# THE ADMINISTRATIVE TRIBUNAL
# OF THE
# EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

**Case No. 2024/AT/15**

**Appellant**

**vs**

**European Bank for Reconstruction and Development,**

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## DECISION

**by a Panel of the Administrative Tribunal comprised of**
**Maria Vicien-Milburn (Chair)**
**Marielle Cohen-Branche**
**Chris de Cooker**

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**20 February 2025**

## I. Introduction

1. The statement of appeal (the "Appeal") concerning these proceedings was filed with the Tribunal on 14 October 2024 pursuant to Section IV paragraph 6.4.1(e) of the Directive, Administrative Review Process ("ARP Directive"). The Appellant challenges the decision of the President of the European Bank for Reconstruction and Development ("EBRD" or "the Bank") taken on 5 September 2024 ("President's Decision") that the Appellant´s Request for Review of an Administrative Decision ("Request for Review") is time barred and inadmissible.

2. The Appellant argues that the President erred in determining her Request for Review to be inadmissible on the grounds that exceptional personal circumstances were sufficiently compelling to warrant a waiver of the applicable time limits.

3. In her Appeal, the Appellant seeks reversal of the President's Decision and requests the Tribunal to remand her Appeal back to the President and refer the Appeal to the Administrative Review Committee for administrative review.

## II. Facts and Procedural History

4. The Appellant entered the service of the Bank on 22 May 2023 on a 12-month short term contract as an Analyst.

5. On 9 February 2024, the Appellant was informed by her line manager during a performance feedback discussion, that her appointment would not be extended on the basis of budgetary and resourcing considerations.

6. On 7 April 2024 the Appellant submitted a request for review of the decision by her Line Manager to the Managing Director, Human Resources & Organisation Development ("MDHROD") alleging that the non-renewal decision was not motivated by budgetary reasons but instead by bias against her because of her medical history and the subsequent disclosure of her medical condition. In addition, the Appellant maintained that her Line Manager failed to accurately assess her performance and made insensitive and other inappropriate comments. She also asked for protection against retaliation by her Line Manager, as she had approached the Ombuds and was initiating this administrative action.

7. On 7 May 2024, the MDHROD informed the Appellant that the decision not to extend her appointment would be maintained on the basis that ¨the essence of a time-limited

contract is the very fact that it expires¨ and that staff on short term contracts do not have an automatic right to an extension or renewal of their appointment. In addition, the MDHROD explained why she had not found any irregularities or abuse of discretion in the non-renewal of the Appellant's short-term contract.

8. The Appellant separated from service of the Bank on 21 May 2024.

9. On 5 July 2024, the Appellant submitted to the President, under Section IV paragraph 6.4.1(a) of the ARP Directive, her Request for Review of the MDHROD's decision, conveyed in her response dated 7 May 2024. The Appellant acknowledged submitting the Request for Review to the President two days after the 40-day deadline of 3 July 2024 due to exceptional personal circumstances.

10. On 25 July 2024 the President issued her Decision to declare the Appellant's Request for Review of 5 July 2024 inadmissible as time-barred, having been submitted after the deadline of 3 July 2024. Section IV, paragraph 6.4.1(b) of the ARP Directive sets out "*A request for review by the President must be submitted by the Staff Member within 40 days of the date when the response of the Managing Director, Human Resources & Organisational Development was notified to the Staff Member…*"

11. On 23 August 2024, the Appellant wrote to the President providing evidence and justification for having missed the deadline and requesting a waiver of the deadline in accordance with Section V: Waivers, Exceptions and Disclosures of the ARP Directive, which provides that the "*President may grant a deviation from a requirement of the Directive*".

12. On 5 September 2024, the President informed the Appellant that she found no reason to revisit her Decision of 25 July 2024 and declined to issue a waiver.

13. In response to the Tribunal's request of 19 December 2024, on 6 January 2025 the Bank informed the Tribunal that to date, no President had exercised his or her authority to grant a deviation to the time limit for filing a request for review (Stage 2) (Section IV, paragraph 6.4.1(b) or to any other provision of the ARP Directive.

## III. The Appellant's Position

14. The Appellant argues that the President erred in determining her Request for Review of 5 July 2025 to be inadmissible and that her exceptional personal circumstances, as

explained to the President in her email of 23 August 2024, and the fact that the delay in her submission was not material, were such to warrant a waiver of the applicable timelines under Section V of the ARP Directive.

15. The Appellant had been ill with a serious illness, and it was only after disclosure of the illness to her Line Manager that she was subjected to unfair treatment. The Appellant asserts that before entering service she had discussed her illness with Cigna and had not been required to disclose it.

16. The Appellant was not aware that she had not observed the time limits in Section IV paragraph 6.4.1(b) of the ARP Directive, until she received the President´s Decision. It constituted an "oversight" on her part motivated by the serious "medical and personal challenges" that hindered her ability to plan and prepare her Request for Review. The medical challenges did not solely entail her pre-entry into service serious illness, which still provoked side effects and fatigue, but also surgery that required a three-week recovery period and then, the stress associated with the termination of her service. In addition, one of her parents had been ill and she had been obliged to travel to assist her.

