



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/097

Judgment No.: UNDT/2011/024

Date: 27 January 2011

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: Víctor Rodríguez

WORSLEY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Karin Etter

Counsel for Respondent:

Serguei Raskalei, UNOG

Stephen Margetts, ALS/OHRM, UN Secretariat

Introduction

1. By application filed with the United Nations Dispute Tribunal (“UNDT”) on 13 July 2010, the Applicant contests the decision by the Chief, Office of Staff Legal Assistance (“OSLA”), to refuse to provide legal assistance to her, as communicated by email dated 24 February 2010.

Facts

2. The Applicant entered service at the United Nations on 10 July 1994. She currently works as Text-Processing Clerk, Conference Services Department, United Nations Office at Geneva, at the G-4 level, step 11. She works part-time due to a disability caused by two brain strokes suffered in 1994 and 2000.

3. The Applicant first contacted OSLA in summer 2009, seeking assistance to bring through grievances against the Organization. At that time, the Office of the Ombudsman was dealing with the Applicant’s case, but no amicable solution was eventually reached.

4. The New York office of OSLA assigned an officer to assist the Applicant. Subsequently, in February 2010, the task of assisting the Applicant was reassigned to the recently appointed OSLA officer based in Geneva.

5. By email dated 24 February 2010 addressed to the Applicant, the Chief, OSLA, stated that he had been advised by his Geneva-based colleague that the Applicant had “repeatedly been uncooperative and abusive”. He noted that this was not the first time that she had been abusive to the staff of OSLA and that “there are limits to what [they] can do if a client is being consistently uncooperative”. He finally informed the Applicant that “OSLA will no longer be able to provide [the Applicant] with any legal assistance and representation” and that he had instructed the Geneva-based OSLA officer and the other OSLA staff not to communicate further with her.

6. On the following day, 25 February 2010, the Applicant replied to the Chief, OSLA, with copy to the Geneva OSLA officer, requesting to be given

dates, times and examples of the alleged behaviour and what form they took. She added that what the Geneva OSLA officer interpreted as “abusive” or “uncooperative” behaviour were in fact due to her disability, referring in this regard to a medical report dated 30 January 2006.

7. On 29 March 2010, the Applicant wrote to the Geneva OSLA officer asking to be provided as soon as possible with the work he had done on her case. She wrote again on 8 April 2010 requesting an answer thereto.

8. By email dated 9 April 2010, the Chief, OSLA, responded that it had been decided that the work completed by the OSLA officer would not be provided to her. He stressed that there was no *onus* to provide it to her and that it was difficult to see what use it would be to her, particularly in light of the fact that she was no longer a client of OSLA.

9. The Applicant requested management evaluation by letter dated 16 April 2010. By letter dated 26 April 2010, the Chief, Management Evaluation Unit (“MEU”), at Headquarters, explained to her that the matter was not receivable as it was, since it was unclear from the Applicant’s correspondence what administrative decision she wished to contest. He further advised the Applicant of the additional information she should provide for her correspondence to be treated as a request for management evaluation. On 28 May 2010, the Applicant sent a new letter to MEU, specifying that the impugned decision was “the decision of OSLA ... to refuse to assist [her] in filing requests for management evaluation and sorting out the problems [she] had experienced as a UN staff member”.

10. By letter dated 13 July 2010, MEU informed the Applicant that it found the contested decision to have been taken in conformity with the applicable rules, regulations and guidelines and to be a proper exercise of OSLA discretion.

11. On the same day, the Applicant filed an incomplete application with UNDT. The Tribunal requested the Applicant to complete the said application by 21 July 2010. After being granted an extension for this purpose, Counsel for the Applicant filed a complete application on 5 August 2010.

12. On 8 September 2010, Counsel for the Applicant communicated to the Tribunal that her client wished to modify the amount of compensation requested for moral damage.

13. The Respondent's reply was served on 13 September 2010.

14. On the same day, OSLA submitted an "Application for Joinder of a Party & Submissions Re: Receivability". The Respondent supported such request by submission dated 5 October 2010, whilst, on 7 October 2010, the Applicant opposed to OSLA joining the proceedings.

15. The Tribunal rejected the application for joinder by Order No. 79 (GVA/2010), dated 19 October 2010.

16. On 16 November 2010, the Respondent presented a submission on receivability.

17. An oral hearing was held on 19 November 2010.

18. Upon the Tribunal's directions, on 2 December 2010, Counsel for the Applicant submitted comments on the Respondent's submission regarding receivability.

