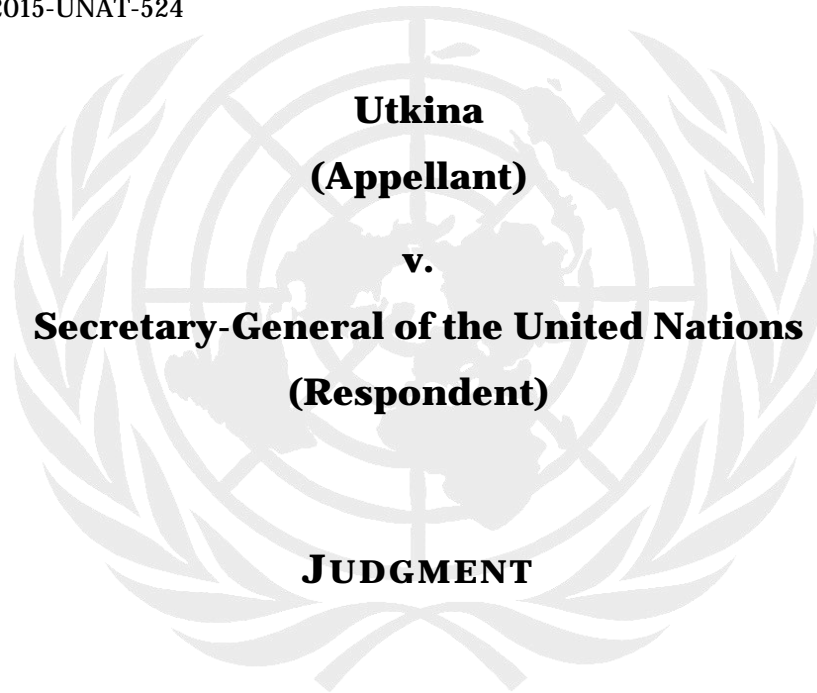




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-524



**Utkina
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before: Judge Deborah Thomas-Felix, Presiding
Judge Richard Lussick
Judge Rosalyn Chapman

Case No: 2014-601

Date: 26 February 2015

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Noam Wiener

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Svetlana Utkina against Judgment No. UNDT/2014/024, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in New York on 28 February 2014 in the case of *Utkina v. Secretary-General of the United Nations*. The Judgment is limited to the issue of her withdrawal from proceedings before the UNDT and the motion for redaction of her name.

Facts and Procedure

2. The Appellant has had two registered cases before the Dispute Tribunal. The first case (Case No. UNDT/NY/2009/143) was closed after Judgment No. UNDT/2009/096 was rendered on 31 December 2009 (Judgment on Suspension), which disposed of her application to the Dispute Tribunal for suspension of the decision not to renew her appointment with the Office for Disarmament Affairs.

3. On 14 February 2012, two years after the Judgment on Suspension, the Appellant filed a request for an extension of time to file her application on the merits contesting the non-renewal of her contract. After a series of motions and counter-motions on the issue of receivability, the Dispute Tribunal granted the Appellant leave to file her application on the merits, without prejudice to consideration of the receivability of the application.

4. On 21 May 2012, the Appellant filed her application on the merits with the UNDT and the matter was registered as Case No. UNDT/NY/2012/011. After a series of motions and case management orders the Appellant filed a motion with the UNDT on 27 January 2014 to withdraw her case. She also requested the redaction of “her identity from all the documents [...] publicly available on the [UNDT] website”, including the Judgment on Suspension.

5. On 28 February 2014, the Dispute Tribunal handed down its Judgment, titled “Judgment on Withdrawal and Motion for Redaction”. The Dispute Tribunal accepted the Appellant’s unequivocal withdrawal of her application on the merits, noting it signified a final and binding resolution concluding the matter *in toto*. The Dispute Tribunal also rejected the Appellant’s request for redaction finding that she had not established sound and valid reasons for redacting her name from the Dispute Tribunal’s published rulings given neither the Judgment which is

currently before the Appeals Tribunal, nor its Judgment on Suspension, dealt with the Appellant's medical history, disclosed sensitive personal information, or referred to matters of a confidential nature. The Dispute Tribunal further noted that since the Judgment on Suspension has been publicly available for four years, an order for redaction may prove fruitless as digital copies of the original judgment may continue to exist elsewhere.

6. On 28 April 2014, Ms. Utkina filed her appeal, and the Secretary-General answered on 30 June 2014.

7. On 1 July 2014, Ms. Utkina filed additional comments on the Secretary-General's answer. On 19 February 2015, the Registry served the comments on the Secretary-General and on 20 February 2015, the Secretary-General filed his observations.

8. On 18 February 2015, while the matter was under consideration by this Tribunal, Ms. Utkina filed a further motion, under seal, offering to proffer additional evidence, and providing additional arguments.

Submissions

The Appellant's Appeal

9. The Appellant contends that the UNDT erred in considering principles of transparency in reaching its decision. The Dispute Tribunal should not have taken transparency into consideration when ruling on her motion for redaction and this methodology is unprecedented. The UNDT also overlooked exceptional concerns in support of her request to redact her name, including that exposure of her name has caused her tremendous ancillary stress impeding recovery from her illness, and her security concerns as her professional profile and specialised knowledge make her a potential target for terrorists. She did not file her request for redaction earlier because she had not been so advised by her Counsel and she was unaware of the rules.

