



UNITED NATIONS DISPUTE TRIBUNAL

Cases No.: UNDT/GVA/2017/052
UNDT/GVA/2018/099
Order No.: 39 (GVA/2020)
Date: 30 March 2020
Original: English

Before: Judge Joelle Adda, President

Registry: Geneva

Registrar: René M. Vargas M.

REILLY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**PRESIDENT'S ORDER
ON MOTION FOR RECUSAL**

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Jérôme Blanchard, LPAS, UNOG

Introduction

1. By letter dated 11 March 2020, the Applicant in Cases No. UNDT/GVA/2017/052 and UNDT/GVA/2018/099 requested the Judge President of Dispute Tribunal to order that the Dispute Tribunal Judge assigned to these cases, namely Judge Bravo, be recused from adjudicating them.
2. In essence, the Applicant claims that her cases, which were previously assigned to Judge Downing, were inappropriately reassigned to Judge Bravo at the expiry of Judge Downing's term with the Dispute Tribunal on 10 July 2019. The Applicant further complains that a number of documents relating to Case No. UNDT/2017/052 have been deleted from the online case management system.
3. In accordance with art. 28 of the Rules of Procedure of the Dispute Tribunal on recusal, Judge Bravo provided her response to the Applicant's recusal request by letter dated 12 March 2020. Judge Bravo denies having any conflict of interest in any of the relevant cases and requests that her assignment be maintained.
4. By letter dated 24 March 2020, the Applicant filed her final comments on the matter. She specifies that her complaint is based on the grounds that pursuant to art. 27 of the Rules of Procedure of the Dispute Tribunal, Judge Bravo allegedly has a conflict of interest.

Consideration

The legal framework for requesting a recusal of a Dispute Tribunal Judge

5. Article 28.2 of the Rules of Procedure of the Dispute Tribunal sets out the procedure by which an applicant can request the recusal of a Judge assigned to her/his case(s) as relevant to the present case:

A party may make a reasoned request for the recusal of a judge on the grounds of a conflict of interest to the President of the Dispute Tribunal, who, after seeking comments from the judge, shall decide on the request and shall inform the party of the decision in writing.

6. Section 2 (Impartiality) of the Code of Conduct for the Judges of the United Nations Dispute Tribunal and the United Nations Appeal Tribunals adds in its relevant part that

- (c) Judges must recuse themselves from a case if:
 - (i) They have a conflict of interest;
 - (ii) It may reasonably appear to a properly informed person that they have a conflict of interest;
 - (iii) They have personal knowledge of disputed evidentiary facts concerning the proceedings.

7. The notion of “conflict interest” is defined in art. 27.1 of the Tribunal’s Rules of Procedure as “any factor that may impair or reasonably give the appearance of impairing the ability of a judge to independently and impartially adjudicate a case assigned to him or her”.

8. Under art. 27.2 of the Rules of Procedure, such a conflict of interest arises where a case assigned to a Judge involves any of the following:

- a. A person with whom the Judge has a personal, familiar or professional relationship;
- b. A matter in which the Judge has previously served in another capacity, including as an adviser, counsel, expert or witness;
- c. Any other circumstances that would make it appear to a reasonable and impartial observer that the Judge’s participation in the adjudication of the matter would be inappropriate.

9. While the Code of Conduct does not specifically define what is meant by a conflict of interest, it provides that “Judges must uphold the independence and integrity of the internal justice system of the United Nations and must act independently in the performance of their duties, free of any inappropriate influences, inducements, pressures or threats from any party or quarter” (see sec. 1.(a)).

The reassignment of the Applicant's cases to Judge Bravo

10. The Applicant essentially argues that her cases were improperly reassigned to Judge Bravo after the tenure of Judge Downing, who was previously charged with her cases, was improperly ended in July 2019.

11. In response, Judge Bravo contends that at the expiration of Judge Downing's term, she was "the only Judge in Geneva since the new half[-]time judges were not yet deployed". Judge Bravo further submits that "a backlog elimination plan had been implemented in January 2019 and the disposal of older cases was one of the priorities" and that "[i]n this context, the Geneva Registrar, as part of his functions, decided to assign [to her] (as the only full[-]time judge in Geneva) the Applicant's cases".

12. In the Applicant's final comments, she does not contest the factual circumstances presented by Judge Bravo, but rather challenges the alleged involvement of Judge Bravo in how Judge Downing's term with the Dispute Tribunal ended. The Applicant also questions the procedures by which her cases were reassigned. Regarding the relationship with Judge Bravo, the Applicant explicitly indicates that "Judge Bravo notes that she does not know me. This is accepted".

13. Accordingly, it is noted that the Applicant admits that Judge Bravo and she have no personal, familiar or professional relationship or that Judge Bravo has not previously been involved in the relevant cases as per art. 27.2(a) and (b) of the Rules of Procedure of the Dispute Tribunal.

14. With reference to art. 27.2(c) of the Tribunal's Rules of Procedure, it is noted that nowhere in the Applicant's submissions is stated, or as much as alluded to, how Judge Bravo should have other personal, familiar or professional interests in any of the issues of her specific cases.

15. Instead, the Applicant contends that Judge Bravo inappropriately participated in the ending of Judge Downing's term with the Dispute Tribunal. While making no findings whatsoever thereon, even if—purely hypothetically—assuming that the Applicant is correct, it is noted that the Applicant has not substantiated how this could possibly have impacted Judge Bravo's independence in the performance of her specific duties as an assigned Dispute Tribunal Judge in Cases No. UNDT/2017/052 and UNDT/2018/099, and/or how this would somehow have contributed to her developing a personal, familiar or professional interest in any matter relevant to these cases.

16. On the contrary, as it is undisputed that the decision to reassign Cases No. UNDT/2017/052 and UNDT/2018/099 to Judge Bravo was, in fact, made by the Registrar in the Geneva Registry, the issue raised by the Applicant as to whether a Dispute Tribunal Registrar has the competence to reassign cases to a specific judge in the circumstances of the present cases is not relevant to decide on the request for recusal of Judge Bravo. Also, it is undisputed that no other Dispute Tribunal Judges were available in Geneva at the given time and that a backlog plan to ensure the efficient disposal of cases had been implemented—in order for handling of the cases to progress, there was no other choice than to reassign them to Judge Bravo. As a matter of fact, it therefore follows that Judge Bravo did not decide to reassign the Applicant's cases to herself or the Registrar was somehow unduly influenced in his decision to do so—at most, this was simply a consequence of the circumstances prevailing in the Geneva Registry at the given moment.

17. Accordingly, under art. 27.2(c), the reassignment of Cases No. UNDT/2017/052 and UNDT/2018/099 to Judge Bravo does not point to any other circumstances that would make it appear to a reasonable and impartial observer that Judge Bravo's participation in the adjudication of any of the relevant matters would be inappropriate.

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The alleged deletion of case related documents in Case No. UNDT/2017/052

18. Rather than a question of a possible conflict of interest, this matter appears to be of a technical nature, which can readily be addressed in the case management of the relevant case.

Conclusion

19. Based on the above, the undersigned Judge President finds that Judge Bravo has no conflict of interest in the Applicant's matters related to Cases No. UNDT/2017/052 and UNDT/2018/099.

20. As no grounds therefore exist to recuse Judge Bravo from the relevant cases, the Applicant's recusal request is dismissed.

(Signed)

Judge Joelle Adda, President

Dated this 30th day of March 2020

Entered in the Register on this 30th day of March 2020

(Signed)

René M. Vargas M., Registrar, Geneva