



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. 514 (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). It dismissed Mihai Nastase's (Appellant) challenge of the decision of the Under-Secretary-General for Operational Support (USG/DOS) to close, after a preliminary assessment, his complaint of prohibited conduct against the Chief Infrastructure Operations Section (CIOS), United Nations Global Service Centre (UNGSC).
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 submitted that the additional pleadings included relevant information and additional documents, all of them already shared with the UNDT, and that the Respondent in his answer to the appeal had omitted and obscured relevant facts. He sought to adduce documents identified as follows: (1) "Your underperformance" communications of 12 May 2020 between CIOS and Appellant; (2) the Appellant's 12 May 2020 message to UNOPS SPM showing why continued CIOS "your underperformance" message from CIOS was not true; (3) the Appellant's 27 October 2020 request for the Management Evaluation

Unit's review of Administration decision not to investigate; and (4) 2 December 2020 result of the Management Evaluation Unit's review.

4. On 30 January 2023, the Secretary-General filed his comments on Mr. Nastase's 17 January 2023 Motion, requesting that it be dismissed because it did not meet the legal requirement of exceptional circumstances justifying the introduction of additional pleadings and evidence.

5. On 13 February 2023, in Order No. 505 (2023), the Appeals Tribunal denied Mr. Nastase's 17 January 2023 Motion for additional pleadings. The Appeals Tribunal found that there were no exceptional circumstances in this case to justify receipt of the additional pleadings or submissions and that it was not in the interests of justice and of efficient and expeditious resolution of the proceedings to receive the additional submissions provided.

6. Meanwhile, on 19 January, Mr. Nastase had filed another Motion for additional pleadings. He requests that the Appeals Tribunal accept additional pleadings for the reason that the UNDT misinterpreted the law, misrepresented the facts, validated a decision taken on the basis of fraudulent documents, and contradicted itself.

7. On 19 February 2023, Mr. Nastase filed yet another Motion for additional pleadings. He submits that the additional pleadings include relevant information and additional documents, all of them already shared with the UNDT; that the UNDT Judgment ignored facts; and that some relevant documents were not included in his list of Annexes submitted to the Appeals Tribunal. He seeks to adduce documents identified as follows: (1) "Your underperformance" communications of 12 May 2020 between CIOS and Appellant; (2) Appellant's 27 October 2020 request for the Management Evaluation Unit's review of Administration decision not to investigate; and (3) 2 December 2020 result of the Management Evaluation Unit's review.

8. On 29 March 2023, the Secretary-General filed his comments on Mr. Nastase's 19 February 2023 Motion, requesting that it be dismissed because it does not meet the legal requirement of exceptional circumstances justifying the introduction of additional pleadings and evidence.

9. On 11 April 2023, the Secretary-General filed his comments on Mr. Nastase's 19 January 2023 Motion, requesting that it be dismissed because it does not meet the legal requirement of exceptional circumstances justifying the introduction of additional pleadings and the Motion does not meet the page limitation for motions for additional pleadings, which are required to be a maximum of five pages.

10. 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".

11. Article 2(5) of the Appeals Tribunal's Statute (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."

12. The Appeals Tribunal 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

13. With one exception (the Appellant's 12 May message to UNOPS SPM), the documents that the Appellant now seeks to adduce are the same documents as this Tribunal refused to allow him to produce in its Order No. 505 (2023) of 13 February 2023. The Tribunal has ruled against Mr. Nastase and to seek to introduce the same documents in reliance on what purport to be different grounds is both an impermissible collateral attack on the Order made and an abuse of the appeal process.

14. The motions are denied.

15. The Respondent has raised concerns that the Appellant should be aware that by continuing to file submissions of this nature, he is merely protracting litigation. Because Mr. Nastase is not professionally represented, it is appropriate to warn him that any

¹ *Nastase v. Secretary-General of the United Nations*, UNAT Order No. 506 (2023), para. 7; *McCloskey v. Secretary-General of the United Nations*, UNAT Order No. 173 (2014), para. 6.

repetition of these strategies puts him at risk of being declared vexatious and at risk of an order for costs.

IT IS HEREBY ORDERED that Mr. Nastase's 19 January 2023 and 19 February 2023 Motions for additional pleadings are **DENIED**.

Original and Authoritative Version: English

Decision dated this 13th day of April 2023 in Auckland, New Zealand.

(Signed)
Judge Graeme Colgan
Presiding

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

(Signed)
Juliet Johnson,
Registrar