



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

RIECAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S MOTION
TO HEAR HIS WITNESSES IN A CLOSED
SESSION**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Nicole Wynn, AS/ALD/OHR, UN Secretariat
Maureen Munyolo, AS/ALD/OHR, UN Secretariat

Introduction

1. By Order No. 083 (NBI/2023) issued on 18 May 2023, the Tribunal scheduled the hearing in this matter from 24-25 May 2023.
2. On 19 May 2023, the Applicant filed a motion requesting that his two proposed witnesses be heard *in camera*. He states that both witnesses expressed the fear of retaliation from the Head of the United Nations Economic and Social Commission for Western Asia (“ESCWA”), whose decision is being challenged by the Applicant.
3. The motion was served on the Respondent on 22 May 2023.
4. The Respondent filed his response on the same day, in which he opposes the motion. He argues that pursuant to art. 9(3) of the Dispute Tribunal’s Statute, the default position on hearings is that “they shall be held in public unless (...) exceptional circumstances require the proceedings to be closed”. The Respondent maintains that this is a case concerning reassignment, and there are no sensitive issues expected to be discussed. Relying on *Kasmani*¹ and *Nartey*², the Respondent contends that the internal justice system’s interest in a public and transparent hearing where accountability questions at the Organization are openly addressed outweighs any abstract and unsubstantiated fear of retaliation.

Considerations

5. Article 16.6 of the UNDT Rules of Procedure stipulates that where the Tribunal decides to have an oral hearing,

[t]he oral proceedings shall be held in public unless the judge hearing the case decides, at his or her own initiative or at the request of one of the parties, that exceptional circumstances require that the oral proceedings be closed. If appropriate in the circumstances, the oral hearing may be held by video link, telephone or other electronic means.

¹ 2013-UNAT-305, para. 41.

² 2015-UNAT-544, para. 63.

6. Having reviewed the submissions on the matter, the Tribunal recalls that the case concerns a decision of the Head of ESCWA and that it is precisely the Applicant's case that the impugned reassignment was an abuse of power and retaliation, aimed at ridding him from the ESCWA. The Tribunal moreover recalls that the audit carried out at the ESCWA found, among others, that: "ESCWA identified staff for separation on early retirement and offered agreed terminations to 13 staff members who were nearing retirement. Also, the appointments of 20 staff on fixed-term contracts were not extended. However, there were no documented criteria for identifying candidates for termination and there was a risk that the process could be viewed as lacking objectivity."³ The Tribunal finds that the power differential and the particular circumstances of the case render the fear of retaliation subjectively justified.

7. It is the Tribunal's concern to create an environment where the witnesses can testify as freely as possible. The Tribunal, moreover, is mindful of the importance of countering retaliation, as expressed consistently by the General Assembly: A/RES/73/276, para. 11, A/RES/75/248, para. 11-13, A/RES/76/242 para 10. Finally, the Tribunal is alive to the fact that it has practically no other tools to alleviate the risk of retaliation but to prevent it by limiting the possibility of attribution of specific words to individual persons. These concerns outweigh the value of a public hearing.

8. Publicness and transparency will be sufficiently tended to by the publication of the facts and the outcome in the Tribunal's judgment.

9. In view of the foregoing, the Tribunal decides as follows:

ORDER

10. The Applicant's motion is granted. The hearing of the Applicant's two witnesses shall be held *in-camera* and shall be closed to the public.

³ OIOS Report 2022/088 of 27 December 2022, para 39.

Case No.: UNDT/NBI/2022/026

Order No.: 090 (NBI/2023)

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 23rd day of May 2023

Entered in the Register on this 23rd day of May 2023

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi