



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: René M. Vargas M.

ARNOLD

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

George Irving

Counsel for Respondent:

Miryoung An, AAS/ALD/OHR, UN Secretariat

Introduction

1. By application filed on 10 November 2022, the Applicant, a staff member of the United Nations Mission in Kosovo (“UNMIK”), contests the decision to impose on her the disciplinary measure of written censure, in accordance with staff rule 10.2(a)(i), together with the managerial action of managerial coaching for one year.
2. In her application, the Applicant requests anonymity in the publication of any orders or judgments.
3. On 9 December 2022, the Respondent filed his reply.
4. By e-mail of 5 September 2023, the Tribunal instructed the Applicant to further substantiate her request for anonymity, by demonstrating how the interest of anonymity outweighs the principle of transparency, and invited the Respondent to provide his comments on the Applicant’s submission.
5. On 7 September 2023, the Applicant filed her submission on anonymity pursuant to the Tribunal’s instructions.
6. On 12 September 2023, the Respondent filed his comments on the Applicant’s above-mentioned submission.

Consideration

The Applicant’s request for anonymity

7. The Applicant submits that the interest of anonymity outweighs the principle of transparency in her case. In support of this, she *inter alia*:
 - a. Argues that the allegations referred to in the case are sensitive in nature, and she has suffered from a breach of confidentiality as evidenced by articles published by *Inner City Press* and leaks of various anonymous e-mail communications;

b. Contends that the present matter could reflect on her private life and sexual orientation, posing a distinct threat to her in her resident country (Turkey) and in her duty station (Pristina).

8. While the Respondent objected to the Applicant's request for anonymity in his reply, he retracted it in his 12 September 2023 submission indicating that he "has no objection to the Applicant being granted anonymity should the Tribunal [determine that] the circumstances support the anonymization of the Applicant's name in the judgment after balancing the competing interests, including the principle of transparency and accountability".

9. The Tribunal notes that art. 11.6 of its 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." It also notes that the Appeals Tribunal held in *AAE* 2023-UNAT-1332, at para. 155, that:

there continues to be concerns raised regarding the privacy of individuals contained in judgments which are increasingly published and accessible online. In our digital age, such publication ensures that individuals' personal details are available online, worldwide, and in perpetuity. There are increasing calls for the privacy of individuals and parties to be protected in judgments.

10. 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).

11. 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.

12. 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 that an applicant meets a high threshold for such a request to be granted.

13. While the Tribunal regrets the leak of information that the Applicant pointed out, it finds that anonymization is not the adequate mechanism to address or to stop it. This Tribunal's previous decision in another matter resulted from a set of circumstances that are different from those in the Applicant's case. The Tribunal does not find it warranted in the Applicant's case to entertain similar actions.

14. Finally, the Applicant claims that the current matter could reflect on her private life and sexual orientation. The Tribunal has carefully considered this argument against the content of the contested decision. The three allegations retained against the Applicant as established conduct for the imposition of the contested disciplinary measure relate to alleged shortcomings of managerial behaviour. They do not refer to the Applicant's private life or sexual orientation.

15. In view of the foregoing, the Tribunal is not satisfied that the interest of anonymity overrides the need for transparency and accountability in the Applicant's case. Accordingly, the Applicant's request for anonymity fails.

The Respondent's request to exceed the page limit

16. The Respondent requests leave to exceed the page limit suggested in the Tribunal's Practice Direction No. 4 on grounds of the factual complexity of the case, and the need to cite relevant evidence.

17. The Tribunal notes that para. 19 of its Practice Direction No. 4 provides that "[t]he reply should not exceed 10 pages, font Times New Roman, font size 12, line spacing of 1.5 lines". In the present case, the reply, excluding the cover, is 13 pages long.

18. Having regard to the circumstances invoked by the Respondent, for a fair and expeditious disposal of the case, the Tribunal considers it appropriate to grant the Respondent's request pursuant to art. 19.1 of its Rules of Procedure.

Case management discussion

19. Having reviewed the submissions on record, the Tribunal deems it appropriate to invite the parties to a case management discussion ("CMD") pursuant to art. 19.1 of its Rules of Procedure.

20. The purpose of the CMD is to:

- a. Ascertain whether the parties are amenable to considering an alternative resolution to the dispute;
- b. Identify the factual and legal issues to be determined;
- c. Consider what further information, if any, is required;
- d. Consider if the case may be decided on the basis of the parties' written submissions or if a hearing should be held;
- e. Identify the relevant witnesses to be called and agree on dates for said hearing, if needed; and
- f. Discuss any other matter relevant to these proceedings.

Conclusion

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

- a. The Applicant's request for anonymity is rejected;
- b. The Respondent's request to exceed the page limit in his reply is granted; and

c. The parties shall attend a CMD on **Wednesday, 20 September 2023, at 3 p.m. (Geneva Time)**, which will be conducted virtually through Microsoft Teams.

(Signed)

Judge Sun Xiangzhuang

Dated this 18th day of September 2023

Entered in the Register on this 18th day of September 2023

(Signed)

René M. Vargas M., Registrar, Geneva