



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2021-1509

Marius Mihail Russo-Got

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

ORDER No. 453 (2022)

1. On 22 February 2022, Marius Mihail Russo-Got (Mr. Russo-Got) filed a motion with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) asking that his name be anonymised in orders and judgments of the UNAT pertaining to the following cases (set out, but not in chronological order): 2021-1509, 2021-1585, 2021-1638, 2020-1418, 2020-1417, and 2020-1410.
2. In Case No. 2021-1509, Mr. Russo-Got appealed *inter alia* his non-selection for a post. This appeal was dismissed in Judgment No. 2021-UNAT-1154.
3. In Case No. 2021-1585, the Secretary-General applied for revision of Judgment No. 2021-UNAT-1095. The Appeals Tribunal has not yet decided this case.
4. In Case No. 2021-1638, Mr. Russo-Got appealed the UNDT Judgment on Receivability No. UNDT/2021/128. The Appeals Tribunal has not yet decided this case.
5. In Case No. 2020-1418, Mr. Russo-Got *inter alia* appealed his non-selection for a post. This appeal was dismissed in Judgment No. 2021-UNAT-1095.

6. In Case No. 2020-1417, Mr. Russo-Got *inter alia* appealed his non-selection for a post. This appeal was dismissed in Judgment No. 2021-UNAT-1100.

7. In Case No. 2020-1410, Mr. Russo-Got *inter alia* appealed the abolition of his post and non-renewal of his fixed-term appointment. This appeal was dismissed in Judgment No. 2021-UNAT-1090.

8. Mr. Russo-Got seeks an order that all UNAT documents that have been put, or may be put into the public domain, be anonymised so that his name does not appear on those documents.

9. On 9 March 2022, the Secretary-General filed his comments, arguing that Mr. Russo-Got has not demonstrated any exceptional circumstance justifying anonymity. He submits the scant explanation provided by Mr. Russo-Got suggests that he is personally embarrassed and discomfited by having the public know about his cases in the administration of justice system of the United Nations. As such, he has not shown that he is in greater need for confidentiality than any other litigant.

10. Additionally, the Secretary-General also notes that Mr. Russo-Got did not seek anonymity during the pendency of his appeals before the UNAT, and hence, this belated request should be denied.

11. Article 10 (9) of the Appeals Tribunal Statute (Statute) provides: “The judgements of the Appeals Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal.” Further, Article 20 (2) of the Appeals Tribunal Rules of Procedure (Rules) states: “The published judgements will normally include the names of the parties.”

12. In *Buff*,¹ this Tribunal reasoned that “the names of litigants are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and accountability, and personal embarrassment and discomfort are not sufficient grounds to grant confidentiality”.

¹ *Buff v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-639, para. 21.

13. Additionally, in *Pirnea*,² the Appeals Tribunal explained that one of the founding purposes of what was then the new system of administration of justice was to ensure that the judgments of the Tribunal are published and made available to the Organisation's staff and the general public. In that regard, the Tribunal stated:³ "Public dissemination of the appellate judgments helps to assure there is transparency in the operations of the Appeals Tribunal. It also means, sometimes fortunately and other times unfortunately, that the conduct of individuals who are identified in the published decisions, whether they are parties or not, becomes part of the public purview."

14. Despite the statutory presumption in Article 10(9) of the Statute that judgments of the Tribunal will be published and made generally available, the Article does allow for the protection of "personal data" which information may include a person's, including a litigant's, identity. Article 20 of the Rules provides that publication of judgments will "normally include the names of the parties". This too contemplates a procedure for addressing abnormal situations in this regard. Article 31 of the Rules (incorporating Article 6 of the Statute) empowers the UNAT to address an application such as has been made by Mr. Russo-Got.

15. Mr. Russo-Got carries the onus of persuading the Tribunal that the 'normal' course of judgment publication should be departed from. I consider that the overriding consideration in the question of anonymisation of judgments is the interests of justice as between the parties to it and the wider United Nations community. Those interests must be identified, weighed and balanced in the interests of justice.

16. I am satisfied that the UNAT is empowered to make such an order, certainly in respect of proceedings currently before it and arguably for proceedings that have been completed by it. I consider, however, that a blanket order also with potentially unlimited future application, is not within the Tribunal's power. Each case of anonymisation must be considered on its merits and it is simply impossible to predict what will be the circumstances of any future and as yet unknown or unanticipated case.

