compliance with deadlines, art. 8.1(c), requesting management evaluation, art. 8.1(d)) but also those involving substantive law, such as existence of a decision capable of being reviewed (art. 8.1(a) in connection with art 2.1(a)), eligibility to file an application (art 8.1(b)), persistence of a claim on the part of the applicant (i.e., “mootness” of an application, introduced by the jurisprudence of the UNAT). Irreceivability for purely procedural reasons is not capable of creating *res judicata sensu stricto*, i.e., determination made by the court does not resolve the merits of the dispute: the court cognisance and judgment is limited to a narrow issue of procedural obstacle, and the *res judicata* - if the term is to be applied at all - encompasses only the narrow procedural situation within which the obstacle persists. Where the obstacle is removed, nevertheless, i.e., deadline restored or management evaluation obtained, a possibility becomes open for adjudication of the merits of the claim without being foreclosed by the sameness of the adjudicated matter. On the contrary, a rejection

of the claim for the substantive reasons extends the court cognisance over the merits of the claim, establishes a substantive defect that cannot be cured, and, as such, a repeated filing would normally bar trying the same matter again. Concerns of legal certainty and economy of proceedings speak for accepting that a final judgment establishing irreceivability for substantive reasons produces res judicata. The finding of irreceivability due to a failure to request management evaluation would not create res judicata and an application found irreceivable for the lack of management evaluation might be brought and considered after the management evaluation has been received. Conversely, to establish irreceivability for the lack of administrative decision in the sense of art. 2 of the UNDT Statute, the judicial cognizance must go into the substance of the claim, the established defect is inherent to the claim, and as such, the application cannot be cured. As such, despite the same form of the decision, i.e., a judgment in the question of receivability, a judgment issued in this situation produces res judicata.

Outcome

Dismissed as not receivable

Outcome Extra Text

The application, which had been filed without awaiting the result of management evaluation (or expiry of the time limit for it), remained not receivable also after the management evaluation had been issued.

Full judgment

[Full judgment](#)

Applicants/Appellants

Bozic

Entity

UN-WOMEN

Case Number(s)

UNDT/NBI/2017/121

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

26 Jun 2018

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)
Management Evaluation

Applicable Law

Staff Rules

- Rule 11.2

UNDT Statute

- Article 8