



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

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Judgment No. 2022-UNAT-1219

**Ashraf Zaqqout  
(Appellant)**  
v.  
**Commissioner-General  
of the United Nations Relief and Works Agency  
for Palestine Refugees in the Near East  
(Respondent)**

**JUDGMENT**

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Before:	Judge Sabine Knierim, Presiding Judge Graeme Colgan Judge Martha Halfeld
Case No.:	2021-1559
Date:	18 March 2022
Registrar:	Weicheng Lin

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Counsel for Appellant:	Self-represented
Counsel for Respondent:	Ana Peyro-Llopis

**JUDGE SABINE KNIERIM, PRESIDING.**

1. Mr. Ashraf Zaqqout (the Appellant) appeals Miscellaneous Order No. 001/2021 (the Impugned Order), dated 20 April 2021, issued by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal). The Impugned Order denied his motion for an extension of time to file an application against the decision of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or the Agency) not to re-employ him.
2. For the reasons below, we dismiss the appeal.

**Facts and Procedure**

3. Mr. Zaqqout was a staff member with UNRWA since April 2015. His last Limited Duration Contract (LDC) was scheduled to cease on 30 June 2018.
4. On 17 January 2018, the Commissioner-General of UNRWA announced to all UNRWA staff that the Government of the United States of America was limiting its contribution to the Agency to 60 million USD in 2018, compared to its contribution of more than 350 million USD in 2017. The sudden and very significant decrease in this contribution led to a series of emergency measures that the Agency subsequently took to address the challenges of the prospective funding cut. Among them were proposals for an increase of 548 part-time posts for the Gaza Field Office, the redeployment of 280 staff members, and the separation of 113 staff members.
5. This financial crisis affected Mr. Zaqqout's employment. His LDC was extended on a monthly basis, first from 1 July to 31 July 2018, then from 1 August to 31 August 2018, and finally from 1 September to 30 September 2018, the last extension being a result of an agreement between the Gaza Field Office and the Local Staff Union in Gaza.
6. On 23 September 2018, Mr. Zaqqout requested review of his July extension. On 22 November 2018, the Director of UNRWA Operations, Gaza (DUO/G) accepted Mr. Zaqqout's request and reinstated him to his LDC post, retroactively from 1 October 2018 for three months through 31 December 2018.

7. Between 23 November 2018 and 23 February 2019, Mr. Zaqqout filed several applications with the UNRWA Dispute Tribunal which remained without success.<sup>1</sup>

8. According to Mr. Zaqqout's documents, on 28 November 2020, he submitted a request for decision review of the decision not to re-employ him under the 14 November 2018 emergency agreement. He claimed that while other staff members had been re-employed, he was excluded from such a re-employment. The Director of Human Resources sent a reply by email at the end of November 2020 stating that he understood that Mr. Zaqqout's case was already adjudicated by the UNRWA Dispute Tribunal.

9. By motion dated 23 March 2021, Mr. Zaqqout requested an extension of time limit to file an application to the UNRWA DT. The motion contained nine pages plus annexes and was filed in Arabic. In the Appeals Tribunal's case file, there is a three page long English translation of parts A and B of the motion (Facts; The requested relief); however, it is not certain whether the UNRWA DT translated parts C, D and E of Mr. Zaqqout's motion into English.

#### *The Impugned Order*

10. On 20 April 2021, in the Impugned Order, the UNRWA DT denied the Appellant's motion for an extension of time to file an application against the decision of UNRWA not to re-employ him on the basis that the Appellant had failed to provide any exceptional circumstances justifying his request.

11. In the Impugned Order and relying on the jurisprudence of UNAT in *Shehadeh*<sup>2</sup>, the UNRWA DT noted that only circumstances beyond an applicant's control that prevent him or her from exercising the right of appeal in a timely manner may be considered exceptional circumstances justifying a waiver of a time limit or deadline.

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<sup>1</sup> *Ashraf Ismail abed allah Zaqqout v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1152; *Ashraf Ismail abed allah Zaqqout v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1116; *Ashraf Ismail abed allah Zaqqout v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2020-UNAT-1055; *Zaqqout v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2020/006.

<sup>2</sup> *Shehadeh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-689, para. 19.

12. Further, relying on the jurisprudence of UNAT in *Scheepers*<sup>3</sup>, UNRWA DT recalled that the onus of proof was with the applicant to pursue his or her case and, where the applicant fails to do so, to convince the tribunal of the existence of exceptional circumstances justifying a waiver of the applicable time limits. UNRWA DT noted that the Applicant had failed to provide any such exceptional circumstances justifying his request for an extension of time to file his application.

13. UNRWA DT held that the Applicant's contention that he needed to be provided with documents from the Respondent in order to write his application could not be considered exceptional circumstances beyond his control that prevent him from exercising his right of filing an application in a timely manner, and therefore was without merit.

*Procedure before the Appeals Tribunal*

14. On 19 May 2021, Mr. Zaqqout submitted an appeal of the Impugned Order to UNAT and the appeal was registered as Case No. 2021-1559. On 1 July 2021, the Commissioner-General filed his answer.

**Submissions**

**Mr. Zaqqout's Appeal**

15. Mr. Zaqqout submits that the UNRWA DT failed to exercise jurisdiction vested in it, erred on a question of law, committed an error in procedure such as to affect the decision of the case and erred on a question of fact, resulting in manifestly unreasonable decision "[b]ecause the UNRWA DT failed to do correct, complete and identical for Appellant's Motion by Arabic into English translation".

16. Mr. Zaqqout submits that the UNRWA DT only translated into English parts of the Appellant's motion which was in Arabic, noting that the translation was only three pages, as opposed to the original motion in Arabic being nine pages.

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<sup>3</sup> *Scheepers v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-211, para. 41.

17. Mr. Zaqqout submits that “[a]s a result for failure in English translation, The [sic]UNRWA DT violated article 7/2 (a+b) of regulation 11.4, and article 16 or regulation 11.5 from UNRWA Area Staff Regulations. And in contravention with text of Article 22 of GSC No. 05-2018, Practice Direction No.2 (2018). And it is in contravention with ethics and the standards of conduct applicable to unrwa personnel such as Neutrality, Impartiality and Operational independence [sic]”. Further, the Appellant submits that the lack of translations was prejudicial to him, that his due process rights were not observed and that he was unable to mount a proper defence based on the documentary evidence.

18. Relying on *Al Othman*<sup>4</sup>, in which the Applicant was given the option to proceed with translations at his own costs and was assured that the Tribunal would order the Respondent to reimburse him for the cost of translations in the Judgment, the Appellant submits that the UNRWA DT erred on a question of law, committed an error in procedure and failed to exercise the jurisdiction vested in it, by not using its authority to ask the Appellant to proceed with the translations into English at the Appellant’s own cost and then order the Respondent to reimburse the Appellant for the cost of the translations.

19. Mr. Zaqqout submits that the UNRWA DT should have established whether or not the Motion was translated completely given the gravity of the allegations contained therein, it’s possible “bearing” and given that the process requires that both parties should be given an opportunity to present their case, produce evidence and file submissions and/or motions. Mr. Zaqqout submits that “[t]he full and fair consideration for Appellant’s Motion during a proceeding may be crucial for the result of a judgement, as a consequence, could have affected the outcome of the Appellant’s Motion for extension of time, Motion for production of evidence in the possession of the Respondent and others [sic] Motions. (Judgment No. 2017-UNAT-779 para 35) [sic]”. Mr. Zaqqout also refers to para. 34 of the same Judgment as relevant.

20. Mr. Zaqqout submits that his due process rights were therefore violated. He says that exceptional reasons were mentioned in parts of his Motion in Arabic and that the UNRWA failed to conclude that they had been “mentioned”.

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<sup>4</sup> *Al Othman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2020/073, para. 78.

21. Mr. Zaqqout submits that UNRWA DT thought that the Appellant just asked for legal advice, but that he also asked for legal representation. Mr. Zaqqout states that “UNRWA DT erred in law because it did not consider that the Appellant is in seeking legal representation As Exceptional reason. Because Mr. Amer Abu Khalaf - from the Legal Officer Staff Assistance - UNRWA, refused Appellant’s request via an emails [sic] ...”. For his submission related to legal representation, Mr. Zaqqout relies on *Amineddine*<sup>5</sup>, para. 12 and Order No. 372 (2020)<sup>6</sup>, paragraphs 3 and 5.

22. Mr. Zaqqout submits that, even if accepting, for argument’s sake, that UNRWA DT did correctly translate the Appellant’s motion into English, UNRWA DT erred in law and erred on a question of fact because it did not consider that the Appellant’s request for a production of evidence in the possession of the Respondent is an exceptional reason, relying on Judgment No. UNRWA/DT/2019/019<sup>7</sup> paragraph 75 and Judgment No. 2019-UNAT-972<sup>8</sup> at paragraphs 9-11.

23. Mr. Zaqqout submits that the UNRWA DT erred in law and erred on a question of fact because it did not take into account of its own the Covid 19 pandemic which “continuously cut of[f] electricity in Gaza Strip as exceptional reasons. Which delayed Appellant to contract with [lawyer].”

24. The Appellant submits that the UNRWA DT failed to exercise its jurisdiction, erred on a question of law, committed an error in procedure such as to affect the decision of the case and erred on a question of fact, resulting in a manifestly unreasonable decision, when the Tribunal did not find that it had received sufficient information to open a case file and considered the

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<sup>5</sup> *Amineddine v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-962, para. 12.

<sup>6</sup> *Zaqqout v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Order No. 372. This Order relates to an appeal to UNAT by the same staff member.

<sup>7</sup> *Al Othman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2019/019.

<sup>8</sup> *Al Othman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-972.

Appellant's motion as an application, contradicting UNRWA/DT/2020/073<sup>9</sup>, at para. 75, and Judgment No. 2019-UNAT-972<sup>10</sup> para. 11.

25. The Appellant seeks a number of remedies as follows:

- 1) The rescission of the contested decision;
- 2) considered the Appellant's motion as an application whereas the sufficient information to open a case file;
- 3) I request also that the Tribunal ordered the Respondent to submit his reply and copies of all evidences that I requested;
- 4) I also request remanded for a hearing de novo before a different Judge, a different translator and a different Registry of DT;
- 5) To be compensated for the entirety of my material damages;
- 6) To be compensated for the violation of my due process rights;
- 7) To be compensated for the moral damages my suffered as a result of the contested decision;
- 8) and Translated the (Annex 14 and (Annex 1) into the English Language.

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

26. The Respondent submits that the appeal is not receivable and requests its dismissal and an award of costs against the Appellant.

27. The Respondent submits that the appeal is not receivable, relying on Article 2 and Article 7(1) of the UNAT Statute, on the basis that only final judgments are appealable. The Respondent submits that this is supported by the consistent jurisprudence of UNAT, such as *Porter*<sup>11</sup>.

28. The Respondent submits that the fact that the effect of rejecting the motion seems to be in the nature of a final judgment is "of no avail considering that the appeal does not raise any arguable grounds on the merits"<sup>12</sup>.

29. Recalling the UNAT jurisprudence in *Porter*, that in appeals against interlocutory orders the excess of jurisdiction or competence must be of "clear" and "manifest", the Respondent submits that a review of the impugned order and the grounds of appeals leads to the conclusion that the threshold of clear and manifest has not been met by the Appellant.

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<sup>9</sup> *Al Othman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2020/073.

<sup>10</sup> *Al Othman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-972.

<sup>11</sup> *Porter v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-507, para. 16.

<sup>12</sup> Respondent's Answer Brief, para. 10.

30. In the alternative, the Respondent argues, that, should UNAT consider the appeal receivable on the basis of the finality and consequences of the Impugned Order, the appeal has no merit. The Respondent submits that the Appellant has not demonstrated in what respect the UNRWA DT, by dismissing his motion on the basis that he failed to provide exceptional circumstances, exceeded or failed to exercise its jurisdiction, erred on a question of law, committed an error in procedure or erred on a question of fact resulting in a manifestly unreasonable decision. Specifically, the Respondent contends that the UNRWA DT's failure to correctly translate the Appellant's motion from Arabic to English as a grounds for appeal is wholly misconceived.

31. Additionally, the Respondent submits that neither seeking legal representation nor a request for production of evidence in possession of the Respondent fall within the realm of exceptional circumstances established by the Tribunal's jurisprudence. The Respondent submits that the issue of the production of documents was addressed by UNRWA DT and that the Appellant fails to criticise the reasons for dismissal of the motion, describing the appeal as "wholly misconceived".

