



**Before:** Judge Jean-François Cousin

**Registry:** Geneva

**Registrar:** Víctor Rodríguez

WILSON

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON WITHDRAWAL**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Ingeborg Daamen, UNOV/UNODC

## Introduction

1. By an application filed on 20 January 2011, the Applicant, who was then based in Vienna, purported to contest the alleged decision of the former Director-General of the United Nations Office at Vienna (“UNOV”) whereby “in relation to private traffic infringements, immunities are waived without expressly seeking waiver from the Secretary-General in each case”. He also contested “the subsequent procedures/decision implemented by UNOV Legal Services” in his case.

2. In his reply dated 21 February 2011, the Respondent requested that the application be rejected in its entirety, on the grounds that it was both inadmissible and unfounded, and asked that costs be awarded against the Applicant for having manifestly abused the proceedings before the Tribunal.

3. By a letter dated 22 August 2011, sent shortly after the Tribunal informed him that his case would be decided on the papers without an oral hearing, the Applicant withdrew his application. He stated in his letter that he had “taken this decision only because [he had] recently been transferred to New York which in effect [left his] application mute [sic]”. His cover email similarly stated: “[M]y application and arguments are somewhat mute [sic] now based on my recent relocation to New York.”

## Facts

4. At the time he filed his application, the Applicant was serving in Vienna at level P-5, as Chief of Operations in the Investigations Division of the Office of Internal Oversight Services.

5. The application followed a notification sent to the Applicant by the UNOV Legal Office regarding a speed limit infringement and asking him whether he wished to receive the fine at home or pick it up at the Austrian Federal Ministry for European and International Affairs.

Paragraphs  
4-11 redacted  
by UNAT  
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6. Before the Tribunal, the Applicant sought the following relief:
- a. Assurances from the Director-General of UNOV that “staff members, including [himself], are afforded due process in consideration of their privileges and immunities...”;
  - b. “An apology from UNOV [Legal Office] for the abuse of [his] diplomatic immunity privileges”;
  - c. Financial compensation “upon conclusion of the Austrian legal process to which [he had] been handed over”;
  - d. An apology from the Respondent “for the attack on [his] personal character” contained in the reply; and,
  - e. “A UNDT determination on the additional due process concerns” regarding his immunity from criminal jurisdiction.

7. In his reply, the Respondent stressed, among other things that, as already explained to the Applicant on several occasions by the UNOV Legal Office, there had never been a decision by the Director-General, as described by the Applicant, to waive immunities in relation to private traffic infringements without expressly seeking a waiver from the Secretary-General in each case. What had been put in place was a process “to encourage the voluntary cooperation of staff to deal with their private legal obligations”. In this context, since the Applicant had admitted to committing the traffic offence in his private capacity, and not in his official capacity, he had been informed by the Legal Office that he could either “deal with the matter voluntarily and privately”, to wit, pay the fine, or else UNOV would seek an express waiver of his diplomatic immunity from the Secretary-General. The Applicant himself had chosen the former option.

### **Considerations**

8. Without entering into the merits of the application, the Tribunal notes that the Respondent makes a credible case that the alleged decision contested by the Applicant was in fact never made. Furthermore, it is a fact that the Applicant

failed to disclose to the Tribunal the full record of his communications on this matter with the Legal Office but selected only those communications which supported his application. While the Applicant subsequently described the undisclosed communications as “irrelevant”, the Tribunal sees them as essential for the understanding of the factual background and notes that they seem to support the Respondent’s case.

9. In addition, the Tribunal observes that in his various filings, the Applicant purported to defend the due process rights “of every UN staff member serving in Vienna who is entitled to diplomatic privileges”, and to be motivated by “the nature of [his] position” because “as the Chief of Operations for OIOS in Vienna, providing staff members the right of due process is an integral component of [his] assigned duties”. Neither this claim nor the relief sought by the Applicant comport with the reason subsequently given for withdrawing his application, to wit, “because [he has] recently been transferred to New York which in effect leaves [his] application mute [sic]”.

10. The above considerations raise concerns about the true motivations and good faith of the Applicant in filing his application and seem to point towards an abuse of proceedings. The Tribunal must therefore caution the Applicant and remind him that article 10.6 of the Tribunal’s Statute provides that “where the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party”.

11. This notwithstanding, the Tribunal takes note of the Applicant’s decision to withdraw his application.

IT IS ORDERED THAT:

12. Since the application has been withdrawn, there is no matter for adjudication by the Tribunal and the case is closed without adjudication of its merits.

Paragraphs  
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*(Signed)*

Judge Jean-François Cousin

Dated this 23<sup>rd</sup> day of August 2011

Entered in the Register on this 23<sup>rd</sup> day of August 2011

*(Signed)*

Víctor Rodríguez, Registrar, Geneva