



**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2021-UNAT-1093

**Leonid Dolgoplov  
(Appellant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT**

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Before:	Judge John Raymond Murphy, Presiding Judge Graeme Colgan Judge Sabine Knierim
Case No.:	2020-1412
Date:	19 March 2021
Registrar:	Weicheng Lin

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Counsel for Appellant:	Self-represented
Counsel for Respondent:	Maryam Kamali

**JUDGE JOHN RAYMOND MURPHY, PRESIDING.**

1. Mr. Dolgoplov appeals against the judgment of the United Nations Dispute Tribunal (“UNDT” or “Dispute Tribunal”) finding that his legal challenge to a refusal of the Secretary-General to waive his immunity to sue third parties was not receivable.
2. This Tribunal holds that no immunity as contemplated in Article V, Section 18(a) of the Convention on the Privileges and Immunities of the United Nations was applicable in this case (“the 1946 Convention”),<sup>1</sup> but that Mr. Dolgoplov’s application was not receivable on other grounds. The appeal is accordingly dismissed.

**Facts and Procedure**

3. Mr. Dolgoplov is a P-2 Associate Administrative Officer with the Client Support and Special Situations Section of the Department of Operational Support (“DOS”) in New York. His appeal relates to two applications he made to the UNDT.
4. On 21 December 2019, Ukrinform, a Ukrainian multimedia platform, published an interview in which a Ukrainian official, the former Ukrainian Representative to the United Nations and current Ambassador of Ukraine to the United States of America (“Ukrainian Ambassador”), stated that half of the staff members of the United Nations from the Russian Federation “are spies working for the Russian intelligence agencies or for the Russian Mission to the UN”.
5. On 23 December 2019, Mr. Dolgoplov e-mailed the Executive Office of DOS inquiring what actions he could pursue “to protect [his] reputation” after the publication of the article, as he is a Russian citizen. In his e-mail, he stated:

As discussed, I would like to request for your advice[.]

Former Ukrainian Ambassador to the UN who is currently assigned as Ukrainian Ambassador to the US in his interview to the Ukrinform agency stated that half of UN staff from Russian Federation are spies working for the Russian intelligence agencies or for the Russian Mission to the UN.

I find this statement affecting my professional reputation and want to file a lawsuit against individual named above.

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<sup>1</sup> Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946.

Could you kindly let me know if I need to request any permission from the Organization to proceed with lawsuit, please?

6. After some internal discussion the Executive Office of DOS replied:

I refer to your request on whether you need a permission to bring a defamation action in the courts of one or more Member States of the United Nations against Volodymyr Yelchenko, the former Permanent Representative of Ukraine to the United Nations for allegedly having said that half of the Russians working at the UN are hidden or open agents of the FSB of Russia. You claim that such alleged statement impugns you professionally. I note that Mr. Yelchenko is currently serving as Ambassador of Ukraine to the United States of America.

HQCSS has consulted with the Office of Legal Affairs on whether bringing such an action against Mr. Yelchenko would involve the application of privileges and immunities of the United Nations.

The Office of Legal Affairs has clarified that, pursuant to Staff Regulation 1.1(f), “in any case where an issue arises regarding the application of [the] privileges and immunities [of the United Nations], the staff member shall immediately report the matter to the Secretary[-]General, who alone may decide whether such privileges and immunities exist and whether they shall be waived in accordance with the relevant instruments.” Staff Regulation 1.2(f) further makes clear the privileges and immunities of the United Nations are conferred in the interests of the Organization itself and are not personal to individual staff members.

Upon consultation with the Office of Legal Affairs, it is noted that the application of the privileges and immunities of the United Nations would be raised were you to bring such an action against Mr. Yelchenko. This is because you would necessarily have to refer to your official status and duties as a staff member of the United Nations as an intrinsic aspect of your claim. The Office of Legal Affairs has advised that the privileges and immunities of the United Nations will not be waived in order to enable you to bring such an action. The Office of Legal Affairs has further advised that, in accordance with the Judgment of the United Nations Appeals Tribunal in Kozul-Wright (Judgment No. 2018-UNAT-843), the decision not to waive the privileges and immunities of the United Nations in order to enable you to bring such an action is not an administrative decision which is be [sic] subject to management evaluation under Staff Rule 11.2 or that subsequently can be contested in the system for the administration of justice pursuant to Article XI of the Staff Regulations or Chapter XI of the Staff Rules.

