



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2022/003

Order No.: 103 (NY/2022)

Date: 11 November 2022

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Morten Albert Michelsen, Officer-in-Charge

PUMPYANSKAYA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Robbie Leighton, OSLA

Counsel for Respondent:
Lucienne Pierre, AS/ALD/OHR, UN Secretariat
Nicola Esti Caon, DAS/ALD/OHR, UN Secretariat

Introduction

1. By Order No. 097 (NY/2022) dated 26 October 2022, the Tribunal granted the Applicant's disclosure request and, *inter alia*, ordered the Respondent to produce all relevant documentation in his possession by 2 November 2022.
2. On 2 November 2022, the Respondent filed his submission as per Order No. 097 (NY/2022) and submitted certain documents.
3. On 9 November 2022, the Applicant filed her comments to the Respondent's 2 November 2022 submission in which she raises certain objections thereto.
4. On 9 November 2022, the Respondent filed a "supplementary submission" pursuant to Order No. 097 (NY/2022) and appended a number of documents. He further requested two weeks to file some additional documents.

Consideration

Respondent's 2 November 2022 disclosures in response to Order No. 097 (NY/2022)

5. In the Respondent's 2 November 2022 submission, he argues why certain limitations apply to disclosing documents originating from the Office of Internal Oversight Services ("OIOS"). The Applicant is challenging these submissions in her 9 November 2022 comments.
6. The Tribunal recalls that in Order No. 097 (NY/2022), it ordered "*the Respondent ... to produce all relevant documentation in his possession in response to the Applicant's request for disclosure*" (emphasis added). In this regard, the Tribunal notes that the Respondent before the Dispute Tribunal is the Secretary-General of the United Nations. Under art. 97 of the United Nations Charter, the Secretary-General is "the chief administrative officer of the Organization", and in accordance with General

Assembly resolution 48/218 of 29 July 1994 (Review of the efficiency of the administrative and financial functioning of the United Nations), OIOS is part thereof. Order No. 097 (NY/2022) therefore also referred to all relevant documentation in OIOS' possession.

7. At the same time, the Tribunal is also mindful of para. 18 of ST/SGB/273 (establishment of OIOS) and the statutory limitations presented therein for disclosure of documents of OIOS. The Tribunal, additionally, recalls that in para. 20 of Order No. 097 (NY/2022), the Tribunal instructed the Respondent “to submit the unredacted reports to OIOS *ex parte* after which it [would] determine whether they are to be shared with the Applicant, and if so, in a redacted form to preserve the anonymity of the complainants”. Further, as also held by the Appeals Tribunal, only evidence that is relevant is to be admitted in evidence (see, for instance, *Barud* 2020-UNAT-998 and *Nadeau* 2020-UNAT-1072). The test of relevancy will depend on the issue(s) at stake in the specific case. In this regard, the Tribunal refers to Order Nos. 058 (NY/2022) dated 29 June 2022, paras. 3-4, and 097 (NY/2022), in particular paras. 17-20.

8. The Tribunal further notes that under the consistent jurisprudence of the Appeals Tribunal, the Dispute Tribunal's orders must be followed (see, for instance, *Villamorán* 2011-UNAT-160, *Igunda* 2012-UNAT-255, *Leboeuf* 2013-UNAT-354 and *Igbinedion* 2014-UNAT-410). If a party fails to produce certain written documentation, the Appeals Tribunal has held that the Dispute Tribunal “may draw an inference from the lack of response” (see para 49 of *Zhao, Zhuang and Xie* 2015-UNAT-536, and similarly, para. 52 of *Bertucci* 2011-UNAT-121 in which was stated that the Tribunal is “entitled to draw appropriate conclusions from the refusal in its final judgment”).

9. In light of the Tribunal's observations above, the parties are to update their submissions of 2 and 9 November 2022, respectively. Subsequently, the Tribunal will make its final determination on the Applicant's disclosure requests. Thereafter, the

parties are to present their final submissions on witnesses with a view to scheduling a hearing in January or February 2023.

Respondent's 9 November 2022 request

10. In the Respondent's 14 February 2022 submission, his Counsel requests an additional two weeks to provide a document titled, "memo MHL". The Tribunal will grant this request and also allow the Applicant to comment thereon in his updated submissions.

11. In light of the above,

IT IS ORDERED THAT:

12. The Respondent's 9 November 2022 request for a two-week extension to file additional documentation is granted;

13. By **3:00 p.m. on Friday, 25 November 2022**, the Respondent is to:

- a. File the relevant additional document(s) as per his 9 November 2022 submission;
- b. Update his 2 November 2022 submissions on the Applicant's disclosure requests;

14. By **3:00 p.m. on Friday, 9 December 2022**, the Applicant is to update her 9 November 2022 submissions regarding the Respondent's compliance with her disclosure requests;

15. Upon receipt of the above-referred submissions, the Tribunal will issue the relevant instructions for further case management.

(Signed)

Judge Joelle Adda

Dated this 11th day of November 2022