## IV. The Respondent's Position

17. The Bank demonstrated in its response that the President's Decision was lawful by establishing that the application of time limits is (i) a non-discretionary matter and the President was *prima facie* correct in determining that the Appellant was out of time; (ii) international administrative law recognises very limited exceptions to the firm application of time limits, which do not extend to the circumstances of the Appellant, and (iii) the Appellant was in a position to meet the required deadline, and her failure to do so was a mistake and an " oversight" which she admitted and sought to rectify.

18. The Bank requested the Tribunal to refuse the Appeal, confirm the President's Decision and deny any remedies to the Appellant.

## V. The Tribunal's Evaluation

19. The Tribunal must decide whether the President of the Bank, in not granting the Appellant´s request for a waiver of the time limits to institute an action under Section V of the ARP Directive, properly exercised her administrative discretion. At the outset, the Tribunal reiterates the established and generally accepted limitations of every judicial review of discretionary decisions. As recognized under the Tribunal's established jurisprudence,

based on principles of international administrative law, the use of the word "may" in the regulatory framework for staff employment indicates that the designated official enjoys broad discretion in exercising his or her authority, such as the authority to approve a deviation or waiver from the rule. Accordingly, the scope for judicial review in such cases is limited, and the Tribunal will not substitute its views for discretionary decisions properly taken (Cf. EBRDAT 2019/AT/08). The Tribunal will generally defer to a discretionary decision so long as it falls within the bounds of reasonableness, is based on a thorough review of the available relevant facts, is not tainted by improper motives or procedures and is consistent with Bank law and international administrative law (Cf. EBRDAT 2021/AT/04 (preliminary decision), para. 73.

## 1. Anonymity

20. The Appellant requests to remain anonymous, and the Bank does not oppose this request. The Tribunal grants this request, recalling that it is inherent to an appeal that certain facts and opinions become known, both inside and outside the Bank. This being said, it is the Tribunal's approach to limit to the maximum extent possible, inter alia, the exposure of facts or descriptions that may identify participants in the process.

## 2. Applicable Law

### Bank's Internal Law

21. Section IV, paragraph 3.02 of the Directive on the Appeals Process ("Appeals Directive") provides as follows: "*In considering an Appeal, the Tribunal shall base its decision on the provisions of the Staff Member's contract of employment, the internal law of the Bank and generally recognised principles of international administrative law.* […]" Section IV, paragraph 3.03(b) of the Appeals Directive specifies that: "*When the Administrative Decision complained of is a Decision of a Discretionary Nature, the Tribunal shall uphold the Appeal only if it finds that the decision was arbitrary, or discriminated in an improper manner against the Staff Member or the class of staff members to which the Staff Member belongs, or was carried out in violation of the applicable procedure*."

22. Section IV, paragraph 6.4.1(b) of the ARP Directive, sets out the following: "(b) *A request for review by the President must be submitted by the Staff Member within 40 days of the date when the response of the Managing Director, Human Resources & Organisational Development was notified to the Staff Member …* ".

23. Section V of the ARP Directive provides that the "*President may grant a deviation from a requirement of this Directive*."

**Generally Recognized Principles of International Administrative Law**

24. The Tribunal has affirmed the importance of time limits to effective administration, stressing it as a matter of public policy:

> "The Tribunal agrees with the view that maintaining procedural time limits is consistent with international administrative law and widely recognized by international tribunals and courts. Procedures and time limits are very important in administrative law since its inception. This is because the administration works and acts in the public interest and if anyone having sufficient interest is of the opinion that the administration acted illegally, he or she should act quickly and imperatively within the time limit so that the matter is brought as soon as possible before a grievance system and finds the appropriate answer so that the regular work of the administration is not disrupted. This is the reason time limits in administrative law are of public order and short, in comparison with any other. And, this is the reason that they must be observed and if they have not been observed there is no remedy to the situation caused. Unless a time limit is extended under the law regulating it before the time limit ends, there is no possibility of reviving it at a later stage. This is a principle transcending the administrative law systems of national or international organizations and has become a general principle of administrative law, as an expression of inherent characteristics of administrative law. Thus, for instance, the EU Court of Justice ruled that the periods prescribed for instituting proceedings are a matter of public policy and are not subject to the discretion of the parties or of the Court. This also applies to the periods for lodging complaints which, from the procedural point of view, precede them and are of the same nature since they both contribute, with the objective of ensuring legal certainty, to the regulation of the same remedy" (Cf. EBRDAT 2017/AT/03, para. 4.10.)

25. Further, the UN Dispute Tribunal has emphasized the importance of adhering to time limits: "The Tribunal observes that 'justifiable grounds for the delay' must be genuinely extraordinary. They must be serious and beyond Applicant's control, in other words they should have prevented Applicant from acting (Cf. UNDT/2010/202)." (Cf. 2020/AT/03, para. 51).

