



Before: Judge Eleanor Donaldson-Honeywell

Registry: Geneva

Registrar: Liliana López Bello

SAMARASINHA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON A MOTION
FOR REVISION OR CORRECTION**

Counsel for Applicant:

Manuel Calzada

Counsel for Respondent:

Elizabeth Gall, UNDP

Introduction

1. On 22 October 2024, the Applicant, a staff member of the United Nations Development Programme (“UNDP”), filed an application challenging the 20 August 2024 decision to extend his placement on Administrative Leave Without Pay (“ALWOP”) from 25 August 2024 to 24 November 2024.
2. On 24 October 2024, the Applicant filed a motion for interim measures under art. 14 of the Tribunal’s Rules of Procedure (“RoP”) seeking the suspension of the 20 August 2024 decision.
3. On 29 October 2024, the Respondent filed his response to the Applicant’s motion, and on 31 October 2024, the Applicant filed a rejoinder.
4. By Order No. 134 (GVA/2024) of 1 November 2024, the Tribunal denied the Applicant’s motion for interim measures.
5. On 5 December 2024, the Applicant filed an “application for revision/correction” of Order No. 134 (GVA/2024). In his motion, he also requested anonymity.

Consideration

Applicant’s request for anonymity

6. The Applicant requests anonymity, arguing that he has “suffered enormous public exposure” damaging his reputation. He indicates that his request is based on a need to protect “personal and sensitive information about the nature and extent of sexual relationships underpinning the proceedings and pervading every aspect of the record”.
7. In this respect, art. 11.6 of the Tribunal’s Statute states that “[t]he judgements of the Dispute Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal”. The same applies to orders issued by the Tribunal, such as the present one.

8. It is well-settled case law that “the names of litigants are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and accountability, and personal embarrassment and discomfort are not sufficient grounds to grant confidentiality” (see *Buff* 2016-UNAT-639, para. 21).

9. The Tribunal also recalls that in its resolutions 76/242 and 77/260, adopted on 24 December 2021 and 30 December 2022 respectively, the General Assembly reaffirmed the principle of transparency to ensure a strong culture of accountability throughout the Secretariat.

10. It follows that the internal justice system is governed by the principles of transparency and accountability. A deviation from these principles by means of anonymization requires an applicant to meet a high threshold for such a request to be granted.

11. In the instant case, the Applicant refers to public exposure, damage to his reputation and the “personal and sensitive information” referred to in the case without providing further reasons for the Tribunal to deviate from the principles of transparency and accountability (see *Sophocleous* UNDT-2024-080, para. 23). Contrary to his claim, the fact that the disciplinary process is ongoing and that no “final findings” have been made in relation to the Applicant does not support his request for anonymity.

12. Therefore, the Applicant’s motion stands to be denied.

Applicant’s request for revision/correction

13. In his motion, the Applicant requests the revision or correction of Order No. 134 (GVA/2024) issued on 1 November 2024, denying his request for interim measures.

Revision

14. Article 12.1 of the Tribunal's Statute and art. 29 of its RoP on the revision of judgments provide that:

Either party may apply to the Dispute Tribunal for a revision of [a] judgement on the basis of the discovery of a decisive fact [which was], at the time the judgement was rendered, unknown to the Dispute Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence.

[An application for revision] must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

15. In accordance with the above-mentioned provisions and in so far as the Applicant seeks revision of Order No. 134 (GVA/2024), his application is not receivable as art. 12.1 of the Tribunal's Statute and art. 29 of its RoP only apply to judgments.

16. Furthermore, even considering that an order could be subject to revision under art. 19 of the Tribunal's RoP, there must have been a newly discovered fact for said provisions to be applicable when applying for revision. In this case, however, there is no new fact cited by the Applicant that was not on record before the Tribunal when the Order was issued.

17. What the Applicant challenges is, in fact, the Tribunal's interpretation of the documentary evidence he presented. As that goes into the merits of the case, it does not meet the threshold of "new fact" for the purpose of a revision.

18. Therefore, the Applicant's request for revision is rejected.

Correction

19. Article 31 of the Tribunal's RoP on the correction of judgements indicates that:

Clerical or arithmetical mistakes, or errors arising from any accidental slip or omission, may at any time be corrected by the Dispute Tribunal, either on its own initiative or on the application by any of the parties on a prescribed form.

20. Although this article only refers to judgments, its content seems to allow for corrections generally based on clerical errors, i.e., the slip rule, which could also reasonably apply to case management orders under art. 19 of the Tribunal's RoP.

21. In his motion, the Applicant claims that in para. 41 of Order No. 134 (GVA/2024), the Tribunal relied on an incorrect reading of the documentary evidence presented.

22. Para. 41 of Order No. 134 (GVA/2024) provides as follows (emphasis added):

The fact that the Applicant refers to consensual messaging and attaches screenshots of messages sent from an alleged victim, seeking to prove that there was **consensus as to sexual engagement**, is not exculpatory on the preponderance of the evidence. There was a sufficient basis in the OIOS investigation report, which was still under review by OAI, that the alleged misconduct by “a senior official, a Resident Coordinator at the D-1 level, is of such gravity that it would, if established, warrant separation or dismissal under [s]taff [r]ule 10.2(a) (viii) or (ix)”, as stated at paragraph 43 of the Respondent's response to the Applicant's motion for interim measures.

23. The Applicant asserts that the Tribunal misunderstood the evidence presented, namely the photographs and screenshots of messages sent unsolicited to the Applicant and of a sexual nature, as indicative of “consensual sexual relations” between the Applicant and one of the persons involved.

24. The Applicant clarifies that the purpose of the evidence “was not to prove any form of consensual sexual engagements, but on the contrary, to show that it was these two alleged victims and not the Applicant who initiated or sought to initiate consensual sexual relationships”. He also points out that he did not engage in sexual relations with them.

25. The Tribunal has the authority to make corrections under art. 31 of its RoP. Nevertheless, in this case, the Tribunal's use of the words “sexual engagement” was not a clerical error. It was based on a finding from the review of the record. More specifically, it was the Tribunal's understanding of the Applicant's statement at para. 10 of his response to the draft report of the Office of Internal Oversight Services (“OIOS”), which he included as annex 6 of his motion.

26. The Applicant there described the screenshots he submitted as “irrefutable evidence, at the very least, of consensual conduct” with the alleged victims of sexual harassment. The images and words stated in the screenshots were of a sexual nature. Therefore, the Tribunal found that when the Applicant referred to consensual conduct, he meant sexual conduct.

27. As it follows, the Applicant’s request for correction is unfounded.

28. The Applicant lastly requests that the record be corrected to state that the photographic evidence and the screenshots submitted were of two alleged victims. However, only some of the screenshots depicted sexual content, and the Tribunal was unable to make a finding that two different women are depicted in the sexual content. Consequently, the Applicant’s request in this respect is rejected.

Conclusion

29. In view of the foregoing, it is ORDERED THAT the Applicant’s motion for correction or revision of Order No. 134 (GVA/2024) is rejected.

(Signed)

Judge Eleanor Donaldson-Honeywell
Dated this 10th day of December 2024

Entered in the Register on this 10th day of December 2024

(Signed)

Liliana López Bello, Registrar, Geneva