



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/097

Order No.: 79 (GVA/2010)

Date: 19 October 2010

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: Víctor Rodríguez

WORSLEY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER
ON A REQUEST FOR JOINDER

Counsel for applicant:

Karin Etter

Counsel for respondent:

Mirka Dreger, UNOG

1. The Office of Staff Legal Assistance (“OSLA”) addressed a request to the United Nations Dispute Tribunal (“UNDT”) to join as a party the proceedings in case UNDT/GVA/2010/097, pursuant to article 11 of the Tribunal’s rules of procedure.

Facts

2. By application filed on 13 July 2010 with UNDT, the applicant contested the decision by the Chief, OSLA, to refuse to provide legal assistance to her.

3. The respondent’s reply was served on 13 September 2010 by the Human Resources Management Section (“HRMS”), United Nations Office at Geneva (“UNOG”).

4. On the same day, OSLA submitted an “Application for Joinder of a Party & Submissions Re: Receivability”.

5. It argues, *inter alia*, that there can be no doubt that OSLA is a party to the proceedings, as its Chief made the challenged decision, and that it has a legitimate interest in the outcome of the proceedings as the judgment will directly affect its operations. It further points to “the exceptional and curious position of OSLA in these proceedings – where OSLA must be represented by the Secretary-General – Office of Human Resource[s] Management Services”, to the extent that the architecture of the internal justice system does not offer it the option to obtain separate representation of its own, or to represent itself. Moreover, it is submitted that certain representations may be advanced which would be better placed coming from OSLA itself.

6. The request by OSLA was transmitted to the parties, which were invited to present comments thereon. The respondent submitted comments on 5 October 2010, supporting OSLA request. On 7 October 2010, the applicant opposed to OSLA joining the proceedings, considering that the latter is already represented in the case by the respondent and that there is no reason for OSLA being doubly represented.

Considerations

7. The starting point for this matter is article 11 of the UNDT rules of procedure, which reads:

The Tribunal may, at any time, either on the application of a party or of its own initiative, join another party if it appears to the Tribunal that that party has a legitimate interest in the outcome of the proceedings.

8. According to this provision, the only ones formally entitled to apply for the joining of a party are those already having the status of parties to the procedure. In the present case, those comprise exclusively the applicant and the respondent. OSLA not being a party to the proceedings, the present request is to be declared irreceivable *ratione personae*.

9. In addition, the Tribunal sees no reason to join OSLA on its own initiative. In general, this may happen where interests of individuals or entities distinct from the parties have to be considered. Such individuals or entities may be considered as a “party” in a broader sense of the word, as it is used in the second part of the above-cited article 11.

10. Firstly, OSLA might hardly be regarded as a “party” distinct from the Secretary-General, who, as per article 2.1 of the statute, is the respondent before the Tribunal as the Chief Administrative Officer of the Organization.

11. Whereas OSLA claims to be “a party to the proceedings, as OSLA’s Chief ... made the decision which is subject to challenge”, this argument is far from convincing. The same is true for all managers whose decisions are subject to review by the Tribunal.

12. Beyond this fact, it stands that OSLA not only is part of the United Nations Secretariat—created by General Assembly resolution 62/228, staffed with regular UN staff members and funded out of the Organization’s budget—but it is part of the core UN administrative machinery. Indeed, OSLA belongs to the Office of Administration of Justice (“OAJ”), which is within the UN Secretariat. Although OAJ is an independent office within the Secretariat, this does not mean

that a part of OAJ, like OSLA, should be regarded as an entity distinct from the Secretary General.

13. No department or organizational unit within the Secretariat may be deemed to be a party separate from the Secretary-General, for the purpose of the above-cited article 11.

14. OSLA highlights that it possesses—and was designed to possess—an independent status.

15. Nevertheless, it appears from reading paragraph 16 of General Assembly resolution 62/228¹, as well as the Guiding Principles of Conduct for Office of Staff Legal Assistance (OSLA) Affiliated Counsel in the United Nations, that OSLA special status refers to a functional autonomy required to properly discharge its duties, i.e., defending the staff members' rights without yielding to the Secretary-General's interest. In this regard, section 7 of ST/SGB/2010/3 (Organization and Terms of Reference of the Office of Administration of Justice) provides that:

The Office of Staff Legal Assistance is headed by a Chief who, without prejudice to his or her responsibility to provide legal assistance to staff members in an independent and impartial manner, is accountable to the Executive Director.

16. In addition, article 11 of the rules of procedure requires also that the individual or entity needs to have a “legitimate interest” in the outcome of the application in question. In the present case, nevertheless, the Tribunal could not identify any interest which is not already duly represented by the respondent, since the Organization, through HRMS, UNOG, has undertaken to defend the legality of the contested decision.

17. OSLA claims to have such legitimate interest on the ground that the judgment on the case at hand will directly affect it and its operations. However, again, the same could be said of any judgment rendered by the Tribunal *vis-à-vis* the unit or service concerned. It is not only OSLA, but in fact any section, unit or service which is “solely reliant on the Secretary-General for representation”.

¹ Whereby the General Assembly “[r]equest[ed] the Secretary-General to establish a code of conduct regulating the activity of internal and external individuals providing legal assistance to staff to ensure their independence and impartiality”.

Decision

18. For the above reasons, the Tribunal DECIDES:

The request by OSLA to be joined as a party to the proceedings pursuant to article 11 of the rules of procedure is rejected.

(Signed)

Judge Thomas Laker

Dated this 19th day of October 2010

Entered in the Register on this 19th day of October 2010

(Signed)

Víctor Rodríguez, Registrar, UNDT, Geneva