



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: René M. Vargas M.

DE JAEGERE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Ludovica Moro
Eline Tritsmans

Counsel for Respondent:

Jacob B. van de Velden, DAS/ALD/OHR, UN Secretariat
Maria Romanova, DAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a former Crime Prevention and Criminal Justice Officer at the United Nations Office on Drugs and Crime (“UNODC”), contests the decision of 30 November 2022 to separate him from service, with compensation in lieu of notice and without separation indemnity.
2. On 27 February 2023, the Applicant filed a motion for extension of time to file an application, which was granted. The complete application was filed on 20 March 2023.
3. On 20 April 2023, the Respondent filed his reply.
4. In response to an instruction from the Tribunal, the Applicant filed a rejoinder on 12 June 2023.
5. On 1 February 2024, the case was assigned to the undersigned Judge.
6. By Order No. 21 (GVA/2024) of 13 March 2024, the Tribunal invited the parties to a case management discussion (“CMD”), which was held virtually via Microsoft Teams on Tuesday, 9 April 2024.
7. By Order No. 30 (GVA/2024) of 12 April 2024, the Tribunal:
 - a. Rejected the Applicant’s motion for anonymity;
 - b. Instructed the Respondent to file *ex parte* all the supporting documents of the Office of Internal Oversight Services (“OIOS”) investigation, duly numbered and indexed;
 - c. Instructed the parties to:
 - i. Identify the relevant witnesses for a hearing on the merits, further confirming their availability to attend a hearing on the merits at the proposed dates; and

ii. File a joint submission with an agreed hearing bundle of documents annexed to it.

8. On 19 April 2024, the Respondent complied with the first part of Order No. 30 (GVA/2024), filing *ex parte* the supporting documents of the OIOS investigation.

9. By Order No. 37 (GVA/2024) of 23 April 2024, the Tribunal decided that the aforementioned supporting documents of the OIOS investigation would not be disclosed to the Applicant as it would not be considering them in its adjudication of this case. As a result, the Tribunal rejected the Applicant's motion for production of evidence.

10. On 26 April 2024, the Respondent submitted a list of potential witnesses to give testimony at a hearing on the merits in response to the second part of Order No. 30 (GVA/2024). On the same day, the Applicant filed a request to postpone the hearing provisionally scheduled between 13 and 17 May 2024.

11. By Order No. 43 (GVA/2024) of 30 April 2024, the Tribunal granted the Applicant's motion and suspended the proceedings until 30 July 2024. The Tribunal further instructed the Applicant, should he require a further suspension of the proceedings, to file a motion with an updated medical report detailing his condition and prognosis.

12. On 15 July 2024, Counsel for the Applicant filed *ex parte* an updated medical report attesting to the worsening of the Applicant's medical condition.

13. On 25 July 2024, Counsel for the Applicant filed a motion requesting a further suspension of the proceedings until further notice due to the Applicant's serious medical condition.

14. By Order No. 87 (GVA/2024) of 29 July 2024, the Tribunal instructed the Respondent's to file his comments on the Applicant's motion, which he did on 2 August 2024.

Consideration

15. According to Counsel for the Applicant, the Applicant's medical condition worsened, and he is unable to attend any judicial proceedings and/or be involved in any related activity.

16. In the updated medical report filed *ex parte*, the Applicant's private physician asserts that the Applicant should only resume his involvement with this case when his health drastically improves. He therefore recommends a postponement of the case for at least one year.

17. As a result, Counsel for the Applicant requests the Tribunal to "postpone the oral proceeding due to the unavailability of the Applicant on the ground of serious health concerns **until further notice**" (emphasis added).

18. In response to the Applicant's request, the Respondent submitted that, instead, the case should be dismissed without prejudice to the Applicant's re-filing the application within a reasonable period of a maximum of one year.

19. The Tribunal is sympathetic with the Applicant's situation and does not wish to jeopardize his health in any way. Concomitantly, it believes that the Applicant's involvement in his case is imperative for its fair disposition.

20. The Tribunal agrees with the Respondent that "the right to institute and pursue legal proceedings is predicated upon the condition that the person exercising this right has a legitimate interest in initiating and maintaining legal action" (*Acquatella Corales* UNDT/2020/042, para. 12; *Elien* UNDT/2021/155, para. 10; *Bimo and Bimo* UNDT/2009/061, para. 13; *Saab-Mekkour* UNDT/2010/047, para. 6; *Zhang-Osmancevic* UNDT/2015/034, para. 12; *Duverné* UNDT/2019/157, para. 8).

21. The Applicant initiated judicial proceedings and he is the one with interest in the timely adjudication of his case. If the Applicant does not want to or, in this case, cannot, proceed, the Tribunal does not see a reason to keep the case pending for an open-ended period.

22. It is worth underlining that the Respondent is correct when he recalls that, in disciplinary cases requiring an oral hearing and the examination of multiple witnesses, a timely judicial proceeding is fundamental. The longer it takes for a hearing to happen, the greater the risk that witnesses will become unavailable or unable to recall the details of relevant events further in the past.

23. In view of the foregoing, the Tribunal decides that the best way forward is to close this case without prejudice to the Applicant's requesting to re-open it once he is able to resume proceedings.

24. Accordingly, the Applicant must either request the re-opening of his case within one year as of the date of this Order, or, within the same timeframe, submit a reasoned request that his right to re-open the case be further maintained.

Conclusion

25. In view of the foregoing, it is ORDERED THAT Case No. UNDT/GVA/2023/008 (De Jaegere) be hereby closed with liberty to reinstate, and struck from the Tribunal's docket.

(Signed)

Judge Sun Xiangzhuang

Dated this 8th day of August 2024

Entered in the Register on this 8th day of August 2024

(Signed)

René M. Vargas M., Registrar, Geneva