



**Before:** Judge Teresa Bravo

**Registry:** Geneva

**Registrar:** René M. Vargas M.

VASCONCELLOS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Rebecca Britnell, UNHCR

Elizabeth Brown, UNHCR

## **Introduction**

1. By an incomplete application filed on 30 January 2023, completed on 13 February 2023, the Applicant, a staff member of the Office of the United Nations High Commissioner for Refugees (“UNHCR”), contests the decision to place her on Special Leave Without Pay (“SLWOP”) for any periods of non-employment at the end of her temporary assignment (“TA”) until she is either regularly reassigned or at the end of her current standard assignment length (“SAL”) in Budapest, following recognition of a special constraint (“contested decision”).

## **Facts and procedural history**

2. In July 2019, the Applicant was appointed as Head of Organisational Design and Job Evaluation Unit, Division of Human Resources (“DHR”), UNHCR, at the P-4 level on a fixed-term appointment in Budapest. Although her five-year SAL in Budapest was to end in June 2024, it ended in August 2022 following official recognition of the Applicant’s situation as a special constraint.

3. By letter dated 3 August 2022, the Director, DHR, UNHCR, informed the Applicant that she had decided to endorse the Special Constraints Panel’s recommendation to support her efforts in finding TA opportunities in family duty stations with appropriate medical and educational facilities. Said letter further informed the Applicant of her situation in the following terms:

If you are offered a TA opportunity and leave your current duty station to undertake such a TA, you will continue to be on paid status. However, should your TA not be extended you will be placed on SLWOP for any periods of non-employment until you are either regularly reassigned or at the end of your current [Standard Assignment Length] in Budapest which will remain the reference point.

4. By email of 10 August 2022, the Applicant was notified that she had been selected for a TA as Senior HR Officer (P-4) in the Division of International Protection (“DIP”) in Geneva, Switzerland, for a period of seven months starting 1 September 2022. The email reiterated that should the Applicant’s TA not be extended, she would be placed on SLWOP for any period of non-employment until either being regularly reassigned or the end date of her current SAL.
5. On 2 October 2022, the Applicant requested management evaluation of the 3 August 2022 decision referring also to the 10 August 2022 email.
6. On 3 October 2022, the Deputy High Commissioner, UNHCR, acknowledged receipt of the Applicant’s request for management evaluation.
7. On 30 January 2023, the Applicant filed the application referred to in para. 1 above.
8. The application was served on the Respondent with a deadline for reply set to 22 March 2023.
9. On 17 February 2023, the Respondent filed a motion for summary judgment requesting the Tribunal to reject the application on the ground that it is not receivable *ratione materiae*. He also requested an extension of the deadline to file his reply should the motion be rejected.
10. By Order No. 17 (GVA/2023) of 8 March 2023, the Tribunal found that the application was receivable *ratione materiae* and rejected the Respondent’s motion for summary judgment. Nevertheless, it granted the Respondent’s request for an extension of the deadline to file his reply instructing him to file it by 29 March 2023.
11. In the same Order, the Tribunal also instructed the Applicant to file a rejoinder by 20 April 2023.
12. On 9 March 2023, the Applicant’s TA with DIP, UNHCR, was extended until 31 December 2023.

13. By letter dated 23 March 2023, the Director, DHR, UNHCR, informed the Applicant that she had decided to rescind the second paragraph of the letter dated 3 August 2022 and the second paragraph of the email of 10 August 2022, including specifically the reference to the Applicant's placement on SLWOP during any periods of non-employment after the end of her TA.

14. On 29 March 2023, the Respondent filed his reply, informing the Tribunal that the contested decision had been rescinded and all remedies sought by the Applicant had been granted.

15. The Applicant did not file her rejoinder by 20 April 2023 and, subsequently, the Tribunal instructed her to file it by 12 May 2023.

16. On 12 May 2023, the Applicant requested an extension of time until 12 June 2023 to file her rejoinder, which the Tribunal granted.

17. On 12 June 2023, the Applicant filed her rejoinder advising the Tribunal that the letter dated 23 March 2023 does not close her grievances and requesting that the Administration grant her a non-prejudicial letter stating that a special constraint has been recognized for her.

### **Consideration**

18. Having reviewed the parties' submissions, the Tribunal considers that the issue at stake in the case at hand is whether the Applicant has a legitimate interest in maintaining current legal proceedings.

19. In this respect, the Tribunal has on several occasions pronounced itself on the principle of procedural law that the right to institute and pursue legal proceedings is predicated upon the condition that the person exercising it has a legitimate interest in initiating and maintaining legal action, and that access to the Tribunal has to be denied to those who are no longer in need of judicial remedy, or no longer interested in the proceedings (see, e.g., *Bimo and Bimo* UNDT/2009/061; *Saab-Mekkour* UNDT/2010/047; *Zhang-Osmancevic* UNDT/2015/034; *Mukeba Wa Mukeba* UNDT/2020/103).

20. Turning to the present case, the evidence on record shows that the Respondent rescinded the contested decision on 23 March 2023. The Applicant acknowledged this in her rejoinder but considers that her grievances are not resolved because she “also requested consideration for new assignments and a reissuance of the 3 August 2022 letter”.

21. In the Tribunal’s view, the 23 March 2023 letter (see para. 13 above), which clearly rescinded the contested decision, amounts to a reissuance of the 3 August 2022 letter.

22. It follows that the Applicant is no longer in need of judicial remedy in the present case. Indeed, “[j]ust as a person may not bring a case about an already resolved controversy (*res judicata*) so too [she/he] should not be able to continue a case when the controversy is resolved during its pendency” (see *Toson* 2021-UNAT-1161, para. 28).

23. Accordingly, the Tribunal does not see the need to maintain current legal proceedings and the matter stands to be dismissed.

### **Conclusion**

24. In view of the foregoing, the Tribunal DECIDES to dismiss the application in its entirety.

(Signed)

Judge Teresa Bravo

Dated this 14<sup>th</sup> day of June 2023

Entered in the Register on this 14<sup>th</sup> day of June 2023

(Signed)

René M. Vargas M., Registrar, Geneva