



UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/NY/2019/060  
UNDT/NY/2019/070  
Order No.: 166 (NY/2019)  
Date: 20 November 2019  
Original: English

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**Before:** Judge Francis Belle  
**Registry:** New York  
**Registrar:** Nerea Suero Fontecha

BELSITO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON CASE MANAGEMENT**

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**Counsel for Applicant:**

Mr. George G. Irving

**Counsel for Respondent:**

Ms. Melissa Bullen, UN Women

Ms. Mylene Spence, UN Women

## **Introduction**

1. The Applicant, the former UN Women Country Representative in Albania, has two separate applications related to the selection process for the D-1 post of UN Women Regional Director for Europe and Central Asia. The applications are registered under Case No. UNDT/NY/2019/070 and UNDT/NY/2019/060.

2. By Order No. 160 (NY/2019) dated 12 November 2019, the two cases were consolidated into a combined proceeding. In the Order, the Tribunal stated that upon review of the parties' submissions, the Tribunal considered that the matter may be decided on the papers before it once the parties have filed their closing submissions. The Tribunal requested the parties to file a joint submission stating whether they agree for the case to be decided on the papers, or in the case the parties request a hearing for witnesses to provide testimony to support any disputed facts or any other issue providing (a) a list of the witnesses that each party proposes to call and (b) a brief statement or summary of the issue and/or disputed fact(s) to be addressed by each witness.

3. On 18 November 2019, the parties filed a joint submission in which the Applicant requested a hearing in order to hear testimony relevant to Case No. UNDT/2019/070 and requested an order of further documentation from the Respondent. The Applicant stated that he proposes to call Ms. Maria-Noel Vaeza, UN Women Regional Director for Latin America, Mr. Mohammad Naciri, UN Women Regional Director for Asia/Pacific, and Ms. Phumzile Malambo-Ngcuka, Executive Director UN Women as witnesses. The Applicant stated that he himself may be called as a witness in rebuttal to the foregoing testimonies. The Applicant further requested the Tribunal to ensure the attendance of the witnesses, since they are currently officials of UN Women.

4. The Respondent submitted *inter alia* that he does not request hearing as he has put before the Tribunal all available facts and disclosed all available information to enable the Tribunal to reach a decision in this case.

### **Consideration**

5. Article 18.5 of the Dispute Tribunal's Rules of Procedure provides that the Tribunal "may exclude evidence which it considers irrelevant, frivolous or lacking in probative value. The Dispute Tribunal may also limit oral testimony as it deems appropriate".

6. The Tribunal notes that Case No. UNDT/2019/070 concerns the decision by the Executive Director of UN Women to cancel the selection process for the D-1 post of UN Women Regional Director for Europe and Central Asia, which the Applicant had applied for, and re-advertise the position.

7. The Tribunal considers the issue to be determined in this case is whether the decision to cancel the selection process for the position was made on lawful grounds. The Respondent has submitted that the reason for cancelation of the selection process was due to a breach of confidentiality in the selection process. In determining the narrow issue in this case, the Tribunal considers that it will be not assisted by the witnesses that the Applicant proposes to call for the following reasons.

8. In respect of the testimony of Ms. Maria-Noel Vaeza, UN Women Regional Director for Latin America, the Applicant states that she will be called to testify "as to the information she conveyed to the Applicant concerning the selection process and in particular her exchanges with the Executive Director as to the reasons the process was being delayed and eventually cancelled as well as concerning any documentation she provided to the Applicant on his candidacy and the reasons therefore". The Tribunal notes that this material is covered by the evidence on the

record and the Applicant fails to adequately identify how oral evidence would assist in clarifying or rebutting the material further. Furthermore, the proposed testimony does not support any disputed facts, but rather corroborates the Respondent's contention that there was a breach of confidentiality in the selection process.

9. In respect of the testimony of Mr. Mohammad Naciri, UN Women Regional Director for Asia/Pacific, the Applicant states that he will be called to testify "as to the timing and reasons for offering the Applicant the post of Representative to Palestine". This matter is irrelevant to the issue in the case.

10. In respect of the testimony of Ms. Phumzile Malambo-Ngcuka, Executive Director of UN Women, the Applicant states that she will be called to "testify as to the reasons for her delay and refusal to accept the original recommendation on filling the Regional Director post and for the cancellation of the first selection exercise as well as any subsequent actions she took". The Tribunal notes that this material is covered by the evidence on the record and the Applicant fails to adequately identify how oral evidence would assist in clarifying or rebutting the material further.

11. Lastly, the Applicant has requested the production of a number of documents including: any minutes or other records of the first interview panel as well as a summary of the recommendations as to any candidates other than the Applicant and whether they were recommended with or without reservation, minutes or records of the Central Review Body review of the second selection process and the scores of the written tests for all candidates in both exercises. The Applicant fails to identify how the requested evidence would assist in clarifying the disputed issue in Case No. UNDT/2019/070 or in rebutting the evidence already before the Tribunal. The parties are reminded that requests for further evidence when cast in the most general terms constitutes an impermissible fishing expedition. It is for the Applicant to limit the scope of a discovery request by means of evidence in his possession. The

Tribunal cannot order a blanket production of documents containing confidential information regarding other job applicants in order to enable the Applicant to establish extraneous factors in the decision to cancel the selection process.

12. Pursuant to arts. 18 and 19 of the Dispute Tribunal's Rules of Procedure,

IT IS ORDERED THAT:

13. The Applicant's requests for a hearing in order to hear testimony relevant to Case No. UNDT/2019/070 and additional disclosure is denied;

14. By **10:00 a.m., on Monday, 2 December 2019**, the Applicant is to file his closing statement, which is to be five pages maximum, using Times New Roman, font 12 and 1.5 line spacing. The closing statement is solely to be based on previously filed pleadings and evidence, and no new pleadings or evidence are allowed at this stage;

15. By **10:00 a.m. Friday, 6 December 2019**, the Respondent is to file his closing statement responding to the Applicant's closing statement, which is to be five pages maximum, using Times New Roman, font 12 and 1.5 line spacing. The closing statement is solely to be based on previously filed pleadings and evidence, and no new pleadings or evidence are allowed at this stage.

*(Signed)*

Judge Francis Belle

Dated this 20<sup>th</sup> day of November 2019