

**ADMINISTRATIVE TRIBUNAL
OF THE
INTERNATIONAL MONETARY FUND**

Judgment No. 2024-4

October 29, 2024

*“UU” (No. 2), Applicant v. International Monetary Fund, Respondent
(Admissibility of the Application)*

Office of the Registrar

**ADMINISTRATIVE TRIBUNAL OF THE
INTERNATIONAL MONETARY FUND**

JUDGMENT No. 2024-4
“UU” (No. 2), Applicant v. International Monetary Fund, Respondent
(Admissibility of the Application)

TABLE OF CONTENTS

INTRODUCTION	1
FACTUAL BACKGROUND AND PROCEDURAL HISTORY	2
PROCEDURE BEFORE THE TRIBUNAL	4
SUMMARY OF PARTIES’ PRINCIPAL CONTENTIONS	4
A. Applicant’s principal contentions on the merits	4
B. Respondent’s principal contentions on admissibility	5
C. Applicant’s principal contentions on admissibility.....	6
CONSIDERATION OF THE ADMISSIBILITY OF THE APPLICATION.....	7
A. The “clearly inadmissible” standard for summary dismissal.....	7
(1) With respect to Applicant’s challenge to an “individual” decision, has Respondent shown that the Application is clearly inadmissible for failure to exhaust internal remedies in a timely manner and is the Tribunal’s Judgment in “UU” <i>res judicata</i> on the issue of exhaustion of internal remedies?.....	8
(2) Has Applicant presented exceptional circumstances that would justify his failure to file a timely Grievance of his challenge to the “individual” decision?.....	9
(a) Applicant’s contention that the procedure for review of mixed individual/ regulatory cases was not clear before the Tribunal rendered its Judgment in “UU”	9
(b) Applicant’s contention that the principle of “equitable tolling” should apply to his case	11
(3) Tribunal’s conclusion regarding the admissibility of Applicant’s challenge to the “individual” decision	12
(4) Has Respondent shown that Applicant’s challenge to a “regulatory” decision is clearly inadmissible?.....	12
CONCLUSIONS OF THE TRIBUNAL	13
DECISION.....	14

ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

JUDGMENT No. 2024-4

“UU” (No. 2), Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)

INTRODUCTION

1. The Administrative Tribunal of the International Monetary Fund (“Tribunal”), composed for this case, pursuant to Article VII, Section 4 of the Tribunal’s Statute, of Judge Nassib G. Ziadé, President, and Judges Deborah Thomas-Felix and Andrew K.C. Nyirenda, has decided the Motion for Summary Dismissal (“Motion”) of a second Application brought against the International Monetary Fund (“Respondent” or “Fund”) by “UU”, a staff member of the Fund. Applicant was represented in the proceedings by Mr. Ryan E. Griffin, James & Hoffman, P.C. Respondent was represented by Ms. Cynthia Colaiacovo, Senior Consulting Counsel, and Ms. Tuuli Mooney-Schindler, Counsel, in the Administrative Law Unit of the IMF Legal Department.

2. This is Applicant’s second Application. In the first application, the Tribunal granted Applicant’s request for anonymity on the basis that his professional competencies were at issue. The considerations that led to the granting of anonymity have not changed, despite Applicant’s statement in the Application in the present case that he “is not requesting anonymity at this time.”

3. Applicant’s first application was summarily dismissed by the Tribunal in “UU”, *Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2022-3 (December 22, 2022). In “UU”, Applicant contested the denial of his request to be reclassified from a Fungible Macroeconomist (“FM”) to a Financial Sector Expert (“FSE”). He filed his application directly with the Tribunal, bypassing the Grievance Committee, asserting that the Tribunal had jurisdiction because he was challenging both an individual and a regulatory decision. The Tribunal granted the Fund’s request to summarily dismiss the application on the basis that even if Applicant was challenging a regulatory decision, he was doing so “in the context of a challenge to an individual decision and such a decision must first be pursued at the Grievance Committee.” (“UU”, para. 23.) Applicant thereafter filed a Grievance with the Grievance Committee; the Grievance was dismissed for being out of time, which led to the present Application.

4. In the present Application, Applicant again challenges the “individual” decision denying his request to be reclassified from an FM to an FSE. He further challenges what he asserts are the following regulatory decisions: (a) “a gap in the regulatory framework governing the career progression of Fund economists, specifically the absence of any formal rules or policies

concerning the process for reclassification from Fungible Macroeconomist to a Specialist Economist role”; and (b) “the informal or ad hoc rules apparently used to fill this gap” with respect to the decision regarding Applicant—namely, the “alleged ‘established practice for reconsidering reclassification from FM to Specialist Economist’ referenced by the Director, HRD, in her Administrative Review decision.”

5. The Fund has responded to the Application with a Motion for Summary Dismissal, arguing principally that (a) Applicant’s individual claim is inadmissible because he did not exhaust internal remedies in a timely manner and the Tribunal’s Judgment in “*UU*” is *res judicata* on the issue of exhaustion of internal remedies; (b) Applicant failed to present exceptional circumstances to excuse his failure to exhaust internal remedies in a timely manner; and (c) Applicant’s regulatory claim is inadmissible because it cannot be reviewed separately and independently from his individual claim, which is inadmissible.

6. A Motion for Summary Dismissal suspends the period for answering the Application until the Tribunal decides the Motion. Accordingly, at this stage, the case before the Tribunal is limited to the question of the admissibility of the Application.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

7. In October 2019, August 2020, and in January 2021 Applicant submitted requests to his managers that he be reclassified from an FM to an FSE. Each of his requests was denied. The record reflects that denials of the October 2019 and the August 2020 requests were done orally. On July 1, 2021, in response to Applicant’s January 2021 request, Applicant’s manager provided Applicant a written denial with a rationale.

8. On July 15, 2021, Applicant filed a request for administrative review to his Department Director of the denial of his January 2021 request for reclassification. Applicant did not receive a response to this request and thereafter submitted a similar request to the Human Resources Department (“HRD”) on August 1, 2021.

9. On March 8, 2022, the HRD Director rejected the claims raised by Applicant in his request for administrative review. The HRD Director noted that the Fund’s “established practice for considering reclassification from FM to Specialist Economist entails consideration by departmental management and then HRD against established parameters, namely: performance; expertise; and business need.” The HRD Director concluded that the decision was consistent with this practice, and she specifically advised Applicant of the following: “Should you wish to pursue this matter further, you may do so by filing an application with the Grievance Committee within two months of this memorandum. . . .”

10. On May 5, 2022, Applicant filed his first application with the Tribunal (“Application No. 1”), challenging his management’s decision to deny his request to be reclassified from an FM to an FSE. He acknowledged that he had not pursued remedies before the Grievance Committee, but argued that the Tribunal had jurisdiction over the matter because “the decision challenged herein is in truth a regulatory one.” “*UU*”, para. 2. He further argued that the case involved not only a regulatory decision but also an individual one. *Id.*

11. The Fund filed a Motion for Summary Dismissal of Application No. 1. The Fund’s principal argument was that Applicant was required to exhaust internal remedies before the Grievance Committee because he was challenging an individual decision, even if he was also challenging a purported regulatory decision. The Fund asserted that Applicant’s bypassing of the Grievance Committee was in contravention of the provisions of Article VI, Section 2, of the Tribunal’s Statute and its Commentary, which provide that in mixed individual/regulatory claim cases, the Grievance Committee must first hear the case and dispose of the issues over which it has jurisdiction.

12. In a Judgment dated December 22, 2022, the Tribunal granted the Fund’s Motion for Summary Dismissal “to the extent that it seeks dismissal of the Application for failure to exhaust all available channels of administrative review as required by Article V of the Tribunal’s Statute.” “*UU*”, para. 25.

13. Following the Tribunal’s Judgment in “*UU*”, Applicant filed a Grievance with the Grievance Committee on January 30, 2023. The Fund filed a Motion to Dismiss, asserting that Applicant had failed to file his Grievance in a timely manner. The Grievance Committee agreed in a decision dated June 12, 2023.

14. The Grievance Committee concluded that Applicant’s Grievance was out of time for the following reasons: (a) the “procedural pathway” for challenging an individual decision “was apparent from the rules of both the Grievance Committee and the Tribunal”; (b) the Commentary on Article VI, Section 2, of the Tribunal’s Statute “makes clear” that in cases where a staff member is challenging both an individual decision and a regulatory decision, the staff member must exhaust administrative remedies by first submitting a grievance to the Grievance Committee “to have the individual aspects of the case adjudicated first”; (c) Applicant had not presented “extenuating circumstances” to justify his decision to disregard the Commentary on Article VI, Section 2 and the HRD Director’s guidance to Applicant that he should proceed to the Grievance Committee in the event he wished to appeal the administrative review decision; and (d) Applicant was not entitled to have the time period for filing a grievance extended retroactively under the provisions of Chapter 11.03, Section 5.12.2 of the Staff Handbook (which allows the Grievance Committee to grant an extension for good cause), because Applicant had not submitted a request in advance of filing a Grievance, which is required by the rule.

PROCEDURE BEFORE THE TRIBUNAL

15. On September 11, 2023, Applicant filed the present Application, which was supplemented at the Registrar's request, and transmitted to Respondent, on September 12, 2023. On October 3, 2023, pursuant to Rule IV(f) of the Tribunal's Rules of Procedure, the Registrar circulated within the Fund a notice summarizing the issues raised in the Application.

16. On October 12, 2023, pursuant to Rule XII of the Tribunal's Rules of Procedure, Respondent filed its Motion for Summary Dismissal of the Application (the "Motion"). The Motion was transmitted to Applicant on the same day. On November 10, 2023, Applicant filed an Objection ("Objection") to the Motion. The Objection was transmitted to Respondent on the same day.

17. On April 2, 2024, the Tribunal notified the parties that it had decided to defer until the merits phase of the proceedings, if any, its decisions on Applicant's requests for production of documents, which had been made in the Application pursuant to Rule XVII of the Tribunal's Rules of Procedure. The Tribunal observed that disposition of the document requests was not necessary to the determination of the pending Motion, and Applicant had not argued otherwise.

18. Also on April 2, 2024, the Tribunal requested that Applicant submit any request for legal fees and costs incurred in responding to the Motion, along with supporting documentation. Applicant filed his Request on April 9, 2024. On April 17, 2024, Respondent submitted responsive Comments.

SUMMARY OF PARTIES' PRINCIPAL CONTENTIONS

19. The parties' principal arguments as presented by Applicant in his Application and Objection, and by Respondent in its Motion, may be summarized as follows:

A. Applicant's principal contentions on the merits

1. Applicant's managers' refusal to reclassify him from FM to FSE constituted "an abuse of discretion with respect to both the individual decision and the regulatory actions on which the individual decision was based."
2. The Fund failed to promulgate any rules, policies, or procedures to govern reclassification from FM to FSE. To the extent any such policies or procedures existed, management failed to make such rules accessible to staff, such as Applicant, who wished to pursue reclassification.
3. The criteria used by the Fund in denying Applicant's requests for reclassification were ill-defined and arbitrarily applied to Applicant.

4. Applicant's managers' refusal to reclassify Applicant was discriminatory. Applicant was treated differently than similarly situated staff, and there was no justification for the differential treatment.
5. The denial of Applicant's requests for reclassification lacked transparency and resulted in his denial of due process. The absence of written standards accessible to staff limited Applicant's ability to seek reclassification and was prejudicial to Applicant. Further, it is not clear whether the proper decision-makers were involved in deciding Applicant's requests.
6. Applicant seeks as relief:
 - a. an order requiring the Fund to reclassify him as an FSE or, alternatively, an order requiring the Fund (i) to reconsider Applicant's request for reclassification after the Fund promulgates applicable procedures and "objective substantive standards" governing requests for reclassification from an FM to an FSE, and (ii) to extend Applicant's current mobility freeze and permit Applicant to remain in his current assignment pending the Fund's reconsideration of his request;
 - b. compensation "in an amount deemed just and reasonable by the Tribunal";
 - c. costs, including legal fees; and
 - d. any other relief the Tribunal "deems just and proper."

B. Respondent's principal contentions on admissibility

1. In "*UU*" the Tribunal granted summary dismissal of the original application because Applicant failed to exhaust all internal remedies as required by the Tribunal's Statute. The "*UU*" Judgment gave Applicant no reason to believe that the Tribunal would hear his case in the event his Grievance was dismissed by the Grievance Committee. The Tribunal's Judgment in "*UU*" is therefore *res judicata* and the current Application should be dismissed on that basis alone.
2. Applicant has presented no exceptional circumstances to justify his failure to exhaust internal remedies in a timely manner.
3. Since Applicant's individual claim is inadmissible, his regulatory claim is also inadmissible. It cannot be reviewed "separately and independently" of his individual claim.

4. The absence of a rule providing a process for staff to request an exception to an existing rule does not qualify as a “regulatory gap.” Further, the absence of codified exceptions is not an “arbitrary gap.”

C. Applicant’s principal contentions on admissibility

1. The Tribunal’s Judgment in “UU” is not *res judicata* as to Applicant’s current Application. The “UU” Judgment was premised on the fact that Applicant had not yet gone to the Grievance Committee and had thus not yet exhausted internal remedies. The question is whether Applicant’s filing of his Grievance with the Grievance Committee satisfies the exhaustion requirements of Article V of the Tribunal’s Statute.
2. Applicant took steps to exhaust internal remedies and took those steps in a timely manner “even if one of those steps—initially lodging his mixed individual/regulatory claim with the Tribunal rather than the Grievance Committee in the first instance—was ultimately, in hindsight, a misstep.”
3. The correct procedure for bringing mixed individual/regulatory claims “was simply not clear” prior to the Tribunal’s “clarification” in the “UU” Judgment.
4. The Tribunal should apply the principle of “equitable tolling” to this case, which would be consistent with the Tribunal’s rule regarding the treatment of regulatory challenges raised together with individual challenges, whereby the normal time limits for bringing a regulatory challenge “are disregarded so that a staff member who diligently pursues an individual grievance is not required to maintain a separate regulatory challenge at the Tribunal simultaneously or be penalized for failing to do so.”
5. The Fund would not be prejudiced by the Tribunal finding that Applicant satisfied the exhaustion requirements.
6. Even if Applicant’s individual claim is untimely, his regulatory claim is timely because he only learned for the first time in the March 8, 2022 denial of his administrative review request that the Fund has an established practice and established parameters for evaluating requests for conversion from an FM to an FSE. Applicant thereafter filed his original application well within the applicable time limit requirements. His current Application “simply renews his original regulatory challenge” and the facts establish the “independent timeliness” of that claim.

7. The Tribunal has jurisdiction to hear Applicant’s regulatory gap claim because a failure to act, like an affirmative act, is equally reviewable where the failure to act occurs under circumstances in which action was necessary. The failure to act in this case was the Fund’s failure to provide an established, transparent framework for FM to FSE reclassification.

CONSIDERATION OF THE ADMISSIBILITY OF THE APPLICATION

20. A motion for summary dismissal presents one principal issue for decision: Is the application “clearly inadmissible” in terms of Rule XII of the Tribunal’s Rules of Procedure?

A. The “clearly inadmissible” standard for summary dismissal

21. Rule XII, para. 1, of the Tribunal’s Rules of Procedure provides that “the Tribunal may, on its own initiative or upon a motion by the Fund, decide summarily to dismiss the application if it is clearly inadmissible.”

22. The Tribunal has emphasized that “Rule XII sets a high bar for the dismissal of an application prior to a full airing of the merits of a case,” with such dismissals intended only for applications that the Tribunal deems “clearly irreceivable or devoid of merit.” “*VV*”, *Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2023-3 (March 30, 2023), para. 35, quoting *Mr. “QQ”*, *Applicant v. International Monetary Fund, Respondent (Motion to Dismiss in Part)*, IMFAT Judgment No. 2020-1 (November 2, 2020), para. 45. This high bar “protects applicants against having their right to be heard by the Tribunal being cut off prematurely” and “protects against the risk of the Tribunal’s taking an erroneous decision as to admissibility when the pleadings before it have yet to unfold in full,” “*VV*”, paras. 36-37, quoting *Mr. “QQ”*, paras. 47-48. At the same time, the Tribunal has recognized that summary dismissal “provides a mechanism to shorten the proceedings where inadmissibility is clear at the outset, thereby protecting the Tribunal (and the Respondent) from the expenditure of time and resources on matters that have no reasonable ground for advancing beyond the threshold.” “*VV*”, para. 36, quoting *Mr. “QQ”*, para. 47.

23. In “*UU*”, para. 23, the Tribunal granted the Fund’s Motion for Summary Dismissal of Application No. 1 where it was “clear and dispositive” that Applicant’s case was inadmissible due to his failure to pursue his individual claim with the Grievance Committee in advance of proceeding to the Tribunal. Respondent’s current Motion, pursuant to Rule XII of the Tribunal’s Rules of Procedure, now asks the Tribunal to dismiss the current Application summarily on the principal bases that: (a) Applicant’s individual claim is inadmissible because he did not exhaust internal remedies in a timely manner, and the Tribunal’s Judgment in “*UU*” is *res judicata* on the issue of exhaustion of internal remedies; (b) Applicant failed to present exceptional circumstances to excuse his failure to exhaust internal remedies in a timely manner; and (c) Applicant’s

regulatory claim is inadmissible because it cannot be reviewed separately and independently from his individual claim, which is inadmissible. These issues are addressed below.

- (1) With respect to Applicant’s challenge to an “individual” decision, has Respondent shown that the Application is clearly inadmissible for failure to exhaust internal remedies in a timely manner and is the Tribunal’s Judgment in “UU” res judicata on the issue of exhaustion of internal remedies?

24. The HRD Director denied Applicant’s request for administrative review on March 8, 2022. Absent a stay of proceedings or an extension of time, Applicant was thereafter required to file his Grievance within two months of that date. *See* GAO 11, Chapter 11.03, Section 5.12. Applicant was explicitly advised of this time limit by the HRD Director.

25. In lieu of following the HRD Director’s instruction, Applicant filed an application directly with the Tribunal, intentionally bypassing the Grievance Committee. In his original application, Applicant expressly stated that his case involved both a challenge to an individual decision and a regulatory one. Therefore, pursuant to Article VI, Section 2, of the Tribunal’s Statute and its Commentary, the Tribunal granted the Fund’s Motion for Summary Dismissal and stated in its Judgment that “the Grievance Committee is the proper forum to hear the case first and to dispose of the issues over which it has jurisdiction”—*i.e.*, Applicant’s challenge of the individual decision. “UU”, para. 24. Applicant thereafter filed a Grievance with the Grievance Committee on January 30, 2023, which was more than ten months following the HRD Director’s March 8, 2022, denial of his request for administrative review.

26. The Grievance Committee has now disposed of Applicant’s individual claim, concluding that it was filed out of time and that there were no justifications excusing the untimely Grievance. The Fund argues that not only did Applicant fail to exhaust internal remedies in a timely manner, but the Tribunal’s Judgment in “UU” is *res judicata* on this issue.

27. While there is no dispute that Applicant’s Grievance was untimely, the Tribunal disagrees with the proposition that *res judicata* precludes Applicant from pursuing his claims with the Tribunal in this second Application. In *Mr. “R” (No. 2)*, the Tribunal held that “[*r*]es judicata prevents the relitigation of claims already adjudicated” *Mr. “R” (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2004-1 (December 10, 2004), para. 25. In “UU”, the only issue adjudicated by the Tribunal was that Applicant had failed to pursue his individual claim with the Grievance Committee before proceeding to the Tribunal. Applicant has addressed that issue by filing a Grievance. It now falls to the Tribunal to decide an issue that was not adjudicated by the Tribunal in “UU”—namely, whether there are exceptional circumstances that would excuse Applicant’s failure to file a timely Grievance with respect to his challenge of the individual decision.

- (2) Has Applicant presented exceptional circumstances that would justify his failure to file a timely Grievance of his challenge to the “individual” decision?

28. The Tribunal recently reaffirmed its authority to consider exceptional circumstances in assessing whether an applicant has exhausted all channels of administrative review as required for an application to be admissible under Article V of the Statute. See “XX”, *Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2024-2 (June 7, 2024), para. 68. In “XX”, para. 69, the Tribunal highlighted the importance of exhausting administrative remedies and of adhering to time limits; emphasized that internal review requirements should not be lightly dispensed with and that exceptional circumstances should not easily be found; and stated that in assessing possible exceptional circumstances, the Tribunal will consider the “extent and nature of the delay, as well as the purposes intended to be served by the requirement for exhaustion of administrative remedies.” Citing *Estate of Mr. “D”, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2001-1 (March 30, 2001), paras. 104 and 108). The Tribunal addresses, below, the exceptional circumstances that Applicant alleges exist in the present case.

- (a) Applicant’s contention that the procedure for review of mixed individual/regulatory cases was not clear before the Tribunal rendered its Judgment in “UU”

29. Applicant asserts that the correct procedure for bringing mixed individual/regulatory claims “was simply not clear” prior to the Tribunal’s “clarification” in the “UU” Judgment and that he “diligently tried to navigate the Fund’s internal justice system and raise his procedurally complex ‘mixed’ individual/regulatory claims.” He further asserts that neither the Staff Handbook nor the Tribunal’s Statute “clearly stated that the individual portion of the claims had to be exhausted before the Tribunal would consider the parallel regulatory questions.” He adds that when faced with this ambiguity, he “acted reasonably” by timely filing his claims with the Tribunal.

30. Applicant’s assertions are without merit. The Tribunal’s Statute and its Commentary are readily available. Article VI, Section 2, of the Tribunal’s Statute explicitly states that “the illegality of a regulatory decision may be asserted at any time in support of *an admissible application challenging the legality of an individual decision* taken pursuant to such regulatory decision.” (Emphasis added.) The Commentary to Article VI, Section 2 provides further clarification on mixed (individual/regulatory) challenges, stating that “[i]n cases involving both types of grounds . . . [t]he Grievance Committee would first hear the case and dispose of the issues over which it had jurisdiction” after which “the staff member could then proceed to the [T]ribunal.” Commentary on the Statute, p. 26.

31. The Staff Handbook, which is accessible to all staff on the Fund’s intranet, also provides information about recourse to the Tribunal in relation to individual and regulatory claims, under GAO 11, Chapter 11.03, Section 7 (“Recourse to the IMF Administrative Tribunal”). Subsection 7.3 (“Jurisdiction”) provides that “[a] staff member [footnote omitted] may bring before the Tribunal a challenge to the legality of an ‘individual’ or a ‘regulatory’ decision of the Fund” and that “[i]n the case of challenges to ‘individual’ decisions, an application may be filed with the Tribunal only after the staff member has gone through Administrative Review and the Grievance Committee”

32. Notably, the Staff Handbook clarifies at Subsection 7.1 that the information in Section 7 is “only a summary of the Tribunal’s Statute and its Rules of Procedure” and states that “[i]f there are any discrepancies between the information in this Chapter and the Statute or Rules of Procedure of the IMFAT, the latter will prevail.” Subsection 7.1 includes a link to the Tribunal’s public internet site, on which are published the Tribunal’s Statute, Commentary on the Statute, Rules of Procedure, and its Judgments and Orders.

33. The Tribunal observes that if Applicant or his counsel had any doubts about the correct process for filing a mixed individual/regulatory claim, they could have filed a Grievance with the Grievance Committee while also filing an Application with the Tribunal in order to preserve Applicant’s rights to proceed in either forum. The Tribunal’s jurisprudence reflects that such an approach is commonplace where uncertainty may exist as to the appropriate route of recourse. *See, e.g., “YY”, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2024-3 (June 7, 2024), para. 38. This practice is especially common where the dispute implicates both individual and regulatory decisions. *See, e.g., Mr. B. Tosko Bello, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2012-3 (September 11, 2012), paras. 17-19.

34. The record in the present case, however, shows that Applicant had no reason for doubt as to the correct process for challenging the decision on his request for administrative review. As noted earlier, the HRD Director’s administrative review decision advised Applicant: “Should you wish to pursue this matter further, you may do so by filing an application with the Grievance Committee within two months of this memorandum.” If Applicant’s intention to raise a regulatory challenge along with his individual challenge created any uncertainty on his part, the HRD Director’s directive made clear that timely review by the Grievance Committee was required, even if Applicant decided simultaneously to file an application with the Tribunal.