² *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-456, para. 18.

³ *Ibid.*

17. As Mr. Russo-Got's motion reveals, he has been or is a party to no fewer than 6 previous judgments of the UNAT in 2020 and 2021, and currently. That number alone is not necessarily an indication of litigiousness which might be a relevant factor: even a single case can produce many judgments on complex or novel questions; nor does that bare number indicate the degree of justification that there may have been for bringing those cases as he did. Each judgment must be analysed for factors that may be relevant in determining whether the interests of justice require the unusual step of masking the litigant's identity.

18. In relation to past judgments, there is also the important consideration that as publication has already taken place, the metaphorical horse may have bolted already. That is, the damage that Mr. Russo-Got fears may have already occurred. It may be not merely futile to try to stop it but any further judgment or order may simply exacerbate those consequences and so be counter-productive.

19. Further, electronic publication creates records that are potentially permanent in their many forms and not possible to eradicate in their original form. There is also the matter that while this application applies to the UNAT's documents, his cases have been previously before other bodies including the UNDT, which publishes information about its cases online. This Tribunal cannot direct others or other organisations to anonymise their publications.

20. Mr. Russo-Got's grounds for anonymisation appear to rest on the collective effect of the publication of these six judgments. He says that they deal with sensitive subject matter in which others may take an unduly prurient interest. He says that some of the subject matter of those previous judgments is for consideration in other international courts or forums. He is critical of the ability of people who are ill-disposed towards him, to seek out these judgments using internet search engines. He says that a range of people's interest has been excited by these published judgments and he has had requests from officials, human rights organisations, and business partners to disclose further information about those events related in the judgments. He says that this intrusion into his private life his is personally harmful but so too, he claims, will the good name of the United Nations be sullied, especially by those ill-disposed towards it.

21. It is also relevant that these are not orders sought on the basis that conclusions that are critical of and embarrassing to a person, may later be set aside on appeal but the damage from which cannot then be undone. With two exceptions with which I will deal separately, each of the judgments involving Mr. Russo-Got has been decided finally in the UNAT and the results, the reasons for them, and the manner of their expression, cannot now be changed with retrospective effect.

22. It would also be wrong to make orders that will affect matters not yet before the Tribunal, which are potentially within the very broad compass of the order the Applicant seeks. It is too late to make orders affecting the six judgments issued by the UNAT over the past two years, and in any event, I consider that personal embarrassment to Mr. Russo-Got arising from the disclosures of his dealings with the United Nations is not a sufficient ground to shield his identity when weighed against the rights of others to know of those dealings with an international organisation. I also do not consider that, as Mr. Russo-Got has claimed, disclosure of his conduct may embarrass the United Nations. Not only does the UNAT not exist and operate to protect the United Nations, but, contrary to his submission, public disclosure of these matters in judgments may illustrate that the United Nations is unprepared to tolerate those elements of Mr. Russo-Got's conduct that were egregious. Finally, there is the anomaly that, irrespective of whether orders are made by the UNAT, Mr. Russo-Got's judgments from the United Nations Dispute Tribunal apparently remain unanonymised.

23. That leaves the two proceeding that are currently before the UNAT. The first (Case No. 2021- 1585) seeks only a revision of one of the prior judgments and so it would be illogical to anonymise that when the proceeding on which it is based has not been. The judgment in the current matter may need to be interpreted in the context of its predecessor. The issues it raises cannot, on the pleadings, be said to be unreasonably critical of Mr. Russo-Got. I decline to make an order anonymising that proceeding. In the second live proceeding (Case No. 2021-1638), I consider that any order anonymising Mr. Russo-Got's identity should be made by the Judges who consider and decide that case. This will allow for any elements that may justify anonymisation emerging, that are not currently known to the UNAT. In these circumstances, I adjourn this one part of Mr. Russo-Got's motion for decision by the judicial panel considering this appeal and direct that a copy of this Order be included among the papers to be provided to that panel.

IT IS HEREBY ORDERED that, except as it relates to proceeding 2021-1638 in which it is adjourned for decision by the UNAT panel which decides that case, Mr. Russo-Got's motion is **DENIED**.

Original and Authoritative Version: English

Dated this 28th day of April 2022
in Auckland, New Zealand.

(Signed)
Judge Graeme Colgan,
President

Entered in the Register on this 28th day
of April 2022 in New York, United States.

(Signed)
Weicheng Lin,
Registrar