

## Decision No. 151

Mariam Yousufzi,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal, composed of E. Lauterpacht, President, R. A. Gorman and F. Orrego Vicuña, Vice Presidents and P. Weil, A.K. Abul Magd, Thio Su Mien and Bola A. Ajibola, Judges, has been seized of an application, received on July 24, 1995, by Mariam Yousufzi, against the International Bank for Reconstruction and Development. The Respondent filed requests, which were granted, to separate the jurisdictional issues from the merits and to file an answer limited to the jurisdictional issues. The usual exchange of pleadings took place. The case was listed on August 5, 1996.

**The relevant facts:**

2. The Applicant joined the Bank on March 8, 1993 by accepting a position with the Contract Temporaries Assignment Program (C-TAP Program). With effect from November 22, 1993 her appointment was converted to a two-year fixed term appointment and she transferred to the Project Financing Division of the Cofinancing Financial Services Department.

3. By memorandum, dated April 13, 1994, to one of the doctors of the Health Services Department, Health Services Staff (HSDHS), the Assistant Personnel Officer, Personnel Management Department, Central Units Team (PMDCU), informed the doctor that the Applicant had indicated that she was unable to carry out the full scope of her duties as Staff Assistant because of health related issues and requested a fitness-for-duty examination.

4. By letter, dated April 18, 1994, the Applicant's physician advised that due to worsening of her symptoms, she had prescribed a remedy and had asked the Applicant to refrain from certain manual activities which would worsen the underlying problem. It was also stated that the Applicant had been referred to a surgeon for evaluation for surgery.

5. By memorandum, dated April 22, 1994, to the Assistant Personnel Officer, PMDCU, one of the doctors from HSDHS stated that in his opinion the Applicant was medically unfit for duty now and for the next twelve months.

6. By memorandum to the Applicant, dated April 28, 1994, the Assistant Personnel Officer, PMDCU, recorded the minutes of a meeting she had had on April 26, 1994, with the Applicant and her husband, at which the Assistant Personnel Officer had explained to the Applicant the procedure regarding termination for ill health and the additional granting of thirty days' sick leave to carry her through most of her sixty-day termination notice period.

7. By memorandum, dated April 29, 1994, to the Applicant, the Director, Personnel Management Department (PMD), gave sixty calendar days' notice of termination to the Applicant, in accordance with Staff Rule 7.01, para. 7.03, in view of her ill health, which, as he explained, precluded her from being able to perform her duties. Her appointment was to end on June 30, 1994.

8. By memorandum, dated May 10, 1994, to the Applicant the Chief Personnel Officer, PMDCU, confirmed the

specific conditions of the Applicant's leaving the service of the Bank as a consequence of ill health.

9. By letter to the Vice President, Management and Personnel Services (VPMPs), dated July 13, 1994, the Applicant requested administrative review of the decision to terminate her employment for ill health and reinstatement as an employee of the Bank. She attached memoranda from supervisors who had given her good evaluations of her performance for the period she worked with them while on the C-TAP program.

10. By letter to the Applicant, dated July 27, 1994, the Director, PMD, denied her request for reinstatement. After further correspondence, the Applicant filed an appeal with the Appeals Committee on September 27, 1994. In its report, dated March 7, 1995, while noting that one week subsequent to the certification of the doctor, HSD, was insufficient for the Applicant to search for alternative employment, the Appeals Committee denied the Applicant's requests for reinstatement as a staff member of the Bank and for payment of her salary for the remainder of the term of her contract. By letter to the Applicant, dated March 9, 1995, the Vice President, MPS, accepted the Committee's recommendations. The Applicant received this letter on March 28, 1995.

11. The Respondent has raised some objections to the jurisdiction of the Tribunal based on Article II of the Statute of the Tribunal, which requires that an application to the Tribunal be filed within 90 days of the receipt of notice that the relief asked for will not be granted. The Applicant has conceded that she did not comply with the Statute's ninety-day time limit, having filed her application on July 24, 1995 when the time limit for filing her application was June 26, 1995.

**The Applicant's main contentions on the jurisdictional issue:**

12. Article II of the Statute of the Tribunal is not an absolute bar to the Tribunal's power to hear cases that are filed outside of the ninety-day period.

13. The Applicant is unemployed and she did not have the resources to retain counsel or to procure the services of counsel on a contingency basis. The Applicant had either to appear pro se against the Legal Department of the World Bank or to exercise due diligence in securing the services of counsel to assist her with her claim as quickly as she could. The Applicant exercised due diligence in securing the assistance of counsel and, therefore, her lack of funds to secure the service of counsel qualifies for exception under the "exceptional circumstances" standard.

14. The remedy sought by the Applicant, to a large extent, is an equitable remedy and, therefore, the legal defense of the statute of limitations does not apply.

15. Since the Tribunal applies international law then by analogy the Tribunal also applies equity in its jurisprudence because equity is part of international law. The Applicant properly anticipated and addressed in its briefs in the present case the equitable defense of laches that the Respondent could raise. If the Respondent is successfully to plead that the Applicant is barred by the equitable doctrine of laches, then the Respondent must show that the delay was unreasonable and that it suffered harm or undue prejudice, which it has not done.

