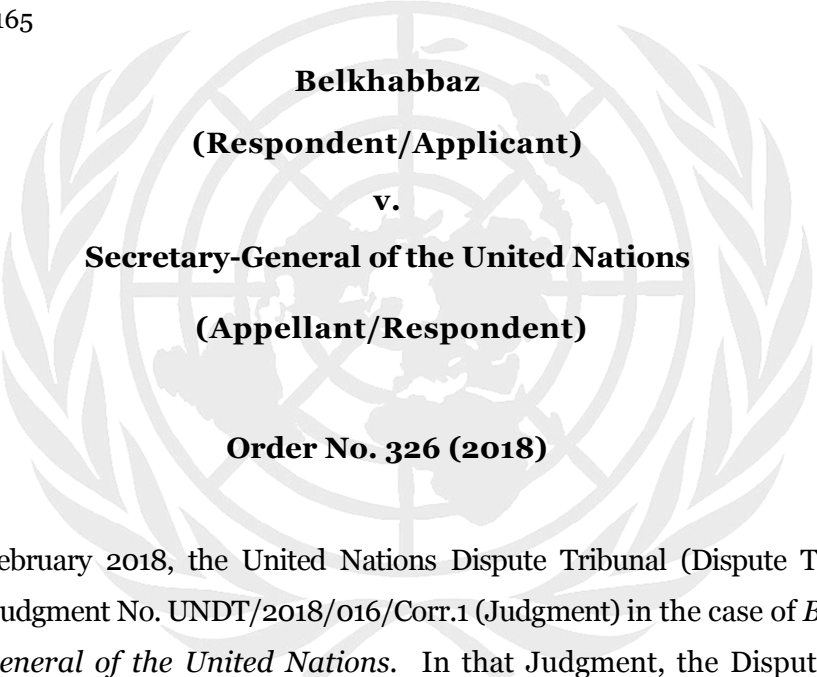




UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2018-1165



Belkhabbaz
(Respondent/Applicant)
v.
Secretary-General of the United Nations
(Appellant/Respondent)
Order No. 326 (2018)

1. On 5 February 2018, the United Nations Dispute Tribunal (Dispute Tribunal) in Geneva issued Judgment No. UNDT/2018/016/Corr.1 (Judgment) in the case of *Belkhabbaz v. Secretary-General of the United Nations*. In that Judgment, the Dispute Tribunal found that Ms. Amal Belkhabbaz's former supervisor, the former Chief of the Office of Staff Legal Assistance (OSLA), Office of Administration of Justice (OAJ), committed prohibited conduct under Secretary General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority), and rescinded the contested decision to take no further action in respect of her complaint of harassment and abuse of authority against the former Chief of OSLA.
2. The Dispute Tribunal also remanded the case to the Assistant Secretary-General (ASG), Office of Human Resources Management (OHRM), to institute disciplinary procedures against the former Chief of OSLA in accordance with section 5.18(c) of ST/SGB/2008/5, and ordered that Ms. Belkhabbaz be paid moral damages and compensation for harm as a consequence of the impossibility to have the full breath of her complaint investigated.
3. On 6 April 2018, the Secretary-General filed an appeal of the Judgment to the United Nations Appeals Tribunal (Appeals Tribunal), and on 8 June 2018, Ms. Belkhabbaz filed an answer to the appeal.

4. On 7 June 2018, Ms. Belkhabbaz filed a “Motion for Interim Relief and/or Expedited Consideration of the Appeal” with relation to the Judgment, and the Secretary-General filed his response to the motion on 19 June 2018.

5. In her motion, Ms. Belkhabbaz seeks “interim relief allowing the execution of that part of the judgment ordering the remand of the case to the ASG/OHRM for institution of disciplinary proceedings against the former Chief of OSLA/OAJ”. In the alternative, Ms. Belkhabbaz requests “this appeal be dealt with on an expedited basis”.