Finally, the Office of Legal Affairs has pointed out that Mr. Yelchenko would appear to enjoy diplomatic immunity as former Permanent Representative of Ukraine to the United Nations and as now Ambassador of Ukraine to the United States of America. It

is, therefore, unclear how, given such diplomatic immunity, you could even bring such a defamation action against Mr. Yelchenko.

7. On 25 February 2020, Mr. Dolgoplov requested “compensation for the reputational losses in the amount of two years of [his] gross salary and moral sufferings in the amount of two years of [his] gross salary” following the Administration’s refusal to waive his immunity which would enable him to bring a lawsuit in a domestic court. There was no response to this request. On 6 March 2020, Mr. Dolgoplov filed a request for management evaluation of the decision not to grant him compensation for “reputational and moral damages”, resulting from the statement attributed to the Ukrainian Ambassador.

8. Mr. Dolgoplov’s second grievance relates to restrictions on his movements. Between 2014 and 2017 he was posted to different duty stations on overseas assignment. His overseas mission ended in June 2017 and he returned to the Headquarters in New York on a new G-4 visa, which included a note of travel restrictions to the effect that he was required to notify the U.S. Mission to the United Nations 48 hours in advance of any travel outside the 25 mile radius from the Columbus Circle. In addition, the duration for his G-4 visa since 2017 has been reduced to one year and the processing time for his G-4 visa has been stretched to as long as four months, while staff from other countries have been granted G-4 visas for five to 10 years with a much shorter processing time.

9. On 30 January 2020, Mr. Dolgoplov requested that the Organization compensate him for the restrictions of movement imposed by the Government of the United States on staff members of Russian nationality on a G-4 visa. His request was denied. On 8 May 2020, he requested that the Organization waive his diplomatic immunity so that he could bring legal action against the Government of the United States. This request was denied on 22 May 2020.

10. On 22 May 2020, Mr. Dolgoplov filed a second request for management evaluation of the Administration’s refusal to lift his diplomatic immunity to enable him to bring legal actions against the Government of the United States.

11. The Management Evaluation Unit (“MEU”) advised Mr. Dolgoplov, on 27 May 2020, that his management evaluation requests were not receivable, because decisions regarding the waiver of immunity taken by the Secretary-General were not administrative, but political or executive, in nature, and were thus not subject to appeal.

12. On 13 June 2020, Mr. Dolgoplov filed an application with the UNDT (“the first application”) challenging: (i) the decision not to waive his functional immunity for the purposes of taking legal action against the Ukrainian Ambassador, and Ukrinform; and (ii) the rejection of his request to receive compensation for the loss of opportunity to take such legal action and for alleged moral harm.

13. On 22 June 2020, Mr. Dolgoplov filed another application with the UNDT (“the second application”) challenging: (i) the decision not to waive his functional immunity for the purposes of taking legal action against the Government of the United States regarding restrictions placed by that Government on G-4 visa holders who are Russian nationals; and (ii) the rejection of his request to be compensated for allegedly suffering from such restrictions and for alleged moral harm.

14. On 29 June 2020, the Secretary-General filed a motion requesting that the two applications be joined and that their receivability be determined as a preliminary matter. The motion was granted.

15. On 9 July 2020, the UNDT issued its Judgment on Receivability.

16. With respect to the first application, the UNDT found that, in line with the Judgment in *Kozul-Wright* issued by the United Nations Appeals Tribunal (“Appeals Tribunal” or “UNAT”),<sup>2</sup> the refusal to waive the immunity of the United Nations accorded to Mr. Dolgoplov as one of its officials was not an administrative decision capable of review. In addition, the UNDT found that Mr. Dolgoplov had not requested management evaluation of the refusal to waive the immunity. His request was limited to a claim for compensation and moral damages for the non-waiver. Therefore, the first application was not receivable under Staff Rule 11.2(a).

17. With regard to the second application, the UNDT also found that the decision not to waive the immunity of the United Nations to allow Mr. Dolgoplov to pursue legal action against the Government of the United States was not an administrative decision and not receivable. As for Mr. Dolgoplov’s claim for compensation for his alleged damages, the UNDT held that Mr. Dolgoplov had not requested management evaluation of the

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<sup>2</sup> *Kozul-Wright v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-843.

Administration's denial of his claim for compensation, and, that this part of his application was therefore not receivable under Article 8(c) of the UNDT Statute and Staff Rule 11.2(a).

18. As a result, both applications were dismissed as not receivable *ratione materiae*.

19. Mr. Dolgoplov appealed the UNDT Judgment to the Appeals Tribunal on 13 July 2020, and the Secretary-General filed his answer on 14 September 2020. On 23 September 2020, Mr. Dolgoplov filed a motion for leave to file additional pleadings in order to rebut the answer point by point, to which the Secretary-General expressed his objection.

