



**Before:** Judge Alessandra Greceanu

**Registry:** New York

**Registrar:** Hafida Lahiouel

TAVORA-JAINCHILL

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON RECEIVABILITY**

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**Counsel for Applicant:**

George G. Irving

**Counsel for Respondent:**

Stephen Margetts, ALS/OHRM, UN Secretariat

Sarahi Lim Baró, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant contests “the refusal of the Respondent to provide facilities, including intranet access via iSeek to [her] to carry out her official functions while according such facilities to persons who are not properly designated [United Nations Staff Union (“UNSU”)] officials”. She seeks the Respondent’s compliance with her entitlement to have access to iSeek and other facilities to carry out her functions in accordance with the Statute and Regulations of UNSU until such time as a new UNSU President is elected, and withdrawal of such facilities from staff who have been recalled from office or who have not been properly authorized in accordance with the Statute and Regulations of UNSU.

2. In his 25 March 2014 reply, the Respondent contends that the application is not receivable because: (a) the outcome of the UNSU elections is disputed and the Dispute Tribunal does not have jurisdiction over matters concerning the internal affairs of the UNSU; (b) no final administrative decision has been taken concerning the Applicant’s request for access to iSeek; (c) disputes concerning access to facilities for duly elected UNSU officials are to be resolved under Chapter VIII and not Chapter XI of the Staff Rules.

## **Factual and procedural background**

3. In the application, filed on 24 February 2014, the Applicant outlines the facts of the case as follows:

... On 5 and 6 December 2013, three members of the UNSU Arbitration Committee submitted their resignations, rendering the Arbitration Committee inoperative ...

... On 6 December the Chair of the Unit Chairpersons of the [UNSU] wrote to the Secretary-General informing him that according to the Statute and Regulations of the [UNSU], Section 6.17, the Polling Officers for the 44<sup>th</sup> Staff Council had been recalled citing a violation of rule 6.9 concerning compromise of integrity and fairness of elections electoral and noted that a new call for polling officers

would be issued. ... When the recalled Polling Officers ignored the recall decision and proceeded with election activities, the Chair of the Unit Chairpersons requested [the Assistant Secretary-General for (the Office of) Human Resources Management (“ASG/OHRM”)] to suspend the [United Nations] email account (polling Officers-UNSU) issued by the Administration as well as their posting privileges to iSeek and time release ...

... On 9 December 2013, [the ASG/OHRM], in response to the email from the Chairperson of the Unit Chair persons informing her of the recall of Polling Officers and requesting to immediately terminate their email account, the ASG/OHRM replied that “it was a longstanding policy and practice that it would be inappropriate for management to become involved in internal administration of the Staff Unions. Such involvement would not be conducive to the proper conduct of staff management relations.” ...

... On 16 January 2014 the [UNSU], pursuant to a decision of the Unit Chairpersons of 6 December 2013, circulated via iSeek a call for nominations for new polling officers, with a deadline of 31 January 2014 ...

... On 30 January 2014, in spite of having been recalled, the former Chairperson of the Polling Officers of the 44<sup>th</sup> Staff Council, ... , issued through the official email of the UNSU on iSeek, a call for nominations for an Arbitration Committee by 14 February 2014 ...

... On the same day, 30 January 2014, the President of the [UNSU] wrote to the Secretary-General calling attention to the email from [the former Chairperson of the Polling Officers of the 44<sup>th</sup> Staff Council] and to [Dispute Tribunal] Order No. 18 (NY/2014) and in particular to the finding that, “not only were the Polling Officers who ran the December 2013 elections recalled, but, insofar as the December 2013 elections are concerned, those Polling Officers are now *functus officio*.” The President of the [UNSU] specifically requested that [the former Chairperson of the Polling Officers of the 44<sup>th</sup> Staff Council] no longer be given access to the Polling Officers email account. ... There has been no reply.

... On 5 February 2014 the Applicant sent a request to iSeek personnel to publish a disclaimer urging all staff to ignore the unauthorized message of the former polling officers ...

... On 6 February 2014 the Applicant was advised by ... [the] Team Leader for iSeek that she was unable to fulfill her request for posting an official communication on behalf of the [UNSU], that

the decision did not rest with her and that she was awaiting guidance from authorities she did not identify ...

