



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/023

Order No.: 97 (GVA/2011)

Date: 9 June 2011

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: Víctor Rodríguez

BALAKRISHNAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON MOTION FOR LEAVE TO HAVE
RECEIVABILITY CONSIDERED AS A
PRELIMINARY ISSUE**

Counsel for Applicant:

Neil Fishman

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. On 13 May 2011, the Applicant, a staff member of the International Criminal Tribunal for the former Yugoslavia, filed an application with the Tribunal, challenging the decision to forward to a central review committee at the United Nations Headquarters his request for conversion of his fixed-term appointment to a permanent appointment and the failure to observe his right to priority consideration for such conversion.

2. Under cover of a letter dated 13 May 2011, the Registry of the Tribunal acknowledged receipt of the application and transmitted it to the Respondent, requesting that he file his reply no later than 14 June 2011.

3. On 2 June 2011, the Respondent filed a motion whereby he sought leave to have receivability considered as a preliminary issue, explaining that on 25 February 2011 the Management Evaluation Unit had rejected the Applicant's request for management evaluation as irreceivable on the grounds that no final administrative decision had been taken in his case.

Consideration

4. At the outset, the Tribunal recalls that "[a]lthough no right to partially respond is granted by the Statute or the Rules of Procedure of the Dispute Tribunal, the Tribunal may decide in certain cases to permit the Respondent to file a reply addressing only the issue of receivability, provided that the Tribunal is satisfied that it would be appropriate for the fair and expeditious disposal of the case and to do justice to the parties" (*Di Giacomo* Order No. 335 (NY/2010)).

5. In the view of the Tribunal, the question whether or not the application is receivable is not a clear-cut issue. The Tribunal notes in particular that the Applicant puts forward a plea alleging undue delay, and it considers that it would benefit from receiving a full reply from the Respondent.

6. The Tribunal also takes note of the fact that the Respondent acted with due diligence in filing his request 12 days before his reply was expected, and that the

Tribunal delivers this ruling only seven days after the request was made. It considers that it is in the interest of fairness that the Respondent should be granted additional time to file his reply.

7. The present Order is without prejudice to the Tribunal's later determination of the issue of receivability.

IT IS ORDERED THAT:

8. The Respondent's motion for leave to have receivability considered as a preliminary issue is rejected.

9. The Respondent is to file his full reply no later than **Tuesday, 21 June 2011**.

(Signed)

Judge Thomas Laker

Dated this 9th day of June 2011

Entered in the Register on this 9th day of June 2011

(Signed)

Víctor Rodríguez, Registrar, Geneva