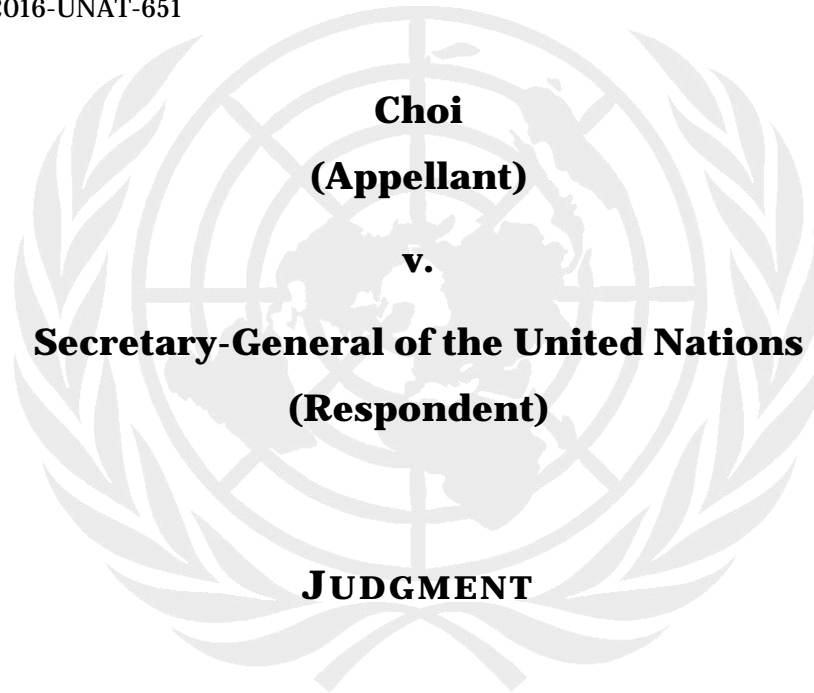




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

---

Judgment No. 2016-UNAT-651



**Choi  
(Appellant)**

**v.**

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

**JUDGMENT**

---

Before:	Judge Inés Weinberg de Roca, Presiding Judge Deborah Thomas-Felix Judge Richard Lussick
Case No.:	2015-857
Date:	30 June 2016
Registrar:	Weicheng Lin

---

Counsel for Appellant:	Gim Bichma
Counsel for Respondent:	Amy Wood

**JUDGE INÉS WEINBERG DE ROCA, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Dae Won Choi against two decisions rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva: Judgment No. UNDT/2011/181 dated 24 October 2011, upholding the disciplinary decision to dismiss Mr. Choi on grounds of harassment and abuse of authority (Judgment on the Merits); and, Judgment No. UNDT/2015/064 dated 6 July 2015, dismissing Mr. Choi's application for revision of Judgment No. UNDT/2011/181 (Judgment on Revision). Mr. Choi appealed on 13 November 2015,<sup>1</sup> and the Secretary-General answered on 18 January 2016.

**Facts and Procedure**

2. For purposes of judicial economy, the facts are limited to those the Appeals Tribunal considers relevant for the disposition of the present appeal.

3. On 24 October 2011, the UNDT issued its Judgment on the Merits, upholding the disciplinary decision taken in October 2009 summarily dismissing Mr. Choi from service on grounds of harassment and abuse of authority. In subsequent correspondence between Mr. Choi and the UNDT Registry, Mr. Choi was alerted on more than one occasion of his right to appeal the Judgment on the Merits to the Appeals Tribunal. Although the record shows that Mr. Choi expressed to the UNDT Registry his intention to file an appeal, he never did so at the time.

4. On 25 August 2014, Mr. Choi submitted an application for revision of the Judgment on the Merits on the basis of alleged new "decisive evidence with material facts". On 26 August 2014, the Secretary-General filed his reply to the application for revision, which alleged abuse of process by Mr. Choi and requested an award of costs.

5. On 6 July 2015, the UNDT issued its Judgment on Revision, dismissing the application for revision in its entirety, noting "[a]n examination of the Applicant's submissions clearly shows that he is attempting to re-litigate his case. This is not, however, a valid ground to entertain an application for revision of judgment".<sup>2</sup> The UNDT held that "[n]o perjury was found at the time

---

<sup>1</sup> The Appeals Tribunal Order No. 238 (2015), granting Mr. Choi an extension of time to file his appeal.

<sup>2</sup> Impugned Judgment, para. 35.

and [Mr. Choi] has not produced evidence that could put this determination into question”.<sup>3</sup> The UNDT declined to award costs against Mr. Choi for abuse of process, noting his evident disagreement and frustration with the outcome of his case may have brought him to “poorly formulate some of his motions/requests ... that ... could reasonably be construed as borderline allegations”<sup>4</sup> and do not amount to an abuse of proceedings.