20. In Order No. 396 (2021) dated 12 January 2021, the Presiding Judge denied the motion, finding that Mr. Dolgoplov had failed to establish how his putative reply to the Secretary-General's answer would not merely consist of supplementary arguments to the appeal briefs already on record.

### **Submissions**

#### **Mr. Dolgoplov's Appeal**

21. Mr. Dolgoplov requests that the Appeals Tribunal vacate the impugned UNDT Judgment. He contends that, by dismissing both of his applications as not receivable, the UNDT committed errors in law and in fact, leading to a manifestly unreasonable decision.

22. He submits the Administration intentionally prevented him from protecting his rights, failed to take reasonable steps for such protection and used the *Kozul-Wright* Judgment issued by the Appeals Tribunal as a tool to escape its accountability.

23. Mr. Dolgoplov claims that the decision not to lift his immunity affected his terms of employment because he was not able to exercise the rights enshrined in Articles 8 and 10 of the Universal Declaration of Human Rights ("UDHR") and set forth in Staff Regulation 1.1 (c) and to protect his professional reputation. These fundamental human rights form part of his terms and conditions of employment. Such a decision was administrative in nature, even if it can also be political or executive, thus subject to appeal.

24. Mr. Dolgopolov states that he sought compensation not only for the harm caused by the contested decision in respect of the slanderous statement but also for the Administration's failure to protect the professional reputation of staff members of Russian citizenship like him working at Headquarters. He also sought compensation not only for the travel restrictions placed on staff members of the Russian Federation holding G-4 visas but also for the discrimination meted out to staff members of the Russian Federation in terms of visa duration and processing time.

### **The Secretary-General's Answer**

25. The Secretary-General requests that the Appeals Tribunal dismiss Mr. Dolgopolov's appeal and affirm the UNDT Judgment.

26. The Secretary-General submits that the UNDT correctly dismissed Mr. Dolgopolov's two applications as not receivable *ratione materiae*, as the Administration's denials of his requests to waive his immunity so that he could bring legal actions against the Ukrainian Ambassador for slander and the Government of the United States for discriminatory practices were not administrative decisions capable of judicial review. The decision was consistent with the *Kozul-Wright* jurisprudence. Regarding Mr. Dolgopolov's first application, the UNDT was also correct in dismissing it as not receivable because he had failed to request management evaluation of certain aspects of the contested decision.

27. The Secretary-General maintains that Mr. Dolgopolov claims that the UNDT erred in fact and in law, but he has failed to show how its decision was defective warranting the intervention of the Appeals Tribunal.

28. The Secretary-General contends that the General Assembly resolutions that Mr. Dolgopolov refers to in his appeal are irrelevant to the issue as to whether the Dispute Tribunal was correct in dismissing his applications as not receivable.

### **Considerations**

29. Mr. Dolgopolov essentially contests the refusal of the Secretary-General to grant him permission to sue the Ukrainian Ambassador and the Government of the United States. The question is: did he require such permission?

30. The privileges and immunities conferred by Member States on the United Nations and its officials by virtue of the Charter of the United Nations and the 1946 Convention are necessary for the fulfilment of the Organization's purposes. The immunities are granted "in the interests of the United Nations and not for the personal benefit of the individuals themselves". The Secretary-General has the "right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations". The decisions of the Secretary-General on requests for the waiver of immunity are executive/political decisions and not administrative decision subject to judicial review under the internal justice system.

31. Staff Regulation 1.1(f) confirms that the privileges and immunities enjoyed by the United Nations and its officials are conferred in the interests of the Organization. It reads:

The privileges and immunities enjoyed by the United Nations by virtue of Article 105 of the Charter are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to the staff members who are covered by them to fail to observe laws and police regulations of the State in which they are located, nor do they furnish an excuse for non-performance of their private obligations. In any case where an issue arises regarding the application of these privileges and immunities, the staff member shall immediately report the matter to the Secretary-General, who alone may decide whether such privileges and immunities exist and whether they shall be waived in accordance with the relevant instruments.

