



UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/NY/2020/023  
UNDT/NY/2020/024  
Judgment No.: UNDT/2020/113  
Date: 9 July 2020  
Original: English

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**Before:** Judge Joelle Adda  
**Registry:** New York  
**Registrar:** Nerea Suero Fontecha

DOLGOPOLOV

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:**  
Nusrat Chagtai, ALD/OHR, UN Secretariat

## **Introduction**

1. On 13 June 2020, the Applicant filed an application contesting the Administration's decision not to lift his immunity to file a lawsuit against a Ukrainian official for slander. The Applicant further contests the Administration's rejection of his request for compensation for "loss of opportunity to get remedy for the slander" caused by said official. This application was registered under case no. UNDT/NY/2020/023 ("first application").

2. On 22 June 2020, the Applicant filed a second application contesting the Administration's decision not to lift his immunity to file a lawsuit against the Government of the United States for restrictions placed on G-4 visas issued to Russian citizens. The Applicant further contests the Administration's rejection of his request for compensation "for discriminatory practice imposed [...] by the host country government [...]". This application was registered under case no. UNDT/NY/2020/024 ("second application").

3. On 29 June 2020, the Respondent filed a motion to join the present cases and have receivability determined as a preliminary matter.

4. On 2 July 2020, by email from the Registry, the Tribunal informed the parties that the Respondent's request to have receivability on both matters determined as a preliminary issue was granted.

5. For the reasons stated below, the Tribunal finds that the applications do not contest administrative decisions and are both non-receivable *ratione materiae*.

## **Facts**

### *First application*

6. On 21 December 2019, a Ukrainian multimedia platform published an interview in which a Ukrainian official stated that staff members of the United Nations are spies working for the Russian intelligence agencies.

7. On 23 February 2020, the Applicant, a Russian citizen, emailed the Executive Office of the Department of Operational Support (“EO/DOS”) inquiring what actions he could pursue to protect his honour after the publication of the article.

8. EO/DOS responded that OLA had decided not to waive the Applicant’s privileges and immunities in order to enable the Applicant to bring a defamation suit in a domestic court of law.

9. On 25 February 2020, the Applicant 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 lift his immunity to bring a lawsuit before a domestic court. The Administration did not respond to this request, and, on 6 March 2020, he requested management evaluation of the decision not to grant him compensation for “reputational and moral damages”.

### *Second application*

10. On 30 January 2020, the Applicant requested compensation for the restrictions of movements imposed by the Government of the United States on G-4 visas issued to staff members of Russian citizenship. On 20 February 2020, the Applicant’s request was denied.

11. On 8 May 2020, the Applicant requested waiver of his diplomatic immunity in order to take legal action against the Government of the United States for the

restrictions placed on G-4 visas granted to Russian citizens. On 22 May 2020, the Applicant's request was declined.

12. On 22 May 2020, the Applicant requested management evaluation of the Administration's rejection to lift his immunity to enable him to pursue legal action against the Government of the United States.

### **Considerations**

#### *Preliminary matter*

13. In his motion to have receivability determined as a preliminary matter, the Respondent requested that both cases be joined. While the decisions contested in both applications are different, they raise similar legal issues. The Tribunal therefore finds that handling both matters jointly contributes to an expeditious case management. Therefore, in application of art. 19 of its Rules of Procedure, the Tribunal decides to join both applications.

#### *First application*

14. The Applicant argues that by refusing to lift his immunity and allow him to bring a lawsuit against the Ukrainian official for slander, the Administration failed to protect his professional reputation.

15. He states further that the refusal to lift his immunity in this case is distinguishable from the case *Kozul-Wright* 2018-UNAT-843 in which the Appeals Tribunal found that the Secretary-General's decision to lift a staff member's immunity was not a reviewable administrative distinction. The Applicant states that in *Kozul-Wright*, the staff member requested the non-removal of his immunity. In this case, the Applicant did, to the contrary, request the lifting of his immunity. The Administration's decision not to do so is purely administrative in nature and aimed at preventing him from exercising his rights.