6. In an e-mail of the same date, on 6 July 2015, the UNDT Registry transmitted a copy of the Judgment on Revision to Mr. Choi to his personal e-mail account and informed him that he had 60 days from receipt of the Judgment on Revision to file his appeal with the Appeals Tribunal.

7. In an e-mail to the UNDT Registry dated 28 September 2015, Mr. Choi requested “a reasonably sufficient time” for him to appeal the Judgment on Revision, stating that UNDT’s 6 July 2015 e-mail and attachment “became fully accessible [to him] only today”. The UNDT Registry responded the following day, drawing Mr. Choi’s attention to the need to request from the Appeals Tribunal an extension of time limit.

8. On 3 October 2015, Mr. Choi filed a request for suspension, waiver or extension of time limit to appeal the Judgment on Revision, asserting inability to open the transmittal message that was sent to him by UNDT on 6 July 2015 because “Google and Gmail account are not normally accessible – often you cannot open due to technical problems – in [China] where [Mr. Choi] worked on professional mission at the time of the transmission”. Consequently, according to Mr. Choi, he did not see the UNDT’s e-mail until 28 September 2015, more than two and a half months later, “when he visited [his] home country, where he could open [his] Gmail account in [a] normal way”.

9. As noted above, in footnote 1, by Order No. 238 (2015) dated 22 October 2015, the Appeals Tribunal granted Mr. Choi twenty (20) days to file his appeal “*without prejudice to the determination as to whether his appeal is receivable*”.<sup>5</sup>

---

<sup>3</sup> *Ibid.*, paras. 32-33.

<sup>4</sup> *Ibid.*, para. 37.

<sup>5</sup> *Supra*, note 1, para. 6 (emphasis added).

10. As also noted above, on 13 November 2015, Mr. Choi filed his appeal. On 18 January 2016, the Secretary-General filed his answer, in which the Secretary-General maintains that Mr. Choi's appeal is time-barred and therefore not receivable in respect of either the Judgment on Revision or the Judgment on the Merits. No further motions or submissions were made by the parties.

### **Submissions**

#### **Mr. Choi's Appeal**

11. Mr. Choi appeals both the UNDT's Judgment on the Merits and Judgment on Revision, alleging a "miscarriage of justice" resulting from a failure by the UNDT "to consider the material facts, and to exercise its jurisdiction". Mr. Choi alleges in his lengthy submission "over 40 UNDT irregularities" of facts, procedure and law, arguing grounds for appeal under every subsection of Article 2 (a – e) of the Statute of the Appeals Tribunal (Statute). His specific contentions in this regard are not summarized, however, as the dispositive issue is whether this appeal is receivable.

12. Mr. Choi requests the "previous judgment" (without specifying which one) be vacated, his immediate reinstatement as well as "compensation for damages caused by the miscarriage of justice". From his submissions, the Appeals Tribunal interprets his reference to "previous judgment" as referring to both the Judgment on the Merits and the Judgment on Revision.

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

13. Mr. Choi's appeal of the Judgment on the Merits, included in his appeal of the Judgment on Revision, is time-barred. The 60 days provided by Article 7(1)(c) of the Statute expired more than four years ago, in December 2011. Article 7(3) of the Statute provides that the Appeals Tribunal "may decide in writing, upon written request by the applicant, to suspend or waive the deadline". In this case, Mr. Choi did not file a written request for extension of time with respect to his appeal of the Judgment on the Merits; his request was only with respect to his appeal of the Judgment on Revision. The Appeals Tribunal has consistently and strictly enforced statutory time limits and its discretionary authority to waive deadlines is triggered when an applicant files a written request for an extension of time prior to filing an appeal. Because Mr. Choi did not file a written request for waiver of the time limit with

respect to the Judgment on the Merits prior to submitting his appeal, the appeal is *per se* not receivable and should be rejected.

14. Mr. Choi's appeal of the Judgment on Revision is also not receivable because Mr. Choi has failed to assert, much less establish, the existence of any "exceptional circumstances" warranting waiver of the statutory time limit for the filing of the appeal. It is undisputed that Mr. Choi was provided a copy of the Judgment on Revision on the date it was issued, i.e., 6 July 2015. His failure to view the e-mail –or take any other steps to obtain a copy of the Judgment on Revision, which is a matter of public record– for a period of nearly three months does not constitute an "exceptional circumstance" under established jurisprudence warranting waiver of the statutory time limit for appeal.

15. Should the Appeals Tribunal consider Mr. Choi's appeal to be receivable, the Secretary-General maintains that, on the merits, Mr. Choi has not established any mistake of law, fact or procedure by the UNDT warranting reversal of either judgment.

