



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/012

Order No.: 69 (GVA/2025)

Date: 19 June 2025

Original: English

Before: Judge Margaret Tibulya

Registry: Geneva

Registrar: Liliana López Bello

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Sètondji Roland Adjovi, Etudes Vihodé Ltée
Anthony Kreil Wilson, Études Vihodé Ltée

Counsel for Respondent:

Alister Cumming, UNICEF

Introduction

1. By an application filed on 29 April 2024, the Applicant contests the decision not to investigate his complaint of intentional leakage of his personal information from inside the Sudan Country Office (“SCO”) of the United Nations Children’s Fund (“UNICEF”).
2. On 3 June 2024, the Respondent filed his reply, challenging, *inter alia*, the receivability of the application.
3. By Order No. 85 (GVA/2024), the Tribunal directed the Applicant to file a rejoinder and encouraged the parties to explore the possibility of an amicable settlement.
4. On 26 August 2024, the Applicant filed his rejoinder.
5. On 4 September 2024, the Respondent informed the Tribunal that there was no prospect for an informal resolution of this matter.
6. On 1 April 2025, the instant case was assigned to the undersigned Judge.
7. On 5 April 2025, the Tribunal invited the parties to a Case Management Discussion (“CMD”), which took place virtually via MS Teams on 29 April 2025 at 2.30 p.m. (Geneva time).

Consideration

8. During the CMD, the parties primarily discussed issues of receivability, evidence production, and the potential need for an oral hearing. The ensuing analysis will address each of these in turn.

Receivability

9. The Tribunal reserves the right to address the issue of receivability in its forthcoming judgment.

Production of evidence

10. In his application, the Applicant requested that the Respondent produce UNICEF's Human Resource Information System ("HRIS") audit logs, which were originally denied by the Office of Internal Audit and Investigations ("OIAI"). He submits that OIAI's denial of the existence of such data is implausible and points to the incompetence of the investigators who assessed the complaint initially.

11. According to him, every action taken by every user in an advanced Enterprise Resource Planning ("ERP") is recorded in the audit logs of the system for security purposes, including the reading/access of records and user session/screen accesses. To bring up personal information, a user would first have to initiate the correct user session and then enter the key information regarding the staff member being inquired about, or first do a search. The Applicant further asserts that, having worked with the implementation of Umoja before, he knows that this type of audit is possible. Further, he submits that any ERP system can record such logs.

12. In this connection, the Applicant argues that accessing said data is crucial for establishing that someone purposely accessed and leaked his personal information. Demonstrating that this data exists and that the investigators refused to review it in their initial assessment further shows the inadequacy of the initial investigation.

13. The Respondent submits, however, that the OIAI already looked into the matter and obtained evidence indicating that the requested data does not exist. The Respondent further pointed out that UNICEF uses a different ERP system than the one the Applicant is familiar with, so his submission that the data exists and is available is inaccurate. Furthermore, even if the data exists, seeking it would effectively invite the Tribunal to conduct a *de novo* investigation, which the Tribunal is barred from doing in a judicial review process.

14. The Respondent furthermore questioned the relevance of the requested data to the determination of the contested decision. He asserts that the application concerns the failure to investigate and that the requested logs are not necessary for determining its lawfulness.

15. Having analyzed the parties' submissions and the evidence on record, the Tribunal disagrees with the Respondent with respect to the relevance of the required data. Indeed, had it been established that the requested data exists and that it would reveal the staff member responsible for leaking the Applicant's personal information, if any, that could, hypothetically, demonstrate the failure of OIAI's initial assessment of the complaint. The relevance of the request lies therein.

16. However, the Tribunal agrees with the Respondent regarding the unavailability of the evidence requested.

17. OIAI stated in its Note for the Record closing the case following initial assessment that: (emphasis added)

8. In the course of the related investigation in matter 2022-0214, OIAI took steps to ascertain whether [the Applicant's] HRIS records may have been improperly accessed by personnel of the Sudan Country Office. **No information that would allow OIAI to determine whether the information was improperly accessed could be retrieved because of limitations in the audit trail as retained by the relevant systems.** More specifically, OIAI determined that only transactional operations are recorded, like information input or approvals.