... The Applicant replied questioning the basis for the refusal to allow her access to iSeek ... This is the first and only occasion on which requests to post notifications to staff through iSeek by the [UNSU] President had not been honored. The communication in question was an important one insofar as it advised staff to ignore an announcement that had recently been disseminated in iSeek by individuals who were no longer authorized to use it. It was also important to organize legally correct elections in order to replace the Arbitration Committee, all of whose former members had resigned.

... To date the request for access to iSeek by the Applicant has not been honored.

... On 10 February 2014, the Applicant submitted a request for management evaluation challenging the decision to exclude her from access to the official UNSU site on iSeek while allowing it to unauthorized persons ...

... On 11 February 2014, the Chair of the Electoral Unit Chairpersons announced the election of nine Polling Offices ... On the same date the Applicant, in her official capacity, requested the publication of an Executive Board Bulletin announcing the new Polling Officers ... There has been no posting on iSeek.

... Some time thereafter the newly elected Polling Officers sought to circulate an announcement to all staff via iSeek, calling for nominations for the UNSU Arbitration Committee to replace the former members of the Arbitration Committee who had all resigned at the end of 2013. To date, the announcement has not been posted.

... On 17 February 2014, the Management Evaluation Unit replied to her request stating that it was not receivable ...

4. On 25 February 2014, the application was transmitted to the Respondent for him to file a reply within 30 days.

5. On 14 March 2014, the Applicant filed a motion for interim measures under art. 10.2 of the Dispute Tribunal's Statute. The Respondent filed a response to the motion on 18 March 2014. On 21 March 2014, by Order No. 45 (NY/2014), the motion for interim measures was rejected by the Tribunal.

6. The Respondent duly filed his reply on 25 March 2014.

7. By Order No. 46 (NY/2014) dated 25 March 2014, the Tribunal ordered the Applicant to file a response regarding the receivability issues raised by the Respondent in his reply. The Applicant filed his response on 11 April 2014.

8. The case was assigned to the undersigned judge on 15 April 2015.

9. By Order No. 91 (NY/2015) dated 22 May 2015, the Tribunal called the parties to a Case Management Discussion (“CMD”) to be held on 28 May 2015 to determine the further progress of the case. At the CMD, Counsel for the Applicant confirmed that the Applicant wished to continue the proceedings of the present case. The parties further informed the Tribunal that the Arbitration Committee had recently issued a decision, which had been contested by the Applicant, and confirmed that no further procedural steps were needed to determine the preliminary issue of receivability on the papers before the Tribunal.

10. Subsequent to the CMD, the Tribunal issued Order No. 102 (NY/2015) dated 29 May 2015 and instructed the parties to file and serve their final submissions on the preliminary issue of receivability. On 12 June 2015, both parties filed their submissions.

### **Respondent’s submissions on receivability**

11. The Respondent’s contentions may be summarized as follows:

a. The elections for the 45<sup>th</sup> Staff Council and Leadership are in dispute. The Dispute Tribunal has repeatedly stated that it has no jurisdiction in matters concerning the internal affairs of the UNSU, including the conduct of elections and the determination of the new leadership of the Staff Union;

b. The internal dispute relating to the outcome of the UNSU elections is ongoing, and it extends to the Applicant’s claim that she is entitled to act as President of the 44<sup>th</sup> Staff Council until her successor takes office. Contrary to

the Applicant's claims, the Respondent has not recognized her authority to act as President;

c. The Administration is required to refrain from interfering with the affairs of the UNSU. Accordingly, the Administration has no authority to recognize her as the current President of the UNSU and, therefore, cannot grant her access to iSeek;

d. The Applicant has failed to demonstrate that there has been a final administrative decision concerning her request to be provided facilities for conducting UNSU activities, specifically, intranet access via iSeek;

e. The iSeek Team Leader informed the Applicant that she would seek guidance on her request and her communication is not a final administrative decision. The Applicant did not wait to receive an official response and her request for management evaluation was filed prematurely;

f. The Applicant has not presented any evidence that she reverted to the iSeek Team Leader for a final determination on the matter;

g. The Applicant claims that she filed her application in her capacity as an individual staff member but her claim is untenable. As an individual staff member, the Applicant, like all other staff members, may submit a request to iSeek in order to submit articles, photographs, etc. The UNSU has its own website, u-seek.org, which includes information on all UNSU matters, including several Arbitration Committee responses;