Parties' contentions

19. The Applicant's principal contentions are:

a. On receivability,

i. OSLA is formally integrated in the UN Administration. The Tribunal mentioned in *Worsley* Order No. 79 (GVA/2010) that OSLA cannot be regarded as an entity distinct from the Secretary-General;

ii. The contested decision is an administrative decision, as defined in former UN Administrative Tribunal Judgment No. 1157, *Andronov* (2003). Following the elements of this definition, the decision at stake was taken by a service which is part of the

Administration of the United Nations, the decision was unilateral, aimed at the Applicant in particular and it carries direct legal consequences;

iii. The fact that OSLA is operationally independent does not mean that it is not accountable to anybody. Section 7.1 of ST/SGB/2010/3 provides that “[t]he Office of Staff Legal Assistance is headed by a Chief who ... is accountable to the Executive Director” of the Office of Administration of Justice, whereas the latter himself reports to the Secretary-General, as per section 3.1. Therefore, there is a hierarchical relation between the Secretary-General and OSLA;

iv. The decision by OSLA not to provide assistance to staff members is an administrative decision which can be brought before UNDT;

b. Regarding the merits,

i. By virtue of General Assembly resolution 62/228, which establishes OSLA, staff members have a right to request legal counsel from OSLA and this office is obliged to give legal advice;

ii. The contested decision amounts to discrimination of a disabled person. OSLA discriminated against her as it did not make the necessary allowances to her disability, in particular by making it possible for her to deal verbally with OSLA staff, since she is print-disabled;

iii. The “threats” mentioned are insufficient to have the client-lawyer relationship break down. In addition, the “threat” of reporting the Geneva OSLA officer to the Bar Council was simply putting into application what he had personally told her she could do if she felt he was not dealing with her properly. Furthermore, she only said that after OSLA refused to deal with her;

iv. OSLA holds that the client-lawyer relationship broke down in February 2010 for something purported to have happened seven months earlier, namely the Applicant's allegations of discrimination against her in July 2009 and a voicemail message left to the Geneva-based OSLA officer saying that the Applicant would report him to the Bar Council;

v. According to *Syed* UNDT/2009/93, OSLA has discretionary authority to decide whether a case has a chance of success and to refuse handling it if there is no such chance. OSLA never told to the Applicant that her case had no chance of success; on the contrary, the Geneva-based OSLA officer had started preparing the case.

20. Based on the above, the Applicant requests:

a. That somebody be appointed to help her sort out all the difficulties she is experiencing at the United Nations;

b. Compensation for unnecessary stress caused in trying to find out what the alleged abusive behaviour on her part was. She quantifies moral damage suffered in the amount of CHF60,000, i.e., 12 months of salary;

c. Reimbursement for the fees she had to pay to an external lawyer to present the brief against OSLA (CHF3,000) and to help her with the cases with which OSLA was previously assisting her (CHF22,000).

21. The Respondent's principal contentions are:

a. The application is not receivable:

i. The conduct of OSLA does not fall within the subject-matter jurisdiction of the Tribunal as defined in article 2.1(a) of its Statute. The conduct of OSLA does not constitute an "administrative decision" for two reasons: (1) OSLA is functionally independent of the Secretary-General and its conduct cannot be attributed to, nor corrected by, the Secretary-General; and (2)

OSLA provides assistance to staff members, it does not take administrative decisions;

ii. OSLA is operationally independent. *Worsley* Order No. 79 (GVA/2010) recognizes that OSLA possesses an independent status in terms of “functional autonomy required to properly discharge its duties”. The foregoing flows from sections 2, 3 and 7 of ST/SGB/2010/3 (Organization and Terms of Reference of the Office of Administration of Justice). Based on these provisions, “OSLA is *twice removed* from the Secretary-General: [i]n the performance of its function, OSLA acts independently of the Executive Director[, OAJ]; and the Executive Director[, OAJ] acts independently from the Secretary-General”;

iii. In providing that staff members may pursue appeals against “the Secretary-General as the Chief Administrative Officer of the United Nations”, article 2.1(a) of the Tribunal’s Statute limits the latter’s subject-matter jurisdiction to claims that can be brought against the Secretary-General as the chief administrator. Hence, where the Secretary-General has no authority over a decision in his administrative capacity, he cannot be held liable for those decisions, as held by the Tribunal in *Koda* UNDT/2010/110;

