



Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

SALEH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER
ON CASE MANAGEMENT

Counsel for Applicant:

Marcos Zunino, OSLA
Endah Ayuningsih Indini, OSLA

Counsel for Respondent:

Sandra Lando, UNHCR
Marisa Maclellan, UNHCR

Introduction

1. By Order No. 6 (NY/2022) dated 14 January 2022, the Tribunal instructed, (a) by 25 January 2022, the Respondent to provide his comments on the Applicant's 29 November 2021 submission and the request for production of additional evidence included therein, and (b) by 28 January 2022, the Applicant to file his observations, if any, thereto. The parties duly complied with this Order.

Consideration

Additional written evidence

2. In the Applicant's 29 November 2021 submission, he requested the following documents to be produced:

- a. "INTEREOS internal investigation report, together with all supporting attachments";
- b. "Any documents relating to [JZ's] meeting with INTEREOS regarding this investigation. In this sense, Annex R-2 indicates that there was a meeting between INTEREOS and [JZ] [reference to footnote omitted]";
- c. "Any correspondence between [the Inspector General's Office, "IGO"] and [JZ] concerning this investigation. Annex R-2 indicates that [JZ] corresponded with the IGO in relation to this matter [reference to footnote omitted]";
- d. "The full record of [BM's] WhatsApp exchange with the Applicant". The Applicant explained that he "unfortunately no longer has access to these messages as he has changed his phone".

3. In the Respondent's 25 January 2022 response, he submits that (emphasis omitted):

a. The "INTEROS investigation report and relevant annexes can be shared with the information redacted for the two witnesses that are unknown to the Applicant", but that "this confidential report which originates from a third party be kept under seal";

b. "Documents related to [JZ's] meeting with INTEROS ... the Respondent has no objection to sharing the documents if they exist";

c. "Any correspondence between the IGO and [JZ]: The Respondent has no objection to sharing this correspondence";

d. "The full record of [BM's] WhatsApp exchange with the Applicant: The Respondent is not in possession of this record".

4. Accordingly, the Tribunal will grant the Applicant's requests for additional written evidence to be produced by the Respondent and instruct the latter to file:

a. Under seal, the INTEROS investigation with annexes in a redacted version;

b. Any documents relating to JZ's meeting with INTEROS regarding this investigation;

c. Any correspondence between the IGO and JZ.

5. The Tribunal further finds that since the Respondent is not in possession of the exchange of WhatsApp messages between the Applicant and BM, he cannot be requested to disclose it.

Witness testimonies

6. The Tribunal notes that, as already stated in Order No. 104 (NY/2021) dated 3 November 2022, the very purpose of producing evidence—written or oral—is to substantiate the specific relevant facts on which the parties disagree. Accordingly, there is, in essence, only a need for evidence if a fact is relevant and disputed.

7. After closely perusing the Applicant’s submissions and the jointly-signed statement of 29 November 2022 on agreed and disputed facts, the Tribunal notes that the basic factual disagreement hinges the veracity of the complaints made by BK, BM and AD regarding the Applicant’s conduct.

The Applicant

8. The Applicant would like to give his testimony and the Respondent has not objected thereto. Accordingly, the Tribunal will allow the Applicant to do so.

BK, BM and AD

9. The Tribunal notes that in the contested decision of 4 June 2020, as background for the decision-maker’s (the High Commissioner of UNHCR) termination of the Applicant’s appointment, he refers to the IGO investigation report and the accounts of some “INTEROS personnel”. When studying the IGO investigation report, it is evident that BK, BM and AD are the referred INTEROS personnel, because they were the only INTEROS employees who were interviewed as part of this investigation.

10. Accordingly, it would indeed be relevant to hear the testimony of BK, BM and AD, but as stated by the Respondent in his 25 January 2022, since they were all already interviewed by the IGO, there is no need for them to reiterate these statements before the Tribunal. Also, the Applicant submits in his 29 November 2021 submission that his primary interest is to cross-examine BK, BM and AD.

11. The Tribunal therefore orders the Respondent to call BK, BM and AD to possibly hear them in examination-in-chief, noting that this can be done by having each witness confirm under oath before the Tribunal their agreement with the contents of statements appended to the IGO investigation report (attached to the application as Annexes 9, 12 and 15, respectively). After this, the Applicant will have the opportunity to cross-examine each witness in this regard, and the Respondent can then ask follow-up questions.

TK, MY and AS

12. It follows from the written statements submitted by the Applicant on 29 November 2021 regarding the proposed testimonies of TK and MY that they both appear to challenge the credibility of BK, BM and AD and their motivation behind submitting a complaint against the Applicant. Taking note that neither TK nor MY were interviewed by the IGO, the Tribunal, nevertheless, finds that their testimony would be relevant on the very limited point of BK, BM and AD's credibility and/or motivation.