35. The Tribunal has emphasized that “Applicants having knowledge of internal review requirements may not simply choose to ignore them.” *Estate of Mr. “D”*, para. 104; *see also Mr. “QQ” (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2022-2 (October 25, 2022), para. 52 (applicant’s perception that administrative review would be

“meaningless” cannot override requirement for timely exhaustion of remedies). That Applicant in the present case chose not to comply with the review requirements of which he had been advised cannot reasonably be attributed to any lack of clarity in the Tribunal’s Statute, Commentary, or jurisprudence with regard to mixed individual/regulatory cases. Rather, Applicant made a knowing choice to bypass the Grievance Committee.

36. Applicant nonetheless argues that the Fund would not be harmed or prejudiced in any way by the Tribunal finding that Applicant satisfied the exhaustion requirements of Article V of the Tribunal’s Statute. The Tribunal observes that the absence of harm or prejudice by Applicant’s delay is not a valid justification. The Tribunal ruled in *Estate of Mr. “D”* (para. 105) that “in light of the public interest in enforcement of time limits, the fact that the respondent organization may not have been prejudiced by the delay does not excuse the applicant’s failure to meet the requisite filing deadlines” The specified time limits may only be excused when exceptional circumstances exist.

(b) Applicant’s contention that the principle of “equitable tolling” should apply to his case

37. Lastly, Applicant asserts that because his Grievance would have been timely “but for being misdirected to the Tribunal rather than the Grievance Committee” the Tribunal should apply the principle of “equitable tolling” to his case, such that the time limits for filing his Grievance with the Grievance Committee would be tolled starting from the date on which he filed his first application with the Tribunal. In Applicant’s view, application of “equitable tolling” to his situation would be consistent with the Tribunal’s handling of mixed individual/regulatory claims where, he says, “the normal time limits for bringing a regulatory challenge are disregarded so that a staff member who diligently pursues an individual grievance is not required to maintain a separate regulatory challenge at the Tribunal simultaneously or be penalized for failing to do so.”

38. It is correct that in mixed individual/regulatory cases, the time limits for the challenge of the regulatory decision are tolled under the Tribunal’s Statute pending consideration by the Grievance Committee of a challenge to an individual decision. *See* Commentary on Article VI, Section 2, p. 26. This is because the Grievance Committee has subject matter jurisdiction over challenges to individual decisions, but not over challenges to regulatory decisions. *See Mr. A. Billmeier, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2010-3 (February 9, 2010), where the Tribunal observed that “[a] singular feature of the IMFAT Statute is that it expressly confers upon the Tribunal subject matter jurisdiction over challenges to both ‘individual’ and ‘regulatory’ decisions of the Fund” (para. 58) and that “the Grievance Committee’s jurisdiction does not extend to challenges to regulatory decisions” (para. 59).

39. To accept Applicant’s argument that the exhaustion requirements for individual claims should be tolled when staff bypass the Grievance Committee and file mixed individual/regulatory

claims directly with the Tribunal would give license to staff to circumvent the exhaustion of remedies requirements set out in the Tribunal’s Statute. As the Tribunal has already observed, the only possible justification for failing to satisfy the exhaustion requirements is the presence of exceptional circumstances—which are not found in this case.

40. Applicant’s case can be distinguished from cases in which applicants challenge only regulatory decisions. In such circumstances, applicants are permitted to file an application directly with the Tribunal within “three months after the announcement or effective date of the decision, whichever is later[.]” Article VI(2) of the Statute. As the Tribunal noted in *Mr. A. Billmeier*, para. 61, “there are no channels of review to exhaust in such cases.” In the present case, it is undisputed that Applicant challenged both an individual decision and a regulatory decision; therefore, he was required to file a timely Grievance of his individual claim with the Grievance Committee.

(3) Tribunal’s conclusion regarding the admissibility of Applicant’s challenge to the “individual” decision

41. Applicant bypassed the Grievance Committee with respect to his individual claim and therefore failed to exhaust internal remedies in a timely manner as required by Article V of the Tribunal’s Statute. Applicant has presented no exceptional circumstances excusing this failure. Accordingly, the Tribunal concludes that Respondent has shown, with respect to Applicant’s challenge to the “individual” decision denying his reclassification request, that the Application is “clearly inadmissible.”

(4) Has Respondent shown that Applicant’s challenge to a “regulatory” decision is clearly inadmissible?

42. Finally, Applicant contends that “[e]ven if his individual claims were untimely, . . . [his] regulatory challenge would still be timely of its own accord and thus deserving of resolution by the Tribunal on the merits independent of his individual claim.” Applicant asserts, as he did in his original application, that it was not until the HRD Director’s March 8, 2022, administrative review decision that he first learned that the Fund had an established practice for evaluating requests for conversion from an FM to an FSE. He submits that these facts establish the “independent timeliness of his regulatory claim.”

43. Applicant’s assertion that his regulatory challenge is timely of its own accord is unpersuasive. In “*UU*” the Tribunal concluded that his application was not admissible for review because “even if he does challenge a regulatory decision, he does so *in the context of* a challenge to an individual decision and such a decision must be first pursued at the Grievance Committee.” “*UU*”, para. 23. (Emphasis added.) The Tribunal’s conclusion was based on Applicant’s own statement that the administrative review decision “comprise[d] both a regulatory and individual decision which should be considered together.” “*UU*”, para. 22. In his current Application

Applicant likewise states that he challenges “both the individual decision and the regulatory actions *on which the individual decision was based.*” (Emphasis added.) In light of the Tribunal’s conclusion in “*UU*” that the individual and regulatory challenges are intertwined (which Applicant himself acknowledges), Applicant is precluded by *res judicata* from asserting that he may raise a challenge to a regulatory decision independently of his challenge to the individual decision.

44. Applicant further asserts that the Tribunal has jurisdiction over his regulatory claim because there is a regulatory gap in the Fund’s framework for evaluating requests for conversion from an FM to an FSE. He states that “a failure to act, like an affirmative act, is equally reviewable where the failure to act occurs under circumstances in which action was necessary.”

45. In making this assertion, Applicant implicitly asks the Tribunal to ignore the inadmissibility of his individual claim. There is no legal support for the proposition that the Tribunal can simply disregard an individual claim in a mixed individual/regulatory claim case. In such cases, the admissibility of the individual claim is a precondition for the Tribunal to entertain the regulatory claim. This is an explicit requirement of Article VI, Section 2, of the Statute, which provides that “the illegality of a regulatory decision may be asserted at any time in support of an *admissible application challenging the legality of an individual decision* taken pursuant to such regulatory decision.” (Emphasis added.) In the present case, Applicant’s challenge of the individual claim is inadmissible; therefore, his challenge of the purported regulatory claim is also inadmissible.

46. In light of the above, the Tribunal concludes that Applicant’s challenge to a “regulatory” decision is clearly inadmissible.

CONCLUSIONS OF THE TRIBUNAL

47. For the reasons elaborated above, the Tribunal concludes as follows:

- i. Respondent has shown that Applicant’s challenge to the individual decision denying his request for reclassification from an FM to an FSE is “clearly inadmissible” for failure to exhaust all available channels of administrative review in a timely manner as required by Article V of the Tribunal’s Statute. Applicant has not established any exceptional circumstances to excuse this delay.
- ii. Respondent has also shown that Applicant’s challenge to a purported regulatory decision is clearly inadmissible.
- iii. Accordingly, the Motion for Summary Dismissal is granted, and the Application is dismissed in its entirety. Applicant’s request for costs is denied.

DECISION

FOR THESE REASONS

The Administrative Tribunal of the International Monetary Fund unanimously decides that:
the Motion for Summary Dismissal is granted; and
the Application of “*UU*” (*No. 2*) is dismissed.

Nassib G. Ziadé, President

Deborah Thomas-Felix, Judge

Andrew K.C. Nyirenda, Judge

/s/

Nassib G. Ziadé, President

/s/

Paul Jean Le Cannu, Registrar

Washington, D.C.
October 29, 2024