



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: René M. Vargas M.

FAGASINSKI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Jérôme Blanchard, HRLU, UNOG

Introduction

1. By application filed on 4 October 2023, the Applicant, a former Human Rights Officer at the Office of the Examination of the Human Rights Situation in Belarus, Office of the High Commissioner for Human Rights (“OHCHR”), contests the decision not to renew his temporary appointment for unsatisfactory performance.
2. On 6 November 2023, the Respondent filed his reply.
3. By Order No. 170 (GVA/2023) dated 26 December 2023, the Tribunal directed the Applicant to file a rejoinder. It also encouraged the parties to explore resolving the dispute amicably and to revert to the Tribunal in this respect by 1 February 2024.
4. On 25 January 2024, in response to Order No. 170 (GVA/2023), the Applicant filed a rejoinder and a “motion for order of production of evidence and information”.
5. On 1 February 2024, the Respondent informed the Tribunal that he “is not in a position to explore alternative dispute resolution”.
6. On 18 September 2024, the Respondent complied with the Tribunal instructions dated 12 September 2024 providing his comments on the Applicant’s motion for production of evidence and information.

Consideration

Motion for production of evidence

7. In support of his “motion for order of production of evidence and information”, the Applicant states that he “*believes* that [OHCHR] is in possession of certain documents and information, and each of them constitutes or contains evidence relevant” (emphasis added) to his case. He also claims that “without substantive evidence or further clarification, discerning the specific grounds and context underlying the assertion of [his] unsuitability, overall performance, and underperformance becomes unfeasible”.

8. The Respondent claims that the contested decision was based on the Applicant's performance in accordance with the applicable rules. In his reply, he provided specific evidence including the Applicant's Terms of Reference and performance evaluation, his workplan, and his First Reporting Officer's feedback. Thus, the Tribunal is in possession of all the evidence to assess the lawfulness of the contested decision.

9. The Respondent also claims that "the Applicant's Motion is overly broad, aiming to capture all information that exists".

10. Pursuant to art. 18.1 of its Rules of Procedure, the Tribunal shall determine the admissibility of any evidence and, under art. 18.5, it may exclude evidence it considers irrelevant, frivolous, or lacking probative value.

11. Also, under art. 19 of its Rules of Procedure, the Tribunal may at any time issue an order or give any direction appearing to be appropriate for the fair and expeditious disposal of a case and to do justice to the parties.

12. It is a well-established practice that parties requesting the production of evidence and information must be able to identify the relevant documents and information they wish the other party to produce, and indicate why such evidentiary production is necessary.

13. The Tribunal notes that in *Rangel* Order No. 256 (UNAT/2016), the United Nations Appeals Tribunal stated that requests for production of documents articulated in general terms constitute "an impermissible 'fishing expedition'".

14. The Applicant did not identify specific or particular documents/evidence he wants the Respondent to produce. Indeed, he referred, for example, to "Minutes, notes, emails, communications, and/or other records of calls, discussions, and/or meetings between [his First Reporting Officer] and OHCHR Administration, Management, and HR concerning the non-renewal of [the Applicant's] temporary appointment produced and recorded from August 2022 to May 2023", or to "Minutes, notes, emails,

communications, and/or other records kept by Mr. [his First Reporting Officer] to document [his] alleged underperformance”.

15. He also referred to “Minutes, notes, emails, communications, and/or other records of calls, discussions, and/or meetings” related to discussion or agreements on how to address potential staffing challenges.

16. There is no evidence that the information and documents that the Applicant seeks is available and requests for production of voluminous documents in general terms are impermissible.

17. It follows that the Applicant’s motion for production of evidence stands to be denied.

Closing submissions

18. Having reviewed the evidence on record and the parties’ submissions to date, the Tribunal considers itself sufficiently informed to render its judgment without the need for additional disclosure of evidence or the holding of a hearing on the merits.

19. Pursuant to art. 19 of the Tribunal’s Rules of Procedure, and for the fair disposal of the case, the parties will be instructed to file their respective closing submission. Upon the filing of closing submissions, the Tribunal will move forward with adjudicating the case.

Conclusion

20. In view of the foregoing, it is ORDERED THAT:

- a. The Applicant’s motion for order of production of evidence and information is denied;

b. By **Thursday, 26 September 2024**, the parties shall file their respective closing submission, which shall:

- i. Exclusively refer to the evidence already on file; and
- ii. Not exceed 5 pages in font Times New Roman, font size 12, line spacing of 1.5 lines.

(Signed)

Judge Sun Xiangzhuang

Dated this 19th day of September 2024

Entered in the Register on this 19th day of September 2024

(Signed)

René M. Vargas M., Registrar, Geneva