



World Bank Administrative Tribunal

2023

Decision No. 690

**HA,
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

(Preliminary Objection)

**World Bank Administrative Tribunal
Office of the Executive Secretary**

**HA,
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Mahnoush H. Arsanjani (President), Marielle Cohen-Branche (Vice-President), Janice Bellace (Vice-President), Andrew Burgess, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.
2. The Application was received on 6 December 2022. The Applicant was represented by Hatem Kotrane, Attorney of Law at the Tunis Bar. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 4 May 2023.
3. The Applicant alleges unfair treatment and violations of due process by the Ethics and Business Conduct Department (EBC).
4. On 7 March 2023, the Bank submitted preliminary objections to the Application. This judgment addresses the Bank's preliminary objections.

FACTUAL BACKGROUND

The Applicant's employment history

5. On 30 September 2010, the Applicant joined the Bank as a Short-Term Temporary staff member based in the Tunisia Country Office. On 1 April 2011, she was appointed to an Extended-Term Temporary position. On 21 May 2012, she was appointed to a Team Assistant position. On 16 December 2019, the Applicant was appointed to a Program Assistant position, Grade Level GC, based in Washington, D.C.

6. Between 2018 and 2021, the Applicant sent a number of emails to her managers and Human Resources (HR) requesting that her term contract be converted to an open-ended contract. According to the Applicant, she was informed by her managers that there was no budget for her contract type to be converted to open-ended during fiscal year 2019. The Applicant further states that she was informed by HR, in 2020 and again in 2021, that the ratio of open-ended staff in the Applicant's unit exceeded 60% and that no further contract conversions could therefore be made.

7. Between June 2020 and November 2022, the Applicant applied for 50 administrative positions, at Grade Level GD or above, in various World Bank Group (WBG) units but was not selected.

8. According to the Applicant, she "discussed with her new [m]anagers at the unit many times about her upgrade" to Grade Level GD, but someone else was selected for the GD-level Executive Assistant position in her unit, effective 1 April 2023.

The EBC investigation

9. On 3 March 2021, EBC received an allegation from the Applicant's Country Manager that three support staff, including the Applicant, may have misused WBG funds related to tuition assistance benefits.

10. As part of its preliminary inquiry into the allegations, between March and June 2021, EBC conducted witness interviews and collected relevant documentation and emails.

11. On 8 June 2021, EBC provided the Applicant with a Notice of Alleged Misconduct, informing her of the allegations of her misconduct. On the same date, EBC investigators interviewed the Applicant. At the start of the interview, EBC reminded the Applicant that she had the right to have an observer present during the interview, and the Applicant confirmed that she was willing to continue the interview without an observer. The interview took place from 8:02 a.m. to 10:25 a.m.

12. Between August and November 2021, EBC conducted several witness interviews, including interviews of staff in the Tunisia Country Office and the Applicant's previous managers.

13. On 11 February 2022, EBC provided the Applicant with a Draft Investigation Report and provided her with ten business days to respond with her comments.

14. On 25 February 2022, the Applicant provided EBC with her comments on the Draft Investigation Report along with a medical certificate, both of which EBC included in the Final Investigation Report. The medical certificate, dated 22 February 2022, and signed by a professional with a diploma in cognitive and behavior psychotherapies, stated:

[The Applicant] has been consulting me regularly since 18/02/2021, following a professional conflict. She is still under medical and medicinal follow-up and suffers from an important Anxiety currently sub-chronic with Panic Disorder, thoracic oppressions with palpitations and sensation of collapse and imminent death. She also suffers from sleep and temperament disorders with a tendency to susceptibility and irritability. [The Applicant] constantly refers in her speech to her professional conflict episode, particularly traumatic and obsessive.

15. On 3 March 2022, EBC sent its Final Investigation Report to the Human Resources Department Vice President (HRDVP) for decision. In its Final Investigation Report, EBC concluded:

[The Applicant] received and knowingly retained the benefit of the unauthorized overpayment from the WBG and by doing so, misused WBG funds. [...]

Based on a careful review of the evidence, EBC concluded that there is sufficient evidence to substantiate the allegation that:

- a. [The Applicant] knowingly submitted for payment to the WBG a claim for tuition benefits covering one hundred percent of a year's tuition for her master's degree, despite having been informed and knowing that the WBG had only authorized payment of fifty percent of her tuition for one year of study; and
- b. [The Applicant] knowingly retained the financial benefit of the unauthorized overpayment, totaling 3800 Tunisian Dinars (TND) (equivalent of US \$1,330), without notifying the WBG until the Tunisia Country Office discovered the overpayment and requested repayment on February 9, 2021. [...]

