



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2016-949

Tsoneva (Applicant)

v.

Secretary-General of the United Nations (Respondent)

Order No. 276 (2017)

1. On 2 June 2016, the United Nations Dispute Tribunal in Geneva issued Judgment No. UNDT/2016/067 in the case of *Tsoneva v. Secretary-General of the United Nations*. The Secretary-General of the United Nations filed his appeal against the Judgment on 5 July 2016, and Ms. Valentina Tsvetkova Tsoneva filed her answer on 26 July 2016. That same day, Ms. Tsoneva also filed a “Motion for Confidentiality”, in which she seeks leave to file annexes 1 and 2 to the answer *ex parte*.

2. In support of her motion, Ms. Tsoneva contends that the documents are confidential pursuant to UNHCR’s internal procedures and that a waiver of confidentiality would put her at risk of retaliation and have a negative impact on her career. While titled “Motion for Confidentiality”, Ms. Tsoneva also contends that the subject documents contain evidence which she seeks to introduce pursuant to Article 10 of the Appeals Tribunal Rules of Procedure “to establish additional facts related to the justification of ... moral damages” and to “give [to] the extent possible [a] full picture... of the circumstances”.

3. Article 2(5) of the Appeals Tribunal Statute provides that the Appeals Tribunal may receive additional evidence in exceptional circumstances, if it is in the interest of justice and the efficient and expeditious resolution of the proceedings. Article 10(1) of the Appeals Tribunal Rules of Procedure provides:

A party may seek to submit to the Appeals Tribunal, with an appeal or an answer, documentary evidence, including written testimony, in addition to that contained in the written record. In exceptional circumstances and where the Appeals Tribunal determines that the facts are likely to be established with such additional documentary evidence, it may receive the additional evidence from a

party. On its own volition, the Tribunal may order the production of evidence if it is in the interest of justice and the efficient and expeditious resolution of the case, provided that the Appeals Tribunal shall not receive additional written evidence if it was known to the party seeking to submit the evidence and should have been presented to the Dispute Tribunal.

4. In the present case, the new documents which Ms. Tsoneva seeks to introduce date back to 2013 and 2014 and were both in her possession during the proceedings before the UNDT. Yet, she failed to submit the documents to the UNDT. We have previously held that “[a]ll evidence is to be submitted to the UNDT. Under Article 2(5) of the Appeals Tribunal’s Statute, we can, in exceptional circumstances, admit further evidence. But we will not admit evidence which was known to the party and could have, with due diligence, been presented to the UNDT. The UNDT is not a dress rehearsal.”¹

5. For the foregoing reasons, I find that in the present case, no exceptional circumstances exist warranting the admission of these documents into evidence in the interest of justice.

IT IS HEREBY ORDERED THAT Ms. Tsoneva’s motion is denied. The Registrar is instructed to redact the references to annexes 1 and 2 in Ms. Tsoneva’s answer form and to remove annexes 1 and 2 to the answer before transmitting it to the Secretary-General.

Original and Authoritative Version: English

Dated this 11th day of January 2017
in Port of Spain, Trinidad & Tobago.

(Signed)
Judge Deborah Thomas-Felix,
President

Entered in the Register on this 11th day of
January 2017 in New York, United States.

(Signed)
Weicheng Lin, Registrar

¹ *Shakir v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-056, para. 1.