32. Relying on Article 9(2) of the UNAT Statute, General Assembly resolution 67/241 of 24 December 2012 and *Monarawila*<sup>13</sup> on groundless, frivolous and vexatious applications being an abuse of process which unduly burden the administration of justice, the Respondent submits that the instant matter is a proper case for an award of costs against the Appellant, requesting an award of USD 9,600 against the Appellant, the cost for appeals filed by or against UNRWA.

33. The Respondent submits that the instant appeal is patently without merit, frivolous and vexatious and constitutes an abuse of process.

34. As to establishing manifest abuse of the appeals process, the Respondent submits that there is reason to believe that the Appellant did not file his motion and subsequent appeal in good faith as demonstrated by the following:

- i. It emerges from the Appellant's appeal brief that the Appellant knew of the decision to reemploy former staff at the Gaza Field Office excluding him and could have

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<sup>13</sup> *Monarawila v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-694.



proceeded to file his application; the request to be provided with documents related to corruption, abuse of authority, discrimination and recruitment malpractices without providing specificity as to the reports he is seeking and prior to filing is a fishing expedition and the request for production for documents “could as well be done after the filing of the application”.

- ii. Noting that the crux of the appeal is the translation of the motion from Arabic, there is reason to believe that the Appellant understands English on the basis of the post he held and his signed brief is in English.
- iii. The Appellant has caused an unnecessary waste of resources of the court system, noting the size of his original motion and the instant appeal.

### Considerations

#### *Receivability of the appeal*

35. According to article 2(1) UNAT Statute:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has (...).

36. From this legal provision stems our constant jurisprudence that only appeals against (final) judgments are receivable, but orders of the UNDT, or the UNRWA DT, cannot be appealed unless the Dispute Tribunal clearly exceeded its competence. Our jurisprudence is summarised in *Porter*<sup>14</sup>, where we held:

16. We have consistently stated that the general principle underlying the right of appeal set out in Article 2(1) of our Statute is that only final judgments of the UNDT are appealable.

17. In *Tadonki*, we held that “[o]nly when it is clear that the UNDT has exceeded its jurisdiction will a preliminary matter be receivable”.

18. We affirmed this approach in *Bertucci* where we stated:

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<sup>14</sup> *Porter v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-507, footnotes omitted.

In *Tadonki* (No.1), the Appeals Tribunal has emphasized that most interlocutory decisions will not be receivable, for instance, decisions on matters of evidence, procedure, and trial conduct. In *Calvani*, the Appeals Tribunal held that an appeal by the Secretary-General from an interlocutory order of the UNDT for the production of a document was not receivable. It observed that the UNDT had discretionary authority in case management and the production of evidence in the interest of justice and that, should the UNDT have committed an error in ordering the production of a document and have drawn erroneous conclusions in the final judgment resulting from the failure to produce the requested document, it would be for the Secretary-General to appeal that judgment. The Appeals Tribunal has, however, held in *Tadonki* (No.1), *Onana*, and *Kasmani*, that an interlocutory appeal is receivable in cases where the UNDT has clearly exceeded its jurisdiction or competence.

19. In *Wasserstrom*, we stated:

As stated in *Bertucci*, there may be exceptions to the general rule that only appeals against final judgments are receivable. Whether an interlocutory appeal will be receivable depends on the subject-matter and consequences of the impugned decision. As established in *Bertucci*, an interlocutory appeal is receivable where the UNDT has clearly exceeded its jurisdiction or competence. This will not be the case in every decision by the UNDT concerning its jurisdiction or competence. The general rule that only appeals against final judgments are receivable does not apply where the UNDT dismisses a case on the grounds that it is not receivable under Article 8 of the UNDT statute, as the case cannot proceed any further and there is in effect a final judgment.

The receivability of an interlocutory appeal from a decision of the UNDT allowing a case to proceed on the basis that it falls within its competence under the UNDT Statute is a different matter. If the UNDT errs in law in making this decision and the issue can be properly raised later in an appeal against the final judgment on the merits, there is no need to allow an appeal against the interlocutory decision.