32. Both the Secretary-General and Mr. Dolgopolov proceed on the assumption that Mr. Dolgopolov required a waiver of immunity by the Secretary-General in order to commence legal proceedings against the Ukrainian Ambassador and the Government of the United States. This is doubtful on the evidence and the arguments presented in this appeal. However, there may be good and legitimate grounds for such a prohibition. The Presiding Judge thus requested the legal representative to refer this Tribunal to any other provision upon which the Secretary-General relied to prohibit United Nations staff members and officials from instituting litigation against third parties in national/municipal courts. She replied as follows:

In this case, Mr. Dolgopolov, a national of the Russian Federation, alleged defamation by the Ambassador of Ukraine to the United States of America for having allegedly stated, when the Ambassador previously served as the Permanent Representative of Ukraine to the United Nations, that all Russians working at the UN are spies. Accordingly, Mr. Dolgopolov sought permission from the Secretary-General to



file a lawsuit in the US courts against the Ambassador of Ukraine to the United States of America.

Because such lawsuit would have required an inquiry into whether Dolgopolov's UN employment involved spying for Russia, the United Nations would have had to waive the privileges and immunities of the United Nations accorded to Mr. Dolgopolov pursuant to Article 105 of the Charter and to Article V, Section 18(a) of the 1946 Convention on the Privileges and Immunities of the United Nations, promulgated by resolution 22(I) of the General Assembly on 13 February 1946. Without such a waiver of the immunities of the United Nations, Mr. Dolgopolov would not have been able to bring a lawsuit alleging defamation concerning his official functions performed for the United Nations.

Staff Regulation 1.1(f) provides that privileges and immunities of the United Nations are conferred on UN officials "in the interests of the Organization." That Regulation further provides that "in any case where an issue arises regarding the application of these privileges and immunities, the staff member shall immediately report the matter to the Secretary-General, who alone may decide whether such privileges and immunities exist and whether they shall be waived in accordance with the relevant instruments."

The Secretary-General decided not to waive the privileges and immunities relating to Mr. Dolgopolov's official functions as a staff member so that Mr. Dolgopolov could bring the lawsuit against the Ambassador of Ukraine. As the UNAT made clear in its Judgment No. 2018-UNAT-843, decisions by the Secretary-General concerning the waiver of the privileges and immunities of the United Nations are not administrative decisions subject to review by the Tribunals, but rather, they are within the Secretary-General's exclusive authority as matters of international law and relations with Member States.

33. Article V, Section 18(a), of the 1946 Convention provides for the functional immunity of the United Nations officials. It reads:

Officials of the United Nations shall ... [b]e immune from legal process *in respect of* words spoken or written and all *acts performed by them* in their official capacity.<sup>3</sup>

34. The provision, concerned as it is with an immunity, and not a prohibition, confers no express power on the Secretary-General to impose any limitation on the right of a staff member to commence legal proceedings in a personal capacity in any national/municipal court. A legal privilege or immunity in international law generally consists of a freedom or exemption from a legal duty, prosecution, civil process or penalty.

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<sup>3</sup> Emphases in original.

It is a principle relied on to claim that a particular tribunal does not have jurisdiction. The immunity granted by Article V, Section 18(a), of the 1946 Convention provides United Nations officials protection against suits brought against them by other persons. Such officials, when sued in respect of words or acts performed by them in their official capacity, as defendants in a suit, will be able to file a special plea of functional immunity, which, provided the preconditions for the application of the immunity are established, normally will be dispositive. However, Article V, Section 18(a), of the 1946 Convention says nothing at all about the right of a United Nations staff member to institute proceedings in an action, as a plaintiff, against a third party defendant in a national court, be it in respect of a tort, breach of contract or any other cause of action.

35. It is possible that the immunity of the Ukrainian Ambassador will arise in the contemplated suit for defamation, but the question of Mr. Dolgopolov's immunity is unlikely to be engaged in such a suit. While evidence describing Mr. Dolgopolov's duties and activities within the Organisation might be adduced in any trial, such alone would not necessarily give rise to any issue regarding his immunity requiring him to seek a waiver from the Secretary-General. The defence of truth or fair comment in the proposed defamation suit would normally not require a waiver of immunity, as Mr. Dolgopolov would not assert immunity. If, during the process of the trial or in discovery, Mr. Dolgopolov is required to disclose information of a sensitive or confidential nature, he could conceivably be obliged, under Staff Regulation 1.1(f) as well as his duty of good faith to his employer, to assert the immunity and perhaps seek a waiver at that stage – failing the grant of that waiver his suit may be dismissed. But that duty cannot be translated into a blanket requirement that staff members seek permission from the Secretary-General to sue in their personal capacities.