iv. The nature of OAJ and OSLA mandate necessitates independence from the Secretary-General. Were the Secretary-General to exercise authority over the actions of OSLA, his instructions would compromise the capacity of OSLA to deliver its mandate. Holding the Secretary-General liable for actions by OSLA would place him in a conflict between his obligation to respect the independence of OSLA and his responsibility to minimize the Organization’s liability. The status of OSLA may be compared with the status of the Registry;

v. As per paragraphs 12 and 13 of General Assembly resolution 62/228, the mandate of OSLA is to provide “assistance

to staff members”. OSLA is not empowered to make decisions determinative of staff member’s rights. Staff members are not required to engage OSLA, nor are they bound to accept its advice;

vi. OSLA acts as an intermediary in the internal system of justice, performing a similar role to the Ombudsman’s Office. As the former UN Administrative Tribunal concluded in Judgment No. 1359, (2007), claims cannot be brought against the Ombudsman’s Office because it is independent and it is only empowered to advise and/or make recommendations;

vii. While staff have the right to request assistance from OSLA or the Ombudsman’s Office, their response to that request is not an administrative decision. Rather, the response is given as part of the general service that they provide within the internal justice system. They are engaged in a course of conduct, providing advice and assistance in order to facilitate the realization by staff of their rights;

b. On the merits of the case,

i. It results from a combined reading of paragraphs 12, 13 and 15 of General Assembly resolution 62/228 and provisional staff rule 11.4 and 11.5(d), in light of *Syed* UNDT/2009/93, affirmed by the Appeals Tribunal in *Syed* 2010-UNAT-061, that while staff members are entitled to have the assistance of counsel through OSLA, the latter, on its part, has the right to refuse to appoint counsel, e.g., if it considers that the application has little chance of success. Hence, notwithstanding the obligation to provide proper advice, OSLA is entitled to withdraw counsel should the circumstances so warrant;

ii. Staff members do not have a right to representation by OSLA. Paragraph 12 of General Assembly resolution 63/253 decided that the role of OSLA would be “to assist staff members ...

in processing claims through the formal system of administration of justice”. Moreover, it results from paragraph 13 of the resolution as well as from the discussions preceding same that there was no agreement that the mandate of OSLA would extend to representation. A distinction must be made between “assistance” and “representation”. Once OSLA has provided advice or assistance to a staff member, it is not obliged to continue to represent him or her throughout the course of a proceeding before UNDT;

iii. The consent form which OSLA clients sign, and which the Applicant in particular signed, provides:

I further understand that OSLA appointed legal counsel may withdraw for good cause from any matter in which he or she has agreed to act on my behalf ... A persistent failure to cooperate with or follow the advice of my legal counsel, or a serious breach of confidentiality or trust between counsel and the client may result in withdrawal of counsel from my case.

Thus, by signing the form the Applicant accepted that under certain circumstances, OSLA was entitled to withdraw counsel from her case, in particular, in case of breach of trust between counsel and herself;

iv. In *Syed* UNDT/2009/93, the Tribunal did not set up an exhaustive list of grounds on which OSLA may decide not to appoint and/or to withdraw counsel. OSLA enjoys instead broad discretionary power and it is not for the Tribunal to substitute its assessment for that of OSLA. The legality control should be limited to whether in taking the decision to no longer assist the Applicant, OSLA abused the discretionary power vested in it;

v. In this connection, the Applicant’s allegations that the Chief, OSLA, discriminated against her as a disabled person are false and without substance. The burden of proof regarding such

allegations falls on the Applicant. However, there is no evidence which would allow concluding that the contested decision was based on the Applicant's disability or any other extraneous grounds;

vi. OSLA provided the Applicant with legal assistance during the period from July 2009 to February 2010. Every effort was made both by the Chief, OSLA, and by the Legal Officer, OSLA, based in Geneva to accommodate the Applicant in view of her disability. They made all appropriate enquiries on her behalf and acted entirely properly at all times. The Applicant was dealt with in good faith and her case was even given priority, to the detriment of other cases;

vii. The Applicant's behaviour made a further assistance by OSLA impossible: first, the Applicant rejected OSLA assistance for the second time in February 2010, for no sensible reason and despite OSLA officer's working arduously on her case; second, she threatened the Chief, OSLA, to go to the United Kingdom Mission and the media to complain about him and to report the Geneva OSLA officer to the Bar Council. Under these circumstances, there was not longer a basis of trust allowing OSLA to continue to assist the Applicant.

