



**Before:** Judge Teresa Bravo

**Registry:** Geneva

**Registrar:** René M. Vargas M.

MIHYAR

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER  
ON CASE MANAGEMENT**

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**Counsel for Applicant:**

Ana Giulia Stella, OSLA  
Mario Hainboeck, OSLA

**Counsel for Respondent:**

Isavella Maria Vasilogeorgi, AAS/ALD/OHR, UN Secretariat  
Santiago Steta Perea, AAS/ALD/OHR, UN Secretariat

## **Introduction**

1. By application filed on 13 January 2023, the Applicant, a staff member of the United Nations Department of Safety and Security (“UNDSS”), contests the decision to reimpose on him the disciplinary measures of written censure and loss of two steps in grade.

## **Procedural history**

2. On 12 March 2021, the Applicant filed an application contesting the disciplinary measures of written censure and loss of two steps in grade, which was registered under Case No. UNDT/GVA/2021/016.

3. By Judgment *Mihyar* UNDT/2022/085 of 21 September 2022, this Tribunal concluded that:

- a. The Administration established to the requisite standard of proof the facts on which the disciplinary measures were based;
- b. The established facts amounted to misconduct under Chapter X of the Staff Rules; and
- c. The Applicant’s due process rights were respected during the investigation and the disciplinary process.

4. Nevertheless, the Tribunal also found that in determining the sanction, the Administration failed to duly consider all relevant factors. As such, it rescinded the disciplinary sanction, and remanded the Applicant’s case to the Administration for a proper determination of the applicable sanction.

5. By Sanction Letter dated 18 October 2022, the Under-Secretary-General for Management Strategy, Policy and Compliance reimposed on the Applicant the disciplinary measures of written censure and loss of two steps in grade.

6. On 13 January 2023, the Applicant filed the present application, which was registered under Case No. UNDT/GVA/2023/002. In his application, he requests the Tribunal, *inter alia*, to:

- a. Review the present case on an expedited basis; and
- b. Order the disclosure of relevant facts of the referenced cases contained in the Sanction Letter of 18 October 2022.

7. On 15 February 2023, the Respondent filed his reply. In it, he requests the Tribunal to:

- a. Grant his request for leave to exceed the page limit; and
- b. Strike Annex 14 to the application from the case record.

### **Consideration**

*The Applicant's request to review the present case on an expedited basis*

8. In his application, the Applicant requests the Tribunal to review the present case on an expedited basis on grounds that the matter “was previously remanded to the Administration by this Tribunal”.

9. In his reply, the Respondent makes no comment on whether the case should be handled on an expedited basis.

10. While “it is the practice of the Dispute Tribunal to deal with cases in chronological order of filing” (see *Kalashnik* UNDT/2015/087, para. 6), the Tribunal notes that in *Yisma*, having considered that both parties were eager to have the matter determined as soon as possible, it decided to grant a “request for expedited consideration of the matter on an exceptional basis” (see *Yisma* Order No. 65 (NY/2011), para. 10).

11. Moreover, the Tribunal has broad discretion in the management of cases and, as the court of first instance, it is “in the best position to decide what is appropriate for the fair and expeditious disposal of a case and do justice to the parties” (see *Bertucci* 2010-UNAT-062, para. 23).

12. Having reviewed the case file on record, the Tribunal considers that the only legal issue before it is whether the disciplinary measures reimposed on the Applicant are proportionate to his misconduct. As such, it finds that the present matter can be decided on written pleadings without holding a hearing on the merits.

13. In light of the above, and considering the circumstances invoked by the Applicant, the Tribunal finds it in the interest of justice to deal with the matter promptly. Accordingly, the Tribunal grants the Applicant’s request for an expedited consideration of the present matter.

*The Applicant’s request for disclosure of relevant facts of the referenced cases*

14. The Applicant requests the Tribunal to order the disclosure of relevant facts of the referenced cases contained in the Sanction Letter of 18 October 2022. To support his request, he specifically argues that “whilst the [Organization’s] Compendium of Disciplinary cases is a useful guide to the Respondent’s past practice in disciplinary cases, it has the potential to create unfairness where relied upon without the full facts of the case in the possession of the Respondent being made known to the Applicant and the Tribunal”.

15. The Respondent strongly objects to such disclosure arguing that the Compendium is “produced under the General Assembly’s specific requirements for confidentiality”.

16. The Tribunal considers that all staff members of the Organization should be treated with dignity and respect, and that the Organization has the right to treat the disciplinary actions taken against staff members with sensitivity and confidentiality. Moreover, the critical facts of the referenced cases have been included in the Compendium. As such, the Applicant has no right to compel the

Administration to provide more facts of the referenced disciplinary cases in its possession.

17. Therefore, the Tribunal does not find it appropriate to grant the Applicant's request for disclosure.

*The Respondent's request for leave to exceed the page limit*

18. The Respondent requests leave to exceed the page limit suggested in the Tribunal's Practice Direction No. 4 on grounds of "the case complexity, the length of the Application, and the need to respond to the Applicant's arguments fully".

19. The Tribunal notes that para. 19 of its Practice Direction No. 4 provides that "[t]he reply should not exceed 10 pages, font Times New Roman, font size 12, line spacing of 1.5 lines". In the present case, the reply, excluding the cover, is 12 pages long. The Tribunal further notes that the application is 14 pages long.

20. Having regard to the circumstances invoked by the Respondent, for a fair and expeditious disposal of the case, the Tribunal considers it appropriate to grant the Respondent's request pursuant to art. 19 of its Rules of Procedure.

*The Respondent's request to strike Annex 14 to the application from the case record*

21. In his reply, the Respondent submits that Annex 14 to the application should be stricken from the case record. In support of his request, he specifically argues that the Applicant failed to submit this evidence for the decision-maker's consideration, and that he is now trying to adduce new evidence to the record for the first time.

22. The Tribunal notes that Annex 14 to the application concerns communications between the Applicant and the Office of Audit and Investigations ("OAI"), United Nations Development Programme ("UNDP"), regarding the outcome of the UNDP OAI Report No. 2225.

23. Noting that the Applicant submitted the UNDP OAI Report No. 2225 for the Tribunal's consideration in Case No. UNDT/GVA/2021/016, the Tribunal does not find it appropriate to strike Annex 14 to the application from the case record at this stage.

24. Accordingly, the Tribunal rejects the Respondent's request in this respect.

*Filing of further submissions*

25. The Tribunal recalls its finding in para. 12 above that the case can be determined on the written pleadings without holding a hearing on the merits. Nevertheless, to be fully informed, the Tribunal finds it appropriate and in the interest of justice to direct the Applicant to file a rejoinder.

26. In accordance with the principle of equality of arms, the Tribunal will give the Respondent an equal opportunity to respond to the Applicant's rejoinder.

**Conclusion**

27. In view of the foregoing, it is ORDERED THAT:

- a. The Applicant's request for an expedited consideration of the present matter is granted;
- b. The Applicant's request for disclosure of relevant facts of the referenced cases contained in the Sanction Letter of 18 October 2022 is rejected;
- c. The Respondent's request for leave to exceed the page limit is granted;
- d. The Respondent's request to strike Annex 14 to the application from the case record is rejected;

- e. By **Friday, 3 March 2023**, the Applicant shall file a rejoinder; and
- f. By **Friday, 10 March 2023**, the Respondent may file his comments, if any, on the Applicant's rejoinder.

*(Signed)*

Judge Teresa Bravo

Dated this 24<sup>th</sup> day of February 2023

Entered in the Register on this 24<sup>th</sup> day of February 2023

*(Signed)*

René M. Vargas M., Registrar, Geneva