h. However, the Applicant has not made her request for access to iSeek as an individual staff member. She made her request in her capacity as the President of the 44<sup>th</sup> Staff Council to be able to post to the UNSU page on iSeek. Granting her request would require a determination that the Applicant remains President of the UNSU;

i. Contrary to the Applicant's claims, she has no standing to pursue a claim relating to her rights under the terms of her appointment arising from Chapter VIII of the Staff Regulations and Rules. The right of staff to be consulted under Chapter VIII is exercised through staff representatives. Staff members are represented in the joint staff-management machinery by duly elected staff representatives (staff regulation 8.2 and staff rule 8.2(a)). The Applicant cannot purport to enforce rights of staff representatives as an individual staff member;

j. Furthermore, it is well-established that the Dispute Tribunal does not have jurisdiction *rationae personae* in relation to applications filed by staff representatives or on behalf of staff unions.

#### **Applicant's submissions on receivability**

12. The Applicant's contentions may be summarized as follows:

a. Staff regulation 8.1(a) mandates the Secretary-General to "establish and maintain continuous contact and communication with the staff in order to ensure the effective participation of the staff in identifying, examining and resolving issues relating to staff welfare";

b. Staff regulations 8.1(b) and 8.2 describe the modalities for implementing staff regulation 8.1(a). These staff regulations, the corresponding staff rules and pertinent administrative issuances form an integral part of every staff member's contract of employment. Every staff member has a contractual right to see that these terms are carried out in accordance with the requirements of good faith and fair dealing. In addition, staff members who are designated under these rules to carry out staff representational functions are entitled to specific rights by virtue of the offices they hold. The operative administrative instruction is ST/AI/293 (Facilities to be provided to Staff Representatives) issued on 15 July 1982;

c. The Respondent's arguments on receivability are primarily based on the premise that the Tribunal has no jurisdiction over internal UNSU matters. This argument is misplaced. The Applicant is not seeking a judicial determination of internal UNSU matters, including the results of a disputed election, but rather is seeking to assert her own rights to facilities she is guaranteed by virtue of the office she holds;

d. The Applicant herself has not disputed the results of the past elections for the 45<sup>th</sup> Staff Council. Others have done so and that matter is yet to be determined. The Respondent mistakenly referred to recent decisions by an Arbitration Committee posted on the UNSU's website. This is not accurate. No group presently has access to the website. The correct facts are that the Arbitration Committee elected under the 44<sup>th</sup> Staff Council no longer exists, its members having resigned office in December 2013. The logical next step would be to allow the polling officers of the 44<sup>th</sup> Staff Council to elect new members. That step, however, has been blocked by the Administration, which has refused them the documentation and facilities to conduct such an election. No decisions of any arbitration committee have been posted on UNSU's website since the last Arbitration Committee ceased to operate in December 2013. No election results have subsequently been recognised or certified by the Secretary-General;

e. The Respondent is, in fact, referring to the actions of an unrecognised group of staff. The 44<sup>th</sup> Staff Council objected to the actions of this group on the grounds that the authority of the former polling officers had been withdrawn by the Council, the purported election was invalid and that three of the four people allegedly selected as arbitrators failed to meet the statutory requirement that they be dues paying members of the Union. Thus, the only staff representatives whose office has not been contested, the 44<sup>th</sup> Staff Council, does not recognise the findings cited by the Respondent. This raises

the question of whether the Respondent, is in fact, picking and choosing how he wishes to interfere in UNSU matters;

f. The Applicant's right to facilities derives not from any contested election but rather by virtue of her continuing office of President of the 44<sup>th</sup> Staff Council. Pending the resolution of the disputed election, the staff regulations and rules impose on the Secretary-General the requirement that he maintain constant contact and communication with the staff through their elected staff representatives. No one is contesting the Applicant's entitlement to office as President of the 44<sup>th</sup> Staff Council. No other leadership or Council has since been recognized or inaugurated. Until that happens, she remains the legitimate spokesperson and is thus entitled to all the facilities guaranteed to her office;

g. The Respondent also alleges that the decision taken over a year ago and unchanged to exclude her from iSeek is not a final decision. That argument strains credibility. The Respondent had an opportunity to clarify his position, if it had changed, at the point of management evaluation. To persist in the argument now is disingenuous;

