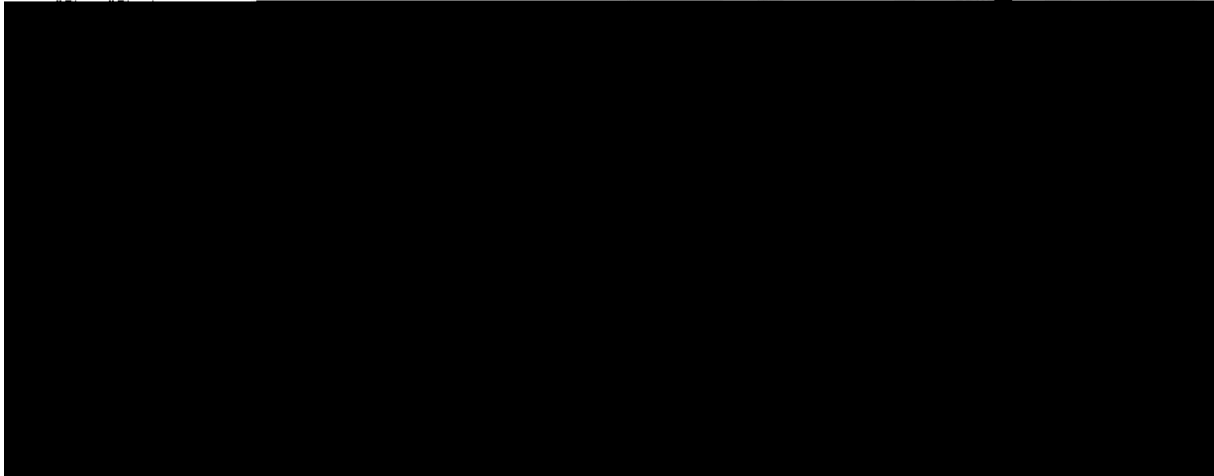




Judgment No. 2013-UNAT-390



Counsel for Applicant: Self-represented

Counsel for Respondent: Paul Oertly

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it a “Motion for Writ of Mandamus” filed by Ms. Kristina Wesslund on 15 July 2013.

**Facts and Procedure**

2. The following facts reflected in Order No. 100 (NY/2013), issued by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in New York on 16 April 2013 in the case of Wesslund v. Secretary-General of the United Nations , are uncontested:

... By email dated 8 April 2013, the Registry of the Dispute Tribunal referred Ms. Wesslund to the filing procedures of the Tribunal set out on the website of the Tribunal, in particular the guidelines for the filing of an application. The Registry requested that Ms. Wesslund make use of the Tribunal's forms and to submit her application via the eFiling portal of the Tribunal.

... By email dated the same day, Ms. Wesslund responded the following: "On the issue of use of form, please, refer to para. 3 of my submission".

... The [Dispute] Tribunal notes that para. 3 of the document emailed by Ms. Wesslund states the following:

I submit that the application is structurally admissible, although it does [not] utilize any of the forms available on the UNDT website. The choice of non-utilization was conscious on my part and is permitted by art. 8(1) of the

applications hinges upon the completion of the management evaluation process (UNDT Statute, art. 8(c)). In any event, it is, once again, not within the Registry'[s] purview to determine the scope of the Tribunal's jurisdiction but within that of the bench (art. 2(6)).

Practice directions do not supersede the UNDT Rules of Procedure. I have cited the relevant article to you but here it is again: "[a]n application may be submitted on an application form prescribed by the Registrar" (UNDT Rules of Procedure, art. 8 (1)). The "may" gives me a choice of format insofar as the format of my choice is compliant with the following: (1) the title-sheet information required by art. 8(2); and (2) the format spelled out in art. 8(3). I submit that I have complied with these requirements in full. Under art. 8(4) it is within your purview to certify that the requirement of arts. 2-3 have been complied with. I submit that there is no reason to withhold this certification in the instant application.

As the form itself is not a requirement of the law, nor is the 10-page limit i[t] imposes. The law does impose a size limit on submissions. To the extent that practice directions are law the only limit imposed by them is that of the maximum size for electronically transmitted files (Practice Direction 4, art. 10).

There is equally no requirement [to] upload the application "in the electronic system of the Tribunal. The law is clear that application "may be electronically transmitted" (UNDT Rules of Procedure, art. 8(3)). To the extent practice directions are law, Practice Direction 4 gives the option of filing and outside the e-Filing Portal (art. 10).

As such, my original application satisfie



10. Furthermore, the motion fails to establish any clear excess of jurisdiction by the UNDT which would provide a recognized basis for an interlocutory appeal.

11. The Secretary-General requests the Appeals Tribunal to find that the motion is not receivable and to dismiss it accordingly.

**Considerations**

12. The Dispute Tribunal Order challenged by Ms. Wesslund was issued on 16 April 2013 and was styled “Order On Requirements For The Filing Of An Application”.

13. In answer to Ms. Wesslund’s Motion, the Secretary-General submits that the Motion is time-barred and therefore not receivable by the Appeals Tribunal. Alternatively, he contends that Ms. Wesslund has failed to establish any clear excess of jurisdiction on the part of the Dispute Tribunal.

14. In her “Motion for Writ of Mandamus”, Ms. Wesslund invokes the authority of the Appeals Tribunal, pursuant to Article 2(3) of its Statute to “issue all orders necessary or appropriate in aid of its jurisdiction and consonant with [its Statute]”. She also cites Article 18bis(1) of the Rules of Procedure of the Appeals Tribunal, which provides: “The President may, at any time, either on a motion of a party or on his or her own volition, issue any order which appears to be appropriate for the fair and expeditious management of the case and to do justice to the parties.”

15. Preliminarily, the powers contained in the above quoted Articles vest in the Appeals Tribunal in its capacity as an appellate body, and not by way of any inherent or original jurisdiction outside of the appellate jurisdiction conferred on the Appeals Tribunal by its Statute. Accordingly, the Appeals Tribunal considers Ms. Wesslund’s “Motion for Writ of Mandamus” to be an appeal against UNDT Order No. 100 (NY/2013). As such, a panel of the Appeals Tribunal was convened for the purpose of deciding whether Ms. Wesslund’s appeal was receivable.

Is Ms. Wesslund's appeal receivable, *ratione temporis*?

16. Paragraph 31 of General Assembly Resolution 66/237 expressly provides a 30-day deadline for the filing of appeals against interlocutory orders of the Dispute Tribunal. Ms. Wesslund filed her appeal on 3 July 2013, which is beyond the due date of 16 May 2013 for her appeal to comply with the aforesaid time limit.

17. Even if the Appeals Tribunal were to determine the 16 April 2013 Order to be a Judgment of the UNDT (which on its face it was not), Ms. Wesslund's appeal by way of "Motion of Writ of Mandamus" was received by this Tribunal on 3 July 2013, some 16 days beyond the expiry limit of 60 calendar days prescribed in Article 7(1)(c) of the Statute of the Appeals Tribunal.

18. Article 7(3) of the Statute of the al to 3Judegl-3.1(3.1(e99( tim)-- Tw(1lRs )]TJ00L)]TJ11.857992 Tw

