

## **PROCEDURE FOR COMMENCING PROCEEDINGS BEFORE THE TRIBUNAL**

The Secretary of the Tribunal offers the following advice on matters about which prospective applicants often seek information. The main areas on which information is usually sought are:

- (A) Time limits,
- (B) How to file applications;
- (C) The applicable law
- (D) Hearings
- (E) Costs
- (F) Review of judgments.
- (G) Application by a non-staff member

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### **A. Time Limits**

1. There are two kinds of time limit: The time limit relating to the period of time within which an application must be filed as prescribed in the Statute of the Tribunal, and the time limit relating to the period of time within which specific steps must be taken by the parties after the application has been filed, as prescribed in the Rules of the Tribunal.

2. Article ll.3(b) of the Statute prescribes that an application must be filed within a period of 90 days after any one of the following three events whichever is the latest:

- (a) the occurrence of the event giving rise to the application;
- (b) receipt of notice, after the applicant has exhausted all other remedies available within the Secretariat, that the relief sought will not be granted;
- (c) if the applicant receives notice that the relief sought will be granted but the relief is not granted, within one month after receipt of such notice.

However, the Tribunal has the power under Article ll.4 to accept an application that is out of time if it is satisfied that it was not reasonably practicable for the application to be filed before the end of the period of 90 days stipulated in Article ll.3(b).

3. Article ll.3(a) also requires that an applicant must exhaust all other remedies available under the Staff Rules and Regulations such as an appeal to the Secretary General as a final resort after other grievance settlement procedures provided for have failed, before filing an application. This clearly applies only to staff or former staff as defined in Article ll.5 of the Statute and does not apply, for instance, to consultants and suppliers of goods and other services. Where an applicant other than a staff member is involved, a similar time limit of three months would apply. However, in such a case, if there is a dispute as to the date of the occurrence of the event that gave rise to the application, it would be for the Tribunal to decide the matter as well as the date from when the period of three months should be calculated.

4. If the application does not comply with the formal requirements set out in the Rules the Secretary of the Tribunal will return it to the applicant and will notify the applicant of the time within which he or she must return the corrected application to the Tribunal. However, the Secretary may, with the approval of the President, make minor corrections to a defective application if the defects are minor and do not affect the substance of the application. In all cases, the taking of measures and filing of copies of documents relating to the application shall take place within the time limits prescribed in the Rules unless extended by order of the Tribunal.

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### **B. The Form of the Application**

1. The application procedure is made deliberately simple. There are no forms to be completed in order to commence an application but there are Tribunal Rules which an Applicant must comply with. The Rules of the Tribunal require an application to be presented in a particular way as described below.

The application shall be divided into four sections as follows:

- (i) information concerning the personal and official status of the applicant
- (ii) the pleas
- (iii) explanatory statement; and
- (iv) annexes

2. (a) The information concerning the personal status of the applicant shall first state the name of the respondent. It shall then give details pertaining to the applicant as follows:

- (i) family name and first names
  - (ii) date and place of birth
  - (iii) marital status
  - (iv) nationality; and
  - (v) address for the purposes of the proceedings
- (b) The information concerning the official status of the applicant shall state:
- (i) date of employment
  - (ii) title and level at time of decision contested
  - (iii) nature of applicant's appointment (e.g. temporary or fixed term); and
  - (v) date of the decision contested; and
  - (vi) description of the remedies exhausted within the Commonwealth Secretariat

3. If the applicant was not a staff member at the time of the contested decision, the information concerning personal status should state:

- (i) the full names, nationality and official status of the staff member whose rights are relied on; and
- (ii) the relationship of the applicant to the said staff member which entitles the applicant to come before the Tribunal.

#### 4. The Pleas

The applicant should indicate in the pleas all the measures that he or she is requesting the Tribunal to order or to take such as:

- any preliminary or provisional measures including the production of documents before considering the merits
- the decision being contested
- the obligations the applicant is invoking and seeking to enforce
- the amount of compensation being claimed; and
- any other relief that the applicant may request in accordance with the Statute.

#### 5. The explanatory statement

The applicant should set out in the explanatory statement the facts and the legal grounds on which the pleas are based. The statement, among other things, should specify the provisions of the contract of employment or in the case of a non staff member the terms of the contract the non-observance of which is alleged.

#### 6. The Annexes

Each supporting document accompanying the application shall constitute a separate annex and must comply with the following requirements:

- the first page must be marked at the top with the word 'Annex' followed by the number of the annex in Roman numerals
- every reference in the application to an annexed document must be followed, in parenthesis, by the words 'see annex and the number of the annex
- the annexed documents shall be preceded by a table of contents indicating the number, title, nature, date and, whenever possible should be presented in chronological order.

