

**IN THE APPEAL BEFORE THE  
EBRD ADMINISTRATIVE TRIBUNAL**

The Appellant

v.

European Bank for Reconstruction and Development

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**Decision by the Administrative Tribunal**

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23 May 2017

## GLOSSARY

*Capitalised terms in this Decision defined under Section 1.03 of the Appeals Procedures have the meanings ascribed to them therein.*

<b>26 August Document</b>	a document submitted by the Appellant (the “Staff Member”) on 26 August 2016 which he identified himself as a “RARD”
<b>Appeal</b>	a document submitted by the Appellant to the Tribunal against the PARD on 23 March 2017
<b>APs</b>	Appeals Procedures
<b>Administrative Decision</b>	the 25 May 2016 decision by the MDHR upholding the Appellant’s 2015 performance rating, concluding the Normal Administrative Process
<b>Administrative Review</b>	the process under the GPs culminating in a PARD, to review either (i) an “Administrative Decision” under Section 11 of the GPs, commenced through the submission of a valid RARD or (ii) a jurisdictional matter under Section 10.02 or 10.03 of the GPs
<b>EBRD</b>	European Bank for Reconstruction and Development (the “Bank” or the “Respondent”)
<b>GC</b>	the EBRD Grievance Committee
<b>GC Report and Recommendation</b>	the report and recommendations of the Grievance Committee concerning a jurisdictional matter, dated 13 December 2016
<b>GPs</b>	Grievance Procedures
<b>internal law</b>	the entirety of the sources of law identified under Section 3.02 of the APs.
<b>MDHR</b>	the Managing Director for Human Resources
<b>ILOAT</b>	the International Labour Organisation Administrative Tribunal
<b>NAP or Normal Administrative Process</b>	the process set out in Section 2 of the GPs for EBRD staff members to seek redress against, amongst others, an initial decision in relation to their work or career, including (but not limited to), annual performance ratings
<b>RARD</b>	Request for Administrative Review Decision, in accordance with the GPs
<b>Response</b>	Bank’s Response to the Appellant’s Submission of Appeal dated and submitted on 27 April 2017
<b>PARD</b>	the President’s Administrative Review Decision dated 3 January 2017, further to the GC Report and Recommendation

**Tribunal**

the EBRD Administrative Tribunal

**UNDT**

the United Nations Dispute Tribunal

**WBAT**

the World Bank Administrative Tribunal

## **1. Procedural history**

- 1.1 On 23 March 2017, the Appellant submitted his appeal to the Tribunal challenging decision of the Bank's President of 3 January 2017. The Staff Member contested his 2015 performance appraisal because he was downgraded from a rating three (fully meets expectations). The rating resulted from the so-called internal calibration process.
- 1.2 On 23 March 2016, the Staff Member requested a Director in Human Resources Department to extend the 40 working days period for a review of his initial appraisal rating on account of medical grounds. He was on an extended medical leave on account of a chronic spinal disease (major surgery in 2012) and other chronic conditions. In his e-mail to the HR Director, the Staff Member requested that the submission date for a review of the initial appraisal be deferred to start 40 days after he is declared fit to work again. He also relied on verbal assurances received from an HR Business Partner. However, on 24 March the HR Director informed the Staff Member that the 40 day time limit would not be extended.
- 1.3 Following the decline, the Staff Member prepared a Request for a Review of the Initial Decision (the RRID) and submitted it on 4 May, 2016 within the 40 working day requirement. He challenged the Initial Decision and characterized it as "misstatement and falsehood or inappropriate methodology". His objections were supported with an evidential paper trail. The MDHR upheld the initial decision on 25 May 2016. The latter decision was not dated but the Staff Member accepts this date of the decision.
- 1.4 On 18 July 2016, the Staff Member requested the MDHR to suspend the time limit for submitting the RARD, due to his health conditions, until he has returned to normal good health "with the three months submission period set to run from the return to normal working". The MDHR replied that it did not agree to prolong the procedural time limit for submission of the RARD and informed the Staff Member that the pertinent deadline to submit the RARD was 26 August 2016.
- 1.5 In August 2016, the Staff Member wrote several e-mails to the Office of the President, the Head of the EBRD legal services and the MDHR requesting an extension of the RARD submission deadline. He argued that to perform the RARD was beyond his health capacity at the time, and in contradiction to medical advice. The addressees of these e-mails again declined to prolong the deadline. They argued that it is administratively unacceptable to

prolong the deadline for an indefinite period of time and that the Staff Member's extensive correspondence demonstrated that he was capable to submit the RARD.