36. The functional immunity conferred by Article V, Section 18(a), of the 1946 Convention exists to protect officials like Mr. Dolgopolov from actions of plaintiffs who may sue them in respect of their official actions. It does not exist to prohibit officials and staff members of the Organisation from seeking redress against wrongs perpetrated against them personally. The exclusive executive/political authority of the Secretary-General to decide whether privileges and immunities exist and whether they should be waived is accordingly not engaged in this matter because the pre-conditions for the exercise of that authority are not present. No issue has arisen regarding the privileges or immunities of Mr. Dolgopolov. He did not require a waiver of any immunity that he enjoyed.

37. The decision of this Tribunal in *Kozul-Wright* is hence not applicable to the facts of this case. In that case, the Secretary-General exercised his executive/political discretion to waive the immunity of a United Nations official raised illegitimately as a special plea against a third-party plaintiff in an action for breach of contract. The official raised the plea to avoid personal liability and was not relying on the immunity to advance the interests of the Organisation. Mr. Dolgopolov is not raising functional immunity to escape personal liability on the basis of his status as a United Nations official. He is seeking to vindicate his rights. That he may or may not meet a successful plea of immunity or truth and fair comment by the Ukrainian Ambassador is no basis for the proposition that he needs the permission of the Secretary-General to institute action. It will be for the national courts to decide if any plea of immunity by the Ukrainian Ambassador is meritorious.

38. However, the Secretary-General appears to have legitimate concerns about evidence that might be led during the litigation of the contemplated defamation suit or in any suit against the Government of the United States regarding visa restrictions. For that reason, as set out above, the Presiding Judge requested the parties to refer the Tribunal to any other provision prohibiting Mr. Dolgopolov from instituting the two actions he contemplates. The answer submitted on behalf of the Secretary-General pointed to no other prohibition or mandatory provision in support of the proposition that Mr. Dolgopolov needed his permission to sue the Ukrainian Ambassador or the United States Government.

39. On the record before us, therefore, absent any clear prohibition (rather than immunity), the UNDT's finding that the challenge to the decision by the Secretary-General not to waive Mr. Dolgopolov's immunity was not receivable on the ground that it was an executive/political decision is incorrect.

40. The true issue before the UNDT was not about the power of the Secretary-General to waive a staff member's functional immunity; it was whether the decisions of the Secretary-General (amounting to prohibitions or refusals of permission to commence suit) are reviewable errors of law. Did the Secretary-General err in his appreciation of the nature of the power conferred upon him in relation to the rights of staff members of the Organisation to institute legal proceedings in national/municipal courts? This is a matter of importance that deserves full consideration. It may well be that the Secretary-General enjoys such a power of prohibition, not adequately considered or conveyed by his legal representative in this case. But such a power does not derive from the executive/political

power of the Secretary-General to waive the functional immunity of a staff member from legal process for official acts. To repeat: Mr. Dolgoplov has not raised a defence of immunity in a case in which he is being sued in respect of any official act which he has performed. And no party suing Mr. Dolgoplov is asking for that immunity to be waived.

41. That said, the UNDT was correct to hold the applications not receivable, but for other reasons. Mr. Dolgoplov did not refer the impugned decision regarding his request to sue the Ukrainian Ambassador to management evaluation and thus the application was not receivable in terms of Article 8(1)(c) of the UNDT Statute and Staff Rule 11.2(a). Mr. Dolgoplov's request to sue the Government of the United States, however, was properly referred to management evaluation. Nevertheless, that decision was not receivable because it was without direct legal impact on Mr. Dolgoplov's contract of employment. Article 2 of the UNDT Statute provides that the UNDT shall be competent to hear and pass judgment on an application to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The key characteristic of an administrative decision subject to judicial review is that the decision must produce direct legal consequences affecting a staff member's terms and conditions of appointment.<sup>4</sup> Visa restrictions imposed on a staff member of the Organisation by the Government of the United States are not part of the terms and conditions of employment and an ineffective decision purporting to limit the staff member's right to seek legal redress concerning such restrictions had no direct impact on the contract of employment.

42. As Mr. Dolgoplov's applications are not receivable, there is no basis for any award for compensation.

43. In the result, the appeal must be dismissed.

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<sup>4</sup> *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 49.

**Judgment**

44. The appeal is dismissed and Judgment No. UNDT/2020/113 is affirmed.

Original and Authoritative Version: English

Dated this 19<sup>th</sup> day of March 2021.

*(Signed)*

Judge Murphy, Presiding  
Cape Town, South Africa

*(Signed)*

Judge Colgan  
Auckland, New Zealand

*(Signed)*

Judge Knierim  
Hamburg, Germany

Entered in the Register on this 21<sup>st</sup> day of April 2021 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar