



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/040

Judgment No.: UNDT/2024/087

Date: 29 October 2024

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

DOLGOPOLOV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Lucienne Pierre, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a staff member of the Department of Operational Support (“DOS”), contests “the failure of the Secretary-General to protect him in his residence and to safeguard the immunity of the Organization”. As the contested decision, the Applicant refers to an email of 22 August 2023 from the Deputy Chief of the Safety and Security Service of the Department of Safety and Security (“the Deputy SSS Chief” and “DSS”, name redacted for privacy reasons) to him. He further states that the “issue is an attempt by [a specific] law enforcement agency of the host country to recruit the Applicant as its agent against his country of nationality”.

2. The Respondent contends that the application is not receivable and, in any event, without merit.

3. For the reasons set out below, the application is rejected.

Facts

4. As an annex to his application, the Applicant appends a series of email exchanges between himself and DOS, SSS, and various United Nations officials. The following factual chronology is mostly based on these emails.

5. On 28 March 2023, the Applicant wrote to DOS that “... as I informed you during our meeting, I was approached by persons who stated that they were agents of [the relevant the law enforcement agency of the host country, name redacted] who tried to recruit me to work for them but I did not cooperate with them”. The Applicant added that he believed that “this is another violation of the [United Nations] Charter, Host Country Agreement and other relevant legal documents and I am concerned that my non-cooperation will lead to delays in my ... visa renewal or even in the refusal of the host-country government to renew my ... visa”. The

Applicant requested DOS “to bring this information to the attention of the Secretary-General for possible investigation and action”.

6. On 31 March 2023, the Applicant wrote to DOS that, “I would like to inform you that I just discovered that somebody tampered with evidence I have for the attempt of person[s] who claimed to be agents of [the relevant law enforcement agency]. That means that the fact that I formally complained about the attempt to recruit me by the group of alleged [law enforcement agency] agents became known to that group and that those people are working on the cover up of that attempt. I am concerned that they can kill me or organize provocation aimed to discredit me by fabricating [a] criminal case against me. Therefore, I am requesting the implementation of my immediate protection. I will also take steps to ensure should something happen to me the information about the attempt will become public and passed to the government of my country”.

7. Later the same date (31 March 2023), a DOS staff member wrote the Applicant that “I have referred your request to DSS and have been advised that an investigator will be in touch to assist you”. According to the Respondent’s reply, the Officer-in-Charge of the Special Investigations Unit (“the OiC/SIU”) in SSS then spoke to the Applicant via telephone, although it is unclear when the call exactly took place.

8. On 3 April 2023, the Applicant also met with an SSS investigator (according to a 25 April 2023 email of the Applicant to DOS). During this meeting, the Applicant “shared with [the SSS investigator] the history in chronological order from the moment [he] was approached by persons who claimed to be agents of [the relevant law enforcement agency] to the time when [he] seized [the Tribunal: or perhaps rather “ceased”] all communication with them”. He “shared with the investigator the copy of [a WhatsApp] chat which was used by one of the persons described above”. He further indicated that “[t]he chat content was changed by unknown person/people to make it look like a friendly conversation between two people”, that the “change in the chat caused [him] to panic because [he] understood

that somebody was trying to tamper with the evidence”, and that he “was afraid that they could try to kill or discredit [him] to cover up their activity”. The Applicant stated that “unfortunately, the referral of [his] case to SSS was not helpful because: [a] The SSS could only record statement but did not have any capacity to conduct a proper investigation with the required forensic research. [b] They would only be able to hand over [his] case to local law enforcement, which was one of the most probable participants in [his] case and it would be the same as the handover of the crime investigation to the criminal who had committed that crime”.

9. On 14 April 2023 (after two follow-up emails from the Applicant on 6 and 11 April 2023), the DOS staff member responded the Applicant that, “I have contacted DSS and have been informed that they looked into your case and [spoke] with you several times since last Friday. They also informed me that, while they have not found any evidence of a threat against you, they are monitoring the case and will remain in contact with you”.

10. On 4 May 2023, the Applicant met with the SSS investigator again (in accordance with a 5 May 2024 email from the Applicant to the Deputy Secretary-General and the Chef de Cabinet, copied to DOS). According to the Applicant, SSS “again informed [him] that the SSS mandate is to ensure [his] personal physical safety on [the United Nations] grounds only, and that SSS would not be able to provide any other services”. He added that, “Currently, I believe that I am already suffering from vindictive retaliatory actions of the host country government: I am waiting for the renewal of my ... visa for four months already. I have elderly parents in [the Applicant’s home country, name redacted], who are in bad health conditions and required my assistance, and the absence of valid ... visa prevent me from helping them. In addition, I do not have any concerns regarding my personal physical safety on [the United Nations] grounds. Therefore, I request that you provide me with name and contact details of the focal point who will help with protection from vindictive retaliatory actions of the host country government”.

11. On the same date (4 May 2023), the Applicant also emailed DOS, stating: “Thank you very much for your support—I met with the SSS investigator today and we agreed on a solution which is most effective at this moment. In regards to [the Under-Secretary-General’s] opinion on the best possible course of action—I am confused—could you kindly let me know what he thinks, please?”