16. With respect to the decision not to compensate him for the loss of opportunity to get remedy for the reputational losses caused by the statements of the Ukrainian official, the Applicant claims that the Administration's refusal to lift his immunity caused a damage to his reputation and that he is therefore entitled to compensation.

17. The Respondent responds that the Applicant did not request management evaluation of the decision not to lift his functional immunity and therefore, this part of the application is not receivable under art. 8(1)(c) of the Statute of the Dispute Tribunal and staff rule 11.2(a).

18. The Respondent argues further that the decision not to waive the Applicant's functional immunity is not a reviewable administrative decision under art. 2.1(a) of the Statute of the Dispute Tribunal because it does not adversely affect the terms and conditions of his contract of employment. The Respondent further states that privileges and immunities are conferred upon staff members in the interests of the Organization and not for their personal benefit.

19. The Respondent recalls that in *Kozul-Wright*, the Appeals Tribunal confirmed that such a decision is not administrative but rather "executive or political in character" and therefore not reviewable.

20. With respect to the Administration's refusal to compensate the Applicant, the Respondent submits that the Applicant has no right under his contract to take legal action against third parties or be compensated by the Organization for the actions of third parties.

21. The Tribunal finds that the refusal to waive the Applicant's immunity is not an administrative decision capable of review as clearly stated in *Kozul-Wright*, at paras. 62-64. Moreover, as the Respondent points out, the Applicant failed to request management evaluation of this contested decision and his challenge in this respect is therefore not receivable under staff rule 11.2(a).

22. Finally, given that the decision not to lift the Applicant's immunity is not an administrative decision capable of judicial review, the request for compensation for any harm caused by such decision is consequently also beyond the scope of the Tribunal's competence.

*Second application*

23. In essence, the Applicant argues that by declining his request to lift his immunity and allow him to pursue legal action against the Government of the United States, the Administration failed to protect his fundamental right to seek effective remedy for acts violating his human rights.

24. He restates that that the refusal to lift his immunity in this case is distinguishable from the case *Kozul-Wright* in which the Appeals Tribunal found that the Secretary-General's decision to lift a staff member's immunity was not a reviewable administrative distinction. The Applicant states that in *Kozul-Wright*, the staff member requested the non-removal of his immunity while the decision not to lift the Applicant's immunity was purely administrative in nature and aimed at preventing him from exercising his rights.

25. The Tribunal has previously stated that the decision not to lift a staff member's immunity is not an administrative decision capable of judicial review. Therefore, the Applicant's challenge to the decision not to lift his immunity in order to sue the Government of the United States over the restrictions placed in his G-4 visa is not receivable.

26. With respect to the Applicant's request for damages, the Respondent states that the Applicant failed to request management evaluation of this decision. He further states that the Applicant has no right under his terms of employment to compensation for damages caused by a third party. Moreover, the Respondent submits that the Applicant was not adversely affected by the restrictions placed in his G-4 visa as his visa was renewed and he continues to receive his full salary.

27. The Tribunal notes that, as the Respondent rightly points out, the Applicant failed to request management evaluation of the Administration's refusal of his claim for compensation. This part of his application is therefore not receivable under art. 8.1(c) of the Tribunal's statute and staff rule 11.2(a).

28. Moreover, given that the decision not to lift the Applicant's immunity is not an administrative decision capable of judicial review, the request for compensation for any harm caused by such decision is consequently also beyond the scope of the Tribunal's competence.

29. In light of the above, the Tribunal finds that both the first and second applications are not receivable *ratione materiae*.

### **Conclusion**

30. Cases UNDT/NY/2020/023 and UNDT/NY/2020/024 are dismissed as not receivable.

*(Signed)*

Judge Joelle Adda

Dated this 9<sup>th</sup> day of July 2020

Entered in the Register on this 9<sup>th</sup> day of July 2020

*(Signed)*

Nerea Suero Fontecha, Registrar, New York