22. In view of the above, the Respondent requests that the application be rejected in its entirety. Besides, considering that the Applicant has manifestly abused the proceedings before the UNDT, the Respondent requests the Tribunal to award costs against the Applicant, under article 10, paragraph 6, of its Statute.

Considerations

23. Starting with the question of receivability, article 8.1 of the Tribunal's Statute requires as the first condition for an application to be receivable that the Dispute Tribunal be "competent to hear and pass judgment on the application,

pursuant to article 2” of the Statute. In turn, article 2.1(a) of the Statute defines the scope of the Tribunal’s jurisdiction *ratione materiae* as follows:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual ... against the Secretary-General as the Chief Administrative Officer of the United Nations ... [t]o appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment.

24. The Respondent submits basically two arguments in support of the alleged Tribunal’s lack of jurisdiction. On the one hand, due to the independent status of OSLA *vis-à-vis* the Secretary-General, the latter cannot be held accountable for the actions of the Office, whereas all applications before the Tribunal must be brought against the Secretary-General, as the Chief Administrative Officer of the Organization. On the other hand, activities performed by OSLA—providing assistance to staff in pursuing their cases within the internal justice system—correspond in nature to a course of conduct, as opposed to administrative decisions determinative of staff members’ rights.

25. The argumentation based on OSLA independence must fail. The Tribunal already clarified in *Worsley* Order No. 79 (GVA/2010) that, notwithstanding its special status, OSLA belongs to the UN Secretariat and, in fact, to the “core UN administrative machinery”. As such, it “might hardly be regarded as a ‘party’ distinct from the Secretary-General”.

26. Indeed, section 7.1 of the ST/SGB/2010/3 (Organization and terms of reference of the Office of Administration of Justice) provides that:

The Office of Staff Legal Assistance is headed by a chief who, without prejudice of his or her responsibility to provide legal assistance to staff members in an independent and impartial manner, is *accountable to the Executive Director*. (Emphasis added)

27. Section 7.2 of the same bulletin foresees that the Chief, OSLA, performs the responsibilities entrusted to him or her “[u]nder the authority of the Executive Director”, OAJ, whilst its section 3.1 reads:

Without prejudice to the independence of the Office of Administration of Justice, the Executive Director *shall report to*

the Secretary-General regarding the work of the Office. (Emphasis added)

28. Lastly, paragraph 16 of General Assembly resolution 62/228, by which OSLA was established, requests the Secretary-General “to establish a code of conduct regulating the activity of internal and external individuals providing legal assistance to ensure their independence and impartiality”.

29. Contrary to the Respondent’s assertions, the above-cited provisions do not “remove” OSLA from the Secretary-General’s sphere of authority. Quite the opposite, they outline the scheme linking OSLA to the Secretary-General in a relationship of a hierarchical kind. As a matter of fact, the Office is part and parcel of the United Nations apparatus and is staffed, funded and administered by the Organization. Nonetheless, the aforementioned provisions insist on the necessity to ensure the Office’s independence in discharging its responsibility to offer legal assistance. In sum, OSLA enjoys functional or operational independence, in the sense that it does not receive instructions from its hierarchy when providing advice to staff members or representing their interests, while remaining administratively subject to the Secretary-General.

30. This Tribunal reached a similar conclusion in two recent judgments concerning another entity of the Secretariat characterized by a large degree of independence: in *Comerford-Verzuu* UNDT/2011/005 and *Kunanayakam* UNDT/2011/006 the Tribunal found that while the Office of Internal Oversight Services is endowed with “operational independence”, the Secretary-General remains administratively accountable for its acts.

31. In any event, beyond the discussion on the Secretary-General’s prerogatives over operationally independent bodies, it is worth emphasizing that, if article 2.1 of the UNDT Statute designates the Secretary-General as the respondent before the Tribunal, it indicates that he assumes this role in his capacity as Chief Administrative Officer, and not on account of his personal behaviour. In other words, this responsibility is linked to his institutional position within the Organization, i.e., its highest staff member, its top representative and the person overall responsible for its good functioning. In no manner is the receivability of an application made conditional upon the Secretary-General’s

having intervened directly in the decision-making process which led to the contested decision.