37. In the present case, the Appeals Tribunal sees no reason to depart from the general rule that only appeals against final judgments are receivable. The question of whether the determination made by the Director of the Ethics Office that no retaliation had occurred constitutes an administrative decision goes directly to the merits of the case. It requires adjudication on the merits and can therefore not be subject to an interlocutory appeal. The alleged lack of jurisdiction of the UNDT is not clearly established in this case and the issue cannot be decided before the UNDT has rendered a judgment on the merits of the case.

38. The Appeals Tribunal further holds that the appeal against the UNDT's order for production of documents is not receivable, because it is interrelated to the alleged lack of jurisdiction. Also, as previously held by the Appeals Tribunal in *Tadonki* (No. 1)<sup>15</sup>, interlocutory appeals on matters of evidence, procedure, and trial conduct are not receivable.

39. In *Hassan*<sup>16</sup> we did not allow an appeal against an order by which the Dispute Tribunal decided to strike an application from the record and to not consider it because the staff member had not properly identified the administrative decision she was challenging. We stated<sup>17</sup>:

17. In accordance with the Appeals Tribunal's consistent jurisprudence, we stated in *Villamorán*: "The Appeals Tribunal has consistently emphasized that appeals against most interlocutory decisions will not be receivable, for instance, decisions on matters of evidence, procedure, and trial conduct. An interlocutory appeal is only receivable in cases where the UNDT has clearly exceeded its jurisdiction or competence."

18. In accordance with this jurisprudence, an interlocutory order by the UNDT is only appealable when the UNDT has clearly exceeded its jurisdiction or competence.

19. In the case at hand, the Order issued by the UNDT is an interlocutory decision, because it struck out the matter, meaning that, because Ms. Hassan had not properly identified the administrative decision she was challenging, the UNDT did not consider her application. The UNDT also based its conclusion on the fact that, since it was not in dispute that the management evaluation had already been completed, it was Ms. Hassan's responsibility to file an application on the merits to the UNDT, instead of applying for suspension of action pending a management evaluation that was no longer pending.

20. The Order to strike the matter out does not, however, mean that the UNDT dismissed the application. This conclusion is even more relevant in light of the fact that Ms. Hassan had not received the communications of the UNDT Registry requesting that she cure her application, because they had been sent, through no fault of her own, to the wrong e-mail address.

21. In the premises, while we note that the records in the Court Case Management System indicate that, following the striking of the application by the UNDT, the case was closed, it is the finding of the Appeals Tribunal that Ms. Hassan is not barred from

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<sup>15</sup> *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005.

<sup>16</sup> *Hassan v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-943.

<sup>17</sup> Footnotes omitted in quotation.

supplementing her application which was filed in compliance with the deadlines prescribed in Article 8 (d)(i) of the UNDT Statute.

22. The appeal is dismissed as not receivable. Ms. Hassan may supplement her application with the UNDT within 90 days of the date of the publication of the present Judgment.

40. However, the present case is distinguishable from the above-mentioned jurisprudence because Mr. Zaqqout will not be able to raise his issues later in an appeal against the final judgment. As he did not file an application (but a motion) to the UNRWA DT, and the UNRWA DT did not issue a judgment (but an Order), Mr. Zaqqout will be without any remedy if his appeal against the UNRWA DT's Order is not allowed. For this reason, we exceptionally allow and receive Mr. Zaqqout's appeal against the UNRWA DT's the Impugned Order.

*Merits of the appeal*

41. Mr. Zaqqout's appeal remains without success. He does not show on appeal that the UNRWA DT committed legal, factual or other errors.

42. The UNRWA DT rejected the Appellant's motion, holding that his contention (that he needs to be provided with documents from the Respondent in order to write his application) cannot be considered as an exceptional circumstance under article 8(3) UNRWA DT Statute. It referred to the Appeals Tribunal's jurisprudence that only circumstances beyond a staff member's control may be considered exceptional circumstances justifying a waiver of a time limit or deadline (*Shehadeh*<sup>18</sup>) and reasoned that Mr. Zaqqout's request to be provided with documents from the Respondent in order to write the application cannot be regarded as such a circumstance beyond control. In his appeal, Mr. Zaqqout does not put the UNRWA DT's Impugned Order into doubt. He does not show why the findings or reasoning of the UNRWA DT could have been erroneous.

