



Before: Judge Margaret Tibulya

Registry: Geneva

Registrar: René M. Vargas M.

NODIRJON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Jeffrey Dahl

Counsel for Respondent:

Esther Saabel, UNOG

Introduction

1. On 7 March 2023, the Applicant, a Drug Control Officer, United Nations Office on Drug Control (“UNODC”), United Nations Office at Vienna (“UNOV”), filed an application contesting the decision contained in an email dated 8 September 2022 between the Applicant and the Human Resources Management Services (“HRMS”), where the Organization informed the Applicant that the Education Grant (“EG”) and the Special Education Grant (“SEG”) are subject to the same single maximum limit and are not to be combined.
2. On 10 March 2023, the application was served on the Respondent who, on 5 April 2023, filed a motion to have receivability determined as a preliminary matter.
3. The Tribunal asked the Applicant to respond to the above motion, which he did on 17 April 2023.

Consideration

4. In support of his motion, the Respondent submits that the application is not receivable *ratione materiae* because the email of 8 September 2022 is not a final administrative decision, thus not subject to judicial review by this Tribunal.
5. The Applicant, however, argues that the email dated 8 September 2022 constitutes an administrative decision for the purpose of judicial review because, in said email, the Organization set out its interpretation of the applicable rules and convened to the Applicant a scenario where he was not entitled to EG and SEG combined.
6. The Tribunal recalls that art. 19 of its Rules of Procedure provides that it can “issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties”. In this connection, the Tribunal notes 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); Balakrishnan Order No. 97 (GVA/2011), and Mafessanti Order No. 169 (GVA/2015)).

7. Having reviewed the parties' submissions, the Tribunal is of the view that the answer to the crucial question of whether the application is receivable *ratione materiae* in the present case is not a straightforward one. Motions for leave to have receivability considered as a preliminary matter should be granted only when the receivability of the application is a clear-cut issue (*Dragnea* Order No. 61 (NY/2022); *Balakrishnan* Order No. 97 (GVA/2011)), which is not the case here.

8. The above notwithstanding, the present Order is without prejudice to the Tribunal's later determination on the issue of receivability.

9. Pursuant to art. 10 of the Tribunal's Rules of Procedure, the Respondent has 30 calendar days from the date of receipt of the application to submit his reply. Thus, the Respondent's reply should have been filed by 11 April 2023. However, since the Respondent filed the motion to have receivability determined as a preliminary matter on 5 April 2023, i.e., with six calendar days left in his deadline to reply, the Respondent shall file his reply on the merits within six calendar days of issuance of this Order.

Conclusion

10. In view of the foregoing, it is ORDERED THAT:

- a. The Respondent's motion to have receivability determined as a preliminary matter is rejected; and

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b. The Respondent shall file his reply on the merits by **Tuesday, 9 May 2023.**

(Signed)

Judge Margaret Tibulya

Dated this 3rd day of May 2023

Entered in the Register on this 3rd day of May 2023

(Signed)

René M. Vargas M., Registrar, Geneva