



**Before:** Judge Vinod Boolell

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

ACHKAR

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for Applicant:**  
Self-Represented

**Counsel for Respondent:**  
None

## **Introduction**

1. The Applicant served with the United Nations Relief and Works Agency (UNRWA) as Senior External Relations and Projects Officer based in Amman, Jordan from 1 March 2002 until his resignation in January 2003. He had taken up this post as a promotion from his previous post in the United Nations Department of Political Affairs (UNDPA) in New York.

## **Facts**

2. The Applicant avers that in 2001 he was being asked to formally travel to Gaza despite numerous warnings by the Applicant that it would be most dangerous for him to travel to Gaza and Israel before and after accepting the offer of the post at UNRWA (“the impugned decision”). His reservations for travelling were that it would be inappropriate and extremely dangerous to ask a staff member to visit a UN Member state in a state of war with that staff member’s country of citizenship.

3. The Applicant asserts that despite having expressed these reservations, he was asked formally in writing to travel to Gaza, a decision that he finally accepted. As a result, the Applicant claims that he faced threats upon his life by Israeli soldiers upon entry to and exit from Gaza during the travel.

4. He further avers that from the time of his employment with UNRWA he and his extended family have been the subject of harassment.

5. The Applicant filed the present Application with the United Nations Dispute Tribunal (UNDT) on 19 October 2011.

## **Consideration**

6. Article 2 of the Statute of the UNDT states that: “[t]he Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual ...

against the Secretary-General as the Chief Administrative Officer of the United Nations.” It further states in article 2.1 (b) that the Dispute Tribunal shall be competent to hear and pass judgment on an “appeal of an administrative decision that is alleged to be in con-compliance with the terms of appointment or the contract of employment.”

7. Article 8(4) of the Rules of Procedure of the UNDT state that “[a]fter ascertaining that the requirements of the present article have been complied, the Registrar shall transmit a copy of the application to the respondent.”

8. From the pleadings of the Applicant, it is clear that at the time of the contested decision he was a staff member of UNRWA. This entity does not fall under the jurisdiction of the UNDT. At the time the cause of action arose, the Applicant would probably have been entitled to pursue any claim he might have had against UNRWA before the former UN Administrative Tribunal.<sup>1</sup>

9. Since the cause of action arose in UNRWA, the element of *ratione materiae* of the UNDT is not satisfied because the Applicant should have filed his application against the Commissioner General as the Chief Executive Officer of UNRWA.<sup>2</sup> On this basis too, the case is not receivable.

10. Even if, the UNDT had jurisdiction to proceed with the Application, the Applicant would not have succeeded in the pursuit of his claim based on the timeliness of the Application. This Tribunal notes that art. 8.4 of the UNDT Statute states that “an application shall not be receivable if it is filed more than three years after the applicant’s receipt of the contested administrative decision.” Further, art. 7.6

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<sup>1</sup> Provided in Regulation 11.2 of the International Staff Regulations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) May 2001. It states that “the United Nations Administrative Tribunal shall, under conditions prescribed in its Statute, hear and pass judgment upon application from staff members alleging non-observance of their terms of appointment...”

<sup>2</sup> Article 2.1 of the Statute of the UNRWA Dispute Tribunal promulgated on 1 June 2010, states that “[t]he Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute against the Commissioner-General as the Chief Executive Officer of UNRWA.” The Statute is found in Regulation 11.3 of the UNRWA International Staff Regulations.

of the Rules of Procedure of the UNDT states that “[i]n accordance with article 8.4 of the statute of the Dispute Tribunal, no application shall be receivable if filed more than three years after the applicant’s receipt of the contested administrative decision.” The Applicant is contesting administrative decisions dating back to 2002, that is nine years ago.

11. In the light of the above quoted legal provisions therefore, *prima facie*, the Application is not receivable *ratione temporis* since the Applicant did not comply with the time-limit provided in art. 7.6 of the Rules of Procedure of the UNDT with respect to the submission of the request for review.

### **Conclusion**

12. The Applicant has not only filed his Application against the wrong entity but has also done so after a considerable delay and therefore beyond the scope of receivability.

13. It is beyond dispute that the action is time-barred and not receivable *ratione temporis* and *ratione materiae*.

14. The Application is therefore dismissed.

(Signed)

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Judge Vinod Boolell

Dated this 15<sup>th</sup> day of November 2011

Entered in the Register on this 15<sup>th</sup> day of November 2011

(Signed)

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Jean-Pelé Fomété, Registrar, Nairobi