

UNITED NATIONS DISPUTE TRIBUNAL

Introduction

1. On 23 April 2018, the Applicant, a former Engineering Technician/Chief

10. The Tribunal also requested the parties to verify and inform the Tribunal about the stage of the selection process in another post of Engineering Technician at the FS-5 level that the Applicant has applied for, namely the one in the Democratic Republic of Congo, Goma, as it appeared process was still on-going. Further, the Tribunal asked the parties to explore the best option for the Applicant, especially since he was a former permanent staff member on an abolished post and to give appropriate consideration to his retroactive continuity in service, if agreed for him to be reinstated.

11. By Order No. 131 (NY/2018) issued on 26 June 2018, the Tribunal, commending the parties for their good faith efforts aimed at resolving this case amicably, ordered the parties to inform the Tribunal by 2 July 2018 as to whether they had finalized a provisional agreement of the present case, or if they consented for the proceedings to be suspended during their informal resolution.

12. On 2 July 2018, the parties filed a joint submission informing the Tribunal that they had not yet finalized a provisional agreement and they requested two additional weeks for this purpose. The parties also informed the tribunal that the proceedings were not to be suspended pending their efforts to nal s re the

appeal the contested decision (*ratione personae*), within the applicable time limit (*ratione temporis*) and in front of the competent Tribunal (*ratione loci*).

23. Consequently, to be legally valid, a request for the withdrawal of an application must be formulated by the applicant and/or by his/her counsel and must before a judgment is issued.

24. An application can be withdrawn orally and/or in writing, partially or entirely.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.

25. 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 court 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.

26. *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 (*non bis in idem*) (see *Shanks* 2010-UNAT-026bis; *Costa* 2010-UNAT-063; *Merón* 2012-UNAT-198). As stated by the United Nations Appeals Tribunal in *Merón* to ensure the stability of the judicial process.

27. The Applicant expressed in his motion his will to withdraw his application and thereby to end the pending litigation.