32. Furthermore, as a matter of principle, limiting judicial review only to decisions which were or could have lawfully been made by the Secretary-General would entail leaving entire areas of the Administration's activity out of any meaningful control of legality. This appears hardly compatible with a legal order which, like that of the United Nations, postulates the principles of rule of law and access to justice (see *Comerford-Verzuu* UNDT/2011/005 and *Kunanayakam* UNDT/2011/006). Additionally, it seems logical to assume that, had the General Assembly intended to exempt certain sectors of the Organization from scrutiny under the new internal justice system, it would have done so clearly and explicitly.

33. The Respondent's contention that the decision presently under review does not constitute an appealable administrative decision within the meaning of article 2.1(a) of the UNDT Statute, but rather a course of action, may not prevail either.

34. The Dispute Tribunal as well as the Appeals Tribunal (see among other Judgments: *Planas* UNDT/2009/086, *Larkin* UNDT/2010/108, *Elasoud* UNDT/2010/111, *Buscaglia* UNDT/2010/112, *Tabari* 2010-UNAT-030 and *Schook* 2010-UNAT-013) have upheld the definition of "administrative decision" for the purpose of formal contestation formulated by the former UN Administrative Tribunal in its Judgment No. 1157, *Andronov* (2003):

Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

35. The decision of 24 February 2010 to stop providing legal assistance to the Applicant falls within this definition, as it fulfils all four requirements enunciated above.

36. First, it was taken by the Chief, OSLA. In the absence of any further specification in the relevant rules and jurisprudence, the Administration should be considered as encompassing every agent and body included in its structure.

Having concluded that OSLA is an organ of the UN Secretariat, there may be no doubt that the decision at hand emanates from the UN Administration.

37. Second, it is undisputed that the act at issue did not take the form of an agreement, nor did it involve any kind of participation by the Applicant. It came from the Administration's side alone and it must thus be said to be unilateral.

38. Third, the contested decision referred to the Applicant personally and deployed effects with regard to her exclusively. She was its one and only addressee. It is by no means of general reach but of individual application.

39. Finally, the decision carries direct legal consequences for the Applicant. A decision such as the one contested potentially affects the Applicant's terms of appointment or contract of employment, to the extent that access to assistance by OSLA is an issue provided for in the terms of appointment of UN staff members.

40. According to article 2.1 of the UNDT Statute,

[t]he terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance.

41. In this connection, staff rule 11.4(d) provides:

A staff member shall have the assistance of counsel through the Office of Staff Legal Assistance if he or she so wishes, or may obtain outside counsel at his or her expense, in the presentation of his or her case before the United Nations Dispute Tribunal.

42. Unlike providing legal advice to staff members or pursuing complaints on their behalf, deciding whether or not to provide assistance to a staff member does imply making a determination—a negative determination for that matter—of the right laid down in staff rule 11.4(d), thereby modifying his or her legal situation.

43. This finding is in line with *Nwuke* 2010-UNAT-099 and *Abboud* 2010-UNAT-100, where the Appeals Tribunal declared receivable two applications contesting decisions not to investigate misconduct allegations. It stressed that "UNDT should not decline to exercise its competence in matters like the present, when the respective right is provided for to the claimant by the rules".

44. In conclusion, the decision at issue in the present application is an administrative decision for the purpose of article 2.1(a) of the UNDT Statute. Accordingly, it falls within the Tribunal's jurisdiction to verify the lawfulness of such decision.

45. Turning to the merits of the application, the starting point to ascertain whether the contested decision is in breach of the Applicant's terms of appointment is determining the content and limits of the right to benefit from the assistance of OSLA.

46. As previously mentioned, this right is enshrined in staff rule 11.4(d). It establishes that "[a] staff member shall have the assistance of counsel through the Office of Staff Legal Assistance if he or she so wishes ... in the presentation of his or her case ...".

47. It may be observed that, in contrast with a clear affirmation of the right for staff members to receive "assistance" by OSLA, these provisions do not recognize a right to be represented by it. This idea is comforted by reading General Assembly resolutions 62/228 and 63/253, for these key resolutions, in describing the Office's *raison d'être* and mandate consistently refer to legal "assistance" but omit any mention of "representation".

48. It may therefore be reasonably inferred that the duty incumbent on OSLA to grant legal assistance does not go as far as to include an obligation to represent staff members willing to instigate procedures before UNDT.