43. His allegation on page 3 of his appeal brief "10) Fifth: (...) (1) Without the Appellant obtaining the evidence in the respondents' possession mentioned in Above paragraph from B/4 to B/10 (...) there is ambiguity of the facts because there is a great contradiction in the

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<sup>18</sup> *Shehadeh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-689, para. 19.

facts (...)” is not sufficient. Neither does Mr. Zaqqout explain why the UNRWA DTs approach (accepting only circumstances beyond a staff member’s control) could be erroneous nor does he address the issue of whether or not there actually existed circumstances beyond Mr. Zaqqout’s control. He neither states the reasons nor can we see why it would not have been possible for him to prepare and file an application without these documents.

44. The UNRWA DT’s finding is strongly supported by Article 13(3) UNRWA DT Rules of Procedure which reads:

3. A party wishing to submit evidence which is in the possession of the opposing party, or of any other entity may, in the initial application or at any stage of the proceedings, request the Tribunal to order the production of the evidence.

45. It becomes clear from this provision that a staff member must first file an application, and only in this application or at a later stage of the proceedings can he or she request the UNRWA DT to order the production of evidence in possession of the Commissioner-General.

46. Mr. Zaqqout’s reference on page 5 of the appeal brief (under paragraph 21) to UNRWA DT Judgment UNRWA/DT/2019/019, para. 75, is misplaced. This Judgment has only 32 paragraphs and does not deal with the issue whether a request for production of documents in the possession of the Commissioner-General can justify an extension of time for filing an application.

47. Mr. Zaqqout complains that the UNRWA DT only translated parts of his motion into English. He submits that it was erroneous of the UNRWA DT not to have translated the complete motion into English or at least given him the opportunity to translate the motion himself (at the Commissioner-General’s cost). We understand that he wants to imply that, had the UNRWA DT Judge seen and read his motion in full, she would have been able to find exceptional circumstances in later parts of the motion; also, she would have been able and even obliged to consider his motion as an application like in the case of *Al Othman*<sup>19</sup>

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<sup>19</sup> *Al Othman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-972.

48. This argument is without merit. The UNRWA DT had no obligation to translate the full text of the motion into English or to invite the Appellant to hand in an English translation (at the Commissioner-General's cost).

49. Firstly, the Appellant did not respect the formal requirements for motions as laid down in Article 3(4) of the Rules of Procedure of the UNRWA Dispute Tribunal, which provides:

4. In exceptional cases, an Applicant may submit a written request to the Dispute Tribunal seeking suspension, waiver or extension of the time limits referred to in Article 3.1, above. Such written request shall succinctly set out the exceptional reasons that, in the view of Applicant, justify the request. Such written request shall not exceed two pages in length.

50. The Appellant sent a motion of ten pages plus annexes to the UNRWA DT; thus exceeding the maximum page limit by eight pages.

51. Secondly, looking at the Appellant's 23 March 2021 motion, we find the UNRWA DT had no reason to assume that the motion could contain exceptional circumstances for an extension of time limit to file an application other than the production of evidence in the possession of the Commissioner-General.

52. The headline of the Appellant's 23 March 2021 motion reads "Request for extension of time to submit the application, request for production of evidence in the possession of the Respondent (...)". Under "B. The requested relief", the Appellant specified that he needed an extension of 20 calendar days "after receipt of the evidence in possession of the Respondent in order to write the application". He further stated which documents in the possession of the Respondent he requested, *inter alia* annexes of the Commissioner-General's 5 July 2018 decision, annexes of the 1 September 2018 agreement and annexes of the 14 November 2018 Emergency Agreement. For the UNRWA DT, it was clear that the Appellant requested an extension of time limit to file an application (only) because he wanted to receive documents in the possession of the Commissioner-General. There was no reason for the UNRWA DT to assume that Mr. Zaqqout would present other exceptional circumstances for his request for an extension of time limit in later parts of the motion.

53. Finally, even his appeal brief does not show that the Appellant did indeed present additional exceptional circumstances in later parts of the motion.

54. While Mr. Zaqqout submits that the UNRWA DT erred in law because it did not consider as exceptional reason that he was seeking legal representation, he does not state on appeal that, in his 23 March 2021 motion, he asked for an extension of time limit to file an application not only to receive documents from the Commissioner-General but also because he was unable to find legal representation.