- 1.6 On August 2016, the Staff Member submitted his RARD to the Grievance Committee copying the document to the Office of the President. This was done within the prescribed time period. The short RARD requested again an extension of the procedural time limit for filing the Staff Member's complaint after he returned back to work. There is no doubt that he submitted the RARD when he was still signed-off as not fit to work and indicated that the written exchanges with the Bank officers had aggravated his symptoms of illness. He argued, *inter alia*, that, whilst not life threatening, his written engagements during July and August 2016 had negatively impacted the quality of the submitted RARD. Under the circumstances, the Grievance Committee Chairman requested the Staff Member and the EBRD to provide their submissions on these issues by 2 December 2016, to which both Parties responded in time.
- 1.7 In a letter of 3 January 2017, the President informed the Staff Member that he has "*considered the Report and Recommendation and have taken the decision to accept the Grievance Committee's recommendation that it has no jurisdiction to consider the document lodged by you on 26 August 2016 due to its non-compliance with the requirements under Section 8.02 of the Grievance Procedures*". The President also informed the Staff Member that his Decision "*exhausts the process of Administrative Review provided by the GPs*".
- 1.8 The Staff Member submitted an appeal against the Bank on 23 March, 2017. He requested the Tribunal to set aside the Administrative Review Decision of the President of 3 January 2017 and grant him also several other reliefs set forth in Section 4.1 of the Appeal<sup>1</sup>.
- 1.9 On 1 April 2017, the Appellant raised several legal questions. In particular, he complained that he had not received the GC report relating to jurisdiction pursuant to Article 10.03 of the GPs. The Staff Member learned from the President's Decision accepting the Grievance Committee's recommendation that the Grievance Committee had concluded that it had no jurisdiction to consider the Staff Member request on August 2016.
- 1.10 At the request of the Tribunal, the Bank replied to the Appellant's complaints and questions on 19 April 2017. The Bank argued that the GPs do not require GC to deliver its Report on

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<sup>1</sup> See Section 2.5 of this Decision of the Administrative Tribunal.

matters of jurisdiction to the Staff Member. The Bank contrasted the express requirement for delivery by the GC of a Report and Recommendations on the merits of a RARD to the Appellant under Article 11.01 (a) of the GPs relating to non-jurisdiction administrative decisions with the GC Report and Recommendation on its jurisdiction (Sections 10.03 and 10.02 (c) of the GPs). Accordingly, the Bank concluded that not providing the Appellant with the GC Report and Recommendation on its jurisdiction does not constitute a breach of the GPs.

- 1.11 The Bank's Response to the Appellant's submission of Appeal was delivered to the Tribunal on 26 of April 2017. The Bank requested the dismissal of the Appeal.
- 1.12 The Tribunal examined the Parties submissions and the documents delivered. It held internal deliberations in camera on 4 May, 2017 and during the following weeks by way of exchange of e-mails. The Tribunal also considered the finding of facts made by the Grievance Committee and in the GC's Report.

## **2. Summary of the Appellant's position**

- 2.1 The Appellant argued that the Administrative Review Decision of the President did not answer the main legal issue raised in his RARD, namely, "*whether the MDHR, acting on behalf of the President, should have granted the requested extension of the time limit due to the serious medical and occupational health circumstance of the Staff Member*"<sup>2</sup>. The Appellant is of the opinion that the President instead of addressing the said question of law considered an unrelated issue, "*which was whether the RARD was admissible given that it was not in line with the formal requirements provided in the GPs*"<sup>3</sup>.
- 2.2 The Appellant pointed out that it is a common practice of the EBRD that the staff on an extended medical absence are discouraged from engaging in Bank processes, so that they can concentrate on their recovery. In the opinion of the Appellant, this is at complete variance with the refusal to accept his requests for extending the pertinent time limit or providing the Staff Member a budget to be used for employing a suitable qualified person to

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<sup>2</sup> Section 5.1 of the Appeal.

<sup>3</sup> *Ib.id.*, Section 5.2.

assist him in preparing the substantive RARD<sup>4</sup>. The Appellant indicated that he made aware the MDHR that he believed that there was no Staff Legal Advisor in place “during the submission period for the RARD<sup>5</sup>”.

