



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

CHERNEVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

N/A

Introduction

1. By application filed on 31 January 2020, the Applicant contests a decision concerning the payment of her work as a consultant in the United Nations Environment Programme (“UNEP”) in 2010.
2. The application was registered under Case No. UNDT/GVA/2020/007 and assigned to the undersigned Judge.

Consideration

Preliminary observation

3. Pursuant to art. 8.4 of the Tribunal’s Rules of Procedure, the Registrar “shall transmit a copy of the application to the respondent and to any other party a judge considers appropriate” after ascertaining that the application is in compliance with articles 8.1 and 8.3 of the Rules of Procedure. Under art. 10 of the Tribunal’s Rules of procedure, the Respondent shall have 30 calendar days to submit a reply.
4. The Tribunal has, on several occasions, considered matters of receivability on a priority basis without first transmitting a copy of the application to the Respondent or awaiting the Respondent’s reply before taking action to consider the claim (see *Hunter* UNDT/2012/036, *Milich* UNDT/2013/007, *Masyllkanova* UNDT/2013/033, *Kalpokas Tari* UNDT/2013/180, *Karambizi* UNDT/2018/001, *Madi* UNDT/2018/006, *Nwogu* UNDT/2018/041 and *Morales* UNDT/2019/158).
5. After a review of the application and its supporting documents, the Tribunal deems that the present matter can be determined on a priority basis without first transmitting a copy of the application to the Respondent for a reply.

Receivability

6. The issue arising for consideration is the receivability of the present application. In *Christensen* 2013-UNAT-335, the United Nations Appeals Tribunal (“the Appeals Tribunal”) held that “the UNDT is competent to review its own competence or jurisdiction in accordance with Article 2(6) of its Statute” when

determining the receivability of an application. The Appeals Tribunal went on to state:

This competence can be exercised even if the parties of the administrative authorities do not raise the issue, because it constitutes a matter of law and the Statute prevents the UNDT from receiving a case which is actually non-receivable.

7. The Tribunal has, accordingly, chosen to proceed by way of a judgment on receivability as it is competent to raise the issue of jurisdiction *sua sponte*.

8. In her application, the Applicant argues that she was not paid the full amount due for her services as a Consultant. She claims that even though she started working in March 2010, she was only paid as of May 2010 when she received her contract.

9. The Tribunal has reviewed the present application and finds that it is not receivable *ratione temporis* and *ratione personae*.

10. The Tribunal notes that while the Applicant contests a decision that took place in 2010, she only filed an application with the Tribunal in January 2020, that is around 10 years later.

11. The record shows that the Applicant requested management evaluation of the contested decision on 30 January 2020 and that she received a response on 31 January 2020 indicating that her request for management evaluation was time-barred. The same day, she filed the present application before the Tribunal.

12. In accordance with art. 8.4 of the Tribunal's Statute and art. 7.6 of its Rules of Procedure, an application shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision. The Applicant has clearly indicated in her application that the contested decision dates back to 2010 and, in such circumstances, her application is not receivable *ratione temporis*.

13. Furthermore, the Tribunal observes that while the Applicant indicated in her application that she was a staff member of the Organization, she contests, in fact, a decision related to her status as a Consultant. However, pursuant to articles 2.1 and 3.1 of the Tribunal's Statute, the status of a staff member is a necessary condition for access to the Tribunal. This interpretation has been upheld by the Appeals Tribunal notably in *Basenko* 2011-UNAT-139.

14. In *Basenko* UNDT/2010/145, the Dispute Tribunal addressed the issue of the limitation of its jurisdiction in the following terms:

In Judgments UNDT/2010/098, *Gabaldon*, and UNDT/2010/142, *Roberts*, the Tribunal held that the limitation of its jurisdiction to persons having acquired the status of staff member was the clear wish of the General Assembly. Indeed, the General Assembly, which had considered proposals to open the Tribunal to non-staff personnel, such as Interns and Type II gratis personnel (e.g., A/62/748, referred to in A/RES/63/253), opted to reject such proposals and to limit the scope of the Tribunal's statute as reflected in article 3.1. Hence, this limitation does not constitute an unintended lacuna and there is no room for a larger interpretation of the actual wording of the statute. The limitation of the scope of the Tribunal's jurisdiction has been confirmed by the United Nations Appeals Tribunal in its Judgment 2010-UNAT-008, *Onana*.

15. It follows that the Applicant has no standing before this Tribunal and that the present application must also be denied on the grounds that it is not receivable *ratione personae* pursuant to art. 3.1 of the Tribunal's Statute.

Conclusion

16. In view of the foregoing, the Tribunal DECIDES:

To reject the application as irreceivable.

(Signed)

Judge Teresa Bravo

Dated this 27th day of April 2020

Entered in the Register on this 27th day of April 2020

Case No. UNDT/GVA/2020/007

Judgment No. UNDT/2020/060

(Signed)

René M. Vargas M., Registrar, Geneva