



Before: Judge Margaret Tibulya

Registry: Geneva

Registrar: René M. Vargas M.

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON MOTION FOR
ACCOMMODATIONS IN REHEARING
A VICTIM'S TESTIMONY**

Counsel for Applicant:

George Irving

Counsel for Respondent:

Miryoung An, AAS/ALD/OHR, UN Secretariat

Nicola Caon, DAS/ALD/OHR, UN Secretariat

Introduction

1. On 20 June 2023, the Respondent filed, *inter alia*, a motion for accommodations in rehearing V03's testimony.
2. By Order No. 62 (GVA/2023) of 22 June 2023, the Tribunal instructed, *inter alia*, the Applicant to file his comments on the above-mentioned motion by 27 June 2023.
3. On 26 June 2023, the Applicant filed his comments pursuant to Order No. 62 (GVA/2023).
4. On 27 June 2023, the Respondent filed, *inter alia*, a motion for leave to respond to the Applicant's submission regarding the Respondent's motion requesting accommodations for V03's testimony.

Consideration

Motion for leave to respond to the Applicant's submission of 26 June 2023

5. In support of his motion, the Respondent rebutted the Applicant's comments of 26 June 2023.
6. Having reviewed the Respondent's submission, and considering the circumstances of the present case, the Tribunal finds it appropriate to grant the Respondent's motion of 27 June 2023 pursuant to art. 19.1 of the Tribunal's Rules of Procedure. Accordingly, the Tribunal decides to admit the Respondent's submission in this respect into the case record.

Motion for accommodations in rehearing V03's testimony

7. The Respondent requests the Tribunal to make accommodations for V03 to provide her oral testimony in the present proceedings. Specifically, he requests that:
 - a. The Applicant's Counsel submit to the Tribunal any additional questions on issues that were not yet traversed in V03's testimony provided on 3 November 2020 in Case No. UNDT/NY/2019/047;
 - b. The Tribunal, or, if not possible, the Applicant's Counsel ask only additional questions; and

c. The Applicant remain silent and not visible during V03's oral testimony.

8. In his submission of 26 June 2023, the Applicant agrees to remain silent during V03's further examination and to shut off his video connection, but considers the Respondent's other requests "unduly restrictive". In his view, the proposal for written questions would defeat the entire purpose of remanding the case and make V03's additional testimony contrived and superfluous.

9. In response, the Respondent argues that the re-hearing of V03's testimony is superfluous and unnecessary, given that audio and video recordings of her testimony to the Office of Internal Oversight Services ("OIOS") and before the Tribunal are available. Moreover, he contends that "[r]educing the psychological burden on and distress of a victim of sexual harassment is a valid reason for the Tribunal to order appropriate accommodations that respond to the exigencies of a particular case".

10. In this respect, the Tribunal recalls that "as a general principle, the importance of confrontation, and cross-examination, of witnesses is well-established" (see *Applicant* 2013-UNAT-302, para. 33). Indeed, art. 17.1 of the Tribunal's Rules of Procedure provides in its relevant part that:

The parties may call witnesses and experts to testify. The opposing party may cross-examine witnesses and experts. The Dispute Tribunal may examine witnesses and experts called by either party and may call other witnesses or experts it deems necessary.

11. Moreover, the Appeals Tribunal in *Appellant* 2022-UNAT-1210, at para. 53, held that:

the evidence in relation [to] the allegations of [V03] that the Appellant attempted to grab her face, fell on her forcefully and took and pulled her hands to try [to] get her to dance has also not been evaluated and determined satisfactorily. The Impugned Judgment confirms that [V03] testified before the UNDT. However, the UNDT failed entirely to discuss and analyse her direct examination and cross-examination and made no findings at all about the cogency of her performance as a witness, her credibility and reliability and the factual conclusions to be drawn from her testimony. There is merely one passing reference to the fact that [V03] had testified. Instead, the

UNDT relied once again almost entirely upon the hearsay in the OIOS investigation report, as well as a relatively neutral admission by the Appellant in his OIOS interview that he had touched [V03's] hand when inviting her to join a communal dance, as sufficient to establish the allegations.

12. Accordingly, the Tribunal does not find it in the interest of justice to grant the Respondent's request for written questions.

13. Noting that the present matter is before a different Judge and the Applicant is represented by a different Counsel, the Tribunal further considers that the Respondent's request for the Applicant not to duplicate previously asked questions unduly restricts his right to cross-examine V03. As such, it rejects the Respondent's request in this respect.

14. Nevertheless, considering the circumstances invoked by the Respondent, the Tribunal finds it appropriate to order the Applicant to remain silent and not visible during V03's oral testimony in the present proceedings.

Conclusion

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

- a. The Respondent's motion for leave to respond to the Applicant's submission of 26 June 2023 be granted;
- b. The Applicant shall remain silent and not visible during V03's oral testimony in the present proceedings; and

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c. Other aspects of the Respondent's motion for accommodations in rehearing V03's testimony be rejected.

(Signed)

Judge Margaret Tibulya

Dated this 4th day of July 2023

Entered in the Register on this 4th day of July 2023

(Signed)

René M. Vargas M., Registrar, Geneva