EBC found that the totality of her actions and omissions were inconsistent with (i) the fiduciary obligations imposed by the WBG on its staff; (ii) the requirement for financial integrity in dealings at the WBG; (iii) the responsibility of staff to ensure truthful and accurate communication of information reflected in accounting and other records; and (iv) the responsibility of staff to ensure the accuracy of data entry in accordance with WBG's business processes.

EBC found that [the Applicant's] actions and omissions amounted to a willful misrepresentation of facts and a misuse of WBG funds related to benefits. EBC further found [the Applicant's] actions to be contrary to the general applicable norms of prudent professional behavior and, inconsistent with the obligations of staff to behave in a manner befitting their status as employees of an international organization.

16. On 11 August 2022, the HRDVP informed the Applicant:

After a careful and thorough review of the EBC Report, I make no finding of misconduct. In my view, there is plenty of blame from all involved which led to this unfortunate matter. [...] As a World Bank Group (WBG) staff member, I remind you have a special responsibility to avoid situations and activities that might reflect adversely on the Organizations, compromise their operations, or lead to real or apparent conflicts of interest. I appreciate your cooperation with this matter and your service to the WBG.

The Applicant's health

17. Following her interview with EBC, the Applicant sought the services of four medical professionals.

18. On 11 October 2022, the Applicant was approved for short-term disability until 31 January 2023, which was subsequently extended until 30 April 2023.

19. Among the medical records submitted in this case is a certification from her psychiatrist, dated 11 October 2022, which stated, "I, the undersigned, certify to give my medical care to [the Applicant]. She suffers from a severe depressive episode. Her state of health requires care as well as her being put on sick leave."

20. Another medical report, dated 29 October 2022, stated:

I, the undersigned [physician,] certify that I have been following [the Applicant] in my consultation for various [...] problems for years. The patient began to develop a goiter in June 2021, with progressive signs of hyperthyroidism. Ultrasound, blood tests and scintigraphy show the slight progression of the disease which is partially linked to the stress to which she was subjected during this period. It will be necessary to operate the patient's thyroid in the near future to avoid possible complications due to the goiter.

21. On 6 January 2023, the Applicant underwent thyroid ablation surgery.

The present Application

22. On 6 December 2022, the Applicant filed this Application with the Tribunal.

23. On 13 December 2022, pursuant to Rule 7, paragraph 9, of the Rules of the Tribunal, the Executive Secretary called upon the Applicant to make necessary corrections to her Application to ensure compliance with the formal filing requirements, stating:

[K]indly correct the following:

1. Missing information: In accordance with Rule 7 of the Tribunal's Rules, please correct the following missing information in the Part II Pleas section:
 - Part II(2): list the specific decision(s) which the [A]pplicant is contesting and whose rescission is requested under Article XII(1) of the Statute.
 - Part II(3): identify the obligations which the Applicant is invoking and the specific performance which is requested under Article XII(1) of the Statute.
2. Annexes: As per paragraph 1 of Annex I(B) of the Tribunal's Rules, "Each document shall constitute a separate annex and shall be numbered with an Arabic numeral. The word 'ANNEX,' followed by the number of the document, shall appear at the top of the first page."
3. Table of Contents: As per paragraph 2 of Annex I(B) of the Tribunal's Rules, "The annexed documents shall be preceded by a table of contents indicating the number, title, nature, date and, where appropriate, symbol of each annex."

Additionally, in accordance with the filing instructions effective 13 March 2020, all electronic filings must be submitted in a [Portable Document Format (PDF)].

24. One week later, on 20 December 2022, the Applicant submitted corrections to the Application as instructed by the Executive Secretary, including (i) insertion of the two fields of the Application Form originally left blank, (ii) labeled annexes, and (iii) a table of contents.

25. On 21 December 2022, the Executive Secretary informed the Applicant that the manner in which the Applicant had labeled the annexes did not appear to match the table of contents. The Executive Secretary further informed the Applicant that, as noted in paragraph 5(a) of Rule 7 of the Tribunal's Rules, if an annex to an application is not an original, it must be certified as a true copy with the signature of the applicant or counsel.

26. On 30 December 2022, the Applicant submitted an amendment to her Application, namely a new medical report issued on 22 December 2022.