55. Mr. Zaqqout further contends that the UNRWA DT erred on a question of fact because “it did not take into account of its own that Covid 19 Pandemic; continuously cut of electricity in Gaza Strip as exceptional reasons”. This argument is without merit. When deciding on a motion for extension of time limit to file an application, the UNRWA DT is only obliged to consider the arguments presented by the staff member. While the Tribunals, during the last two years, have been very generous to grant extensions of time limits when staff members stated they would not be able to meet such time limits due to the Covid 19 pandemic, it is not possible to grant an extension of time limit for exceptional circumstances which were not mentioned by the staff member.

56. Finally, there is no merit in Mr. Zaqqout’s argument that the UNRWA DT should have translated his motion into English which would have allowed and obliged the Judge to consider the motion as an application like in the case of *Al-Othman*<sup>20</sup>. As stated above, the UNRWA DT is not obliged to translate a motion which clearly exceeds the page limit under Article 3(4) Rules of Procedure. Further, the UNRWA DT is not obliged to consider whether a motion contains sufficient information to open a case file and to be considered as an application. In the contrary, under the jurisprudence of the Appeals Tribunal, the Dispute Tribunal is not allowed to regard a motion for an extension of time limit to file an application as an application. In 2016-UNAT-631, para. 18, we stated:

18. As the language of the statutory scheme shows, a request for an extension of time to file an application is not the same document as an application. The requests for an extension of time were made so that the staff members could obtain information needed to prepare an application. In other words, the staff members were not ready to submit an application without obtaining additional information to support it. Of course, this does not mean that the Dispute Tribunal must grant the staff members’ requests for an extension of time; but it does mean that the Dispute Tribunal cannot convert sua sponte the staff members’ requests for more time into applications.

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<sup>20</sup> *Al Othman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-972.

*Costs*

57. We deal finally with the Commissioner-General's application for costs against Mr. Zaqqout. The Commissioner-General requests an award of USD 9,600 against the Appellant being the cost for appeals filed against UNRWA.

58. Under Article 9(2) of the UNAT Statute, costs may be awarded by this Tribunal if it considers that a party has "manifestly abused the appeals process".

59. Recently, we held in *Turki Salem Abu-Rabei*<sup>21</sup> as follows:

30. We deal finally with the Commissioner-General's application for costs against Mr. Abu Rabei. The Appellant was given, and took, an opportunity to make submissions about this in view of its application having been first made in the Respondent's Answer to the appeal. Under Article 9(2) of the UNAT Statute, costs may be awarded by this Tribunal if it considers that a party has "manifestly abused the appeals process". That is a high threshold for an applicant party to attain and recent case law illustrates that such an order will be rarely made, and usually after the party has been fairly warned of that consequence if the party's abuse of process continues.

31. We take into account that Mr. Abu Rabei is not professionally represented and that the question of his date of birth was not entirely clear-cut, there having been several documents produced that referred to this as having been in 1959 being the year in which Mr. Abu Rabei claims to have been born.

32. All litigants in this jurisdiction have a right of appeal to this Tribunal, subject to limitations of time and the like which are not in issue in this case. That the exercise of this right might, in retrospect, appear to have been unwise or its failure inevitable, should not alone be a reason to penalise by costs the exercise of that right. Mr. Abu Rabei is now a former member of the UNRWA staff, but having served in a senior and responsible role for many years. We infer that he was an unwilling retiree, but was compelled to do so irrespective of his abilities to continue, because of an arbitrary age of compulsory retirement.

33. In all the circumstances, we are not satisfied that the pursuit of this appeal by Mr. Abu Rabei was a clear abuse of the appeal process and the Respondent's claim to costs is also dismissed.

60. Applying this standard we find that in the present case, the Appellant has not manifestly abused the appeals process.

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<sup>21</sup> *Turki Salem Abu Rabei v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2020-UNAT-1060.



**Judgment**

61. Mr. Zaqqout's appeal is hereby dismissed.

62. The Commissioner-General's application to award costs against the Appellant is also dismissed.

Original and Authoritative Version: English

Dated this 18<sup>th</sup> day of March 2022.

*(Signed)*

Judge Knierim, Presiding  
Hamburg, Germany

*(Signed)*

Judge Colgan  
Auckland, New Zealand

*(Signed)*

Judge Halfeld, Presiding  
Juiz de Fora, Brazil

Entered in the Register on this 6<sup>th</sup> day of May 2022 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar