



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

A-Ali and 39 others

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON WITHDRAWAL

Counsel for Applicants:

Lennox S. Hinds

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. On 14 September 2011, 40 Applicants filed an application contesting the decision to change the schedule by which staff members in the General Service (“GS”) category receive their salary payments—from bi-weekly payment to monthly payments. The Respondent filed his reply on 14 October 2011.

2. On 19 December 2013, the Tribunal, by Order No. 349 (NY/2013), asked the Applicants to inform the Tribunal by 7 February 2014 of their continued interest in pursuing this matter and to respond to the Respondent’s submission regarding the receivability of their appeal. The Respondent was ordered to file a response, if any, by the following week.

3. On 7 February 2014, the Applicants filed a motion for extension of time to comply with Order No. 349 (NY/2013), stating that as consequence of the General Assembly approving the Secretary-General’s proposed budget for the biennium 2014-2015 “the posts of most of the Applicants holding a permanent appointment were abolished effective 1 January 2014”. The Applicants therefore needed additional time to respond to Order No. 349 (NY/2013) and “determine whether the issues are now moot” “since termination of [their] position will undoubtedly impact their actual interest in the present case”. By Order No. 30 (NY/2014), the Tribunal granted the Applicants’ request for an extension of time to comply with Order No. 349 (NY/2013).

4. On 28 February 2014, the Applicants filed a motion whereby they stated that they had “decided not to proceed further with their application” and they were “hereby fil[ing] this notice withdrawing the matter fully, finally, and entirely, including on the merits”.

Consideration

5. 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.

6. 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 with dealing with the appeal. The whole procedural activity will take place within the Tribunal's jurisdictional 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*).

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

8. 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.

9. 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: (1) same parties; (2) same object; and (3) 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.

10. *Res judicata* is a reflection of the principle of legal certainty and does not prejudice the fundamental right to a fair trial since access to justice is not absolute and can be subjected to limitations resulting from the application of the following 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*).

11. 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.

12. The Applicants clearly express in their submission their free will to fully and finally withdraw their application and thereby end the pending litigation.

13. In conclusion, the object of the withdrawal request is the actual right to appeal and represents the Applicants’ free will to end any and all pending litigation in the present case. As a result of the Applicants’ full and final withdrawal, 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:

14. The Applicants have 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 11th day of March 2014

Entered in the Register on this 11th day of March 2014

(Signed)

Hafida Lahiouel, Registrar, New York