



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NY/2016/031  
Order No.: 270 (NY/2016)  
Date: 2 December 2016  
Original: English

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**Before:** Judge Alessandra Greceanu

**Registry:** New York

**Registrar:** Hafida Lahiouel

WILSON

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON WITHDRAWAL**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Alan Gutman, ALS/OHRM, UN Secretariat  
Alister Cumming, ALS/OHRM, UN Secretariat

## **Introduction**

1. On 19 July 2016, the Applicant, a Chief of Proactive Investigations at the Office of Internal Oversight Services, filed an application in which he contests “[t]he decision by [the Assistant Secretary-General of Human Resources] to take no further action on a prohibited conduct complaint [the Applicant] had initiated on 9 July 2016”.

2. On 20 July 2016, the application was transmitted to the Respondent who was instructed to file his reply by 18 August 2016 and the case was assigned to the undersigned judge.

3. On the same date, the Applicant, filed a “Request for Under Seal Application”, requesting that Annex 4 to the application be “processed as an ‘Under Seal Filing’” by the Registry.

4. On 19 August 2016, the Respondent filed his reply. He contends that, insofar as the Applicant alleges that the management evaluation was flawed, is not receivable *ratione materiae*, and that the application is otherwise without merit.

## **Procedural background**

5. By Order No. 220 (NY/2016) dated 20 September 2016, the Tribunal made the following orders (emphasis omitted):

... The Applicant’s request for production of evidence is rejected.

... Annex 4 to the application is to remain under seal.

... The parties are to file their closing submissions, including on the issue of receivability *ratione materiae*, invoked by the Respondent in paras. 6 and 7 of his reply, based only on the documents already before the Tribunal, by 5:00 p.m. Friday, 14 October 2016.

6. On 27 September 2016, the Applicant filed his closing submissions and, on 14 October 2016, the Respondent filed his closing statement.

7. On 12 November 2016, the Applicant emailed the New York Registry's inbox, stating that:

In the interest of all concerned parties I would like to submit an informal request in regards to UNDT-NY-2016-031 [...]. Both these matters are waiting an eminent judgment and/or decision on its merits. My informal request is that no judgment and/or decision be issued this week. I am making this request as late yesterday (Friday afternoon) Management spoke with me about a possible resolution to ALL my outstanding cases before the Tribunal. As such I do not want to risk this possible avenue of resolution by the issuance of an untimely judgment or decision on the merits, I expect that by 18 November I will be able to formally advise if all my pending cases are in mediation.

8. On 16 November 2016, the Applicant filed a "request for referral to mediation", stating that:

... As provided by Article 15.3 of the UNDT Rules of Procedure and further referenced by Annexes 1 and 2 the Applicant has agreed to mediation with the Department of Management as a possible means to resolve the current Application.

... It is requested the Application be suspended to provide the parties a suitable period to attempt an informal resolution to the matters at hand. The Tribunal will be immediately advised if the parties were able to come to an agreement.

... The Applicant apologizes for the slight delay in informing the Tribunal. The Applicant was travelling on 15 November 2016.

9. By email of 16 November 2016, the Tribunal requested the parties to advise it, by 4:00 p.m. the same date, whether the case was to be referred to mediation under the Ombudsman's office and be suspended in accordance with art. 15 of the Rules of Procedure of the Dispute Tribunal or the proceedings were to be suspended pursuant to art. 10.1.

10. On 16 September 2016, the Respondent emailed the New York Registry's inbox, stating that, "[d]iscussions regarding a possible informal settlement of this case are being carried out on an *inter partes* basis. Accordingly, the Respondent has no objection to proceedings being suspended in accordance with Article 10.1 of the Dispute Tribunal's Statute".

11. On the same date, the Applicant emailed the New York Registry's inbox, stating that, "I am in direct discussions with the [Department] of [M]anagement and would ask that the matters be suspended; not referred to the ombudsman [...] office".

12. By Order No. 261 (NY/2016) dated 16 November 2016, the Tribunal suspended the proceedings until 21 December 2016 by which date the parties were to inform the Tribunal as to the progress of the settlement discussions and/or whether this case has been resolved. In the latter event, the Applicant was instructed to confirm to the Tribunal, in writing, that his application was withdrawn fully, finally and entirely, including on the merits.

13. On 2 December 2016, the Applicant filed a "Request for Withdrawal of Application following Informal Resolution" in which he stated that:

Following informal discussions with the Department of Management the Applicant wishes to advise the Tribunal that this case has been resolved. The Applicant confirms that the Application is withdrawn fully, finally and entirely, including on the merits.

### **Consideration**

14. The Tribunal commends the Applicant for withdrawing the application in the present case following his informal discussions with the Department of Management. This saves valuable resources and contributes to a harmonious working relationship between the parties.

15. The Tribunal considers that each person has the fundamental human right to free access to justice, which includes the right to file an application in front of an impartial tribunal, and therefore also the right to withdraw that application.

16. An application represents the materialization of an applicant's right to appeal the contested decision. This is the first procedural act by which an applicant invests the Tribunal of dealing with the appeal. The whole procedural activity will take place within its limits and the application must be filed by the person who has the right to

appeal the contested decision (*ratione personae*), within the applicable time limit (*ratione temporis*) and in front of the competent Tribunal (*ratione loci*).

17. Consequently, to be legally valid, a request for the withdrawal of an application has to be formulated by the applicant and/or by her/his counsel and must consist of the unconditional expression of the applicant's free will to close the case before a judgment is issued.

18. An application can be withdrawn orally and/or in writing, partially or entirely. The withdrawal request can refer either to the pending application (as a procedural act) or to the right to appeal itself.

19. If an identical application is filed by the same applicant against the same party after she or he waived her or his right to appeal the matter, the exception of *res judicata* can be raised by the other party or *ex officio* by the court itself. *Res judicata* requires three cumulative elements: (i) same parties; (ii) same object; and (iii) same legal cause, and has both negative and positive effects: it is blocking the formulation of a new identical application and guarantees that it is not possible to rule differently in the same matter.

20. *Res judicata* is a reflection of the principle of legal certainty and does not prejudice the fundamental right to a fair trial since the access to justice is not absolute and can be subjected to limitations resulting from the application of the other principles. The principle of rule of law and the principle of legal certainty, expressed also by *res judicata*, require, *inter alia*, that an irrevocable decision given by the Tribunal not to be further questioned (*non bis in idem*) (see *Shanks* 2010-UNAT-026bis; *Costa* 2010-UNAT-063; *Meron* 2012-UNAT-198). As stated by the United Nations Appeals Tribunal in *Meron* that "there must be an end to litigation" in order to ensure the stability of the judicial process.

21. The Applicant clearly expressed, in his withdrawal request of 2 December 2016, his free will to fully and finally withdraw his application and thereby end the pending litigation.

22. In conclusion, the object of the withdrawal request is the right to appeal itself and represents the Applicant's free will to end the litigation. Since the Applicant has withdrawn his application, the Tribunal no longer needs to make a determination on the merits and takes note of the withdrawal.

IT IS ORDERED THAT:

23. The Applicant has withdrawn the matter in finality, including on the merits. There being no matter for adjudication by the Dispute Tribunal, Case No. UNDT/NY/2016/031 is hereby closed without liberty to reinstate.

*(Signed)*

Judge Alessandra Greceanu

Dated this 2<sup>nd</sup> day of December 2016