

UNITED NATIONS DISPUTE T

Introduction

1. On 12 September 2019, by Order No. 129 (NY/2019), the Tribunal ordered the Respondent to confirm the availability of Mr. Maurice Yadendji and Mr. Joseph Yaderendji for a hearing. The Tribunal further ordered the parties to inform the Tribunal if they wish to call any other witnesses.

2. The Respondent confirmed that Mr. Yadendji and Mr. Yaderendji are available to testify before the Tribunal via video-conference. The Respondent proposed Mr. Gagnan, the victim, to testify, and the Applicant proposed five witnesses including himself.

3. Subsequently, the Respondent made a further submission expressing no objection to calling the Applicant as a witness and objecting to calling the four witnesses proposed by the Applicant. The Respondent also proposed that the Tribunal hold a case management discussion prior to issuing an order on the hearing.

4. In response, the Applicant made a submission reiterating why the testimonies of his proposed witnesses are necessary and asking that Mr. Gagnan's testimony be excluded in the event the Tribunal decides to exclude the four witnesses proposed by the Applicant. The Applicant's counsel also informed the Tribunal that he will be unavailable from 3 November 2019 for about five weeks.

Considerations

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 considers that the testimonies of Mr. Gagnan and the Applicant are relevant in establishing the facts as they have first-hand knowledge of the incident and therefore grants the parties' requests to call them as witnesses.

7. With regard to the proposed testimonies of Mr. Irakli Kvashilava, a United Nations security staff, and Mr. Mongai Pamou, the supervisor of Mr. Gagnan, the Applicant submits that they can provide testimonies regarding the difficult working relationships between the Applicant and some of the security guards, including Mr. Gagnan.

8. The Tribunal notes that none of the proposed witnesses were present at the incident in question and their proposed testimonies might be only relevant in showing the mitigating circumstances. However, the decision letter of 15 December 2016, in the analysis of mitigating factors, acknowledged that the Applicant faced difficult situations as the security guards were misusing the Organization's property and repeatedly disobeying the Applicant's instructions. Since the difficult working relationship between the Applicant and these security guards as claimed by the Applicant is not disputed, the Tribunal finds it unnecessary to hear from Mr. Kvashilava and Mr. Pamou for this purpose.

9. With regard to the proposed testimonies of Mr. Bruno Pittiani and Ms. Relinde van Laar, the then staff members of the Special Investigations Unit who conducted and supervised the underlying investigation in this case, respectively, the Applicant submits that they can testify as to how the investigations were conducted and why they did not deem it necessary to hear from the eyewitnesses. In addition, the Applicant submits that Ms. Relinde van Laar can testify that she had decided to reopen the investigations but was prevented to do so on the grounds that it was too late. The Applicant also submits that these witnesses can assist the Tribunal in assessing the facts and credibility of the witnesses.

10. While the Applicant has not raised any issue with the investigation process before, the Applicant now claims that after her review of the investigations, Ms.

Relinde van Laar had decided to reopen the investigations but was prevented to do so by her hierarchy within the Mission because it was too late. Since this allegation could be relevant to the question as to whether there was any procedural irregularity, the Tribunal grants the request to call Ms. Relinde van Laar for this purpose. Since Ms. Relinde van Laar can provide testimony regarding the investigation and her attempt to reopen the investigation, the Tribunal does not find it necessary to call Mr. Pittiani who is no longer employed by the Organization.

11. The parties are reminded that under art. 17.1 of the Tribunal's Rules of Procedure, the Tribunal may call any other witnesses at oral proceedings it deems necessary regardless of the parties' requests.

12. The Respondent also requested a case management discussion "prior to issuing an order on the hearing". The Tribunal finds that the Respondent has had ample opportunity to address any issues pertaining to the hearing through his written submissions. Therefore, the Tribunal does not find it necessary to hold a case management discussion prior to issuing an order on the hearing for the fair and expeditious disposal of the case.

IT IS ORDERED THAT:

13. The Respondent's request for a case management discussion is denied;

14. The Respondent's request to call Mr. Gagnan to testify is granted;

15. The Applicant's request to call the Applicant and Ms. Relinde van Laar to testify is granted;

16. The Applicant's request to call Mr. Kvashilava, Mr. Pamou, and Mr. Pittiani to testify is denied;

17. The Tribunal will hear from the following witnesses: (a) Mr. Yadendji and Mr. Yaderendji; (b) Mr. Gagnan; (c) Ms. Relinde van Laar; and (d) the Applicant;

