



Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

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

Introduction

1. By Order No. 102 (NY/2022) dated 11 November 2022, the Tribunal ordered:
 - a. The Respondent to update his 2 November 2022 submission on the Applicant's disclosure requests; and
 - b. The Applicant to update her 9 November 2022 submission regarding the Respondent's compliance with her disclosure requests.
2. On 23 November 2022, the Respondent filed his submission as per Order No. 102 (NY/2022) and submitted, *ex parte*, Annex R19.
3. On 30 November 2022, the Applicant filed a motion for joinder and, on 7 December 2022, the Respondent filed his opposition to said motion.
4. On 9 December 2022, the Applicant filed her updated submission as per Order No. 102 (NY/2022).

Consideration

The Applicant's disclosure requests

5. The Tribunal notes that several exchanges have taken place in relation to the Applicant's motion for disclosure of evidence, and the parties have had ample opportunity to submit their views in this respect.
6. In paras. 7 and 10 of Order No. 096 (NY/2022), the Tribunal noted that, in summary, the Applicant sought disclosure of:
 - a. "[T]he notice to [AJ] that he was subject to investigation and the closure report created by OIOS";

b. “[A] screenshot of the OIOS case log indicating the documents created during this investigation”;

c. “[T]he documents created during the predication process which memorializ[ed] the decision not to investigate the Applicant’s complaints” regarding the USG and EC; and

d. “[T]he actual documents removed from her account by [AJ] and shared with [EC]”.

7. As a result of the Applicant’s requests, the Respondent produced *ex parte* Annex R19. He also informed the Tribunal that OIOS does not have the attachments to Annex R18, and that he obtained the emails referred to in Annex R18 from the Applicant, who had included them in PDF format in her complaint to OIOS regarding the alleged misuse of her IT resources.

8. The Applicant requests the disclosure of Annex R19 noting *inter alia* that the issue to be determined by the Tribunal is not the relevance of those documents but, instead, whether a justification exists for its non-disclosure. She further claims that the Respondent should not be permitted to rely on a document not disclosed to the Applicant to argue the irrelevance of the same.

9. Article 18.4 of the Dispute Tribunal’s Rules of Procedure provides it with the power to “impose measures to preserve the confidentiality of evidence, where warranted by security interests or other exceptional circumstances”.

10. Regarding the right to the confidentiality of evidence, the Appeals Tribunal ruled on confidentiality principles in *Bertucci* 2011-UNAT-121 (see paras. 46 to 51). Guided by them and having reviewed Annex R19 filed *ex parte*, the Tribunal notes that its content is relevant to the Applicant’s case. To the extent that this document was not

previously available to the Applicant, the Tribunal finds it appropriate to disclose it to her.

11. Considering that the aforementioned document contains information concerning third persons, the Tribunal directs the Respondent to provide a redacted version noting that, in principle, only the information in column four of the document is to be redacted. The redacted version will be reviewed by the Tribunal and shared with the Applicant on an under seal basis.

12. Concerning the attachments to Annex R18 (emails entitled “Davos invitations.msg” and “FW DAVOS BUSY WORK PREPARATIONS.msg”), the Applicant notes, *inter alia*, that the Respondent is in possession of the requested documents as he disclosed them as R9 in Case No. UNDT/NY/2022/003.

13. The Respondent claims that the Applicant has failed to show that the documents disclosed in Case No. UNDT/NY/2022/03 as Annex R9 are relevant to be admitted as evidence into the present case. He further asserts that said documents have never been in OIOS’s possession and thus were not considered at the time that the contested decision at issue in the present case was taken.

14. In light of the evidence on record and the parties’ submissions, the Tribunal considers that the attachments to the emails referred to in Annex R18 are relevant for the adjudication of this matter. Consequently, the Tribunal instructs the Respondent to produce the evidence disclosed as R9 in Case No. UNDT/NY/2022/003 as long as they relate to the emails referred to in Annex R18 of the present case.

The Applicant’s motion for joinder

15. The Applicant requests the Tribunal to join the present case with Case No. UNDT/NY/2022/003 as she considers that there is a degree of overlap in terms of subject matter. She claims that by joining the cases, the evidence from one case would

be considered in the other, and the Tribunal would then be able to make appropriate determinations on the relevance of the evidence produced.

16. The Respondent opposes the Applicant's motion on the basis that the Applicant challenges two distinct administrative decisions in separate cases, which require the Tribunal to apply two different standards of review.

17. While the present case and Case No. UNDT/NY/2022/003 have been assigned to the same Judge for judicial efficiency, the Tribunal considers that it is not in the interest of justice or judicial efficiency to join the two cases as they refer to two different decisions requiring adjudication of different questions of fact and law. Consequently, it decides to reject the Applicant's motion.

18. The Tribunal notes that, in the alternative, the Applicant requests leave to file as evidence, the attachments to Mr. Jaru's emails to Mr. Calzada that were disclosed as Annex R9 in Case No. UNDT/NY/2022/003. However, since the Tribunal has already decided in para. 14 above to order the Respondent to produce said documents, the Applicant's request is moot.

The oral hearing

19. Based on the information on record, the Tribunal considers it appropriate to hold the oral hearing *in camera* to protect the identity of the witnesses to be called.

20. The Tribunal will determine the modalities of the hearing in view of the witnesses to be called and the issues to be addressed, particularly in connection with testimonies that may be relevant to the Applicant's both matters, namely Cases No. UNDT/NY/2022/001 and UNDT/NY/2022/003.

21. The hearing will tentatively take place on either the week of 6 or 13 March 2023 depending on the availability of the parties and the witnesses to be called.

22. In preparation for the hearing, the Tribunal deems it appropriate to invite the parties to update their list of witnesses to be called, if any.

23. In light of the above,

IT IS ORDERED THAT:

24. **By 3 p.m. on Monday, 13 February 2023**, the Respondent is to produce a redacted version of Annex R19 as indicated in para. 11 above, which will be shared with the Applicant on an under seal basis;

25. The Applicant's request to order the Respondent to produce as evidence Annex R9 of Case No. UNDT/NY/2022/003 into the present case is granted;

26. **By 3 p.m. on Monday, 13 February 2023**, the Respondent is to file the above-mentioned evidence;

27. The Applicant's motion for joinder is rejected;

28. **By 3 p.m. on Friday, 17 February 2023**, each party is to provide the Tribunal with an updated list of witness(es) to be called for the hearing indicating what disputed fact(s) each of these witnesses is to give testimony about, also setting out the proposed witness's testimony in writing. This written witness statement may also be adopted as the examination-in-chief at the hearing if the party leading the witness should wish to do so.

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

Case No. UNDT/NY/2022/001

Order No. 006 (NY/2023)

(Signed)

Judge Joelle Adda

Dated this 7th day of February 2023