
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2022/003

Order No.: 007 (NY/2023)

Date: 8 February 2023

Original: English

Judge Joelle Adda

New York

Isaac Endeley

PUMPYANSKAYA

V.

1. By Order No. 103 (NY/2022) dated 11 November 2022, the Tribunal ordered:
 - a. The Respondent, *inter alia*, to file the relevant document(s) as per his 9 November 2022 submission and 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. 103 (NY/2022) and submitted Annexes R12B and R13.
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. 103 (NY/2022).

The disclosure of the unredacted complaints of 22 November 2019

5. In his updated submission, the Respondent informs the Tribunal, *inter alia*, that he is unable to comply with its order for the *ex parte* disclosure of an unredacted version of the documents bearing the name of the anonymous complainants because he does not have such documents in his possession. The Respondent indicates that due to the operational independence of the Office of Internal Oversight Services ("OIOS"), he does not have the authority to compel OIOS to release the requested documents.

6. According to the Respondent, OIOS considers as central to its mandate the requirement that the identity of staff members who have submitted reports of unsatisfactory conduct to OIOS not be disclosed without the staff member's consent. In support of his argument, the Respondent produces Annexes R8 and R13.

7. In her submission, the Applicant maintains her request for the disclosure of the unredacted complaints. She states, *inter alia*, that by "claiming that the Respondent is not in possession of the unredacted complaints, the Secretary-General is arguing that

- f. All documentation relating to the selection of the Panel members;
- g. Folder entitled “EC” containing email exchanges on a number of issues;
- h. Electronic versions of emails allegedly sent by AJ to the Executive Office, including attachments; and
- i. Communications by which the Panel’s report was submitted on 30 June 2020, a copy of the original version of the report, any document or communication subsequently taking place with the Panel including concerning required revision of their report and their response to any such communication.

13. As a result of the Applicant’s request, the Respondent produced Annex R12 filed in Case No. UNDT/NY/2022/001, which has already been admitted into the evidence in the instant case by Order No. 097 (NY/2022). The Respondent subsequently produced Annexes R8, R9, R10, R11, R12B and R13. Of these annexes, only Annex R10 was filed *ex parte*.

14. The Respondent submits that exceptional circumstances exist warranting steps by the Tribunal to preserve the confidentiality of the material in Annex R10. He asserts, *inter alia*, that the material consists of confidential legal advice provided by ALD to the USG/DGC and the Investigative Panel on the exercise of their official duties. He argues that such advice is protected by a legal professional privilege, which constitutes a legitimate reason for the Tribunal to preserve its confidentiality.

15. The Applicant challenges the Respondent’s argument concerning the alleged privileged nature of the documents in Annex R10, and requests that the remaining documents disclosed *ex parte* be released to her and that she be given the opportunity to provide comments thereon.

16. 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 the documents at Annex R10 filed *ex parte*, the Tribunal notes that their content is relevant to the Applicant's case. To the extent that these documents were not previously available to the Applicant, the Tribunal finds it appropriate to disclose them to her.

17. The Tribunal considers that in line with *Bertucci*, the alleged professional privilege does neither override the transparency of the system nor the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members, and the accountability of managers and staff members alike.

18. Having said the above and considering that the documents in Annex R10 contain information concerning third persons, the Tribunal directs the Respondent to provide a redacted version. The redacted version will be reviewed by the Tribunal and shared with the Applicant on an under seal basis.

The Applicant's motion for joinder

19. The Applicant requests the Tribunal to join the present case with Case No. UNDT/NY/2022/001 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.

20. 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.

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