



# UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

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Case No. 2023-1783

**AAQ**

**(Appellant)**

**v.**

**Secretary-General of the United Nations**

**(Respondent)**

**ORDER No. 528 (2023)**

1. A staff member of the United Nations (Appellant) has filed an appeal of Judgment No. UNDT/2022/129, in which the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) dismissed their challenge to the Administration's decision to deny their request to have their gender in the United Nations human resource management system (Umoja) reflect their gender identity. This appeal was registered with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) as Case No. 2023-1783.

2. Contained within the Appellant's appeal brief (at paragraphs 43-46) are two Motions for decision before the Appeals Tribunal considers and decides this appeal in its Fall 2023 Session in late October.

3. Pursuant to Article 18*bis*(4), the President of the Appeals Tribunal has designated the undersigned Judge, the Presiding Judge in Case No. 2023-1783, to address these Motions.

4. The first is an unopposed motion that the Appellant's identity be anonymized as it was before the United Nations Dispute Tribunal. Pursuant to paragraph 32 of the UNAT's Practice Direction No. 1, the anonymity order of the UNDT remains in effect for the present appeal. I further note that the Secretary-General does not oppose Appellant's request. Thus, I confirm by this Order that Appellant's proceedings before the UNAT in this case will henceforth identify the Appellant only as AAQ, a three-letter acronym which bears no resemblance to the Appellant.

5. The second motion is opposed and so must be dealt with in more detail. AAQ seeks to introduce new evidence to support their claim to compensation for breach of their human rights and psychological harm. AAQ says that they have been affected significantly and psychologically by the Organization's decision not to recognize their gender in UMOJA and other United Nations information systems in which such information about staff members is held and that this consequence has emerged progressively and increasingly over time, including during that time between filing their application with the UNDT and filing the appeal with the UNAT. AAQ says that in October/November 2022 they began consulting a UN Counsellor to address this condition and wishes to adduce evidence from that Counsellor to support their claim to moral damages. AAQ says that the UNDT's Judgment was delivered less than 4 months after filing their application and only shortly after AAQ had approached the UN Counsellor about their deteriorating psychological state. AAQ says that these are exceptional circumstances in which it would be just to allow the introduction of a statement by the UN Counsellor about the Appellant's state of health and attribution of the reasons for this.

6. The Respondent opposes this Motion. He says that harm has not been established and nor has any unlawfulness, even if any harm may be attributable to the Respondent's acts or omissions. The Respondent argues that the Appellant must establish harm by evidence but has not done so. He also points to Article 2(5) of the UNAT Statute requiring that before such orders for additional evidence can be made, exceptional circumstances must exist and also that the facts are likely to be established by the production of documentary evidence. The test for admission of such additional evidence is also that it meets the interest of justice and the efficient and expeditious resolution of the proceedings, but the Respondent contends that exceptional circumstances have not been established and there is no indication of what evidence would be adduced.

7. Addressing first the statutory test, I am satisfied that a combination of the UNDT determination being delivered before the Appellant's alleged condition manifested itself sufficiently, the development of that condition and its alleged continuation, and the failure of the Organization to address the Appellant's complaint by changing its practices despite assurances to do so, all amount to exceptional circumstances pursuant to Article 2(5). They are out of the ordinary events, exceptional rather than normal as these things go. I accept the assurance of experienced counsel for the Appellant that, despite no draft expert

report having been provided to date, that the UN Counsellor's statement may establish the existence of moral harm. I thus find that it is in the interests of justice that the proposed evidence supporting Appellant's claim for moral damages be submitted; that Respondent be allowed the opportunity to refute this evidence, and that doing so will permit the efficient and expeditious resolution of the appeal.

8. This is not to say that the admission of the evidence in support of Appellant's claim to moral damages will mean that this remedy will be granted. AAQ will need to establish error by the UNDT, the reversal of its Judgment and then establish their claim to this remedy. There will also need to be a timetable of the steps to be taken by both parties to ensure that this new evidence can be considered by the Appeals Tribunal in the Fall 2023 Session. That timetable will be as follows.

9. The Appellant must file and serve the evidence in support of their claim to moral damages (being an affidavit by the Appellant addressing his claim to moral damages and/or a report of the Appellant's UN Counsellor) by 5pm New York time on Wednesday, 6 September 2023.

10. The Respondent may have until 5pm New York time on Wednesday, 27 September 2023 to file and serve any response.

11. The Appellant may have until 5pm New York time on Wednesday, 4 October 2023 to file and serve any written submissions addressing this issue.

12. The Respondent may have until 5pm New York time on Wednesday, 11 October 2023 to file and serve any written submissions in reply.

13. Any written submissions filed pursuant to paragraphs 11 and 12 of this Order shall not exceed 2 pages in length.

14. For the assistance of counsel, I note that these motions should have been brought by stand-alone application rather than buried in the written submissions on the merits of the substantive appeal. This meant that they were not identified by the Registry and referred to a Judge for timely direction earlier in the year. Rather, it was by chance when I, as the Presiding Judge, came to review preliminarily the papers for the appeal that the existence of these motions was first appreciated. Otherwise, the Appellant would have

been at risk of their refusal for lateness, or at least postponement of the appeal to the next session of the Appeals Tribunal.

15. **IT IS HEREBY ORDERED: (i) that the Motion for anonymity is GRANTED and that all references to the Appellant's identity in public documents relating to the Appellant's case be by use of a 3-letter acronym assigned by the Registrar, which is AAQ; and (ii) that the Motion for the admission of evidence in support of Appellant's claim for moral damages is GRANTED on the conditions set out in paragraphs 9-13 inclusive of this Order.**

Original and Authoritative Version: English

Decision dated this 16<sup>th</sup> day of August 2023  
in Auckland, New Zealand.

*(Signed)*  
Judge Graeme Colgan,  
Presiding

Order published and entered in the Register on this  
16<sup>th</sup> day of August 2023 in New York, United States.

*(Signed)*  
Juliet Johnson,  
Registrar