



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NY/2009/022/  
JAB/2008/037  
Order No.: 63 (NY/2010)  
Date: 5 April 2010  
Original: English

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**Before:** Judge Adams

**Registry:** New York

**Registrar:** Hafida Lahiouel

ISLAM

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**RULING**

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**Counsel for Applicant:**  
Bart Willemsen, OSLA

**Counsel for Respondent:**  
Stephen Margetts, ALS

## **Introduction**

1. On 26 March 2010 I made certain orders (Order 59 (NY/2010) in the matters of *Bertucci* (UNDT/NY/2009/039/JAB/2008/080 and UNDT/NY/2009/117) giving reasons that, in part, dealt with the continuing case management issues in the present case. Presently this application is adjourned for hearing on 8 April 2010. On 10 March 2010 the Tribunal ordered that, in accordance with its earlier rulings in *Bertucci*, the respondent was not entitled either to appear or present evidence in any hearing before the Tribunal although, in the hope that the disobedience of the respondent would be purged, counsel for the respondent was given leave to appear and participate in these proceedings, it being foreshadowed that any evidence to be adduced by the respondent would be received on the *voir dire*, with a decision later to be made as to whether it would be admitted into evidence. Since that date, the respondent has informed the Tribunal that appeals have been filed both in respect of the orders in *Bertucci* and the present case and, amongst other things, has sought adjournment of the proceedings pending determination of the appeals.

2. In Order 59 (NY/2010) I discussed the nature of the inherent jurisdiction of the Tribunal to control its proceedings where its orders have been wilfully disobeyed, whether the filing of appeals operated to stay proceedings and whether the Tribunal had continuing jurisdiction to hear and determine an application where appeals had been filed against its orders or interim/interlocutory judgments. In the result, I confirmed my earlier rulings as to the consequences of disobedience in these circumstances and ruled that the appeals were incompetent and at all events did not effect a stay of proceedings. Further, dealing with the adjournment application, I briefly explained the nature of the Tribunal's jurisdiction to stay or otherwise delay its own proceedings and held that there were no good grounds for adjourning or otherwise staying the proceedings in *Bertucci*, reserving this question so far as it applied to the present case.

3. Since the disobeyed order to produce documents was not made in the present proceedings and having regard to the importance of the entitlement of a party to appear, I am prepared to consider whether a stay of my order refusing leave to appear in the present case should be granted pending determination of the appeal. Accordingly, when this matter comes on for hearing, counsel for the respondent may make an application for such a stay which I will determine after I have heard from the applicant's counsel. I have already briefly stated the relevant considerations in *Bertucci* and counsel should be prepared to deal with these issues in their submissions. Amongst other things, a copy of the relevant appeal will need to be produced.

*(Signed)*

Judge Adams

Dated this 5<sup>th</sup> day of April 2010