h. The Respondent also argues that staff representatives have no standing before the Dispute Tribunal. This is a misstatement of the intention of the General Assembly, which merely declined to give staff associations standing as parties to bring claims on behalf of their constituents. That is quite different from individuals who are asserting claims in their individual and official capacity. The Respondent confuses the rights of staff associations with the rights of individual staff members. As the Tribunal held in *Hassanin* Order No. 83 (NY/2011), "The benefits of a recognized organizational right are conferred on every individual staff member". In *Campos* 2010-UNAT-001, the Appeals Tribunal recognized the right of a staff member to challenge a decision based on his representational capacity. In that capacity,

the Applicant has questioned why a right that was formerly accorded her (access to iSeek and UNSU's website) has been withdrawn. In the absence of a certification of new election results, the Respondent should be estopped from asserting the present impasse as an excuse for denying the Applicant's rights. The lack of good faith in this posturing is further demonstrated by the evidence adduced in Case No. UNDT/NY/2015/005 that the Administration has on any number of occasions recognized the on-going authority of the Applicant as head of the Staff Union to nominate members to the Central Review Bodies, to attend the Secretariat-wide Staff-Management Committee and to have access to the physical premises of the Staff Union. The Applicant cannot be recognised for some purposes but not others. The Respondent is obliged to act consistently. By selectively refusing facilities, the Respondent is undermining the effectiveness of the Union and impeding its communication with the membership on matters with significant implications for them. This is self-serving. The Applicant is only asking that his actions be consistent with respect to providing the UNSU with the facilities needed to solve the present impasse and communicate with its members in accordance with the Statute of the UNSU.

## **Consideration**

### *Applicable law*

13. The Statute and Regulations of UNSU, adopted on 14 December 2007, provides as follows of relevance to the present case:

#### **Part I – Statute**

##### **5. Leadership**

The President, 1<sup>st</sup> Vice-President and 2<sup>nd</sup> Vice-President shall run for election in a single ticket and shall be elected by the staff-at-large.

## **8. Representatives**

8.4 The role of representatives shall be as defined under the Regulations made under this Statute.

## **11. Standing Committees**

There shall be the following standing committees of the Union:

- (a) Arbitration Committee;
- (b) Audit Committee.

## **15. Compliance**

The Arbitration Committee shall consider and rule on compliance matters as specified in the Regulations made under this Statute.

## **17. Interpretation**

17.1 Words used in this Statute and in any Regulation made thereunder have the same meaning as in the UN Charter.

17.2 In the event of an unresolved dispute arising over the interpretation of the Statute, its Regulations or any policy the matter shall be referred to the Arbitration Committee.

17.3 In circumstances where an interpretation is sought from the Arbitration Committee, it shall be reported to the Council and duly recorded.

## **18. Regulations**

18.1 The Regulations of the Union shall deal with:

- (a) Membership;
- (b) Leadership;
- (c) Executive Board;
- (d) Council;
- (e) Representatives;
- (f) General Meeting;
- (g) Referendum;
- (h) Standing Committees;
- (i) Finance;
- (j) Elections;
- (k) Responsibilities.

## **Part II – Regulations**

### **4. The Council**

#### **Preamble**

#### **The Council is:**

- 4.1 The legislative assembly of the Union.
- 4.2 Responsible and accountable to the General Meeting for all its activities.

#### **Composition**

- 4.3 Comprised of staff representatives and alternates.
- 4.4 The Council shall take full office from the first day of the month immediately following the declared result of elections.
- 4.5 The term of office of the Council shall not expire earlier than a new Council assumes office.

### **8. Arbitration Committee**

8.1 In order to increase accountability of elected Union officials, the Arbitration Committee is established to review alleged violations of the Statute of the Staff Union and decide on sanctions where warranted. Rulings of the Arbitration Committee shall be binding on all bodies of the Staff Union.

#### **8.2 Terms of Reference**

8.2.3 The Arbitration Committee shall receive, consider and rule upon matters related to violations of the Statute and Regulations.

8.2.5 The Arbitration Committee may impose the following sanctions:

- (a) A verbal warning, which may take the form of an informal or formal discussion of the problem;
- (b) A written warning, which will take the form of a letter from the Arbitration Committee;
- (e) Suspension of Executive Board and/or Council voting rights;
- (d) Recommendation for recall.

