



**Before:** Goolam Meeran

**Registry:** Geneva

**Registrar:** René M. Vargas M.

FARZIN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT  
ON RECEIVABILITY**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Thomas Jacob, UNDP

## **Introduction**

1. By application filed on 20 July 2017, the Applicant, a former staff member of the United Nations Development Programme (“UNDP”) who separated from the Organization on 30 September 2016, contests several alleged decisions of UNDP.

2. The application was served on the Respondent who filed his reply on 18 September 2017. The Respondent challenges both the receivability of the application as well as its merits.

3. The case was re-assigned to the undersigned judge on 27 August 2018. Following various submissions from the parties, the Tribunal issued Order No. 133 (GVA/2018) on 19 September 2018 informing the parties that the matter would be considered and determined on the basis of the documents on file.

## **Consideration**

4. The Respondent resists the application on the principal ground that at the time that the Applicant separated from service, he signed a Certificate of no Contest (“CNC”) in return for the receipt of a discretionary award of termination indemnities. The Respondent submits that the Applicant has no standing to bring a claim before the Tribunal given his agreement, arising from the CNC, that he would not pursue or initiate any claims or proceedings related to his tenure.

5. The Respondent’s alternative submission is that should the Tribunal find that the Applicant has standing to file his application, it is not receivable because the Applicant did not request management evaluation within the requisite time limit and, in any event, he failed to identify a contestable administrative decision.

6. Having considered the documentary evidence, the Tribunal finds as follows. Since the early 1990’s, UNDP adopted separation programmes (“Agreed Separations”) to deal with staffing contingencies connected with budgetary reductions. In 2016, the Applicant was informed of the abolition of his post and of

the possibility of applying for an agreed separation. He applied for it and, following UNDP approval, he separated from service on 30 September 2016.

7. On 30 October 2016, the Applicant signed a “Certificate of No Contest/Lump Sum” formalizing his agreed separation. In addition to setting forth the conditions of the separation, the CNC contains opening and closing clauses as follows (emphasis added):

I hereby certify that **I will not contest the termination of my appointment** in accordance with the provisions of Staff Regulation 9.3 (a) subject to the payment of termination indemnities as specified in Annex III to the UN Staff Regulations.

...

In signing this Certificate of No Contest (CNC), I acknowledge that I have fully understood the conditions of this Agreed Separation. I also acknowledge that this separation has been mutually agreed between the Organization and myself, and at the same time I am certifying that **I will not contest the terms of my separation. Additionally, upon signature of this CNC, I agree to withdraw any claims or proceedings that I may have initiated arising from my status, entitlements or tenure as a staff member, fully, finally and entirely, including on the merits, and that I will not pursue or initiate any claims or proceedings concerning such status, entitlements or tenure in the future, contingent to the payment of the termination indemnity agreed to.**

8. The CNC has all the hallmarks of a binding agreement freely entered into by the Applicant for a consideration which he would not otherwise have been entitled to, and there is no suggestion by the Applicant that it was procured by duress, misrepresentation or other impermissible consideration or action.

9. Although the Applicant added a handwritten footnote to his signature reading “Will not contest ‘terms of separation’” he did not delete any of the text preceding his signature which is sufficiently wide to preclude the initiation of any claim arising from his status or tenure with UNDP.

10. Notwithstanding the fact that the Applicant did not clearly identify the decision(s) he sought to contest, the Tribunal notes that the Applicant's claims—such as “non transparent processes” in the UNDP Country Office that would have revealed significant bias, discrimination and a conspiracy that deprived him of his rights, privileges and immunities as a permanent staff member working under difficult conditions in Iran or that prior to his separation he was subjected to treatment that impugned his professional and private status any such action took place in the summer of 2015 or thereabouts—all relate to his period of employment with UNDP, which ceased on 30 September 2016.

11. The Tribunal finds that the Applicant does not have standing to bring claims related to or arising from his period of employment with UNDP.

12. Even if the Tribunal were to find that the Applicant has standing, his application would not be receivable because of non-compliance with mandatory deadlines as set out below.

13. The Applicant states that in the Summer of 2015, he requested the Office of Audit and Investigations (“OAI”), UNDP, to look into decisions taken by senior UNDP managers at the Country Office (Iran) that affected his professional and private status. OAI replied to the Applicant, also in 2015, that the matters he had raised related more to management than misconduct and indicated to him how he could pursue them.

14. The Applicant alleges that after his separation in September 2016, he became aware of new information that prompted him, as a former staff member, to submit a new request for an OAI investigation. On 17 January 2017, OAI replied to the Applicant by reiterating its 2015 advice, namely that what the Applicant had raised were management issues not falling within OAI jurisdiction, thus preventing it from conducting an investigation. The Applicant requested management evaluation of this decision and, subsequently, filed this application.

15. If the Applicant wished to challenge the refusal of his request for an OAI investigation, he ought to have done so in 2015/2016. He did not do so. Further, the decision communicated to him on 17 January 2017 is a reiteration of the earlier decision and, in accordance with established jurisprudence, it does not reset the clock of statutory deadlines to, for instance, request management evaluation and, eventually, to come before the Tribunal (see *Kazazi* 2015-UNAT-557).

### **Judgment**

The application is dismissed.

*(Signed)*

Judge Goolam Meeran

Dated this 1<sup>st</sup> day of October 2018

Entered in the Register on this 1<sup>st</sup> day of October 2018

*(Signed)*

René M. Vargas M., Registrar, Geneva