



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

KOCH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Victor Rodriguez

Counsel for Respondent:

Adrien Meubus

Susan Maddox

Introduction

1. By application filed on 6 January 2017, the Applicant, a security officer (G-3), Security and Safety Service, United Nations Office at Geneva, contests the disciplinary measure issued against him on 10 October 2016, which consisted in his separation from service with notice and termination indemnity.
2. On 11 January 2017, the application was served on the Respondent, who has until 10 February 2017 to submit his reply.
3. On 16 January 2017, the Applicant filed a motion requesting that “[TRANSLATION] all communications in this case be made in the language of the application, French” (“the motion”).
4. On 20 January 2017, the Respondent submitted his response to the motion pursuant to Order No. 14 (GVA/2017) of 19 January 2017. The Respondent opposes it on the ground that there is no legal basis authorizing the Tribunal to order him to transmit his written submissions in French rather than in English.

Considerations

5. The procedural rules applicable before the Tribunal limitedly address the issue of languages to be used in proceedings before it.
6. Art. 8.6 of the Tribunal’s Statute provides that “[a]n application and other submissions shall be filed in any of the official languages of the United Nations”. Art. 11.4 provides that “[t]he judgements of the Dispute Tribunal shall be drawn up in any of the official languages of the United Nations, in two originals, which shall be deposited in the archives of the United Nations”, while art. 11.5 provides that a copy of the judgment shall be delivered to the applicant “in the language in which the application was submitted unless he or she requests a copy in another official language of the United Nations”. These latter provisions concerning the language of the Tribunal’s judgments are repeated in art. 25.3 and 25.4 of its Rules of procedure.

7. At the Organization's level, art. 1 of the Rules of procedure concerning languages, adopted by the General Assembly on 1 February 1946, states:

In all the organs of the United Nations, other than the International Court of Justice, Chinese, French, English, Russian and Spanish shall be the official languages, and English and French the working languages.

8. In his bulletin ST/SGB/201 (Use of working languages of the Secretariat) of 8 July 1983, the Secretary-General recalled the terms of the Secretariat's official policy concerning the use of its working languages. This bulletin, which is available electronically in English only, provides that (emphasis added):

2. By virtue of his or her appointment, *every staff member is required to work in either English or French*, which are the working languages of the Secretariat, as defined in General Assembly resolution 2(I) of 1 February 1946.

...

4. I wish to emphasize the importance I attach to... the *respect for the equal status of the working languages*.

5. To this end, within the Secretariat as a whole, *each staff member should be free to use in his written communications either English or French, at his or her option*. No impediment is to be placed by anyone to this policy.

9. A few years later, in his bulletin ST/SGB/212 (Use of Working Languages of the Secretariat) of 24 September 1985, also available electronically in English only, the Secretary-General insisted on the effective implementation of his official policy regarding the use of the Secretariat's working languages, as outlined in his bulletin ST/SGB/201:

1. The purpose of this bulletin is to emphasize once more the importance I attach to ensuring a linguistic balance among staff members of the Secretariat and to reiterate the policy of the Secretariat regarding the use of its working languages.

2. I set out this policy in my bulletin ST/SGB/201, the text of which is annexed.

3. This policy, although well established, is not fully put into practice. I wish therefore to reaffirm it and to encourage those staff members throughout the Secretariat whose principal language is French, or who prefer to work in that language, to use French in all official communications.

10. It follows from the foregoing that staff members of the Secretariat are entitled to express themselves in French or English, as they prefer, notably in the context of their relations with the Administration and in administrative proceedings brought before the Tribunal. However, the existing rules do not contain a corresponding obligation for the Administration to respond to the staff member in his or her own language.

11. In view of the bilingualism policy adopted by the General Assembly and reinforced within the Secretariat by the Secretary-General, the Tribunal considers that it is reasonable to expect the Respondent to be able to participate in proceedings before the Tribunal involving the Secretariat in either of its working languages. It is in the interest of the administration of justice to have proceedings conducted in the language of the application, in that it ensures procedural fairness in cases where the applicant does not understand the other language and contributes to avoid delays and costs arising from a possible need for translation and interpretation services. In this regard, the Tribunal notes that the Appeals Tribunal also seems to favour, to the extent possible, the conduct of hearings in the Applicant's language (see *Comerford-Verzuu* 2012-UNAT-203, par. 37). Moreover, it goes without saying that the conduct of proceedings before the Tribunal in French, when the application is submitted in that language, helps to ensure effective implementation of the bilingualism policy within the Organization.

12. The Tribunal concludes that while it is desirable, for the proper administration of justice, to have the Respondent participate in the present proceedings in French, it does not have any legal basis to order him to do so.

13. The Tribunal must now consider whether other measures should be taken at this stage to ensure procedural fairness, such as providing the Applicant with a French translation of the written submissions to be filed by the Respondent. According to art. 19 of its Rules of Procedure, the Tribunal may “issue any order or give any direction which appears ... to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties”.

14. In the present case, the Applicant is not claiming that procedural fairness would be jeopardized if he does not receive the reply or any other document from the Respondent in French. At the most, the Applicant alleges that he does not read English but only French and that, despite of this fact, the contested decision was communicated to him in English. Furthermore, the Respondent submitted as evidence the Applicant’s Personal History forms dated 22 January 2000 and 2 March 2003, in which he declares that he reads, writes, speaks and understands English without difficulty.

15. The Tribunal concludes that it has not been demonstrated that it is necessary for the Applicant to receive the Respondent’s written submissions in French to ensure procedural fairness. There is, therefore, no need at the present stage to take any measure in this regard.

Conclusion

16. In view of the foregoing, the Tribunal REJECTS the Applicant’s motion concerning the language of the proceedings.

(Signed)

Judge Teresa Bravo

Dated this 25th January 2017

Entered in the Register on this 25th January 2017

(Signed)

René M. Vargas M., Registrar, Geneva