8.2.6 The Chair of the Arbitration Committee must in all cases inform the individual being sanctioned of his/her right to request a final review by the Committee.

8.3 Procedure for submitting a complaint

8.3.1 Should any member of the Staff Union be of the view that an act of the Staff Council, Executive Board or any of its officers is in violation of the Staff Union's Statute and Regulations, the complaint should be submitted to the Arbitration Committee in accordance with the procedures set out in Regulation 8.3.2 below within three months of such an act having been known or publicized.

8.3.2 Any complaint by a staff member must be submitted to the Arbitration Committee in writing and list the Articles of the Staff Union Statute and Regulations that have been allegedly violated by an act of the Staff Council, Executive Board or any of its members.

**10. Responsibilities of Officers**

10.1 The **President**, as the principal executive officer of the Union, shall:

- (a) Lead, manage and represent the Union;
- (b) Plan and oversee, either personally or through delegation of authority to other individuals or committees, the implementation of the policies and decisions of the Union, including financial governance, as established under the Statute and Regulations, all programs and activities necessary for the advancement and welfare of the Union, its membership and affiliated bodies;
- (c) Be responsible for all correspondence elaborating policy matters;
- (d) Submit a written report on affairs of the Union at each General Meeting;
- (e) Provide a summary record of communications and a report to each Council meeting, normally in writing;
- (f) Act as ex-officio member of all committees and subordinate bodies of the Union as required;
- (g) Call or convene meetings of any subordinate body or its boards or committees;
- (h) Request for special meetings of the Council as required by this Statute;
- (i) Act as certifying official of the Union;
- (j) Hold no other office or position in the Union or be engaged in any other employment.

18.2 The Regulations may be established, altered, amended or added to by resolution of the General Meeting pursuant to Article 9, paragraph 3.

14. ST/AI/293 provides in relevant parts that:

1. The term “staff representatives” shall mean staff members of the United Nations who have been duly elected to a Staff Council or corresponding staff representative body in accordance with the Staff Regulations and Rules.

2. The functions of staff representatives are official. Staff representatives shall have the same rights, duties, obligations and privileges as other staff members of the United Nations under the Staff Regulations and Rules and shall enjoy protection against any discriminatory treatment or prejudicial acting based on their status or activities as staff representatives.

3. Staff representatives as well as staff representative bodies shall be afforded such facilities as may be required to enable them to carry out their functions promptly and efficiently, while not impairing the efficient operation of the organization. The precise nature and scope of the facilities to be provided at each duty station shall be determined in accordance with the procedures set out in chapter VIII of the Staff Rules.

4. Facilities for the holding of meetings duly convened by staff representatives, including general meetings, Staff Council meetings, Staff Committee meetings and Unit meetings, shall be provided, to the extent possible.

5. Each Staff Council, Staff Committee or corresponding staff representative body shall be provided with secretarial assistance, office space and supplies as may be necessary for the proper discharge of their functions.

6. Each Staff Council, Staff Committee or corresponding staff representative body shall be accorded facilities for reproduction and distribution of notices, bulletins and other documents required for the proper discharge of their functions. The provision of such facilities shall be subject to the procedures governing requests for internal reproduction and distribution of documents.

7. Each Staff Council, Staff Committee or corresponding staff representative body may have its notices or bulletins posted at spaces or on bulletin boards especially designated for that purpose.

8. Each Staff Council, Staff Committee or corresponding staff representative body shall have use of telephone and cable

communication facilities subject to the procedures governing requests for such services, budgetary considerations and any necessary security arrangements. Authority to sign cables and initiate calls shall normally be delegated to an officer designated by the Staff Council or by the staff representative body at the respective duty station.

13. Staff members duly designated or elected by the Staff Council, Staff Committee or corresponding staff representative body to perform representational functions may be accorded such facilities as may be required to perform those functions under arrangements to be determined in accordance with the procedures set out in chapter VIII of the Staff Rules.

14. Disagreements concerning the implementation of the above provisions shall be discussed and resolved in accordance with the procedures set out in chapter VIII of the Staff Rules.