16. Because the Tribunal has not stated that the "exceptional circumstances" standard is the exclusive standard for granting redress for people who for some reason file their application out of time, the Tribunal in its sound discretion may use its equitable powers to suspend the ninety-day statute of limitations if it finds that the Respondent is not prejudiced or harmed in any way, or that the delay was not unusually long.

**The Respondent's main contentions on the jurisdictional issue:**

17. The application is time-barred and should be held inadmissible.

18. The Tribunal has previously declined to rule that lack of counsel is an exceptional circumstance and,

therefore, sufficient justification to excuse a failure to observe the time limits set forth in the Tribunal's Statute. The Tribunal's Statute neither imposes financial costs on filing applications, nor requires that applications be filed by an attorney, nor requires that an attorney be obtained as a prerequisite for initiating a legal proceeding. The Applicant's alleged lack of funds and delay in obtaining legal counsel would not, therefore, have put the Applicant under pressure and prevented her from complying with the prescribed time limits.

19. The Applicant fundamentally misunderstands the doctrine of laches which is not recognized in the Tribunal's jurisprudence. It establishes a time-bar to be invoked by the defendant, not a release from a time-bar to be raised by the plaintiff.

20. Neither the Statute of the Tribunal nor its jurisprudence distinguish between legal and equitable remedies. Regardless of the type of relief requested, prior decisions of the Tribunal establish that the Applicant is bound by the prescribed time limits set forth in the Statute.

21. The Applicant may not circumvent her legal burden of proving "exceptional circumstances" under the Statute by asserting additional equitable rights not recognized by the Tribunal. Because the Applicant is bound by the statute of limitations under Article II and "exceptional circumstances" is the proper and exclusive standard to determine any exception from those limits, any reference to a laches defense is out of order.

### **Considerations:**

22. The jurisdictional objection raised by the Respondent is based on Article II of the Statute of the Tribunal which provides:

No ... application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:

(ii) the application is filed within ninety days after....

(b) receipt of notice, after the applicant has exhausted all the remedies available within the Bank Group, that the relief asked for ... will not be granted....

23. The Applicant does not deny that she filed her application to the Tribunal twenty-eight days after the expiry of the ninety-day period prescribed by Article II of the Statute of the Tribunal. However, she invokes "exceptional circumstances" to justify her delay and to render her application admissible. The circumstances she characterizes as "exceptional" relate to her financial difficulties resulting from the termination of her employment with the Bank and the ensuing shortage of resources necessary to engage an attorney to handle her application.

24. In answer to the Respondent's invocation of Article II of the Statute the Applicant contends that this Article is not a general bar to the Tribunal's power to hear cases. She contends that the Tribunal must not declare her application time-barred because there exists in equity the doctrine of "laches".

25. The Applicant in effect regards the time limits prescribed by Article II as no more than guidelines that may in particular cases be disregarded. The Tribunal does not subscribe to this view. In Agerschou (Decision No. 114 [1992], para. 42), the Tribunal emphasized the importance of the time limits prescribed by Article II of the Statute "for a smooth functioning of both the Bank and the Tribunal". Under the terms of Article II the specified time limits may be disregarded only when the Tribunal finds that exceptional circumstances exist.

26. The Tribunal also does not accept the Applicant's contention that enforcement of the time bar prescribed by Article II is contingent on the Respondent's showing that it suffered injury or damage resulting from the Applicant's failure to observe the prescribed time limits. Time limits are not prescribed in the interest of the Respondent alone. Rather, they have a wide purpose. They are prescribed as a means of organizing judicial proceedings in a reasonable manner. Their object is to prevent unnecessary delays in the settlement of disputes. As such they are of a mandatory nature and are enforced by courts in the public interest.

27. As to the invocation of the doctrine of “laches”, this can have no relevance in a situation where the time limit is prescribed by the Statute of the Tribunal. Moreover, even if the doctrine were relevant, it is directed against non-vigilant parties and is not meant, as the Applicant seems to argue, to be used as a justification for untimely action.

28. The statutory requirement of timely action may, however, be relaxed in exceptional circumstances. Such circumstances are determined by the Tribunal from case to case on the basis of the particular facts of each case. In deciding that exceptional circumstances exist the Tribunal takes into account several factors, including, but not limited to, the extent of the delay and the nature of the excuse invoked by the Applicant.

29. In the case of the Applicant her claimed insolvency and financial inability to engage an attorney in due time do not constitute exceptional circumstances under Article II of the Statute. In Kavoukas and Parham (Decision No. 3 [1981]) the Tribunal did not consider inability to retain counsel an exceptional circumstance which excused the Applicant who had not filed within the ninety days as required by the Statute. The Statute does not require applicants to engage attorneys to file their applications nor does it impose any charges for filing applications.

30. In order to ensure that no injustice is done to the Applicant, the Tribunal has also considered the possibility that her state of health may have been a factor contributing to the delay. On the basis of the information before it, the Tribunal finds that the Applicant’s state of health cannot in this case be considered an exceptional circumstance.

31. The Tribunal, thus, concludes that the delay in filing the application cannot be excused on the basis of exceptional circumstances.

**Decision:**

For the above reasons, the Tribunal unanimously decides that the application is inadmissible.

Elihu Lauterpacht

/S/ Elihu Lauterpacht  
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe  
Executive Secretary

At Washington, D.C., October 22, 1996