- 2.3 The Appellant contends that the G.C. and the President of the EBRD are competent to extend the requested deadlines despite the fact that the Grievance Procedures do not explicitly provide for such powers, “*because due process and duty of care are general principles of international administrative law which are legally superior to the internal legal frameworks of all International Organisations (...)*”<sup>6</sup>.
- 2.4 The Appellant indicated that the case law of the ILOAT relied upon by the Bank was irrelevant because the facts in cases referenced by the Respondent were different than those in the case of the Staff Member<sup>7</sup>.
- 2.5 In summary, the Appellant concluded that the challenged decision is “fatally flawed” and, therefore, he requested the Tribunal to grant him the following remedies:

- “1. *To set aside the Administrative Review Decision of the President of 3 January 2017 because it is tainted with the following flaws: errors of procedure and error of law:*
- i). *Article 11.01 (a) of the GPs<sup>8</sup> provides that the Grievance Committee shall submit its Report to the Staff Member. This was never fulfilled despite an email sent by the Staff member on 27 February 2017 reminding the Grievance Committee of this obligation<sup>9</sup>. Consequently, the EBRD did not respect its own internal rules; due process and principles (the right of the Staff Member to know the basis on which an adverse administrative decision is taken); and*
  - ii). *The Administrative Review Decision of the President does not address the question of law raised in the grievance submitted by the Staff Member, namely whether or not the MDHR (acting on behalf of the President) or*

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<sup>4</sup> *Ib.id.*, Sections 4.2, 4.3 and 4.4.

<sup>5</sup> *Ib.id.*, Section 5.8.

<sup>6</sup> *Ib.id.*, Section 5.10.

<sup>7</sup> *Ib.id.*, Section 5.11.

<sup>8</sup> Article 11 of GPs: “11.01 Report of the Grievance Committee (a) As soon as possible after the conclusion of its proceedings and the closing of the record in a matter referred or its consideration by the President, the Grievance Committee shall submit a written Report of the Grievance Committee to the President and, at the same time, to the Staff Member”.

<sup>9</sup> See Exhibit 11 – e-mail from the Staff Member to the Grievance Committee requesting the Report of the GC, 27 February 2017.

*Grievance Committee should have extended the procedural time limit in order to allow the Staff Member to submit his grievance before the Grievance Committee. Instead, the Administrative Review Decision Addressed a different issue, namely, whether the RARD respected the formal requirements provided by Article 8.02 of the GPs.*

2. *To order the EBRD to provide the Staff Member with a reasonable time limit allowing the Staff Member to file a grievance before the Grievance Committee in full respect with art. 8.02 of the GPs. To this end, the Staff Member suggests that the Tribunal order the EBRD to seek independent occupational health advice from a suitable expert practitioner and on terms of reference acceptable to the Staff Member, to provide guidance on what would be a reasonable time limit.*
3. *To consider granting moral damages at the maximum punitive level available resulting from the lack of duty of care shown to the Staff Member by the EBRD. Breach of duty of care arises on the failure of the EBRD to grant a reasonable request for extension of procedural time limit and the resulting pain, suffering and distress arising on insistence to adhere to the time limits prescribed by the Normal Administrative Process; Grievance Process and the Appeals Procedure. Breach of duty of care arises on the disregard paid to all other solutions proposed by the Staff Member such as alternative timetables or the provision of resources to assist in the process and in total disregard of the multiple warning of harm that engagement in the processes was causing to the Staff Member. Breach of duty of care arises on failure of the MDHR to appoint independent, expert occupational health advisors to assess the Staff Member and advise on the issues presented. Finally breach of duty of care arises out of the disregard shown by the EBRD for its own common practice, namely that staff on medical leave should not be expected to participate in EBRD processes and work type activities.*
4. *In recognition of the health issues of the Staff Member and the limitations this places in accessing the grievance procedures through a documented process and in recognition of the overriding imperative that due process be seen to be respected and the interest of justice served, the Staff Member requests that the Tribunal consider ordering the EBRD that a budget of £10,000 be made available to the Staff Member to be used in contracting suitably qualified assistance in preparing the substantive*

*RARD, for which an extension of the submission date is being requested by this appeal.”*

