



**Before:** Judge Alessandra Greceanu

**Registry:** New York

**Registrar:** Hafida Lahiouel

SAYROLS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON WITHDRAWAL**

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**Counsel for Applicant:**  
Mariam Munang, OSLA

**Counsel for Respondent:**  
Stephan Grieb, UNICEF

## **Introduction**

1. On 20 August 2015, the Applicant, a former General Service staff member at the United Nations Children’s Fund (“UNICEF”) Office in Mexico, filed an application contesting:

... the Administration’s decision to abolish the recruitment process for the post of Communication Assistant at the GS6 level, for which the Applicant was the only suitable candidate, and the consequent decision not to provide her with the opportunity to participate in the recruitment for, and be selected against, that position while she was still employed as a staff member with a permanent appointment at UNICEF in Mexico.

2. By notification dated 20 August 2015, the New York Registry of the Dispute Tribunal acknowledged receipt of the application, and as instructed by the Duty Judge, transmitted annexes 2, 3 and 9 to the application for translation from Spanish into English. The Respondent was requested to submit his reply in 30 days after he had been notified by the Registry that the translated annexes had been uploaded into the electronic case file through the eFiling portal.

3. The translation was received on 26 August 2015. On 27 August 2015, the New York Registry notified the parties that the translated version of annexes 2, 3, and 9 had been uploaded to the eFiling portal.

4. The Respondent submitted his reply on 25 September 2015, contending that the Applicant’s assertions were without merit.

5. On 9 May 2016, the case was assigned to the undersigned Judge.

### **Procedural background**

6. By Order No. 186 (NY/2016) dated 29 July 2016, the Tribunal instructed the parties to attend a Case Management Discussion (“CMD”) on 24 August 2016, to discuss the further proceedings of the present case. The parties were requested to confirm their participation by 18 August 2016.

7. On 1 August 2016, both parties requested by email that the CMD scheduled for 24 August 2016 be postponed and instead proposed to hold it on 15 September 2016.

8. By Order No. 190 (NY/2016) dated 4 August 2016, the Tribunal rescheduled the CMD for 15 September 2016.

9. At the 15 September 2015 CMD, the parties informed the Tribunal that they had agreed to engage in *inter partes* discussions and to have the proceedings suspended until 28 October 2016.

10. By Order No. 217 (NY/2016) dated 16 September 2016, the Tribunal suspended the proceedings until 28 October 2016 and instructed the parties to inform the Tribunal as to whether this case had been resolved by 4 November 2016.

11. By joint motion for further suspension of the proceedings dated 4 November 2016, the parties requested that the proceedings be further suspended until 2 December 2016.

12. By Order No. 255 (NY/2016) dated 4 November 2016, the Tribunal suspended the proceedings until 2 December 2016 and instructed the parties to inform the Tribunal as to whether this case had been resolved by 5 December 2016.

13. On 5 December 2016, the parties filed a jointly-signed, “Notice of Withdrawal”, in which the Applicant confirmed that “the parties have reached a satisfactory settlement and she hereby withdraws fully her [...] application filed on 20 August 2015”.

### **Consideration**

14. The Tribunal commends the Applicant for withdrawing the application in the present case following the successful *inter partes* settlement negotiations. 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 the withdrawal request of 5 December 2016, her free will to fully withdraw her 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.

23. In light of the foregoing,

IT IS ORDERED THAT:

24. 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/2015/051 is hereby closed without liberty to reinstate.

*(Signed)*

Judge Alessandra Greceanu

Dated this 7<sup>th</sup> day of December 2016