







Parties' contentions

13. The Applicant's principal contentions are:

- a. In response to the receivability issues raised by the Respondent,
  - i. The Tribunal has made clear in Worsley Order No. 79 (GVA/2010) that OSLA, despite enjoying independence in the day-to-day exercise of its functions, is not really distinct from the Secretary-General;
  - ii. Based on Judgment No. 1875, in re Natarajan (No. 2) (1999), of the International Labour Organization Administrative Tribunal, it does not need to be an administrative decision what causes damage to the Applicant to trigger the Organization's liability. It suffices that harm is inflicted to the staff member.
- b. As regards the merits of the case,
  - i. Legal counsel have a duty to disclose conflicts of interest. The Chief, OSLA, decided not to do so. The Applicant has no recollection of the Chief, OSLA, having told him that he previously served with UNHCR;
  - ii. The service provided to the Applicant by OSLA was so "abysmally bad" that its degree of commitment must be questioned. Among other things, his counsel was not aware that he was presenting three cases instead of one, she ignored on a number of occasions his instructions and requests, she was not diligent regarding the deadlines and the Applicant was forced to approve an application which was not to his satisfaction, being threatened to no longer be represented one hour before the deadline for filing one of the applications;
  - iii. The Chief, OSLA, sent a letter to UNHCR "begging for their assistance" a few days before his phone conversation with the Applicant, which he only found out late in November 2009. This is

worse than the non-disclosure of the prior employment of the  
Chief, OSLA;

iv.

iii. In this instance, the Applicant characterizes the conduct he contests as an implied decision not to inform him of a potential conflict of interest. “Properly characterized, this is not an administrative decision, but instead an alleged course of conduct,

iii. Article 10.6 of the Tribunal's Statute reads: "Where the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against the party." A bold allegation of professional impropriety made in an application to UNDT against a UN official, with no supporting evidence, may be considered an abuse of process. Accordingly, it may be appropriate for the Tribunal to award costs against the Applicant.

16. In light of the above, the Respondent requests the Tribunal that the

jurisdiction is strictly limited to reviewing administrative decisions, in accordance with article 2.1 of the UNDT Statute, which provides that:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual ... against the Secretary-General as the Chief Administrative Officer of the United Nations ... to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment ... (Emphasis added)

19. In addition, the travaux préparatoires of the UNDT Statute show that it had been initially proposed that the Tribunal's competence extend to "prejudicial or injurious conduct" (see A/61/205 and A/62/294). This proposal thus was purposefully turned down by the General Assembly.

20. In sum, the Tribunal is not competent to examine th

23. It is more than doubtful that this kind of omission is a decision producing direct legal consequences, as required by the well-established definition quoted above.

24. Third, assuming that the above-described omission may be construed as an administrative decision, for the application to be receivable, the applicable time limits must have been complied with. Pursuant to staff rule 11.2, paragraphs (a) and (c), a staff member wishing to contest an administrative decision must as a first step submit a request for management evaluation within 60 calendar days from the date on which the staff member received notification of it. The Applicant did not send his request for management evaluation until 18 December 2009, even though he had received an email on 5 October 2009 stating that the Chief, OSLA, was a former UNHCR employee; this means that his request was made some two weeks after the expiration of the relevant deadline and, hence, the application is time-barred. Although the Applicant asserts that he did not become aware of the nature of the relationship of the Chief, OSLA, with UNHCR management until 22 November 2009, when he alleges to have learnt by external sources that “not only was [the Chief, OSLA] on friendly terms with [the Applicant’s] opponents [but] he had actually been pleading with them to voluntarily support his office”, the fact remains that the Applicant became aware of the connection between the Chief, OSLA, and UNHCR on 5 October 2009. Since the Applicant learned about this—in his mind—crucial fact already in October, it is of no relevance at what point he developed the idea that this connection might amount to a conflict of interest.

25.



cross the line of criticizing the course of conduct of the author of the decision at issue. Some extent of criticism is almost indissociable of contestation; therefore, it may not be qualified as an abuse of the procedures that were put in place specifically as formal channels of contestation.

#### Conclusion

31. In view of the foregoing, the Tribunal DECIDES:

The application is hereby rejected.

(Signed)

Judge Thomas Laker

Dated this 2<sup>nd</sup> day of February 2011

Entered in the Register on this 2<sup>nd</sup> day of February 2011

(Signed)

Víctor Rodríguez, Registrar, UNDT, Geneva