15. Chapter VIII (Staff relations) of the Staff Regulations and Rules (ST/SGB/2014/1) states, in relevant parts, that:

### **Regulation 8.1**

(a) The Secretary-General shall establish and maintain continuous contact and communication with the staff in order to ensure the effective participation of the staff in identifying, examining and resolving issues relating to staff welfare, including conditions of work, general conditions of life and other human resources policies;

(b) Staff representative bodies shall be established and shall be entitled to initiate proposals to the Secretary-General for the purpose set forth in paragraph (a) above. They shall be organized in such a way as to afford equitable representation to all staff members, by means of elections that shall take place at least biennially under electoral regulations drawn up by the respective staff representative body and agreed to by the Secretary-General.

### **Rule 8.1**

#### **Staff representative bodies and staff representatives**

#### **Definitions**

(a) The term “staff representative bodies”, as used in the present chapter of the Staff Rules, shall be deemed to include staff associations, unions or other corresponding staff representative bodies established in accordance with staff regulation 8.1 (b).

(g) In accordance with the principle of freedom of association, staff members may form and join associations, unions or other

groupings. However, formal contact and communication on the matters referred to in paragraph (f) above shall be conducted at each duty station through the executive committee of the staff representative body, which shall be the sole and exclusive representative body for such purpose.

## **Rule 8.2**

### **Joint staff-management machinery**

(a) The joint staff-management machinery provided for in staff regulation 8.2 shall consist of:

(i) Joint advisory committees or corresponding staff-management bodies, at designated duty stations, normally composed of not fewer than three and not more than seven staff representatives and an equal number of representatives of the Secretary-General;

(ii) A Secretariat-wide joint staff-management body composed of equal numbers of representatives of the staff and representatives of the Secretary-General.

(b) The President of the joint staff-management bodies referred to in paragraph (a) above shall be selected by the Secretary-General from a list proposed by the staff representatives.

(c) Instructions or directives embodying recommendations made by the bodies referred to in paragraph (a) above shall be regarded as having satisfied the requirements of staff rule 8.1 (f) and (h).

(d) The joint staff-management bodies referred to in paragraph (a) above shall establish their own rules and procedures.

(e) The Secretary-General shall designate secretaries of the joint staff-management bodies referred to in paragraph (a) above and shall arrange for such services as may be necessary for their proper functioning.

16. The Dispute Tribunal's Statute, art. 2.1(a), states that:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include

all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged noncompliance

*Receivability* ratione materiae

17. The Tribunal notes that, as stated by the Applicant, on 5 and 6 December 2013, three members of the UNSU Arbitration Committee submitted their resignations. On 6 December 2013, the Chair of the Unit Chairpersons of the UNSU wrote to the Secretary-General informing him that according to the Statute and Regulations of UNSU, the Polling Officers for the 44<sup>th</sup> Staff Council had been recalled, but they ignored the recall decision and proceeded with election activities. On 6 December 2013, the Unit Chairpersons decided to circulate via iSeek a call for nominations for new polling officers, with a deadline of 31 January 2014. On 30 January 2014, the former Chairperson of the Polling Officers of the 44<sup>th</sup> Staff Council, issued through the official email of the UNSU on iSeek, a call for nominations for an Arbitration Committee by 14 February 2014.

18. On 5 February 2014, the Applicant sent a request to iSeek personnel to publish a disclaimer urging all the staff to ignore the unauthorized message of the former polling officers. The Applicant submits that this request to post notifications to staff through iSeek by the UNSU President was not honored. Further, the Applicant contends that, due to unresolved conflicts over the conduct of the electoral process, no designation of new leadership has been finalized. She states that, regardless of the ultimate outcome of the elections for the 45<sup>th</sup> Staff Council and Union Leadership, she, as the effective President of the Union, is still required and entitled to communicate with staff until her replacement is designated.

19. The Applicant states that her official function as President of UNSU for the term of the 44<sup>th</sup> Staff Council is not in dispute and that the Respondent's withdrawal of facilities previously made available to her is directly affecting her activities as UNSU President.

20. The Tribunal notes that the legal basis for her claims is ST/AI/293, which addresses the issue of facilities that may be provided to staff representatives in secs. 13 and 14 as follows:

13. Staff members duly designated or elected by the Staff Council, Staff Committee or corresponding staff representative body to perform representational functions may be accorded such facilities as may be required to perform those functions under arrangements to be determined in accordance with the procedures set out in chapter VIII of the Staff Rules.

14. Disagreements concerning the implementation of the above provisions shall be discussed and resolved in accordance with the procedures set out in chapter VIII of the Staff Rules.