27. On 5 January 2023, the Applicant submitted corrections to the annexes to her Application. The annexes were certified as true copies, and updates were made to the labeling of the annexes.

28. On 15 January 2023, the Applicant submitted an amendment to her Application, namely the addition of two new medical reports issued on 9 and 13 January 2023.

29. On 23 January 2023, the Executive Secretary informed the Applicant:

The piecemeal manner in which the filing and annexes have been submitted for [the Applicant's Application] is unclear, and the Secretariat is therefore not in a position to assemble the files. Kindly submit a single [PDF] file of the [A]pplication and its annexes, organizing and labeling the annexes appropriately in accordance with the Tribunal's Rules.

30. On 27 January 2023, the Applicant submitted her corrected Application, which complied with the Tribunal's Rules.

31. The Applicant seeks compensation in the amount of \$1,000,000.00 for "physical, psychological and moral harm."

32. The Applicant also seeks, as relief, a promotion to Grade Level GD and for her term contract to be converted to an open-ended contract based on “[r]eputation damage which could be an obstacle to limit her promotions and her contract conversion to open-ended staff.”

33. The Applicant further seeks legal fees and costs in the amount of \$30,000.00.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Bank’s Contentions

The Application should be dismissed because it was not filed in a timely manner, it fails to identify any specific non-observance of the Applicant’s contract of employment or terms of appointment, and the Applicant failed to exhaust internal remedies

34. First, the Bank contends that the Application is untimely. The Bank avers that, although the Applicant originally submitted her Application on 6 December 2022, the Applicant’s later resubmission date of 27 January 2023 should be considered the date on which the Applicant filed the Application, because that is the date the Application was compliant with the Tribunal’s Rules. To the Bank, this date puts the Application forty-nine days in excess of the filing deadline dictated by the Tribunal’s Statute.

35. To the Bank, a “failure to meet the substantive requirements of a filing cannot reasonably justify circumventing the procedural requirement of a timely filing” because to do so “would wholly undermine the statutory requirement.” Moreover, the Bank maintains, “an applicant should not benefit from their own mistakes.”

36. The Bank further states that the Applicant did not seek an extension or provide any exceptional circumstances that would justify her late filing.

37. Second, the Bank contends that the Applicant has failed to identify any specific non-observance of her contract of employment or terms of appointment. To the Bank, the Applicant’s

claim contesting the EBC investigative process is general and fails to identify or provide any evidence of a specific failure to observe the requirements of the Staff Rules.

38. The Bank maintains that the Applicant cannot generally contest the existence of Staff Rule 3.00, which requires subjects of an investigation to cooperate fully, nor can she contest, generally, the EBC investigative process simply because it is not to her liking. The Bank avers that, for the Tribunal to have jurisdiction, the Applicant must allege and provide evidence of any non-observance of the Applicant's contract of employment or terms of appointment.

39. Third, the Bank contends that the Applicant has failed to exhaust internal remedies. In the Bank's view, the Applicant is contesting the decision of her managers not to promote her or convert her contract type to open-ended. The Bank maintains that, in accordance with the Staff Rules, the Applicant was required to file such claims first with Peer Review Services. To the Bank, because the Applicant has not done so, and because the Bank has not agreed to the submission of these claims directly to the Tribunal, the claims pertaining to promotion and contract conversion do not meet the requirements of Article II(2)(i) of the Tribunal's Statute.

The Applicant's Response

The Application is timely, the Applicant has alleged a breach of her contract of employment or terms of appointment, and the Applicant has exhausted internal remedies

40. The Applicant contends that she respected the filing deadline, that she filed her Application in a timely manner, and that, afterward, she was responsive to the Executive Secretary's requests "to gather the files in one record." In the Applicant's view, she should not be faulted for responding to the Executive Secretary's requests.

41. The Applicant also maintains that she was a victim of a specific breach of her contract of employment or terms of appointment and that the Tribunal therefore has jurisdiction over her claims. In this respect, the Applicant states that she was subjected to "a real interrogation" which was stressful, inhumane, and disproportionate "to the lightness of the alleged facts." Moreover, according to the Applicant, the investigation procedure, which lasted "from Feb[ruary] 2021 [until]

August 2022” “took too long” and was “neither fair nor impartial.” The Applicant contends that the faults committed “throughout the investigation proceedings” resulted in damages which are detailed in the Application. In the Applicant’s view, her claims are not general complaints about being subjected to EBC’s investigative process; rather, they are concrete claims specific to her circumstances, which demonstrate a non-observance of the rights and obligations of Staff Rule 3.00.