10. The Appellant raises several alleged factual errors in the Judgment concerning her prior application related to the non-renewal of her contract, and ancillary motions, and requests the Appeals Tribunal to undertake the necessary corrections. The UNDT also misapplied the law and the Staff Rules for staff on the 100-series contracts in the Judgment on Suspension. She also challenges that her case was "closed" after the Dispute Tribunal rendered the Judgment on Suspension.

11. The Appellant also claims she has been unable to find another position by virtue of the publication of her name in the Judgment on Suspension.

The Secretary-General's Answer

12. The Secretary-General contends that the UNDT correctly rejected the Appellant's motion for redaction and its approach was consistent with UNAT jurisprudence to the same effect. Insofar as the Appellant cited purportedly exceptional concerns which the UNDT allegedly overlooked, the Judgment on Suspension was silent as to the Appellant's medical history and the Appellant did not present any evidence that public knowledge of her expertise and affiliation with her prior United Nations office would render her a target.

13. The UNDT's reference to the timeliness of the Appellant's request was only intended to determine the efficacy of a potential redaction order. The Respondent submits that the UNDT was correct to consider the timeliness of the Appellant's motion as an attempt to redact information that has already been in the public domain is difficult to enforce.

14. The remaining matters raised by the Appellant should be rejected as they are not related to the UNDT's decision to reject her motion for redaction, which is the subject of her present appeal. Further, the Appellant's claim that she will be unable to find further employment is unsubstantiated. The Respondent submits the Appellant has not established any errors on the part of the UNDT warranting a reversal of the Judgment and requests the Appeals Tribunal to dismiss the Appellant's appeal in its entirety.

Considerations

15. Two preliminary issues must first be addressed by this Tribunal. First, the Appellant requested an oral hearing. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute (Statute) and Article 18(1) of the Appeals Tribunal's Rules of Procedure (Rules). The factual and legal issues arising from this appeal have already been clearly defined by the parties and there is no need for further clarification. We do not find that an oral hearing would "assist in the expeditious and fair disposal of the case", as required by Article 18(1) of the Rules. Thus, the request is denied.

16. Second, the Appellant sought to file two additional pleadings. The Statute and the Rules do not provide for an appellant to file an additional pleading after the respondent has filed an answer. Nevertheless, Article 31(1) of the Rules and Section II.A.3 of Practice Direction No. 1 of the Appeals Tribunal allow the Appeals Tribunal to grant a party's motion to file additional pleadings if there are exceptional circumstances justifying the motion.¹ A review of the Appellant's submissions in the first additional filing shows that the arguments merely repeat or supplement her initial application. The Appellant has not provided a cogent argument to demonstrate that there were exceptional circumstances which warranted the additional filing. In her second additional filing, the Appellant offers to file additional evidence in support of her application. There are no exceptional circumstances which justify the receipt of the evidence in this case, as required by Article 2(5) of the Statute. By her own admission, the additional evidence was known to the Appellant and should thus have been presented to the UNDT. Furthermore, as the UNDT did not rely upon the proposed additional evidence in reaching its conclusions, it is irrelevant to the determination of her appeal. The balance of the filing makes submissions which are irrelevant to the core of the Appellant's application. Accordingly, the Appellant's application to file a reply to the Secretary-General's answer and her subsequent motion to file additional evidence are denied and her additional pleadings will not be included as part of the case file.

17. The main issue is whether or not there are exceptional circumstances to support an application for the Appellant's name to be redacted from the Judgment on Suspension and the Judgment under appeal. The Statute of the UNDT provides for transparency in the work of the Dispute Tribunal and for the publication of judgments. Article 11 of the UNDT Statute provides that "the judgements of the Dispute Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal". In addition, Practice Direction No. 6 of the Dispute Tribunal provides, inter alia, that "the work of the tribunal should be open and transparent, except insofar as the nature of any information that is deemed sensitive".² It stands to reason therefore that an interested party can make an application for redaction, which the Appellant has done in the instant case.

¹ Practice Direction on Filing of Documents and Case Management, 26 June 2014.

² Practice Direction on Records of the Dispute Tribunal, 27 April 2012, para. 4.

18. The notion of transparency of, and access to, information, is very important in any Organization. It allows for openness, accountability and good governance, which indeed are the overarching principles of this Organization. It is therefore important that requests for the redaction of evidence be carefully examined within this context and only be permitted where it is necessary having considered the facts of each case. A request for redaction can only be permissible and/or permitted where it is necessary to protect information of a confidential and sensitive nature.

19. In this case, the allegedly sensitive information is the identity of the Appellant and her professional profile. We have examined the Judgment on Suspension and the Judgment under appeal and consider that the Appellant's concerns, as outlined in her submissions, are unfounded; the judgments reference her professional profile only generally and do not detail the substantive and allegedly confidential matters raised by the Appellant in her submissions. In any event, we note that a considerable number of years have elapsed since the Judgment on Suspension was rendered in 2009; applications of this nature should be made in a timely manner to protect the integrity of the process. We agree with the findings of the UNDT that the Judgment with the Appellant's name as written has been in the public domain for a very long time and it is too late in the day to seek to redact the judgment; an order for redaction may prove fruitless as digital copies of the original judgment may continue to exist elsewhere. In this virtual world where there is a continuous flow of information anyone can have access to the judgment. Therefore, no useful purpose can be served by an order of redaction and it is denied.

Judgment

20. The appeal is dismissed and Judgment No. UNDT/2014/024 is hereby affirmed.

Original and Authoritative Version: English

Dated this 26th day of February 2015 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Lussick

(Signed)

Judge Chapman

Entered in the Register on this 17th day of April 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar