



**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** Víctor Rodríguez

ABDALLA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON AN APPLICATION TO FILE  
A FRIEND-OF-THE-COURT BRIEF**

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**Counsel for applicant:**  
Self-represented

**Counsel for respondent:**  
Alan M. Gutman, ALS/OHRM, UN Secretariat

**Staff association applying to file a friend-of-the-court brief:**  
Staff Association of the United Nations Economic Commission for Latin America  
and the Caribbean (ECLAC)

## Introduction

1. On 12 January 2010, the applicant filed with the United Nations Dispute Tribunal (UNDT) an application requesting the Tribunal to suspend, during the pendency of the management evaluation, the implementation of the decision not to renew his contract beyond 31 December 2009.

2. By order No. 4 (GVA/2010) dated 26 January 2010, the Tribunal decided to reject the application. It considered that the original decision was moot because the applicant's appointment had been extended until 3 February 2010. However, it underlined that the applicant was not precluded from filing a new application for suspension of action with respect to the decision not to renew his appointment beyond 3 February 2010. The applicant did not do so on or before 3 February 2010.

3. On 15 March 2010, the applicant submitted an "application for suspension of action" concerning the decision not to renew his appointment beyond 3 February 2010.

4. By letter dated 16 March 2010, the Tribunal informed the parties that the applicant's submission should not be considered as an application for suspension of action but rather as an application on the merits because the contested decision had already been implemented. The Tribunal hence acknowledged receipt of the application and transmitted it to the respondent.

5. By e-mail dated 26 March 2010 from the Chief of the Office of Staff Legal Assistance (OSLA), the Tribunal was informed that "[the OSLA counsels] had already advised [the applicant] that [they] would not be able to assist him in his request for management evaluation ... [but that they] further advised him that [they] would review the management evaluation, once he [had] received it, with a view to assessing whether OSLA could assist him at that stage. [The applicant] [had] not avail[ed] himself of this opportunity but instead apparently [had] made a submission to the Geneva UNDT on his own".

6. On 15 April 2010, the respondent submitted his reply.

7. By letter dated 26 April 2010, the Tribunal acknowledged receipt of the respondent's reply, which was transmitted to the applicant, and required the parties to attend an oral hearing on Monday, 10 May 2010.

8. On 3 May 2010, a "petition" on behalf of the applicant was submitted to the Tribunal. The Tribunal was requested to order that "[he] should be provided with legal assistance and representation so as to secure [his] legal rights". He requested from the Tribunal that "(a) [he] should be assigned with legal assistance and representation by OSLA and (b) that the [T]ribunal grants [him] a postponement of the date of the hearing until [he] can count on counsel to continue with the proceedings in an equal foot as the [r]espondent".

9. On the same day, 3 May 2010, the Staff Association of the United Nations Economic Commission for Latin America and the Caribbean (ECLAC) submitted to the Tribunal an application to file a friend-of-the-court brief. The application reads *inter alia* as follows:

“It is the purpose of this brief to submit to the Tribunal the situation being experienced by the applicant vis-à-vis the lack of counsel and to confirm that this is a problem that goes far beyond his case and that it is our responsibility now to bring the issue to Court since we have exhausted all possible means to get a solution.

We respectfully submit to the Tribunal the possibility to bear in mind this matter in the decisions to secure a counsel for the applicant and to postpone the 10<sup>th</sup> May hearing until he is properly assisted and represented.”

10. On the same day, the Tribunal transmitted the above-mentioned application to the parties. They were requested to submit any objections or/and comments by Wednesday, 5 May 2010. By submission dated 5 May 2010, the respondent opposes the friend-of-court brief and moves the Tribunal to deny leave to make a submission; the respondent has no objections to postponing the oral hearing for a reasonable period of time.

### **Considerations**

11. According to article 2.3 of the Tribunal’s statute and article 24 of its rules of procedure, a staff association may submit a signed application to file a friend-of-the-court brief. The President or the judge hearing the case may grant the application if it considers that the filing of the brief would assist the Tribunal in its deliberations.

12. Considering the application’s first goal “to secure a counsel to the applicant”, it has to be pointed out that neither the Tribunal’s statute nor its rules of procedure contain explicit provisions to order any such thing. Article 12 of the rules of procedure only provide that an applicant may designate counsel from OSLA or counsel authorized to practice law; furthermore a party may also be represented by a staff member or a former staff member of the United Nations or one of the specialized agencies. It certainly does not authorize the Tribunal to assign legal counsel to an applicant.

13. Article 19 of the rules of procedure allows the judge to issue any order which appears appropriate for the fair and expeditious disposal of the case and to do justice to the parties. It may be left open whether this provision, under particular circumstances, e.g. mental and/or intellectual problems of an applicant, is sufficient basis for assigning legal counsel to an applicant. The applicant who worked as a translator and interpreter on an FS-5 Administrative Assistant Post does not fall under this category.

14. It may be reiterated that the General Assembly in its resolution 62/228 on administration of justice at the United Nations, which established the OSLA, stipulated that “staff at all duty stations shall continue to have access to legal assistance”. The Tribunal has already found that this resolution must be interpreted as creating a right for staff members to request legal counsel from the OSLA, which has an obligation to provide proper advice, including on the merits of the case (see UNDT/2009/93, *Syed*).

15. It seems clear that the applicant was in contact with OSLA and received advice on how to handle his case once he would receive a management evaluation decision. Unfortunately, he did not follow OSLA advice to present the management evaluation decision to OSLA which was willing to assess whether they could assist the applicant at this stage. Instead of doing so, the applicant decided to file an application by himself. The applicant did not take advantage of legal advice which had been offered by OSLA.

16. The second goal of the application, that it is to have postponed the oral hearing scheduled for 10 May 2010, may also not be granted. In the light of the foregoing, the Tribunal holds the view that it is neither necessary nor appropriate to postpone the oral hearing. The Tribunal itself will raise the facts and discuss the legal issues of this case with the parties.

17. Finally, the Tribunal cannot find in the Staff association's submission any reason why and how the filing of a friend-of-the-court brief would assist the Tribunal in its deliberations. The question whether the new system of internal justice suffers from a general lack of counsel does not fall within the jurisdiction of the Tribunal.

### **Decision**

18. For the reasons stated above, the application to file a friend-of-the-court brief is rejected.

*(Signed)*

Judge Thomas Laker

Dated this 6<sup>th</sup> day of May 2010

Entered in the Register on this 6<sup>th</sup> day of May 2010

*(Signed)*

Víctor Rodríguez, Registrar, UNDT, Geneva