



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

ANDRYSEK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON MOTION TO FILE
A FRIEND-OF-THE-COURT BRIEF**

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Marisa MacLennan, UNHCR

Jan Schrankel, UNHCR

Introduction

1. On 27 November 2019, the Applicant, a staff member of the Office of the United Nations High Commissioner for Refugees (“UNHCR”), filed an application contesting the decision to place him on Special Leave Without Pay (“SLWOP”) effective 11 June 2019.
2. On 10 December 2019, the UNHCR Staff Council submitted a motion to file a friend-of-the-court brief in the present case.
3. On 11 December 2019, the parties were notified about the above-mentioned motion and were instructed to file any comments or objections in this regard. None of them objected to it.

Consideration

4. The Tribunal must decide whether to grant said motion and to establish the conditions under which the friend-of-the-court will intervene in the current proceedings.
5. Article 24 of the Tribunal’s Rules of Procedure provides as follows:
 1. A staff association may submit a signed application to file a friend-of-the-court brief on a form to be prescribed by the Registrar, which may be transmitted electronically. The Registrar shall forward a copy of the application to the parties, who shall have three days to file any objections, which shall be submitted on a prescribed form.
 2. The President or the judge hearing the case may grant the application if it considers that the filing of the brief would assist the Dispute Tribunal in its deliberations. The decision will be communicated to the applicant and the parties by the Registrar.
6. In the present case, the Tribunal will for the first time examine the legality of the UNHCR’s newly introduced measure of placing staff members in between assignments (“SIBA”) on SLWOP.

7. The Staff Council points out that the Tribunal’s decision in the present case “will have a significant impact on a large number of staff members in UNHCR” who are currently in between assignments or who will be in between assignments in the future.

8. The Staff Council indicates that it has raised its concerns regarding the legality of the UNHCR’s newly introduced SLWOP within SIBA in numerous occasions before and after its adoption. The Staff Council further mentions that it seeks to share with the Tribunal “its knowledge of the issues at hand and their impact on staff”.

9. The Staff Council further indicates that it would provide the Tribunal with “some background information on the SIBA phenomenon, its scale and some of the reasons for its continued existence”.

10. The Tribunal considers that the Staff Council should be allowed to intervene as a friend-of-the-court in the present case pursuant to art. 24 of the Tribunal’s Rules of Procedures as its participation would assist the Tribunal in its deliberations.

11. The Tribunal is mindful of the important contribution that the Staff Council can provide in relation to the reasons that led to introducing SLWOP within the SIBA mechanism as well as to the procedure that was followed for its implementation. The Tribunal considers that the Staff Council can also provide relevant information concerning the impact of said policy on UNHCR staff at large.

12. Nonetheless, the Tribunal draws the attention of the UNHCR Staff Council to the fact that the role of a friend-of-the-court is different from the role played by the parties. This means that the friend-of-the-court cannot directly intervene in the case management discussion nor at the hearing even though they can be present. Furthermore, the friend-of-the-court can neither examine nor cross examine witnesses and does not have the right to appeal.

13. The friend-of-the-court’s intervention is limited to file submissions in relation to legal issues of a complex nature related to the newly introduced measure of placing SIBA staff members on SLWOP. The friend-of-the-court may do so on its own initiative or at the Tribunal’s request.

14. The Tribunal further clarifies that since the friend-of-the-court is not a party to the proceedings, it cannot have access to its electronic case management system (e-filing portal also known as “CCMS”) and shall, therefore, make any submissions through the email address of the Tribunal’s Geneva Registry.

IT IS ORDERED THAT:

15. The motion to file a friend-of-court brief is hereby granted and the UNHCR Staff Council is admitted to the proceedings in said capacity.

(Signed)

Judge Teresa Bravo

Dated this 22nd day of January 2020

Entered in the Register on this 22nd day of January 2020

(Signed)

René M. Vargas M., Registrar, Geneva