



JUDGE JEAN COURTIAL , Presiding

Summary

1. The United Nations Appeals Tribunal (“Appeals Tribunal”) is seized of an appeal dated 30 April 2012 by the United Nations Secretary-General against Judgment No. UNDT/2012/058 rendered in New York on 26 April 2012 by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT). Ms. Tanaz Khambatta filed a brief of defence on 29 May 2012.

2. This court has consistently held that as a general rule only appeals against judgments concerning matters of substance are receivable. Appeals against decisions taken during proceedings, however denominated by the UNDT (order, judgment, etc.), are non-receivable save in the exceptional cases where the UNDT has clearly exceeded its competence. However,

6. She subsequently signed a number of letters of temporary appointment with MINUSTAH of varying durations, extending her ~~service~~ up to 1 May 2012. On 10 April 2012 she received a memorandum

minimum period. In ruling on Ms. Khambatta's application for suspension of action without allowing the Secretary-General to reply, the UNDT had violated the well-established principle of *audi alteram partem* and exceeded its competence, erred on a question of law and committed a procedural error which could affect the outcome of the case. The Secretary-General contends that the Tribunal breached the principle of equality before the courts. When in the course of proceedings a judgment is rendered creating an obligation on one party or containing preliminary decisions (even *prima facie* basis), all parties should have an equal right of response to the submissions and evidence produced.

Ms. Khambatta

11. In her reply Ms. Khambatta states that the appeal is non-receivable and pointless, since the management evaluation had already been planned when the judgment was rendered and that consequently rescission of the judgment would have no practical effect. She also states that article 13 of the UNDT's Rules of Procedure does not provide for a systematic right of replies of applications for suspension of action under the same article. The Appeals Tribunal had already indicated by implication in the *Villamorán* case that there was no need to call on the Administration to respond to every application for suspension; the Appeals Tribunal's Practice Direction did not provide for a right of reply, even with regard to interim measures, and the

UNITED NATIONS APPEALS TRIBUNAL

Judgment

18. The appeal of the Secretary-General is dismissed.

Original and Authoritative Version: French

Done this 29th day of June 2012 in Geneva, Switzerland.

*(Signed)*

Judge Courtial, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Garewal

Entered in the Register on this 12th day of September 2012 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar

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