16. The Secretary-General requests the Appeals Tribunal affirm both the Judgment on the Merits and Judgment on Revision and reject the appeal.

### **Considerations**

17. Mr. Choi requests an oral hearing on "[p]erjury under [o]ath and ... [o]ther [f]acts and [p]rocedure" as well as "new evidence" in order "to determine the truth," providing the names of people to be called to testify. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules). We do not find that an oral hearing would "assist in the expeditious and fair disposal of the case", as required by Article 18(1) of the Rules. We, therefore, deny Mr. Choi's request.

18. The Appeals Tribunal must, as a preliminary matter, decide whether Mr. Choi's appeal is receivable.

#### *Mr. Choi's Appeal of the Judgment on the Merits*

19. Article 7(4) of the Statute determines that "... an application shall not be receivable if it is filed more than one year after the judgement of the Dispute Tribunal".

20. Article 7(3) of the Rules provides that: “In accordance with article 7.4 of the statute of the Appeals Tribunal, no application shall be receivable if filed more than one year after the judgement of the Dispute Tribunal”.

21. The Judgment on the Merits, which Mr. Choi seeks to appeal by including it in his appeal of the Judgment on Revision, was issued more than four years ago, on 24 October 2011. The appeal is therefore not receivable.

*Mr. Choi's Appeal of the Judgment on Revision*

22. In *Bofill*,<sup>6</sup> we stressed that:

This Tribunal has repeatedly held that it ‘has been strictly enforcing, and will continue to strictly enforce, the various time limits’. The Appeals Tribunal has followed the jurisprudence of the former Administrative Tribunal according to which only circumstances ‘beyond his or her control that prevented the applicant from exercising the right of appeal in a timely manner’ may be considered ‘exceptional circumstances’ justifying a waiver of the statutory time limit.

23. The Appeals Tribunal granted Mr. Choi’s request for an extension to file his appeal of the Judgment on Revision “without prejudice to the determination as to whether his appeal is receivable”.<sup>7</sup> We note that Mr. Choi did not include in his submissions on appeal any discussion of receivability, nor did he seek leave to respond to the Secretary-General’s reply which maintained Mr. Choi’s appeal was time-barred. The Secretary-General challenged the reasons Mr. Choi had advanced in his request to the Appeals Tribunal for an extension as not constituting “exceptional circumstances” justifying a waiver of the time limit.

24. The simple fact is Mr. Choi had not complied with the deadlines for filing an appeal, and has previously not complied with the time-limit to request revision before the UNDT, which was 30 calendar days of the discovery of a decisive fact and within one year of the date of the judgment (Article 12(1) of the Statute of the Dispute Tribunal (UNDT Statute) and Article 29 of the Rules of Procedure of the Dispute Tribunal (UNDT Rules)).

---

<sup>6</sup> *Bofill v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-478, para 19, citing, *inter alia*, *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-043, para. 21 and *El-Khatib v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-029, para. 14.

<sup>7</sup> *Choi v. Secretary-General of the United Nations*, Order No. 238 (2015), para. 6.

25. The appeal was non-receivable before the UNDT on that ground alone and, by extension, is non-receivable before this Tribunal.

26. We add that the UNDT correctly dismissed Mr. Choi's application for revision. The UNDT Statute and its Rules set out the material elements which a moving party must show for an application for revision to be granted, and they are practically identical to those in the Statute and Rules of this Tribunal, namely: "(1) a new fact which, at the time the judgment was rendered, was unknown to the Appeals Tribunal and the moving party; (2) such ignorance was not due to the negligence of the moving party; and (3) the new fact would have been decisive in reaching the original decision".<sup>8</sup> As we have stated previously in connection with an application for revision before this Tribunal: "No party may seek revision of the judgement merely because that party is dissatisfied ... and wants to have a second round of litigation".<sup>9</sup> As the UNDT correctly found, "[a]n examination of [Mr. Choi's] submissions clearly shows that he is attempting to relitigate his case".<sup>10</sup>

### **Judgment**

27. The appeal is not receivable.

---

<sup>8</sup> *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-45, para. 14.

<sup>9</sup> *Ibid.*, para. 15 (citing *Muthuswami et al. v. United Nations Joint Staff Pension Board*, Judgment No. 2011-UNAT-102), para. 11 (citing former Administrative Tribunal Judgment No. 894, *Mansour* (1998)).

<sup>10</sup> Impugned Judgment, para. 35.

Original and Authoritative Version: English

Dated this 30<sup>th</sup> day of June 2016 in New York, United States.

*(Signed)*

Judge Weinberg de Roca,  
Presiding

*(Signed)*

Judge Thomas-Felix

*(Signed)*

Judge Lussick

Entered in the Register on this 24<sup>th</sup> day of August 2016 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar