



**Before:** Judge Alessandra Greceanu

**Registry:** New York

**Registrar:** Hafida Lahiouel

HASHIMI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON WITHDRAWAL**

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**Counsel for Applicant:**  
Robbie Leighton, OSLA

**Counsel for Respondent:**  
Susan Maddox, ALS/OHRM, UN Secretariat  
Cristiano Papile, ALS/OHRM, UN Secretariat

## **Introduction**

1. On 16 May 2011, the Applicant filed an application on the merits together with 17 annexes contesting “the decision to re-open the investigation into alleged misconduct whilst he had been charged for the same misconduct, which charges had been withdrawn under the unlawful qualification without prejudice and the decision that during this reopened investigation [he] is not entitled to the assistance of counsel when he will be interviewed as a subject”. The Respondent filed his reply on 16 June 2011, together with two annexes.

2. In response to Order No. 244 (NY/2013) dated 9 October 2013, the parties confirmed that the Applicant had not been interviewed by the Office of Internal Oversight Services in the United Nations Secretariat. The Respondent stated that “the Office of Internal Oversight Services considers the matter closed”.

3. On 26 October 2013, by Order No. 266 (NY/2013), the Tribunal considered that the case could be decided on the papers before it and instructed the Applicant to inform the Tribunal, on or before 29 October 2013, whether he wished to maintain his application. If the Applicant wished to maintain his application, the parties were ordered to file their respective closing submission by 19 October 2013.

4. On 29 October 2013, the Applicant informed the Tribunal that he wished to maintain his application. Subsequently, on 6 November 2013, the parties filed a joint submission informing the Tribunal that they had entered into informal negotiation and were seeking suspension of the proceedings for one month.

5. By Orders No. 299 (NY/2013), 334 (NY/2013) and 6 (NY/2014), the Tribunal granted the parties’ consecutive requests to suspend the proceedings from 8 November 2013 until 10 February 2014.

6. On 5 February 2014, the Applicant filed a submission stating that “[p]ursuant to the terms and conditions of a confidential settlement agreement, [he] respectfully

requests to withdraw his application [and] ... all of his allegations and claims in the proceedings”.

## **Consideration**

### *Withdrawal request*

7. The Tribunal considers that each person has the fundamental human right to free access to justice, which includes the right to file an application in front of an impartial Tribunal, and therefore also the right to withdraw that application.

8. The application represents the materialization of an applicant’s right to appeal the contested decision. This is the first procedural act by which an applicant invests the Tribunal of dealing with the appeal. The whole procedural activity will take place within its limits and the application must be filed by the person who has the right to appeal the contested decision (*rationae personae*), within the applicable time limit (*rationae temporis*) and in front of the competent Tribunal (*rationae loci*).

9. Consequently, to be legally valid, a request for the withdrawal of an application has to be formulated by the applicant personally or by his counsel and must consist of the unconditional expression of the applicant’s free will to close his case before a judgment is issued.

10. 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.

11. If an identical application is filed by the same applicant against the same party after s/he waived his/her 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: (1) same parties; (2) same object; and (3) same legal cause, and has both negative and positive effects: it is impeding the formulation

of a new identical application and guarantees that it is not possible to rule differently in the same matter.

12. *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*).

13. The Appeals Tribunal stated in *Meron* 2012-UNAT-198 that “there must be an end to litigation” in order to ensure the stability of the judicial process.

14. The Applicant clearly expressed in his submission his free will to fully and finally withdraw his application and thereby end the pending litigation.

15. In conclusion, the object of the withdrawal request is the right to appeal itself and represents the Applicant’s free will to end the litigation. Since the parties reached a settlement agreement, the Tribunal no longer needs to make a determination on the merits and the application is to be dismissed.

**Conclusion**

In the light of the above considerations, the Tribunal DECIDES:

16. The Applicant has withdrawn the matter in finality, including on the merits and this application is dismissed in its entirety without liberty to reinstate.

*(Signed)*

Judge Alessandra Greceanu

Dated this 6<sup>th</sup> day of February 2014

Entered in the Register on this 6<sup>th</sup> day of February 2014

*(Signed)*

Hafida Lahiouel, Registrar, New York