



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/098

Order No.: 335 (NY/2010)

Date: 29 December 2010

Original: English

---

**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Santiago Villalpando

DI GIACOMO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**ORDER**

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

---

**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Susan Maddox, ALS/OHRM, UN Secretariat

## Introduction

1. On 25 November 2010 the Applicant submitted an application identifying the contested decision as “the imposition of an illegal and unchallengeable disciplinary measure against [him]” and stating that the decision stemmed from the time he was an intern with the United Nations Department of Social and Economic Affairs between 10 April 2006 and 30 June 2006. The Applicant stated that this decision was taken on 26 December 2007 by the Chief of the Administrative Law Unit.

2. On 7 December 2010 the New York Registry of the Dispute Tribunal transmitted the application to the Respondent, stating, *inter alia* (emphasis in original):

### **Applicant—**

This email serves to confirm that, on 25 November 2010, the New York Registry of the Dispute Tribunal received your application. ... Pursuant to art. 8.4 of the Rules of Procedure of the Tribunal, the Registry has reviewed your application to ensure compliance with the requirements of arts. 8.1–8.3 of the Rules of Procedure and assigned it Case No. UNDT/NY/2010/098. The Registry’s review under art. 8.4 of the Rules of Procedure was undertaken to ascertain that the formal requirements of arts. 8.1–8.3 of the Rules of Procedure have been met and **not** to determine whether your application is receivable (including under arts. 2 and 3 of the Statute of the Tribunal), which is a matter for determination by a Judge of the Dispute Tribunal.

### **Respondent—**

Pursuant to art. 10 of the Rules of Procedure of the United Nations Dispute Tribunal, your office, as the Respondent’s representative in this case, has 30 calendar days to submit its reply to the attached application. Therefore, the Tribunal expects to receive your reply (with a copy provided to the Applicant) by **5:00 p.m. (New York time), Thursday, 6 January 2011.**

3. On 28 December 2010 the Respondent filed a request “for leave to have receivability considered as a preliminary issue”. The Respondent sought leave to address only the issue of receivability in his reply, reserving the right to file a further

submission addressing the merits of application. He also requested that the issue of receivability be dealt with as a preliminary matter by the Tribunal. Specifically, the Respondent stated in his request:

1. In an application dated 25 November 2010, the Applicant requests the Tribunal “to provide [him] with an effective mode of settling [a] dispute” which arose during 2006 when he was present in New York. From the end of March to the end of June 2006, the Applicant served as an intern with the Department of Economic and Social Organization. The Applicant is neither a staff member nor a former staff member of the Organization.
2. The Respondent applies for leave to address solely the issue of receivability in the Reply.
3. The Respondent further requests that the issue of receivability be dealt with as a preliminary matter by the Tribunal.
4. Subject to the Tribunal’s ruling on the above matters, the Respondent reserves the right to file a further submission addressing the merits of the Applicant’s claim.

### **Consideration**

4. At the outset, I find it appropriate to observe that Counsel for the Respondent has followed the correct procedure in requesting the Tribunal’s leave to address only the issue of receivability in his reply. As Kaman J explained in *Appleton* Order No. 289 (NY/2010), “[t]he correct course of conduct [in such situations] is ... to first seek the leave of the Tribunal to respond only to certain aspects of the case before the time the reply is due”. Although 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 (see art. 19 of the Rules of Procedure).

5. It is generally expected that the Respondent will address both the issues of receivability and the merits of the application in its reply. This allows both parties

and the Dispute Tribunal to have the benefit of full submissions on all issues in the case and may permit the Tribunal to determine the issues before it—including issues of receivability—in a more expeditious manner. Nevertheless, in certain situations it may be appropriate to permit the Respondent to address only the issues of receivability in his initial reply.

6. Based on the application filed on 25 November 2010, it appears that, due to the peculiar circumstances of this case, the issues of receivability and merits may be closely related and the Tribunal would benefit from receiving a full reply from the Respondent to ensure that it has the Respondent's submission on all matters that may be relevant to the determination of this case. Therefore, due to the particular circumstances of the present case, I have decided not to grant leave to file a partial reply.

7. It may very well be the case that, having reviewed the application and the reply, the Tribunal will decide to first consider, as a preliminary matter, the receivability of the application, in which case the parties will receive appropriate directions in due course.

8. Considering that the filing of the Respondent's reply will follow its standard course prescribed by art. 10 of the Rules of Procedure, it was not necessary for the Tribunal to seek the Applicant's comments on the Respondent's request of 28 December 2010.

9. The present Order is without prejudice to the Tribunal's determination of the issues of receivability and merit of the Applicant's claims.

IT IS ORDERED THAT:

10. The Respondent's request for leave to file reply only on the issues of receivability is refused.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 29<sup>th</sup> day of December 2010