### **3. Summary of the Respondent’s position**

- 3.1 The Respondent asks the Tribunal to dismiss the Appeal as the PARD was not tainted with any irregularity<sup>10</sup>. The MDHR explained the Appellant why the procedural limits for submission of a RARD cannot be extended giving its reasons stipulated in the MDHR communication referring, *inter alia*, to uncertainty of when the Appellant would return to work, his ability to prepare a RARD and the need to remedy the pending matter in a timely manner.
- 3.2 The Respondent pointed out that the 26 August Document submitted by the Appellant<sup>11</sup> lacked the majority of substantive particulars required by Section 8.02 of the GPs. In its Report and Recommendation of 13 December 2016, the GC informed the President that the Appellant did not provide the information, required by the said rules of the GPs. Moreover, the MDHR did not have any power to release the Staff Member from the pertinent time limits set forth in the relevant provisions of the GPs. Furthermore, the GC concluded that it also did not have powers to entertain the request of the Appellant to adjourn the administrative process. On the basis of the GC Report and Recommendation, the President issued its PARD decision of 3 January 2017. The decision indicated that the document submitted by the Appellant was unreceivable because it failed to comply with requirements under Section 8.02 of the GPs. In the opinion of the Respondent, the requirements listed in Section 8.02 of the GPs are ones of substance and not of form as characterized by the Appellant.
- 3.3 The Respondent argued that pursuant to Section 10.03 of the GPs, the GC has the power to conduct a preliminary hearing on the issue of its own jurisdiction and at its own initiative<sup>12</sup>. It further pointed out that “*not providing the Appellant with the GC Report and Recommendation on its jurisdiction does not constitute a breach of process*”<sup>13</sup>. Furthermore, the Respondent emphasized that the Appellant has not demonstrated that the non-delivery of this Report has prejudiced his due process rights.

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<sup>10</sup> Response to the Appellant’s Submission of Appeal of 26 April 2017, at p. 7.

<sup>11</sup> The Appellant identified the pertinent document as a RARD.

<sup>12</sup> Response to the Appellant’s Submission of Appeal, Section 5.1, at p. 10-11.

<sup>13</sup> *Ib.id.*, at 11.

- 3.4 The Respondent indicated that it acted fairly and impartially in light of the Appellant's health conditions. The MDHR explained that the request to postpone the deadline for 3 months following the Staff Member's return to work is not administratively acceptable due to the fact that it is not known when he will be fit to return to work. However, the MDHR remarked that the Staff Member was informed that his submission did not need to be very extensive, and that "*should further information from you be required after you have submitted your RARD, this will be requested*"<sup>14</sup>.
- 3.5 The Respondent pointed out that there is no discretion for the GC to admit a non-compliant RARD and indicated that the Appellant was informed that he could obtain assistance in preparing the RARD from the Ombudsman or an independent lawyer<sup>15</sup>.
- 3.6 Finally, the Respondent referred to several precedents confirming that the time limits prescribed for instituting proceedings constitute public policy and are not subject to the discretion of the parties or of the courts/administrative organs<sup>16</sup>.
- 3.7 The Respondent emphasized that the 26 August Document does not conform to the requirements of Article 8.02 of the GP and, therefore, it should not be considered.
- 3.8 Article 8.02 of the GP is clear in the requirements for a request for an Administrative Review Decision to be filed by the deadline. Article 8.02 of the G provides that:

*"In the Request for an Administrative Review Decision the Staff Member shall indicate, as clearly as possible:*

- (i) The administrative Decision complained of and date it was made;*
- (ii) The basis of the Staff Member's Request for an Administrative Review Decision and in particular, the basis upon which the Staff Member alleges that the Administrative Decision was incorrectly decided in light of the provisions of the Staff Member's contract of employment, the internal law of the Bank and generally recognized principles of internal administrative law;*

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<sup>14</sup> MDHR e-mail of 17 August 2016.

<sup>15</sup> MDRB e-mail to the Appellant of 25 July, 2016.

<sup>16</sup> Response, Sections 5.4. 23-5.4.29.

- (iii) *Any fact supporting the Staff Member's contentions, including, if the Administrative Decision being challenged is a Decision of a Discretionary Nature, the facts supporting the contention that the decision was arbitrary or unjustifiably discriminated against the Staff Member or the category of Staff Members to which he/she belongs;*
- (iv) *The steps taken by the Staff Member to seek redress through the Normal Administrative Process (if applicable); and*
- (v) *The relief sought by the Staff Member by the way of an Administrative Review Decision reversing or modifying the Administrative Decision."*

3.9 Of the five stated requirements in Article 8.02 of the GP, the 26 August Document complied with only one, namely, point (i) identifying the "*Administrative Decision complained of and date it was made*" (see paragraph 1.7 above). No details of any kind relating to points (ii), (iii), (iv) and (v) were submitted. The 26 August Document is therefore deficient as a request for an Administrative Review Decision in that it does not give the particulars, whether general or specific, required under Article 8.02 of the GP.