12. On 18 May 2023, the DOS staff member replied to the Applicant’s 4 May 2023 email. Regarding the Applicant’s “personal safety”, it was stated that, “[As] we had previously noted, if you have concerns about your safety you should be in touch directly with DSS. There is no mechanism outside of DSS through which to carry out investigations or provide personal protection. Additionally, from the limited information provided, we understand that DSS have not been able to establish any credible threat to you or your family. I’m sure DSS would be happy to re-engage with you should you have additional information or wish DSS to refer the matter to local law enforcement”.

13. On 3 August 2023, the Applicant wrote to DOS that “I met today with DSS focal point and he informed me that SSS ... is not aware of any threat and risk assessment conducted which determined that there were no credible threats towards me and my family—could you point out who in DSS informed you about the absence of credible threats, please?”

14. On 8 August 2023, the DOS staff member responded the Applicant that “I see you are already in communication with DSS, who are best placed to answer your questions on all security matters you have raised”.

15. On the same date (8 August 2023), the Applicant replied to the 18 May 2023 email from DOS, stating that, “In your email on behalf of [the Deputy Secretary-General and the Chef de Cabinet] you stated: ‘Additionally, from the limited information provided, we understand that DSS have not been able to establish any credible threat to you or your family.’ This means that a specific DSS official provided you with this information. However, DSS focal point did not agree with

these findings and was not aware of these conclusions. Therefore, I would like to ask you who in DSS provided you with that information?” (emphasis in original omitted).

16. On 10 August 2023, the Applicant wrote DOS again, stating that, “This is a polite follow-up to my email ... As a former security professional, I have grounds to doubt the credibility of the information (Probably even in the existence of proper threat and risk assessment which is supposed to be conducted in such cases) in your email regarding the safety of my family and myself. I have a technical question for the person who provided you with that information. Therefore, I would like to ask you to let me know the name of the DSS official who provided you with this information”.

17. After another follow-up email from the Applicant on 17 August 2023, the DOS staff member responded the Applicant that, “I responded to your email on 8 August (pls see attached). Any inquiries you might have about matters related to DSS can be directed to the [the Deputy SSS Chief], whom I copy”.

18. On 21 August 2023, the Deputy SSS Chief wrote to the Applicant that, “Considering that you are not willing to pursue it further along with local law enforcement officials, based on the limited information you provided to us, at this point it is my professional assessment that there is no credible threat to you or your family related to your functions as a [United Nations] staff member. Should you be willing to disclose any additional information to us, I would be happy to revisit my assessment”.

19. On the same date (21 August 2023), the Applicant wrote the Deputy SSS Chief that, “I take the safety of my family and myself very seriously and I have grounds to doubt in the credibility of your conclusion. Can you kindly let me know if you conducted proper security threat and risk assessment or this conclusion is your professional opinion?”

20. On 22 August 2023, the Deputy SSS Chief responded to the Applicant that, “The security risk assessment methodology adopted by [the United Nations Security

Management System] is not applicable to a case like this. My assessment is based on the review of the messages you presented to us, your statements to [the SSS investigator], the discretion of my post and 33 years of police/security experience. Until such time as you present us with additional evidence or decide to report your concerns to Host Country law enforcement, I stand by my opinion”.

21. On the same date (22 August 2023), the Applicant wrote to the Deputy SSS Chief that, “In your professional opinion, what geographical area did you consider: [United Nations] grounds [names of various localities in the host country redacted]? What specific threats did you consider? Did you consider the possibility of retaliatory actions from host country government? Please, note that I am looking forward to sharing all information about [the relevant law enforcement agency] attempt to recruit me to have those who breached international law accountable for their actions. Please, note that I take as retaliation your and [the DOS staff member’s] threat to take this matter to host country government because it would be the same as the handover of the crime investigation to the criminal who had committed that crime. If I hear it one more time, I will file complaint to [the Office of Internal Oversight Services, “OIOS”]”.

22. Later the same date (22 August 2023), the Deputy SSS Chief responded to the Applicant that “Your constant messages and accusations are indeed harassment to myself and others. Feel free to take it up with OIOS. I will no longer engage with you in this discussion”.

23. On 16 September 2023, the Applicant filed a request for management evaluation of “[t]he personal subjective unprofessional assessment of [the Deputy SSS Chief] that there were no credible threats to me and my family for my refusal to be recruited” by the relevant law enforcement agency. He further stated that SSS “was designated as a focal point for dealing with [the law enforcement agency’s] attempt to recruit me—it was communicated to me on behalf of [the Deputy Secretary-General and the Chef de Cabinet] by [the DOS staff member] but [the

Deputy SSS Chief] in his last email refused to perform his duties and to help me using invented harassment as an excuse”.

Consideration

Receivability

Was the Applicant’s request for management evaluation filed in a timely manner?

