



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/123

Order No.: 159 (NBI/2023)

Date: 16 October 2023

Original: English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: René Vargas, Officer-in-Charge

TERRINE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE RESPONDENT'S
MOTION FOR LEAVE TO RESPOND
TO THE APPLICANT'S
SUBMISSION OF 3 AUGUST 2023**

Counsel for the Applicant:

Stéphanie Zurawski

Counsel for the Respondent:

Charlotte Servant-l'Heureux, UNHCR

Jan Schrankel, UNHCR

Introduction

1. On 9 October 2023, the Respondent filed a Motion for Leave to Respond to the Applicant's submission ("the Respondent's motion") of 3 August 2023. The basis for the motion is that the Applicant's 3 August submission raised new issues and facts not previously raised in the application. The Respondent also states that the French translation of his reply was incorrect in some parts.

2. The Applicant has replied with a request for case management in which she observes that the Respondent's motion was filed more than two months after receipt of the 3 August submissions and that "a fair trial would require that the same time limit set for my response be set to the opposing party, namely 30 days."

3. In examining the merits of the Respondent's motion, it is helpful to recall the chronology of this case.

4. The application was filed on 20 December 2022 and served on the Respondent on 28 December 2022. The Respondent filed his reply on 27 January 2023.

5. On 2 February 2023, the Applicant filed a motion requesting (1) that the reply and its annexes be translated into French, and (2) that she be given 30 days after receipt of the translations to respond to the reply. This was granted by an Order on the next day.

6. On 16 May 2023, the Applicant's Counsel was sent the French translation of the reply and, on 5 July 2023, the translated annexes. Thus, under her original request and the resulting Order, the Applicant's response to the reply was due on 3 August 2023.

7. On 25 July 2023, the Applicant filed a motion for leave to exceed the prescribed page limit that was granted on the same day. On 3 August 2023, the Applicant filed her 21-page response to the reply. As noted, the Respondent's motion was filed on 9 October 2023.

Consideration

8. Initially, the Tribunal notes that the Applicant has not alleged that she would suffer any prejudice if the Respondent's motion were granted. Her argument is merely that "fairness" would require that the Respondent be limited to the same 30-day response time as she was.¹ However, this argument ignores the facts and course of this litigation.

9. As noted above, the Applicant sought and obtained leave to file a response to the reply beyond the previously set deadline, namely until 30 days after receiving French translations of the reply and its annexes. This turned out to be 3 August 2023. The Tribunal accommodated the request for translations, but the undersigned observes that the submissions on file indicate that the Applicant passed the United Nations Language Proficiency Examination in English in 2017 and many of the documents submitted by both parties in this case show her communicating in English. Further, the website of Applicant's Counsel (as listed on her email correspondence) states that "[s]he works in French, **English** and Spanish" (emphasis added). The Applicant's Counsel also has called the Registry on numerous occasions and spoken in fluent English with the staff.

10. If, as it appears, both the Applicant and her Counsel are fluent in English, then her request for French translations was unnecessary. However, the translations and related extension of her filing deadline gave her over six months to respond to the reply. Fairness indicates that the Respondent be given at least two months to reply to the Applicant's Response.

11. In addition, it seems necessary to remind the parties that "responses" are limited to responding to the other party's arguments. They should not be a vehicle for raising new issues or rearguing issues already set forth. The parties are further reminded that

¹ This is similar to the argument that she submitted to obtain leave to file a 21-page response. She claimed then that, since the 16-page reply amounted to 21 pages when translated to French, she should be allowed up to 21 pages to respond. "Tit for tat" is not fairness in a judicial setting.

page limits exist to encourage brevity and conciseness, and they should bear this in mind.

12. The Tribunal also notes that some of the filings are based on arguments about what counsel alleges they were told by registry staff. To avoid future issues arising from conversations between counsel and registry staff, henceforth the Tribunal will require strict adherence to UNDT Judicial Direction 11.1, whereby “any correspondence requiring a judicial response must be made in principle by way of motion and responded to by way of an order.” The sole exception to this will be for the scheduling of proceedings, which shall be done via email.

Conclusion

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

- a. The Respondent’s motion is granted;
- b. The Respondent shall submit his response to the Applicant’s 3 August 2023 submissions on or before 24 October 2023;
- c. If the Applicant feels that a further response is required, she shall submit one on or before 24 November 2023; and
- d. Registry staff will communicate via email with counsel to schedule a Case Management Discussion.

(Signed)

Judge Sean Wallace

Dated this 16th day of October 2023

Entered in the Register on this 16th day of October 2023

(Signed)

René M. Vargas M., Officer-in-Charge, Nairobi