
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2017/097
Order No.: 124 (

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his Counsel, Mr. Alan Gutman, who was accompanied by Ms. Mihaela Astinova, an intern. The Applicant and her Counsel indicated they had no objection to the presence of the intern at the CMD.

16. At the CMD, the Tribunal requested that the Applicant further explained the relevance of the proposed additional oral evidence set out in her submission of 28 February 2018

evidence would assist the Tribunal in clarifying factual elements of the case. The

25. The Tribunal considers that each person has the fundamental human right to free access to justice, which includes the right to file an application in front of an impartial Tribunal, and therefore also the right to withdraw that application.

26.

contested decision. This is the first procedural act by which an applicant invests the Tribunal of dealing with the appeal. The whole procedural activity will take place within its limits and the application must be filed by the person who has the right to appeal the contested decision (*ratione personae*), within the applicable time limit (*ratione temporis*) and in front of the competent Tribunal (*ratione loci*).

27. Consequently, to be legally valid, a request for the withdrawal of an application has to be formulated by the applicant and/or by his/her Counsel and must consist of the unconditiona
is issued.

28. An application can be withdrawn orally and/or in writing, partially or entirely. The withdrawal request can refer either to the pending application (as a procedural act) or to the right to appeal itself.

29. If an identical application is filed by the same applicant against the same party after she or he waived her or his right to appeal the matter, the exception of *res judicata* can be raised by the other party or ex officio by the Tribunal itself. *Res judicata* requires three cumulative elements: (a) same parties; (b) same object; and (c) same legal cause, and has both negative and positive effects: it is blocking the formulation of a new identical application and guarantees that it is not possible to rule differently in the same matter.

30. *Res judicata* is a reflection of the principle of legal certainty and does not prejudice the fundamental right to a fair trial since the access to justice is not absolute and can be subjected to limitations resulting from the application of the other principles. The principle of rule of law and the principle of legal certainty, expressed also by *res judicata*, require, *inter alia*, that an irrevocable decision given by the Tribunal not to be

further questioned (