



**Before:** Judge Margaret Tibulya

**Registry:** Geneva

**Registrar:** René M. Vargas M.

REILLY

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER  
ON CASE MANAGEMENT**

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**Counsel for Applicant:**

Robbie Leighton, OSLA

**Counsel for Respondent:**

Jérôme Blanchard, LPAS, UNOG

## **Introduction**

1. By application registered under Case No. UNDT/GVA/2020/059, the Applicant contests the “[t]he manner in which her complaints of harassment and abuse of authority [against the former High Commissioner for Human Rights and the Chief, Human Rights Council Branch, United Nations Office of the High Commissioner for Human Rights] were processed and the decision to close them without further action”.

2. Pursuant to Order No. 29 (GVA/2023), a case management discussion (“CMD”) was held on 26 April 2023 with the participation of the Applicant, her Counsel and Counsel for the Respondent.

## **Consideration**

3. At the CMD, the Tribunal heard the parties’ position concerning the subject matter under adjudication, the Applicant’s request for disclosure of evidence, and the holding of a hearing on the merits.

4. The Tribunal recalls that, in her application, the Applicant requests it to order the disclosure of the following documents:

- a. The investigation report and all the evidence referred to therein; and
- b. The Terms of Reference of the Panel appointed to investigate her complaints;
- c. All communications concerning or touching upon the convening of the Panel and the conduct of the investigation.

5. In *Bertucci* 2011-UNAT-121, the Appeals Tribunal ruled as follows:

46. [...] this Tribunal agrees with the International Labour Organization Administrative Tribunal (ILOAT) that “it is for the party making [the] claim [of confidentiality] to establish the grounds upon which the claim is based” (Judgment No. 2315 (2004), para. 28) and that “the staff member must, as a general rule, have access to all evidence on which the authority bases (or intends to base) its decision against him. Under normal circumstances, such evidence

cannot be withheld on the grounds of confidentiality” (Judgment No. 2229 (2003), para. 3 (b)).

47. The documents relating to the process that led to the contested administrative decision are part of the case file. They must therefore, in principle, come under the Tribunal’s control, unless they are covered by a right to confidentiality by virtue of the internal law of the United Nations.

48. The exceptions to this principle, if they exist, must be interpreted strictly. In its resolution 63/253, the General Assembly chose to establish a new administration of justice system that was “transparent” and “consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike”. This is an overriding objective that prevails over claims of confidentiality that are not sufficiently specific and justified.

6. In light of the above and having considered the parties’ arguments concerning the disclosure of the above documents and the contested decision in this case, the Tribunal finds that the investigation report and all the material to which it refers, as well as the Terms of Reference of the investigative Panel are relevant for the Applicant’s case. Consequently, it is in the interest of justice to include them in the case record and to disclose them to the Applicant.

7. Concerning the modalities for disclosure of the documents in question, the Tribunal is mindful of their sensitivity as well as of the fact that consideration of *ex parte* evidence “breaches the fundamental legal principle of natural justice known as *audi alteram partem*, the obligation on a decision-maker, literally, to ‘hear the other party’ and includes the right of each party to a fair hearing and to respond to evidence against them” (see *Banaj* 2022-UNAT-1202, para. 61).

8. Therefore, the Tribunal finds it in the interest of justice to disclose the documents referred to in para. 6 above to the Applicant in redacted form and on an under seal basis as applicable and pursuant to the Tribunal’s instructions below.

9. Upon receipt of the Respondent’s filing, the Applicant will be given the opportunity to submit a rejoinder.

## Conclusion

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

- a. By **Friday, 5 May 2023**, the Respondent shall file:
  - i. On an *ex parte* basis, the investigation report together with all material annexed to it;
  - ii. On an under seal basis, a redacted version of the investigation report and of the material annexed to it; and
  - iii. On an under seal basis, the Terms of Reference of the Panel appointed to investigate the Applicant's complaints.
- b. By **Thursday, 18 May 2023**, the Applicant shall file a rejoinder.

11. With respect to the filings pursuant to para. 10.a above, the Respondent is further instructed to ensure that all documents, with the exception of audio and or video recordings, be filed in PDF format, and that each file submitted be named to permit identification of its nature. The Respondent may obtain further guidance in this respect from the Tribunal's Geneva Registry.

12. The Applicant shall not disclose, use, show, convey, disseminate, copy, reproduce or in any way communicate the under seal documents—except for the filing of an appeal with the United Nations Appeals Tribunal—without prior authorization by this Tribunal.

*(Signed)*

Judge Margaret Tibulya

Dated this 3<sup>rd</sup> day of May 2023

Entered in the Register on this 3<sup>rd</sup> day of May 2023

*(Signed)*

René M. Vargas M., Registrar, Geneva