

**G.**  
**v.**  
**IOM**

**127th Session**

**Judgment No. 4059**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms S. G. against the International Organization for Migration (IOM) on 27 March 2017 and corrected on 19 April, IOM's reply of 22 August, the complainant's rejoinder of 5 October 2017 and IOM's surrejoinder of 24 January 2018;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the decision not to affiliate her to the United Nations Joint Staff Pension Fund (UNJSPF).

The complainant, a Turkish national, joined the IOM Office in Ankara, Turkey, in January 2006 under a consultancy contract. As from June 2006, she was employed under a special all-inclusive contract which was extended several times. On 24 June 2015 she signed an extension of her contract for the period from 1 July 2015 to 31 December 2015.

By a letter of 19 August 2015, she was informed that her contract was terminated with immediate effect, as the project she was working for would be handed over to the Republic of Turkey as from 20 August 2015, and that she would receive compensation in lieu of notice.

On 31 March 2016 the complainant sent a letter to the Director General, claiming that she should have been affiliated to the UNJSPF or to the local social security system during her employment with IOM. She requested that her pension rights be restored in respect of her ten years of service with IOM. On 30 May she was informed that her request was rejected. It was pointed out to her that the contracts she had signed with IOM specifically excluded her affiliation to the UNJSPF and that affiliation to national social security schemes was inconsistent with the status of the IOM as an international organization.

On 27 July 2016 the complainant filed an appeal before the Joint Administrative Review Board (JARB) challenging the decision of 30 May 2016. By a letter of 12 August 2016 she was informed that, in the Administration's view, her appeal was irreceivable because she had not followed the procedure set out in Instruction 217 (IN/217), entitled "Request for Review and Appeal to the Joint Administrative Review Board (JARB)", and because it was time-barred, but that a JARB would nevertheless be convened to determine the receivability of her appeal.

In its report dated 29 December 2016 the JARB found the complainant's appeal irreceivable for failure to follow the required steps to submit an appeal and for failure to respect the time limits set out in IN/217. Further, the JARB found that the complainant had not demonstrated the existence of any fact that could allow it exceptionally to waive the time limits and consider the merits of her appeal, nor had she demonstrated any violation of applicable rules. It recommended dismissing the appeal as manifestly irreceivable and without foundation.

On 30 January 2017 the Director General informed the complainant that he fully endorsed the JARB's findings and dismissed her appeal as irreceivable and, subsidiarily, as without foundation. That is the impugned decision.

The complainant asks the Tribunal to order that she be paid an indemnity equal to ten months' salary with all benefits (including contributions to the UNJSPF) "for losing [her] right to social security". She claims moral damages in the amount of 50,000 United States dollars, as well as 50,000 dollars for damage to her professional and personal integrity.

IOM submits that the complaint is manifestly irreceivable and, subsidiarily, unfounded.

### CONSIDERATIONS

1. The determinative issue in this complaint is receivability. The Administration took the view that the complainant had not followed the required procedures or respected the applicable time limits set out in IN/217 in submitting her request for review. However, the Administration informed her that it would convene a JARB to consider the receivability of her appeal. The JARB concluded that the complainant's appeal was irreceivable for failing to submit a request for review in accordance with the procedure set out in IN/217, and for failing to submit the appeal within the applicable time limits. The JARB also concluded that the complainant had not provided any facts or justification demonstrating exceptional circumstances warranting a waiver of the time limits that would allow a consideration of the merits of the appeal. In the 30 January 2017 impugned decision, the Director General agreed with the JARB's conclusions and recommendations, and dismissed the appeal as irreceivable.

2. The complainant does not dispute the grounds on which the finding of irreceivability was made. However, she asks the Tribunal to consider her complaint as an "exceptional case". The relevant case law of the Tribunal consistently states:

"Under Article VII, paragraph 1, of the Tribunal's Statute, a complaint will not be receivable unless the impugned decision is a final decision and the complainant has exhausted all the internal means of redress. This means that a complaint will not be receivable 'if the underlying internal appeal was not filed within the applicable time limits' [...]."

(Judgment 3758, under 10; see also Judgment 3687, under 9, and the cases cited therein.)

In Judgment 3758, under 11, the Tribunal added:

"As the Tribunal has consistently stated, the strict adherence to time limits is essential to have finality and certainty in relation to the legal effect of decisions. 'When an applicable time limit to challenge a decision has passed, the organisation is entitled to proceed on the basis that the decision is fully and legally effective.' (See Judgment 3439, under 4.)"

However, the case law also recognizes that there are exceptions to the requirement of the strict adherence to the applicable time limits. In Judgment 3687, under 10, the Tribunal stated:

“[I]n very limited circumstances 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 Judgment 3405, under 17; citations omitted); and ‘where some new and unforeseeable fact of decisive importance has occurred since the decision was taken, or where [the staff member concerned by that decision] is relying on facts or evidence of decisive importance of which he or she was not and could not have been aware before the decision was taken’ (see Judgment 3140, under 4; citations omitted).”

(See also Judgment 3758, under 12.)

3. The complainant submits that her complaint is about “the violation of [her] right to social security” to which everyone is entitled. She claims she suffered professional and personal damages due to being employed for ten years under special all-inclusive contracts; the compensation she received on the termination of her contract did not include any pension contributions; she should have been affiliated to the UNJSPF; and deserved to be granted a different type of contract. These pleas are essentially directed at the merits of her claims advanced in the internal appeal and the complaint, and they do not come within any of the exceptions set out above. Importantly, the complainant did not offer any reason or justification for the lengthy delay in the initiation of the internal appeal process.

4. As the complainant did not exhaust the internal means of redress as required under Article VII, paragraph 1, of the Tribunal’s Statute and has not brought her complaint within the exceptions set out under consideration 2, above, the complaint is irreceivable and will be dismissed.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 23 October 2018,  
Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores  
M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I,  
Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