26. With respect to a 90-day time limit, the World Bank Administrative Tribunal ("WBAT") has held that such prescriptions are "important for a smooth functioning of both the [World Bank] and the Tribunal (...)". The WBAT declined to excuse an applicant for his failure to observe a legal time limit even where the applicant had suffered from a paranoid breakdown for 2-3 weeks and insisted on the continuing character and severity of his mental illness and on his difficulty in working. The WBAT ruled that the legal time limits for filing an appeal must be observed notwithstanding the severity of the applicant's mental and physical weakness (see Setia, WBAT Decision No. 134, paragraphs 29-32, quoting Agerschou, WBAT Decision No.114, para. 42).

27. Other international administrative tribunals have also recognized the importance of adherence to time limits and the very limited circumstances in which they may exceptionally be set aside. For example, the Administrative Tribunal of the International Labour Organization ("ILOAT") has pronounced that "time limits are an objective matter of fact and strict adherence to them is necessary to ensure the stability of the parties' legal relations [citations omitted]." In its Judgement 4811, the ILOAT agreed with the findings and recommendation of the internal appeals body that an appeal be dismissed because it was filed three days after the applicable time limit:

> "The fact that an appeal lodged by a complainant was out of time renders her or his complaint irreceivable for failure to exhaust the internal means of redress, which cannot be deemed to have been exhausted unless recourse has been had to them in compliance with the formal requirements and within the prescribed time limit [citations omitted]. As the complainant's appeal . . . was lodged late, the present complaint is clearly irreceivable." (consideration 7)

The ILOAT has narrowly defined the very limited circumstances in which an exception may be made to the rule of strict adherence to the relevant time limit. The circumstances identified in the case law are: ''where the complainant has been prevented by *vis major* from learning of the impugned decision in good time or where the organisation, by misleading the complainant or concealing some paper from him or her so as to do him or her harm, has deprived that person of the possibility of exercising his or her right of appeal, in breach of the principle of good faith". (see ILOAT Judgment 3405, consideration 17).

### 3. Conclusion

28. The Appellant was notified of the MDHROD's response to her request for review of an Administrative Decision (Stage 1) on 7 May 2024. Accordingly, the 40 day deadline to request review by the President (Stage 2) expired on 3 July 2024. The Tribunal notes that the Appellant failed to meet this deadline by not filing her submission until 5 July 2024. Thus, the request for review by the President of the Administrative Decision (Stage 2) was not filed within the time limits established by Section IV, paragraph 6.4.1(b) of the ARP Directive.

29. Further, the Tribunal notes that, pursuant to Section V of the ARP Directive, the "*President may grant a deviation from a requirement of this Directive*." The use of the word "may" indicates that any such decision to grant a deviation from a requirement of the ARP Directive lies within the discretion of the President.

30. It follows from the above that the Tribunal's competence in the present case is limited to a review of whether the President's Decision on admissibility falls within the bounds of reasonableness, is based on a thorough review of the available relevant facts, is not tainted by improper motives or procedures and is consistent with Bank law and international administrative law (see above para. 19). Applying these criteria to the case at hand, the Tribunal does not find any legal error.

31. First, it is clear from the contested decision that the President was fully aware of the relevant facts of the Appellant's situation and took them into consideration.

32. Further, the President's view that there were no "exceptional circumstances" was consistent with the general principles articulated by various international administrative tribunals, and thus fell within the bounds of the President's discretionary authority.

33. The Tribunal accepts that the Appellant's overall personal and professional circumstances at the time were difficult. She was recovering from a long and serious illness that had left her with a number of side effects, plus she had been obliged to assist with a parent´s illness overseas. In addition, she was under severe stress on account of the Bank's decision not to extend her contract of employment. However, none of these factors – individually or taken together – amounted to a situation which could have prevented her effectively from submitting her Request for Review to the President (Stage 2) within the prescribed time-limit. Therefore, the Tribunal finds no grounds to overturn the President's

Decision of 5 September 2024, conveyed in the following words: "While the personal circumstances you set out are regrettable, I do not consider that they are such as to be beyond the legislative foresight of the ARP Directive or otherwise as to warrant exceptional treatment. I particularly note that there is no compelling indication in your email that you were strictly prevented from meeting the applicable deadline by your circumstances. In this respect it appears that the delay was in substance on account of a simple oversight as you note at the outset of your second paragraph".

## VII. Costs

34. Section IV paragraph 8.06 (a) of the Appeals Directive provides:

> If it upholds an Appeal, in whole or in part, the Tribunal may order that the respondent reimburse the appellant for such reasonable expenses, including reasonable legal costs, the appellant has incurred in presenting the Appeal. Exceptionally, the Tribunal may order that the respondent pay all or some part of the appellant's legal costs where the Appeal has not succeeded.

35. As the Appellant was not represented by counsel and has not requested the Tribunal to provide reimbursement, it is not necessary to consider whether the Respondent should bear the Appellant's legal costs.

## VIII. Decision

36. The Tribunal rejects the Appeal in its entirety.

**For the Administrative Tribunal**

**Maria Vicien-Milburn**
**Chair of the Panel**
**20 February 2025**