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## **TIP OF THE MONTH**

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### **THE APPEAL PROCESS: IT IS NOT TOO LATE TO ASSERT NEW REASONS WHY THE DECISION IS WRONG**

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It is worth learning the difference between a claim and a plea when it comes to pursuing an appeal of an adverse administrative decision: claims must normally be asserted at the beginning of the appeal whereas pleas may be raised at any time. Claims will include, for example, a request that the decision be reversed, for material damages (loss of salary, pension benefits, interest, etc.), for moral damages (for injury to the staff member's reputation and dignity), and costs. These constitute the staff member's claims. In support of the claims, the staff member will assert pleas. Pleas are the reasons why the decision was not lawful or correct. In the initial letter to the executive head, no reason or plea may be given supporting the request to reverse the decision. In the internal appeal, at least one persuasive reason or plea should be given. As the appeal moves forward, new information may be discovered showing why the decision was wrong. At any point during the internal appeal and even before the ILO Administrative Tribunal in the rejoinder, a new reason may be asserted showing the decision was wrong. It is very often the case that the organization in defense will argue that assertions of new reasons are time-barred because they were not raised earlier. That is not a good defense as to new pleas: "Although he might at the outset have challenged the decision on the merits, only in his rejoinder has he done so. Yet the case law allows the submission of new pleas both in the complaint and in the rejoinder: it is only new claims that may not be made". Judgment No. 1590. If the staff member did not request moral damages in the internal appeal, the ILO Administrative Tribunal will dismiss the claim for moral damages if it is asserted before the Tribunal as time-barred. However, if the staff member identifies a different rule or procedure that was not followed which makes the decision unlawful, the Tribunal will review the new reason.

This rule of due process in the appeal procedure allows the Tribunal "to do justice between the parties according to the merits of the case". The rule levels the playing field between the administration and the staff member. The staff member's access to documents and information, and legal assistance, is limited and it often happens during the course of the internal appeal that significant evidence disclosing a flaw in the decision arises. This sometimes even happens during the appeal to the Tribunal when the staff member receives the reply from the administration. Sometimes, a simple but very cogent reason may be simply overlooked.

Remember that it is not too late to assert new reasons why the decision is wrong.

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\* I specialize in the representation of international civil servants, and serve as legal advisor to several staff unions/associations of international organizations, some of which are based in Vienna, Austria. For further information, please send me an e-mail or visit my website.