



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2021/024
UNDT/GVA/2021/054
Order No.: 48 (GVA/2023)
Date: 16 May 2023
Original: English

Before: Judge Margaret Tibulya

Registry: Geneva

Registrar: René M. Vargas M.

REILLY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Jérôme Blanchard, LPAS, UNOG

Introduction

1. By application registered under Case No. UNDT/GVA/2021/024, the Applicant contests “the decision not to implement the recommendations of the Alternate Chair of the Ethics Panel, the decision not to provide interim protection measures, [and] the decision to refer her retaliation case for investigation by OIOS”.
2. By application registered under Case No. UNDT/GVA/2021/054, the Applicant contests the “[d]ecision to revise [the] findings and recommendations of the Alternate Chair of the UN Ethics Panel in his preliminary assessment of the Applicant’s 3 October 2019 request for protection from retaliation”, and the “[i]mplied decision not to investigate on the basis of those findings and recommendations”.
3. Pursuant to Order No. 27 (GVA/2023) of 5 April 2023:
 - a. The Applicant filed a rejoinder on 21 April 2023 in each of her above-mentioned cases; and
 - b. The Tribunal held a case management discussion (“CMD”) on both cases on 26 April 2023, with the participation, in person, of the Applicant, her Counsel, and Counsel for the Respondent.

Consideration

4. At the CMD, the Tribunal heard the parties’ position concerning the subject matter under adjudication, the Applicant’s requests for disclosure of evidence, and holding a hearing on the merits. The Tribunal also addressed the question of how evidence in both cases at hand could be cross-referenced.

Evidence cross-referencing

5. The Tribunal acknowledged that the factual background of the cases is closely intertwined. Consequently, it instructed the parties that evidence in one case could be brought forward in the other without having to refile it in whichever case it was missing.

Disclosure of further evidence

Ex parte annexes to the Respondent's reply

6. The Tribunal recalled at the CMD that in Case No. UNDT/GVA/2021/054, the Respondent filed annexes 6 and 7 to his reply on an *ex parte* basis. Following arguments on this issue, Counsel for the Respondent agreed to their disclosure to the Applicant on an under seal basis.

Documents/communications concerning the 27 July 2020 review by the UNHCR Alternate Chair of the Ethics Panel

7. At the CMD, the Applicant reiterated her request for disclosure of any communication or document concerning or touching on:

- a. The treatment of the UNHCR Alternate Chair of the Ethics Panel's report finding a *prima facie* case of retaliation;
- b. The Administration's decision to refer that matter to OIOS;
- c. The Administration's decision not to implement recommendations therein;
- d. The treatment by OIOS of the referral for investigation and its decision to seek review by a new Alternate Chair of the Ethics Panel; and
- e. The decision of the new Alternate Chair to close the matter with no action.

8. The Tribunal considers relevant to gather all available information on the above-mentioned five points. It will therefore grant the Applicant's request for disclosure in their respect.

Holding of a hearing and potential witnesses

9. The Tribunal noted that, at the CMD, the Applicant reserved her position about the need for a hearing until she had the opportunity to examine the documents to be shared with her under seal, as well as any further evidence resulting for her request for disclosure.

10. In view that the Tribunal will grant the Applicant's request for disclosure, it will pronounce itself in due course about the holding of a hearing.

Conclusion

11. In view of the foregoing, IT IS ORDERED THAT:

- a. Pursuant to para. 6 above, annexes 6 and 7 to the Respondent's reply in Case No. UNDT/GVA/2021/054 shall be shared with the Applicant unredacted and on an under seal basis. 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;
- b. The Respondent shall file all documents/communications in connection with the matters outlined in para. 7 above **by Friday, 19 May 2023**; and
- c. **By Wednesday, 31 May 2023**, the Applicant:
 - i. Shall indicate in writing her position about the holding of a hearing and, if applicable, provide a list of potential witnesses, explaining the relevance of each testimony for the determination of the issues in dispute; and

Case No. UNDT/GVA/2021/024
UNDT/GVA/2021/054
Order No. 48 (GVA/2023)

ii. May supplement her rejoinder in light of the additional evidence shared with her.

(Signed)
Judge Margaret Tibulya
Dated this 16th day of May 2023

Entered in the Register on this 16th day of May 2023
(Signed)
René M. Vargas M., Registrar, Geneva