49. This distinction between a duty to assist and a duty to represent underpins the Tribunal's conclusion in *Syed* UNDT/2009/093 that:

[T]he General Assembly resolution must be interpreted as creating a right for staff members to request legal counsel from the Office, which has an obligation to provide proper advice, including on the merits of the case. The Office is therefore entitled to advise applicants not to file an application before the Tribunal and may therefore legally refuse to appoint counsel for an applicant on the grounds that his application had little chance of success.

50. The foregoing does not run against the applicants' right of defence, taking into account that representation by counsel is not a precondition to pursue a case

neither before UNDT nor before the Appeals Tribunal, and, likewise, that other avenues exist to secure legal representation if desired. In addition, this interpretation stands as the most plausible one in practical terms, since it would be unrealistic to expect OSLA to absorb the total demand for legal defence and representation of the UN staff. As pointed out in *Kita* UNDT/2010/025, interpreting the relevant provisions “as imposing an obligation on OSLA to provide legal assistance to all staff members requesting it, including those with obviously frivolous cases, would overload the Office and prejudice those applicants with a serious case”.

51. It flows from all of the above that staff rule 11.4(d) unambiguously imposes on OSLA an obligation to provide advice, which, if it is to be interpreted fairly and in good faith, must entail for the Office, first, the duty to examine the issues presented by a potential applicant and, second, the duty to take and communicate a decision in due time as to the further assistance, if any, it intends to provide to the staff member. What should be understood as “due time” in this context is to be determined on a case-by-case basis. Attention must be paid to the running deadlines and a situation must be avoided in which the staff member would not be able to pursue the legal avenues on his or her own in an appropriate way. These requirements were fulfilled in the present case.

52. Apart from the duties outlined above, OSLA possesses a large margin of discretion to decide whether it undertakes to represent a given client, or, by the same token, whether it ceases representing him or her. However, this power, as any discretionary power, is not unfettered. As constantly reiterated in the relevant case law, discretion must not be abused. More specifically,

the Administration must act in good faith and respect procedural rules. Its decisions must not be arbitrary or motivated by factors inconsistent with proper administration ... [I]ts decisions must not be based on erroneous, fallacious or improper motivation. (*Asaad* 2010-UNAT-021)

53. In this respect, the Applicant alleges that the contested decision on the basis that refusal by OSLA to continue providing her with legal assistance amounts to discriminating against her as a disabled person. Notwithstanding, the Applicant does not substantiate her claim, even though, as the Tribunal has

repeatedly held, the *onus probandi* of such an allegation lies with the applicant who puts it forward (see e.g., *Bye* UNDT/2009/083, *Allen* UNDT/2010/009). The Applicant simply maintains that OSLA failed to make the necessary concessions in view of her disability. However, her representation of the facts is not supported by any evidence. Even had she adduced some convincing evidence that OSLA had deployed no efforts to accommodate her impairment, this mere fact would not suffice in itself to demonstrate that the Applicant's disability was the cause behind the decision by the Chief, OSLA, to discontinue the assistance afforded to her.

54. Also, no other indication of arbitrariness, formal irregularity, error of fact or manifest error of appreciation transpires from the facts of the case. As far as the Tribunal may see from the case file, OSLA did not treat the Applicant in an unprofessional or incorrect manner. Besides, regarding the factual circumstances as described by the Respondent, the exchanges between OSLA and the Applicant show that a breakdown in mutual trust had truly occurred. The Applicant herself acknowledges in her submissions that she proffered threats to the Chief and the Geneva OSLA officer.

55. For all these reasons, the Tribunal is of the view that the contested decision was nothing but a legitimate exercise of the discretionary authority vested in OSLA. In these circumstances. The Tribunal should not and shall not substitute its own judgment for that of OSLA in a matter falling within the latter's discretion.

56. With respect to the Respondent's request to have costs awarded against the Applicant pursuant to article 10.6 of the Statute, the Tribunal is not satisfied that the Applicant manifestly abused the proceedings before it. The fact that she availed herself of the possibility to formally challenge the decision at issue cannot be construed as abusive in the present case, and the perceived attitude of the Applicant *vis-à-vis* OSLA staff prior to seizing UNDT is not a pertinent consideration for this purpose.

Conclusion

57. In view of the foregoing, the Tribunal DECIDES:

The application is rejected in its entirety.

(Signed)

Judge Thomas Laker

Dated this 27th day of January 2011

Entered in the Register on this 27th day of January 2011

(Signed)

Víctor Rodríguez, Registrar, UNDT, Geneva