42. Last, the Applicant contends that she “has indeed exhausted the prior internal remedies” required of her, because she “asked her managers since 2016” both in writing and verbally about the conversion of her contract type and “discussed with her new [m]anagers at the unit many times” her desire for a promotion.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

WHETHER THE APPLICATION ALLEGES NON-OBSERVANCE OF THE APPLICANT’S CONTRACT OF EMPLOYMENT OR TERMS OF APPOINTMENT

43. The Bank contends that the Tribunal lacks jurisdiction over the Applicant’s claims because the Applicant fails to identify or provide any evidence of the Bank’s specific failure to observe her contract of employment or terms of appointment.

44. The Applicant maintains that she has alleged a breach of her contract of employment or terms of appointment, namely unfair treatment and violations of due process, and that, therefore, the Tribunal has jurisdiction.

45. The Tribunal held in *Q*, Decision No. 370 [2007], para. 36, that

[f]or a present or former staff member to have standing [...] [the claim] must relate significantly to the staff member’s contract of employment or terms of appointment, for example with respect to the performance of the staff member’s current duties, or to the staff member’s enjoyment of the rights provided under the Principles of Staff Employment.

46. In *BB*, Decision No. 426 [2009], para. 53, the Tribunal, quoting *N*, Decision No. 356 [2006], para. 20, stated that

[t]he discussion whether there has been a breach of fairness and impartiality in this case pertains to the merits. For jurisdictional purposes, as the Tribunal held in *McKinney*, Decision No. 183 [1997], paras. 13, 16–17, it is enough that the [a]pplicant has “alleged” a plausible claim of contract violation and that it is tenable that “there are circumstances that warrant an examination of the merits of his allegations.” It was there held by the Tribunal that “[i]t would be premature and improper for the Tribunal, by declaring this application inadmissible on the ground of jurisdiction *ratione materiae*, to deprive the [a]pplicant of an opportunity to make his case.”

47. Further, in *FB (Preliminary Objection)*, Decision No. 609 [2019], para. 42, the Tribunal found that

for it to review a claim on the merits it suffices that an applicant alleges a plausible claim of the non-observance of his or her contract of employment or terms of appointment, including all pertinent regulations and rules. In the present case, whether the [a]pplicant would ultimately succeed in her claim is a matter of merits not of jurisdiction. “Whether there is any factual support for this claim is not [...] a matter to be considered now, but only following a further exchange of pleadings on the merits.” *Nguyen*, Decision No. 190 [1998], para. 7.

48. The cardinal rules governing staff rights and duties are those contained in the Principles of Staff Employment, which establish the constitutional foundations on which the Staff Rules and other regulatory elements are based. One such foundational principle, Principle 2.1, provides that “[t]he Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members.” Such Principles form part of the contract of employment or terms of appointment, as was held in *de Merode*, Decision No. 1 [1981], the Tribunal’s first judgment.

49. The discussion of whether there has been a breach of fairness and due process in this case pertains to the merits. For jurisdictional purposes, as the Tribunal held in *McKinney* [1997], para. 16, it is enough that the Applicant has alleged a plausible claim of contract violation and that it is tenable that “there are circumstances that warrant an examination of the merits of [the] allegations.” It was there held by the Tribunal that “[i]t would be premature and improper for the

Tribunal, by declaring this application inadmissible on the ground of jurisdiction *ratione materiae*, to deprive the [a]pplicant of an opportunity to make his case.” *Id.*, para. 17.

50. In *G*, Decision No. 340 [2005], para. 2, the Tribunal made clear that it could review a claim concerning an allegation of abuse arising from decisions made during an investigation that did not culminate in the imposition of sanctions. Just as in *G* [2005], so too in *D*, Decision No. 304 [2003], the Tribunal reviewed allegations of unfairness and due process violations occurring from the very outset of the preliminary inquiry stage and at other stages of a misconduct investigation. *See id.*, paras. 57–58, 61, 65.

51. Here, the Applicant is a current staff member who alleges unfair treatment and violations of due process by EBC during its investigation.

52. Consistent with the above jurisprudence, the Tribunal finds that the Applicant has presented an Application alleging a plausible claim of the non-observance of her contract of employment or terms of appointment and that the circumstances warrant an examination of the merits of her allegations.