3.10 Further, the Appellant was fully aware of the deficiencies under Article 8.02 of the GP of the 26 August Document he prepared and submitted. In the pertinent document, he specifically requested to "**adjourn**" the process "*pending receipt of the substantive parts of the RARD*". The Appellant indicated that he was unable to prepare an adequate RARD.

#### **4. Tribunal's evaluation**

4.1 The Tribunal shares the Grievance Committee's evaluation of the Appellant's request for an Administrative Review Decision. We agree that the Appellant RARD is unreceivable. The document was submitted in time as required by Articles 8.01 and 8.03 of the GPs but it failed to comply with all requirements of Article 8.02, except subparagraph (i). The Appellant did not provide any information in respect of subparagraphs (ii), (iii), (iv) and (v).

- 4.2 The Appellant requested an “adjournment” to prepare “an adequate RARD”, thereby admitting that the document he submitted was non-compliant.
- 4.3 The Tribunal agrees that there is no discretion for the Grievance Committee to admit a non-compliant RARD because the provisions of Sections 8.01-8.02 are prescriptive. We are of the opinion that providing information required by Section 8.02 was not beyond the capacity of the Appellant, taking into account he actively engaged into controversies with several Bank officers about the possibility to obtain an extension of the time limit, during the time in which he could have written the RARD. It is also worthy of note that the Appellant has not provided the requisite information “as clearly as possible” pursuant to Section 8.02.
- 4.4 Furthermore, he was informed in writing by the MDHR that his submissions do not need to be very extensive. “*Should further information from you be required after you have submitted your RARD, this will be requested*”<sup>17</sup>.
- 4.5 The Appellant was well informed by MDHR that the pertinent Administrative Decision may be challenged by way of a written request to the President in accordance with Sections 8.01, 8.02 and 8.03 of the Grievance Procedures<sup>18</sup>.
- 4.6 Under the circumstances described above, the Grievance Committee unanimous conclusion that the RARD submitted by the Appellant was unreceivable was fully justified. Consequently, the Grievance Committee recommended the President that it lacked jurisdiction to consider the defective “RARD”.
- 4.7 On the basis of the GC Report and Recommendation, and consistent with its findings, the President issued its decision on jurisdiction. The PARD informed the Appellant that the 26 August Document submitted by the Appellant as his RARD, was **unreceivable** because it did not comply with the prescriptive rules set forth in Section 8.02 of the GPs. The PARD sent to the Appellant on January 3, 2017 indicated that it exhausted the Administrative Review under the GPs to the Appellant. The Tribunal agrees with the Respondent that the Appellant was out-of-time under the GPs to file a new RARD<sup>19</sup>.

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<sup>17</sup> MDHR e-mail dated 17 August 2016.

<sup>18</sup> The GPs were attached to the letter sent to the Staff Member by MDHR. See Exhibits of the Respondent in Response to the Appellant’s Submission of Appeal, p. 5.

<sup>19</sup> Response, p. 9.

4.8 Since the 26 August Document characterized by the Appellant as a RARD did not comply with the requirements of Section 8.02 of the GPs, the GC correctly recommended the President that it had no jurisdiction to consider the document which did not specify the particulars of the administrative decision to be reviewed by the GC, as required by the indicated provision of the GPs<sup>20</sup>. **It is also important to note that the essence of the 26 August Document was a request by the Appellant to the GC for an extension of the deadline to submit a RARD.** This request for prolonging the time limit provided by the internal regulations of the applicable EBRD laws had two forms. First, the Appellant requested the GC to “adjourn” the process until he will become fit to undertake his “normal working duties”. Second, frequently, the Appellant requested GC, MDHR and several EBRD officers to extend the procedure for an indefinite period of time. In essence, he required the 3 months submission period to commence after he returns to work<sup>21</sup>. The Tribunal shares the opinion of the MDHR that given the fact that the dispute and the Administrative Decision Concerned the Appellant’s 2015 performance rating, the Respondent could not suspend a review of the pertinent Administrative Decision for an indefinite period of time. Apart from the absence of the MDHR competence to prolong the legal time limits, reviewing the challenged Administrative Decision in a timely manner was an additional practical consideration raised by the Respondent<sup>22</sup>. The Tribunal shares the Respondent’s argument that given the Appellant’s health conditions it could be years when the “*Appellant would or could return to work*”<sup>23</sup>. It is also worth mentioning that it is by no means certain that the Staff Member will be able to return to work. Hence, accepting his request for an indefinite period of time until he will be fit to return to work could be not only inconsistent with efficient administration but could deprive the Staff Member an opportunity to review his 2015 performance rating (e.g. if he could not return to work for medical reasons). **The Respondent’s decision to uphold the procedural time limits was consistent with principles of international administrative law.**

4.9 The Appellant argued that it is a “*very common practice for complainants to file incomplete complaint forms and for the ILOAT to systematically grant the complaint a period of time to complete their complaint*”<sup>24</sup>. However, he overlooked that the GPs, unlike the ILOAT Statute, does not provide for the possibility that an extension of time may be granted to

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<sup>20</sup> Response, Section 3.3, at p. 8.

