



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/007/T

Order No.: 58 (GVA/2025)

Date: 28 May 2025

Original: English

Before: Judge Margaret Tibulya

Registry: Geneva

Registrar: Liliana López Bello

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

George Irving

Counsel for Respondent:

Miryoung An, DAS/ALD/OHR/UN Secretariat

Introduction

1. By application filed on 6 March 2024, the Applicant, a staff member of the United Nations Mission in Kosovo (“UNMIK”), contests the decision to impose on her the disciplinary measure of separation from service with compensation in lieu of notice, and without termination indemnity.
2. On 2 April 2025, the Tribunal invited the parties to a Case Management Discussion (“CMD”), which was held virtually on MS Teams on 9 April 2025.
3. Following the CMD, the Tribunal directed the parties to confirm the availability of the parties and the proposed witnesses, which were discussed during the CMD, to virtually attend a hearing on the merits at some point between 21 April and 16 May 2025.
4. By email dated 17 April 2025, the Respondent submitted that V01 is traumatized and unwilling to testify before the Tribunal in person. He then requested that V01 be examined through written questions.
5. On the same day, Counsel for the Applicant submitted that he was available between 28 April and 6 May 2025 and objected to V01 being examined through written questions.
6. By email dated 22 April 2025, the Registry informed the parties that, pursuant to Practice Direction No. 5, all requests to the Tribunal should be made by motion. The Registry further clarified that the request regarding the oral hearing and V01 testimony was rejected by the Registry, and that they should submit their respective positions vis-à-vis the oral hearing and attendance of witnesses through a motion in CCMS.
7. On 23 April 2025, Counsel for the Applicant filed a motion proposing that the hearing be held on 7 May 2025. He further stated that the Respondent had agreed to such a date.
8. By Order No. 47 (GVA/2025) of 7 May 2025, the Tribunal directed the parties to file written submissions substantiating their respective proposed witnesses for a

hearing on the merits, the accommodations required for the examination and cross examination of said witnesses, and the parties' availability, including that of their witnesses, to virtually attend a hearing on the merits between 19 and 30 May 2025, starting at 3 p.m. (Geneva time). The Respondent was further instructed to confirm the availability of V01.

9. On 9 May 2025, Counsel for the Applicant proposed two witnesses for a hearing on the merits, i.e., the Applicant and V01. Counsel for the Applicant further informed that he and the Applicant are only available for a hearing after 1 June 2025, and that Counsel for the Respondent had been consulted and is also available in early June.

10. On the same day, the Respondent submitted that a hearing on the merits is not needed and that he has no witnesses to propose. The Respondent further submitted that V01 is severely distressed about the possibility of an oral hearing. V01 informed the Respondent that she has been traumatized by the incident in issue and is concerned about the negative impact on her mental and physical wellbeing from being exposed to the Applicant and being questioned about the incident again. The Respondent thus requests that V01 be allowed to respond to written questions instead of an oral hearing.

11. By notification dated 12 May 2025, the Tribunal determined the following:

The Tribunal is mindful of V01's wellbeing and does not wish to distress [her] in any way. However, in the interest of affording a fair hearing, and ensuring that all issues raised in the application are comprehensively determined, it is proposed that V01 be requested to reconsider her position on condition that her concerns are specially accommodated, to ensure that she will feel safe to testify.

It is proposed that V01 be requested to testify on condition that: (i) the Applicant will either not be present during her testimony or will be off camera; (ii) V01 will remain anonymized throughout the proceedings; and (iii) V01 will be allowed to testify off-camera.

The Respondent is hereby instructed [to] communicate these proposals to V01 and revert to the Tribunal by Friday, 16 May 2025.

12. On 16 May 2025, the Respondent reverted to the Tribunal, stating that, while deeply appreciative of the Tribunal's consideration of her concerns, V01 had

carefully considered the proposed conditions and informed the Respondent that she was not in a position to testify in an oral hearing. In addition to the concerns already conveyed, the Respondent informed the Tribunal that V01 is currently undergoing medical treatment and considers that testifying in an oral hearing about the traumatic experience she went through would cause “unbearable harm to her well-being.” V01 further submitted that she is willing to provide a generic note confirming the medical treatment.

13. By Order No. 56 (GVA/2025) of 21 May 2025, the Tribunal, *inter alia*, acknowledged V01’s continued refusal to testify in a hearing, and found that it had no alternative but to exclude her from the potential list of witnesses. The Tribunal then granted the Respondent’s prior request to obtain V01’s testimony through written questions and instructed the parties to file their respective written questions to V01 by 27 May 2025. The hearing was scheduled to be virtually held on 4 June 2025.

14. On 27 May 2025, the Respondent submitted that weight must be given to V01’s interview statements with the Office of Internal Oversight Services (“OIOS”), which are corroborated by other evidence on record, as well as multiple witness statements. The Respondent further submits that V01’s sworn interview statements are clear and detailed in describing all relevant facts of the case. In this regard, he indicated that he has no additional questions on the facts other than those already asked to V01 during the OIOS interview, which she answered under oath. He proposed that V01 be asked to reaffirm the truthfulness of her interview statements.

15. On the same day, the Applicant submitted that it found futile the exercise of submitting written questions to V01, and strongly urged the Tribunal to abandon it. In lieu of presenting questions, the Applicant requested leave to submit comments with documentation dealing specifically with V01’s prior statements and some issues of fact that are in contention. In the interest of expediting proceedings, the Applicant has already filed said comments in the record.

Consideration

16. The Tribunal agrees that preparing written questions in lieu of live testimony is not the ideal scenario. The Tribunal repeatedly tried to convince V01 to testify without success. In that scenario, written questions were the only alternative proposed by either party, which the Tribunal agreed to in the interest of guaranteeing the parties an opportunity to, at least, put on the record their issues of fact with the testimony of V01.

17. However, given that the Respondent has no questions of fact to put to V01, and that the Applicant strongly opposes any written examination, the Tribunal agrees to abandon such a course of action. No written questions will be submitted to V01.

18. Furthermore, in the interest of justice, the Tribunal grants the Applicant's motion for leave to submit comments dealing specifically with V01's prior statements to OIOS. The submission filed on 27 May 2025 is, therefore, accepted into the case record.

19. In the interest of equality of arms, the Respondent is given the opportunity to respond to the Applicant's submission.

Conclusion

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

- a. Order No. 56 (GVA/2025) is partially revoked, and the Tribunal will not order V01 to respond to any written questions; and
- b. **By Monday, 2 June 2025, COB Geneva**, the Respondent may respond to the Applicant's comments of 27 May 2025.

(Signed)

Judge Margaret Tibulya

Dated this 28th day of May 2025

Entered in the Register on this 28th day of May 2025

(Signed)

Liliana López Bello, Registrar, Geneva