#### 7. The Pleadings

The pleadings in a case will usually comprise four separate documents, namely:

- the Application
- the defendant's Answer
- the applicant's Reply, and
- the defendant's Rejoinder.

8. On receipt of each of the above documents, and if satisfied that they comply with the Rules, the Secretary will send a copy to the other party. After the filing of the defendant's Rejoinder, the written part of the proceedings are completed and the President, in consultation with the members of the panel that are chosen to hear the case, will fix a date for the hearing.

9. The written submissions end with the defendant's Rejoinder and the pleadings are said, at that point, to have closed. However, in exceptional cases, the President may on his or her own initiative, or at the request of either party, call upon the parties to submit additional written statements or documents.

10. Every document filed in support of an application must be in the English language or, alternatively, must be accompanied by an English translation. The parties in each case are required to file multiple copies of every document that they intend to use in support of their case so that each member of the panel that will decide the case is given a complete set of the documents.

11. An applicant may present his or her case before the tribunal in person or may engage the services of a lawyer whether the application is to be decided without an oral hearing or where the tribunal has decided that the circumstances warrant oral hearings. An applicant who is a staff member may designate another staff member or a retired staff member of the Secretariat to represent him or her.

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### **C. The applicable law**

1. Some knowledge of precedent already established by the Tribunal may help in determining whether an application is worth pursuing and, if so, how to plead.
2. A database of the Case Law of the Tribunal is included in this website and is regularly updated. The database may be accessed by clicking e.g. Judgments and then searching for the judgment in question by name e.g. Gurmeet Hans v. the Commonwealth Secretariat, or by the reference number e.g. CSAT/1.
3. Under its statute, in dealing with all cases before it relating to contracts of service, the Tribunal is bound by the principles of international administrative law which shall apply to the exclusion of the national laws of individual Commonwealth member countries. There is an established and growing body of law that governs international civil service and in common with the practice of other international administrative tribunals, the Tribunal will consider relevant judgments of international administrative tribunals such as the International Labour Organisation Administrative Tribunal (ILOAT), the World Bank Administrative Tribunal (WBAT) and the United Nations Administrative Tribunal (UNAT). In all other cases, the Tribunal is required to apply the law specified in the contract or failing that, it shall apply the law most closely connected with the contract in question.

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### **D. Application for oral proceedings**

1. The Tribunal will normally consider and determine an application on the basis of the written documents alone but it may hold oral hearings if either party to the proceedings requests it or if it decides that oral proceedings are warranted. The Tribunal will order oral proceedings if the interests of justice appear to require the calling of witnesses, for instance, where the Tribunal is of the view that the evidence in the written submissions are not sufficient to enable it to rule on the issues of fact and law that it considers to be of a decisive nature.
2. In the event that the Tribunal decides that oral hearings are to be held, each party is required, in sufficient time before the opening of the oral proceedings, to inform the Secretary of the Tribunal and through the Secretary the other party of the names and description of the witnesses that he or she will call and indicating the points to which the evidence of the witness will refer.
3. Each party shall have the right to examine or cross-examine a witness or comment on any written reply to questions raised by the other party.
4. If the Tribunal decides to hold oral proceedings, the proceedings will be held in public unless the Tribunal decides that the interests of justice require that they be held in private.

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### **E. Costs**

1. There is no requirement to pay any fees for filing an application but an applicant may incur costs in pursuing the application. For instance, the applicant may engage the services of counsel and there may be costs involved in the preparation, typing and photocopying of documents.
2. However, under its statute, the Tribunal has power to determine the costs of the application. The Tribunal may therefore make an order for costs and, in doing so, it may take into account the means of the parties, in accordance with Article IX.3 of the statute.

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### **F. Review of Judgments**

1. The overarching principle that underpins the jurisdiction and authority of the Tribunal is that a judgment of the Tribunal is final and binding between the parties and not subject to appeal.

2. However, subject to a number of clearly defined circumstances, a judgment of the Tribunal may be corrected, revised or reviewed. These circumstances and the course open to the Tribunal for dealing with such circumstances are set out in Article X1 of the Statute.

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**G. Application by a non-staff member**

Where the Applicant is a non-staff member and the application relates to a dispute arising from a contract other than a contract of employment such as a consultancy contract or a trade contract for the supply of goods or services, the procedure, and the form of application is the same, with any necessary changes, as for an Applicant who is a staff member.