



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2022-1718

Mihai Nastase

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

Order No. 505 (2023)

1. The United Nations Dispute Tribunal (UNDT) in Geneva issued Judgment No. UNDT/2022/056 on 13 June 2022 in the case of *Nastase v. Secretary-General of the United Nations* (the Judgment), dismissing Mr. Mihai Nastase's (Appellant) challenge of the decision of the Under-Secretary-General for Operational Support (USG/DOS) to close his complaint of prohibited conduct against the Chief Infrastructure Operations Section (CIOS), United Nations Global Service Centre (UNGSC), after a preliminary assessment without opening an investigation.
2. On 10 August 2022, Mr. Nastase filed an appeal of the Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal), which was registered as Case No. 2022-1718. On 14 October 2022, the Secretary-General (Respondent) filed his answer.
3. On 17 January 2023, Mr. Nastase filed a Motion for additional pleadings. He submits that the additional pleadings include relevant information and additional documents, all of them already shared with the UNDT. He argues that the Respondent in his answer to the appeal has omitted and obscured relevant facts.
4. On 30 January 2023, the Secretary-General filed his comments on the Motion, requesting that the Motion be dismissed. The Motion should be rejected because it does not meet the legal requirement of exceptional circumstances justifying the introduction of additional pleadings and evidence.

5. Article 31(1) of the Appeals Tribunal’s Rules of Procedure and Section II.A.3 of the Appeals Tribunal’s Practice Direction No. 1 provide that a motion to file an additional pleading may be granted if there are “exceptional circumstances justifying the motion”.

6. Article 2(5) of the Appeals Tribunal’s Statute (the Statute) reads: “In exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony, it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings.”

7. I find that there are no exceptional circumstances in this case to justify receipt of the additional pleadings or submissions. I find that it is not in the interests of justice and of efficient and expeditious resolution of the proceedings to receive the additional submissions provided by Mr. Nastase’s motion to file additional pleadings. The UNAT has consistently held that, where an additional pleading merely consists of supplementary arguments to those already submitted in an appeal or answer, there are no “exceptional circumstances’ which would allow the admission of the additional argument”.¹ Mr. Nastase provides the additional submissions and annexes as supplementary arguments and in response to the Respondent’s submissions as rebuttal which is not authorized in the process. All relevant, available evidence should be provided with the appeal. In addition, the annexes were already before the UNDT and/or available to Mr. Nastase at the time of filing of the appeal. These are not exceptional circumstances.

8. For these reasons, the motion is denied.

¹ *McCloskey v. Secretary-General of the United Nations*, UNAT Order No. 173 (2014), para. 6. See also *Nouinou v. Secretary-General of the United Nations*, UNAT Order No. 339 Corr. (2019), para. 6.

IT IS HEREBY ORDERED that Mr. Nastase's 17 January 2023 Motion for Additional Pleadings is **DENIED**.

Original and Authoritative Version: English

Decision dated this 13th day of February 2023
in Vancouver, Canada.

(Signed)
Judge Kanwaldeep Sandhu,
President

Order published and entered in the Register on this
13th day of February 2023 in New York, United States.

(Signed)
Juliet Johnson,
Registrar