

# 2020-UNAT-1035, Gelsei

## UNAT Held or UNDT Pronouncements

UNAT held that exceptional circumstances existed which warranted an extension of time. UNAT held that UNDT's discretion should have been exercised in the Appellant's favour because it affected access to justice and there is a presumption that access to justice should not be denied at the outset without compelling reasons, which were absent. UNAT held that circumstances beyond the Appellant's control prevented him from acting to file his appeal within the time limit and it would be unjust to visit upon the Appellant the consequences of an error (a fail in the electronic filing system) for which he and his representative had no responsibility. UNAT held that UNDT erred in fact and law (resulting in a manifestly unreasonable decision) in refusing the application for extension of time. UNAT extended or waived the time limit and deemed the application disputing the disciplinary sanctions to have been filed on time. UNAT allowed the appeal, reversed the UNDT judgment, and remanded the case to UNDT for a decision on the merits.

## Decision Contested or Judgment/Order Appealed

UNDT dismissed the application to extend time and the substantive application on the basis that the Applicant had failed to demonstrate the existence of exceptional circumstances.

## Legal Principle(s)

The degree of lateness when a party fails to meet a filing deadline before UNDT is not irrelevant for the purpose of determining an application to suspend or waive that time limit. While the length of a delay in missing a deadline is irrelevant to the preliminary question of exceptional circumstances, if exceptional circumstances are established, the length of a delay may then become a relevant factor in deciding whether to exercise UNDT's discretion to waive the breach and the particular nature of that waiver, for example how long the party then has to file. The relevant circumstances in which such an extension or waiver should be allowed by UNDT are variable and highly fact-dependent, so long as they are "exceptional". Interests of justice are the paramount factor in the exercise of the discretion to suspend or waive time limits. Whether either party will be prejudiced by the grant or refusal of an order, and the extent and effect of such prejudice, will be a relevant consideration in deciding whether to suspend or waive time limits.

## Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Gelsei

Entity

UNHCR

Case Number(s)

2020-1350

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Jun 2020

President Judge  
Judge Colgan  
Language of Judgment  
English  
Issuance Type  
Judgment  
Categories/Subcategories  
Jurisdiction / receivability (UNDT or first instance)  
Temporal (ratione temporis)  
Applicable Law  
UNDT RoP

- Article 7.5

UNDT Statute

- Article 8.1(d)(i)
- Article 8.3
- Article 8.4

Related Judgments and Orders

UNDT/2019/165

2012-UNAT-218

2016-UNAT-693

2018-UNAT-872