<sup>21</sup> Appellant’s Submissions of Exhibits to the Appeal, exhibits 1 and 3.

<sup>22</sup> Response, para 5.49.

<sup>23</sup> *Ib.id.*

<sup>24</sup> Appellant’s Submission of Appeal, para 5.11.

submit a RARD beyond the time limits provided in Section 8.03 of the GPs. However, it is worth mentioning that the MDHR sent information to the Appellant that his RARD “*does not need to be very extensive*” and that it may be supplemented with additional information at the request of the GC. However, neither the ILOAT Statute nor the flexible interpretation of the GPs by the MDHR allowed for prolongation of the procedural time limits.

4.10 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 subjected 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<sup>25</sup>.

4.11 As reiterated and documented by the Respondent in its exhibits submitted to the GC, the WBAT indicated that in relation to the 90-day time limit such prescriptions are “far too important for a smooth functioning of both the [World Bank] and the Tribunal (...)”<sup>26</sup>. In *Setia v. IBRD*, the WBAT ruled that the Tribunal may not excuse an applicant for his failure to observe a legal time limit even in a case when the applicant had suffered from a paranoid breakdown for 2-3 weeks and insisted on the continuing character and severity of his mental

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<sup>25</sup> *Weyrich v. Commission of the European Communities*, Respondent’s Exhibits, Exhibit 3.

<sup>26</sup> *Agerschon v. IBRD-WBAT Decision No. 114*, para 42, Respondent’s Exhibits, Exhibit 5.

illness and on his difficulty in working. The WBAT ruled that it had to observe the legal time limits for filing an appeal despite the severity of the applicant's mental and physical weakness<sup>27</sup>.

4.12 The Appellant's complaint that he could not have been able to complete a RARD in the absence of an appointed Staff Legal Advisor due to his health conditions is not persuasive. First, staff on medical leave are not exempt from GPs. Second, GPs provide other instruments for appellants to obtain independent assistance (e.g. the Ombudsman or a lawyer)<sup>28</sup>.

4.13 The Tribunal established that the MDHR acted fairly to the Appellant. It answered his numerous e-mails and carefully explained the legal basis of its decisions. Moreover, it frequently informed the Appellant about various options available to the Staff Member in a case before the GC<sup>29</sup>.

4.14 The Respondent admits that the GC failed to respond to the Appellant's request to be provided with a copy of a Report and Recommendations of the GC relating to jurisdiction<sup>30</sup>. The Tribunal is of the opinion that the whole report should have been delivered to the Appellant and we disagree with the Respondent's arguments that the GC is not bound to deliver to the Appellant its report and recommendation relating to jurisdiction. However, we agree that the Appellant has not proved that the pertinent non-delivery of a part of the GC Report and Recommendation adversely affected his due process right.

## 5. Decision

On the basis of the foregoing analysis, the Tribunal acting by a panel composed of Judges Giuditta Cordero-Moss, Spyridon Flogaitis and Stanisław Sołtysiński (Chairman), hereby decides that the Appellant's claim that the Respondent violated the international administrative law principle by refusing to "adjourn" or extend the procedural time limit for filing an appeal is not well founded. The Tribunal also found that the PARD was not tainted by errors of law or procedure, but

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<sup>27</sup> Respondent's Exhibits, Exhibit 6.

<sup>28</sup> See Sections 4 and 9 of the GPs.

<sup>29</sup> See, for instance, the explanations regarding consulting the Ombudsman, assisting the Staff Member by another Staff Member or an outside lawyer before the GC. The Response, para 5.4.18-5.4.20.

<sup>30</sup> Response, para 5.2.1-5.2.5.

constitutes a legitimate exercise of administrative power and, therefore, the Appellant's claim is dismissed in full.

For the Administrative Tribunal

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Stanisław Sołtysiński  
Professor Dr.juris