

REGISTRY'S SUMMARY¹: *“UU” (No. 2), Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*,
IMFAT Judgment No. 2024-4 (October 29, 2024)

SUMMARY DISMISSAL—ADMISSIBILITY—INDIVIDUAL DECISION—EXHAUSTION OF CHANNELS OF ADMINISTRATIVE REVIEW—EXCEPTIONAL CIRCUMSTANCES—RES JUDICATA—REGULATORY DECISION—MIXED INDIVIDUAL/REGULATORY CLAIM

“UU” (No. 2) was Applicant's second Application before the Tribunal. 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 in *“UU”* 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” pursuant to Article VI, Section 2, of the Tribunal's Statute and its Commentary. (*“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 submission of the Application in *“UU” (No. 2)*.

In *“UU” (No. 2)*, Applicant again challenged the “individual” decision denying his request to be reclassified from an FM to an FSE. He further challenged what he asserted were 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.” (Para. 4.)

The Fund responded to the Application in *“UU” (No. 2)* with a Motion for Summary Dismissal, arguing principally that (a) Applicant's individual claim was inadmissible because he did not exhaust internal remedies in a timely manner and the Tribunal's Judgment in *“UU”* was *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,

¹ This summary is provided by the Registry to assist in understanding the Tribunal's Judgment. It does not form part of the Judgment. The full Judgment of the Tribunal is the only authoritative text. The Tribunal's Judgments are available at: www.imf.org/tribunal.

and (c) Applicant's regulatory claim was inadmissible because it cannot be reviewed separately and independently from his individual claim, which is inadmissible.

Regarding Applicant's individual claim, the Tribunal observed that while Applicant's Grievance was untimely, *res judicata* did not preclude Applicant from pursuing his claim with the Tribunal. The only issue adjudicated by the Tribunal in "UU" was that Applicant had failed to pursue his individual claim before the Grievance Committee. Applicant addressed that issue by filing a Grievance with the Grievance Committee. It therefore fell to the Tribunal to decide the only issue that had not been adjudicated by the Tribunal in "UU"—namely, whether there were exceptional circumstances that excused Applicant's failure to file a timely Grievance with the Grievance Committee regarding his individual claim.

The Tribunal concluded that Applicant had not presented exceptional circumstances and that his individual claim was therefore inadmissible. In reaching this conclusion, the Tribunal rejected the following arguments raised by Applicant: (a) the procedure for the review of mixed individual/regulatory claims was not clear before the Tribunal rendered its judgment in "UU"; and (b) 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.

Regarding Applicant's first argument, the Tribunal found that Applicant had no reason for doubt as to the correct process for challenging his individual decision. As to Applicant's second argument, the Tribunal observed that to accept the proposition 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.

The Tribunal also found that Applicant's regulatory claims were inadmissible. The Tribunal observed that in "UU" it had concluded that Applicant's individual and regulatory claims were intertwined. This conclusion was based on statements made by Applicant in his own pleadings. Consequently, Applicant was precluded by *res judicata* in this case from asserting that he may raise a challenge to a regulatory decision independently of his challenge to the individual decision. Further, the Tribunal could not, as Applicant was implicitly asking, ignore the inadmissibility of Applicant's individual claim. The Tribunal emphasized that "[t]here 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." (Para. 45.)

Accordingly, the Motion for Summary Dismissal was granted and the Application in "UU" (*No. 2*) was dismissed.