6. Ms. Belkhabbaz contends that “there is a real likelihood of irreparable harm if the temporary relief is not granted” and “justice will in effect be denied even if [she] succeeds on appeal”. Ms. Belkhabbaz believes that the former Chief of OSLA will be reaching the mandatory age of retirement by the end of 2018 or early 2019 and “this in essence would mean that the equitable remedy finally provided to [her] would be rendered meaningless” since the Organization cannot institute a disciplinary case against a retired staff member.

7. Ms. Belkhabbaz further submits it is in the Organization’s interest to allow the remand of the case to the ASG/OHRM, or in the alternative, expedite the Appeals Tribunal’s review of the appeal, due to the exceptional circumstances of this case.

8. In his response to the motion, the Secretary-General states that Ms. Belkhabbaz presumes that she is likely to prevail on the merits in the present case. The determination as to whether the Secretary-General’s submissions on appeal are likely or unlikely to prevail is a matter solely for the Appeals Tribunal and not Ms. Belkhabbaz. Moreover, this is a matter which should be decided on the merits of the appeal and not as a part of a consideration on a motion.

9. The Secretary-General notes that the Appeals Tribunal has held that it “may allow additional pleadings in exceptional circumstances”, pursuant to Article 31(1) of the Appeals Tribunal Rules of Procedure and Section II.A.3 of Practice Direction No. 1 of the Appeals Tribunal.

10. The Secretary-General states that the Appeals Tribunal, however, has repeatedly ruled that an additional pleading consisting of arguments that merely reiterate or supplement a staff member's appeal does not meet the threshold of exceptional circumstances.

11. The Secretary-General requests that the Appeals Tribunal dismiss Ms. Belkhabbaz's request for a partial execution of the Judgment. In the alternative, the Secretary-General requests that the Appeals Tribunal consider Ms. Belkhabbaz's matter on an expedited basis.

12. Normally, judgments of the Dispute Tribunal subject to appeal are not executable – Article 11(3) of the Dispute Tribunal Statute read with Article 7(5) of the Appeals Tribunal Statute. The filing of an appeal has the effect of suspending the execution of the contested judgment or order. However, in terms of Article 9(4) of the Appeals Tribunal Statute, this Tribunal may order an interim measure to provide temporary relief to either party to prevent irreparable harm.

13. The onus is on Ms. Belkhabbaz to prove on a balance of probabilities that there are exceptional circumstances showing she will suffer irreparable harm if the order of the Dispute Tribunal is not executed in the interim. This Tribunal must also weigh the harm to the appellant (in this case the Secretary-General) if the Dispute Tribunal's order is implemented prior to his exercise of the right of appeal.

14. Ms. Belkhabbaz, strictly speaking, has no direct interest in the disciplining of the former Chief of OSLA. The prerogative to discipline is vested in the Secretary-General. It is arguable whether or not the Dispute Tribunal's power to order specific performance extends to directing the Secretary-General to proceed with discipline in certain cases. In the event that it is shown on appeal that the order of the Dispute Tribunal was erroneous, the premature institution of inappropriate disciplinary proceedings will cause the former Chief of OSLA significant harm, outweighing any harm that Ms. Belkhabbaz might suffer in having to wait until the correctness of the Dispute Tribunal order is tested on appeal.

15. Insofar as Ms. Belkhabbaz is legitimately concerned that disciplinary proceedings may be thwarted by the former Chief of OSLA's retirement, that is best catered for by expediting the set down of the appeal.

In the premises, **IT IS HEREBY ORDERED** that Ms. Belkhabbaz’s “Motion for Interim Relief and/or Expedited Consideration of the Appeal” **IS PARTIALLY GRANTED** and the Registrar is directed to set down the appeal in the Appeals Tribunal’s Fall session in October 2018.

Original and Authoritative Version: English

Dated this 29th day of June 2018
in New York, United States.

(Signed)
John Murphy,
President

Entered in the Register on this 29th day of
June 2018 in New York, United States.

(Signed)
Weicheng Lin, Registrar