JURISDICTION OVER OTHER MATTERS

53. The Applicant, in part, requests as remedies for the Tribunal to order the Bank to (i) promote the Applicant to Grade Level GD and (ii) convert her term contract to an open-ended contract.

54. The Bank objects to the requested remedies, considers the requested remedies to be separate claims, and contends that the Applicant has failed to timely exhaust internal remedies with respect to the managerial decisions not to promote the Applicant or convert her contract type to open-ended.

55. At this jurisdictional phase, the Tribunal is not in a position to consider remedies. However, the Bank has made jurisdictional objections relating to the Applicant’s request for a promotion and

conversion to an open-ended contract type, and the Applicant has offered a rebuttal to the Bank's jurisdictional objection by stating that she "has indeed exhausted the prior internal remedies." The Tribunal will address these contentions.

56. Article II of the Tribunal's Statute provides the following:

2. No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:
 - (i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal.

57. The Tribunal has emphasized the importance of the statutory requirement of the exhaustion of internal remedies. *See, e.g., O*, Decision No. 323 [2004], para. 27. In *Berg*, Decision No. 51 [1987], para. 30, the Tribunal stated, "This statutory exhaustion requirement is of the utmost importance. It ensures that the management of the Bank shall be afforded an opportunity to redress any alleged violation by its own action."

58. The Tribunal will therefore determine whether the Applicant timely exhausted internal remedies with respect to the decision not to promote her to Grade Level GD and the decision not to convert her contract type from term to open-ended.

59. The Applicant contends that she "has indeed exhausted the prior internal remedies" required of her, because she "asked her managers since 2016" both in writing and verbally about the conversion of her contract type and "discussed with her new [m]anagers at the unit many times" her desire for a promotion.

60. The Tribunal has decided that "[e]xhaustion of internal remedies means formal remedies and includes timely recourse to the Appeals Committee [now Peer Review Services]." *Rittner*, Decision No. 335 [2005], para. 36. The Tribunal has also held that "a staff member's failure to observe the time limits for submission of an internal complaint or appeal constitutes non-compliance with the statutory requirement of exhaustion of internal remedies (*e.g., Setia*, Decision

No. 134 [1993], para. 23; *Sharpston*, Decision No. 251 [2001], paras. 25–26).” *Malekpour*, Decision No. 320 [2004], para. 14.

61. In line with the Tribunal’s judgment in *Rittner* [2005], here, the Applicant’s communications with her management do not constitute exhaustion of the WBG’s formal remedies.

62. The Tribunal observes that the Applicant has not put forward any evidence to demonstrate that she has exercised timely recourse to Peer Review Services, which the Tribunal notes is the appropriate forum to bring claims pertaining to promotions and conversions of contract type.

63. Moreover, the Tribunal observes that the Bank has not agreed to the Applicant’s submission of her claims pertaining to promotion or contract conversion directly to the Tribunal.

64. Because the Applicant has not exhausted internal remedies, and because the Bank has not agreed to the submission of claims pertaining to promotion and contract conversion directly to the Tribunal, these claims do not presently meet the requirements of Article II(2)(i) of the Tribunal’s Statute.

65. The Tribunal finds that, under these circumstances, and in accordance with Article (II)(2)(i), it does not have jurisdiction to review the Applicant’s claims pertaining to the decisions not to promote the Applicant to Grade Level GD and not to convert the Applicant’s contract type from term to open-ended.

WHETHER THE APPLICATION WAS FILED IN A TIMELY MANNER

66. The parties agree that 6 December 2022 was the appropriate deadline for the Applicant to file her Application in accordance with the Tribunal’s Statute.

67. The Applicant contends that she submitted her Application on 6 December 2022 and that it is therefore timely.

68. In contrast, the Bank contends that the Application was not timely because it was not fully compliant with the Tribunal's Rules until after the filing deadline had passed.

69. Article II(2) of the Tribunal's Statute sets out the requirements for admissibility of applications to the Tribunal. It states:

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

- (i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal; and
- (ii) the application is filed within one hundred and twenty days after the latest of the following:
 - (a) the occurrence of the event giving rise to the application;
 - (b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted; or
 - (c) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.

70. The Tribunal observes that the Application submitted on 6 December 2022 did not meet the formal requirements of Rule 7 of the Tribunal's Rules, as two fields of the Application Form were left blank; it also did not include a table of contents, appropriate numbering to label the annexes, or certification that the annexes were true copies of the originals.

71. Rule 7, paragraph 9, of the Tribunal's Rules sets out the relevant process to be followed when an application does not fulfill the formal requirements of Rule 7. It states:

Corrections

If the formal requirements of this rule are not fulfilled, the Executive Secretary may call upon the applicant to make the necessary corrections in the application and the copies thereof within a period which the Executive Secretary shall prescribe. He or she shall return the necessary papers to the applicant for this purpose. The

Executive Secretary may also, with the approval of the President, make the necessary corrections when the defects in the application do not affect the substance.

72. The Tribunal is mindful that there are no express warnings in the Tribunal's Statute, Rules, or jurisprudence to notify applicants of any jurisdictional repercussions for submitting an application that does not conform to the formal requirements of the Tribunal's Rules. Indeed, the Tribunal has had few occasions on which to consider the timeliness of deficient applications having corrections submitted after the statutory filing deadline.

73. The Tribunal therefore looks to the established jurisprudence of the International Labour Organization Administrative Tribunal (ILOAT). In *In re PARY* (No. 4), ILOAT Judgment No. 1500 (1996), the ILOAT found a deficient application, corrected after the initial filing deadline, but within the time limit set for such corrections, to be receivable. In so finding, it reasoned:

CONSIDERATIONS:

Receivability

1. Article VII(2) of the Tribunal's Statute says that a complaint must be filed within ninety days after the complainant had notice of the impugned decision; Article 6(1) of the Rules sets out the requirements of form; and 6(2) says that if not satisfied that the complaint meets those requirements the Registrar shall call upon the complainant to correct it within thirty days. The Rules do not say that all the formal requirements must be met by the date of filing.
2. The complainant filed within the time limit in the Statute the complaint form provided for in the schedule to the Rules. The entries sufficed to identify the decision he was impugning and the relief he was claiming. The registering of the complaint and the correcting of it within the time limit were in line with the Rules. Since the complaint was lodged in time the Organization's objection to receivability fails.

74. Similarly, in *In re Mrs. S.N.*, ILOAT Judgment No. 3225 (2013), para. 5, the ILOAT found:

The complaint form was filed within the time limit specified in Article VII, paragraph 2, of the Statute of the Tribunal, albeit without the brief and supporting evidence which, according to Article 6, paragraph 1(b) and (c) of the Rules of the Tribunal, had to be appended to it. Contrary to [the respondent's] submissions, this does not signify that the complaint was submitted out of time, since paragraph 2 of

the above-mentioned article affords the complainant the possibility of correcting a complaint that does not meet the requirements of the Rules.

75. The Tribunal also looks to the established jurisprudence of the United Nations Appeals Tribunal (UNAT). In *Vangelova*, Judgment No. 2010-UNAT-046, para. 16, the UNAT rejected the respondent's submission that an appeal was time-barred; in reaching its conclusion, the UNAT explained that the appeal had been submitted in a timely manner but that, in view of the provision of Article 8(4) of its Rules of Procedure, the appellant was permitted thereafter to make corrections to fulfill the formal requirements of filing an appeal.

76. The Tribunal holds a view consistent with the above jurisprudence.

77. Here, the parties agree that the Application was filed within the time limit specified in Article II(2), albeit without meeting all of the formal requirements of Rule 7 of the Tribunal's Rules. However, as was reasoned in *In re Mrs. S.N.*, this deficiency does not signify that the Application was submitted out of time, because paragraph 9 of Rule 7 of the Tribunal's Rules affords the Applicant the possibility of correcting her Application.

78. The Tribunal observes that the Applicant was responsive when notified that her Application did not fully conform to the Tribunal's Rules and that she made corrections accordingly.

79. Given the circumstances, the Tribunal finds that the Application was filed in a timely manner.

80. The Tribunal therefore partially dismisses the Bank's preliminary objections and accepts jurisdiction over the Applicant's claims pertaining to unfair treatment and violations of due process by EBC.

DECISION

- (1) The Bank's preliminary objections with respect to claims pertaining to promotion and contract type are upheld;
- (2) All other preliminary objections are dismissed; and
- (3) The Bank shall contribute to the Applicant's legal fees and costs in the amount of \$2,500.00 for the preliminary objection phase of the proceedings.

/S/Mahnoush H. Arsanjani
Mahnoush H. Arsanjani
President

/S/ Zakir Hafez
Zakir Hafez
Executive Secretary

At Washington, D.C., 12 May 2023