21. It results that the right to have access to iSeek is a derivative right only of the staff member(s) duly designated or elected by the Staff Council, Staff Committee or corresponding staff representative body to perform representational functions and not of any staff member as submitted by the Applicant.

22. Pursuant to secs. 4.3 and 4.4 of the UNSU Regulations, the Council, comprised of staff representatives and alternates, shall take full office from the first day of the month immediately following the declared result of the elections, and the term of office of the Council shall not expire earlier than the new Council assumes office.

23. According to sec. 10.1 of the UNSU Regulations, the President of UNSU, as principal executive officer of the Union shall, *inter alia*: lead, manage and represent the Union (art. 10.1(a)); plan and oversee, either personally or through delegation of authority to other individuals or committees, the implementation of the policies and decisions of the Union, including financial governance, as established under the UNSU Statute and Regulations, all programs and activities necessary for the advancement and welfare of UNSU, its membership and affiliated bodies (art. 10.1(b)); be responsible for all correspondence elaborating policy matters (art. 10.1(c)); and act as certifying official of UNSU (art. 10.1(i)).

24. Further, as follows from secs. 8.1 and 8.2.3 of the UNSU Regulations, the Arbitration Committee: (a) is the only body competent to review alleged violations of the UNSU Statute made by elected UNSU officials (Staff Council, Executive Board and any of its officers) in order to increase their accountability and decide on sanctions where warranted; (b) has an exclusive competence (“shall”) to receive, consider and rule upon matters related to violations of the UNSU Statute and Regulations, (c) issues decisions/rulings that are mandatory, final, and binding on all bodies of the Staff Union, including all members of these bodies and consequently on all UNSU members.

25. The Tribunal underlines that the Arbitration Committee’s decisions/rulings are final (irrevocable), since it is the unique body with the competence to review alleged violations of the UNSU Statute and Regulations made by the elected UNSU officials and decide on sanctions if warranted. As results from secs. 8.2.5 and 8.2.6 of the UNSU Regulations, only the decision(s) to impose sanction(s) on an elected UNSU official can be reviewed, but the application for a final review is to be filed only by the individual being sanctioned and is to be considered exclusively by the Arbitration Committee.

26. Therefore, it results that all the decisions taken by the Arbitration Committee are excluded from the Dispute Tribunal’s jurisdiction.

27. In the present case, the Applicant’s request to the iSeek team to publish UNSU related announcements are directly related to the UNSU elections held on 10 and 11 December 2013. The outcome of these elections, including the names of the Leadership and the 45<sup>th</sup> Staff Council, was announced on 17 December 2013.

28. As results from para. 20 of Order No. 45 (NY/2015), the Tribunal observed in Order No. 36 (NY/2014), in relation to the Applicant’s request for suspension of action pending management evaluation of the contested decision, that the Applicant’s claims are in direct contradiction with those of the Applicant in Case

No. UNDT/NY/2014/026, and that these two staff members currently claim to be President of UNSU, which constitutes a contested electoral issue.

29. The Applicant is seeking a judicial decision to confirm her position that the elections are not valid and that she has the right to continue publishing UNSU communications on iSeek.

30. Any judicial determination on the application and relief requested would result in the Tribunal adjudicating on the Applicant's right to continue her official function as President of UNSU after 17 December 2013, which will represent a direct determination of the term of office of the Council under arts. 4.4 and 4.5 of the UNSU Regulations. This matter is directly related to the validity of the December 2013 elections and its outcome for the leadership and 45<sup>th</sup> Staff Council.

31. As follows from the above considerations, the competence to rule on any dispute related to this matter belongs exclusively to the Arbitration Committee, and the Dispute Tribunal has no jurisdiction under art. 2.1(a) of its Statute to substitute, review and/or enforce any of the Arbitration Committee's decisions/rulings, including the ones on contested electoral issues.

32. Consequently, the application is not receivable *ratione materiae* and is to be dismissed.

**Conclusion**

33. In light of the foregoing, the Tribunal DECIDES:

34. The application is dismissed.

*(Signed)*

Judge Alessandra Greceanu

Dated this 10<sup>th</sup> day of September 2015

Entered in the Register on this 10<sup>th</sup> day of September 2015

*(Signed)*

Hafida Lahiouel, Registrar, New York