13. Regarding AS, based on his proposed testimony, the Tribunal does not find that it would be relevant as the proposed testimony does not relate to the credibility and/or motivation of BK, BM and AD.

14. Consequently, the Tribunal will instruct the Applicant to hear TK and MY in examination-in-chief and thereafter offer the Respondent the opportunity to cross-examine them.

HR and JZ

15. Both HR and JZ were also interviewed as part of the IGO investigation, but their evidence is not directly referenced in the contested decision. The Tribunal, however, notes that the investigation report seems to have taken their statements into consideration when setting out the factual background for the finding that the Applicant had committed misconduct as part of the background facts.

16. The Tribunal will therefore instruct the Respondent to call HR and JZ as witnesses and possibly hear them in examination-in-chief. As their statements to the IGO investigation are also appended to application (Annexes 10 and 16, respectively), it is not necessary to rehear on the points covered therein, and the Respondent can simply request HR and JZ to confirm the content of their statements to the IGO investigation after which the Applicant will have the opportunity to cross-examine them. The Respondent will subsequently be allowed to ask follow-up questions. As with BK, BM and AD, the hearing of HR and JZ will be strictly limited to the disputed factual point of the veracity of circumstances entailed in the complaints of BK, BM and AD.

SG

17. The Applicant would like to question SG, the IGO investigator in charge, regarding “circumstances of the INTERSOS investigation”, the “IGO investigation” and the “credibility of INTERSOS staff”.

18. The Tribunal notes that IGO’s assertions on these matters are already comprehensively reflected in its investigation report and that no need exists to restate them before this Tribunal. Also, SG did not witness any of the relevant events. SG therefore does not have any additional information to contribute to the present case.

19. In the application, the Applicant, however, submits that “the IGO investigators failed in their obligation to look for both inculpatory and exculpatory evidence”. By this, the Applicant explicitly challenges that IGO only gave weight to the statements provided by “INTEROS” and not that of himself. As a due process violation, the Applicant is therefore not challenging the fact that IGO did not interview TK, MY and AS, and it is not clear if the Applicant ever requested IGO to do so. IGO’s reasoning behind not interviewing TK, MY and AS has therefore not been brought into question.

20. Accordingly, the Tribunal does not find it relevant to interview SG.

PT

21. The Applicant contends that he would like to question PT, an INTERSOS internal Auditor, regarding the “circumstances of the INTERSOS investigation” and the “credibility of INTERSOS witnesses”.

22. As with SG, the Tribunal notes that INTERSOS’s findings on the mentioned matters should thoroughly be reflected in its investigation report and that PT did not witness any of the relevant events himself. Consequently, the Tribunal finds that his testimony would not be relevant in the present case.

23. In light of the above,

IT IS ORDERED THAT:

24. By **4:00 p.m., Wednesday, 16 February 2022**, the Respondent is to file:

- a. Under seal, the INTERSOS investigation with annexes in a redacted version;
- b. Any documents relating to JZ’s meeting with INTERSOS regarding this investigation;
- c. Any correspondence between the IGO and JZ.

25. A hearing is to be held at which the Applicant will hear the following witnesses in examination-in-chief: the Applicant, TK and MY, after which the Respondent will have the opportunity to cross-examine each witness. The Respondent will hear the following witness in examination-in-chief: BK, BM, AD, HR and JZ, after which the Applicant will have the opportunity to cross-examine them. Each party will be allowed the following time to question each witness: the Applicant (1½ hours) and TK, MY, BK, BM, AD, HR and JZ (½ hour each);

26. For those witnesses, who only speak Arabic and where interpretation is necessary from Arabic to English, the hearing will take place on **Tuesday, 22 and Wednesday, 23 March 2022, from 8:30 to 10:30 a.m. (New York time)**, which is when the necessary interpretation services are available. Each party is to confirm to the Tribunal, who these witnesses are and their availability during the given time slots by **9:30 a.m., Thursday, 10 February 2022**. According to the requirements of the interpretation services, each witness shall participate via a laptop or a desktop with a high-speed internet connection and use a dedicated microphone or headset;

27. For all English-speaking witnesses, each party is to ensure that each of their witnesses is available **during the week of 21 to 25 March 2022**. Due to the time difference, the hearing will be scheduled as three morning sessions starting at 8:30 a.m. to 12:30 p.m. (New York time), except from 22 and 23 March, where the session can only start after 10:30 a.m. The parties are to inform the Tribunal about the availability of the English-speaking witnesses no later than **9:30 a.m., Thursday, 10 February 2022**;

28. Other practicalities will be handled in the scheduling order and by the Registry in communication with the parties.

(Signed)

Judge Joelle Adda

Dated this 7th day of February 2022