18. Similarly, the Respondent has stated, on the written record and orally at the CMD, that the evidence requested by the Applicant does not exist in the Organization.

19. However, the Applicant asserted that he was one of the lead implementers of Umoja in the United Nations and is well familiar with the system's security apparatus. This statement was made to support the argument that the audit log data being requested in discovery is indeed available within the ERP system, contrary to the Respondent's claim.

20. In response, the Respondent submitted that UNICEF uses a different ERP system from the Secretariat (i.e., not Umoja). He then implied that the Applicant's knowledge of Umoja may not be applicable in this context.

21. The Tribunal agrees with the Respondent in this respect. Since the Applicant's experience is with a different system than the one used by UNICEF, his assertion that the requested data exists, and that the Organization could have retrieved it is speculative at best.

22. Given the foregoing context, the Tribunal is of the view that ordering the production of the audit logs, as requested by the Applicant, would be futile. It is simply not possible to order the production of evidence that does not exist.

Oral hearing

23. When questioned about the necessity of an oral hearing for the determination of the facts under dispute, both parties agreed, at first, that the case could be adjudicated based on the papers. However, after the issue of production of evidence was discussed, with the Respondent submitting that the data requested by the Applicant did not exist, Counsel for the Applicant requested that an oral hearing be held for the examination of an IT expert to determine whether the Administration's submission vis-à-vis the HRIS audit logs is accurate.

24. In the Tribunal's view, an outsider IT expert would not resolve the foregoing issue. Only an expert on the system used by UNICEF could shed any light on the matter. The said expert would need to be appointed by the Respondent, as the Applicant did not identify anyone in the Organization to testify.

25. Recalling the presumption of regularity principle, by which there is always a presumption that official acts have been regularly performed and recalling that both OIAI and the Respondent have separately stated on record that the audit logs do not exist, the Tribunal is forced to conclude that the matter has already been looked into by the Organization, as affirmed by OIAI in its Note for the Record.

26. In this connection, the Tribunal sees no value in asking the Respondent to identify a staff member to testify on the matter in dispute. The Applicant's request for a hearing is consequently rejected.

Anonymity

27. The Tribunal notices that, in this case, neither party requested anonymity of the Applicant's name.

28. However, in the other two cases of the Applicant that are currently undergoing judicial review before this Tribunal, *i.e.*, Case No. UNDT/GVA/2024/005 and UNDT/GVA/2024/018, anonymity has been both requested and granted.

29. The Tribunal further notes that the contested decisions in the three cases are different, but that the context is the same. Therefore, it considers appropriate, for the same reasons described in Orders No. 60 (GVA/2024) and 45 (GVA/2025), to anonymize the Applicant's name in this case as well.

Closing submissions

30. Having examined the evidence on record and considered the parties' submissions in length, the Tribunal considers itself fully briefed on the matters under dispute.

31. The parties are instructed to prepare closing submissions, focusing primarily on the facts in dispute and the issue of receivability.

Conclusion

32. In view of the foregoing, it is ORDERED THAT:

- a. The Applicant's motion for production of evidence is rejected;
- b. The Applicant's motion for an oral hearing is rejected;
- c. The Applicant's name shall be anonymized in all past and future Orders and Judgment; and
- d. The parties shall file closing submissions by **Thursday, 3 July 2025**, which shall:
 - i. Exclusively refer to the evidence already on file; and

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- ii. Not exceed 10 pages, using font Times New Roman, font size 12 pts and 1.5 line spacing.

(Signed)

Judge Margaret Tibulya

Dated this 19th day of June 2025

Entered in the Register on this 19th day of June 2025

(Signed)

Liliana López Bello, Registrar, Geneva