24. Pursuant to staff rule 11.2(c), a “request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested”. From art. 8.3 of the Dispute Tribunal’s Statute, it further follows that “[t]he Dispute Tribunal shall not suspend or waive the deadlines for management evaluation” (see also the Appeals Tribunal in, for instance, *Kamara-Joyner* 2023-UNAT-1400, para. 97).

25. As for establishing the date of notification under staff rule 11.2(c), the Appeals Tribunal has consistently held that this is “based on objective elements that both parties (Administration and staff member) can accurately determine” (see, for instance, *Rosana* 2012-UNAT-273, para. 25). In this regard, the “Appeals Tribunal has repeatedly ruled that the “decisive moment of notification for purposes of Staff Rule 11.2(c) is when ‘all relevant facts ... were known, or should have reasonably been known’” (see *Auda* 2017-UNAT-746, para. 31). Also, the “case law of the Appeals Tribunal is to the effect that the repetition of an administrative decision ... does not reset the time limit” for filing a request for management evaluation (see, for instance, *Das* 2024-UNAT-1433, para. 50).

26. The Appeals Tribunal further explained in *Houran et al.* 2020-UNAT-1019 that “there is no explicit requirement for written notification as a prerequisite to contest an administrative decision”, but “if there is no written notification, it is incumbent on the body reviewing the matter to consider whether the circumstances

surrounding the verbal communication still constitutes notification” (see para. 30, as also affirmed in, for instance, *Elmenschawy* 2021-UNAT-1176, para. 25)

27. In the present case, the Respondent contends that the 14 April 2023 email from the DOS staff member notified the Applicant of the contested decision. The Applicant’s 16 September 2023 request for management evaluation was therefore filed after the expiry of the statutory and mandatory 60-day time limit of staff rule 11.2(c) and untimely.

28. The Applicant, on the other hand, submits that the contested decision was notified to him via the Deputy SSS Chief’s 22 August 2023 email. He argues that in the emails sent to him on 14 April 2023 and 18 May 2023, the DOS staff member rather informed him “about DSS / the respondent’s decision—determination that there were no credible threats to [him and his] family”. When the Applicant then asked “about that DSS decision and confirmed [his] willingness to disclose all information related to [the relevant law enforcement agency’s] attempt to recruit [him] in [his] email sent to [the Deputy SSS Chief], he blatantly refused to deal with [the relevant law enforcement agency’s] attempt to recruit [him] by calling [his] requests for help as ... ‘indeed harassment to myself and others’”. Accordingly, the administrative decision communicated to the Applicant on 22 August 2023 was “the blatant refusal to deal with [the relevant law enforcement agency’s] attempt to recruit [him] by the respondent”, which is “completely different from the administrative decision communicated to [him] on [14] April [2023]”. The Applicant therefore believes that the “time for the requesting management evaluation started to run from 22 August 2023—when the original decision was communicated to [him]”.

29. The Tribunal notes that for the Applicant’s request to be timely under staff rule 11.2(c) and thereby for the application to be receivable, since the Applicant filed his request for management evaluation on 16 September 2023, the contested decision should have been notified to him no later than 17 July 2023, counting 60 days backwards the filing date.

30. The Applicant himself stated in his written summaries of the meetings with the SSS investigator on 3 April and 4 May 2024 that DSS/SSS had informed him that they “did not have any capacity to conduct a proper investigation with the required forensic research”, “would only be able to hand over [his] case to local law enforcement”, and “would not be able to provide any other services” than ensuring his “safety at the [United Nations] grounds” (see, the Applicant’s emails of 25 April 2023 to DOS and of 5 May 2024 to the Deputy Secretary-General, the Chef de Cabinet, and copied to DOS, which are both quoted under the Facts).

31. By email of 14 April 2023, the DOS staff member informed the Applicant that DOS “had contacted DSS and have been informed that they looked into your case and [spoke] with you several times since last Friday. They also informed me that, while they have not found any evidence of a threat against you, they are monitoring the case and will remain in contact with you”. By email of 18 May 2023, the DOS staff member reiterated that “from the limited information provided, we understand that DSS have not been able to establish any credible threat to you or your family. I’m sure DSS would be happy to re-engage with you should you have additional information or wish DSS to refer the matter to local law enforcement”.

32. The Tribunal finds that, with reference to the Appeals Tribunal’s above quoted jurisprudence, by 14 April 2023, if not even before (given the Applicant’s meeting summary of his 3 April meeting with the SSS investigator, as recorded in his 25 April 2023 email to DOS), or at the very latest by the 18 May 2023 email from DOS, the Applicant should reasonably have been able to accurately determine that in the given circumstances, DSS/SSS had decided to reject his request to take any action regarding his complaint concerning the relevant law enforcement agency.

33. Subsequently, it also follows from the Deputy SSS Chief’s emails of 21 and 22 August 2023 that at this later moment, the Applicant had not presented DSS/SSS with any new or additional information and that the decision not to take any further action remained the same. Thus, the Deputy SSS Chief in his emails of 21 and 22 August 2023 to the Applicant stated that “[s]hould you be willing to disclose any

additional information to us, I would be happy *to revisit my assessment* and that “[u]ntil such time as you present us with additional evidence or decide to report your concerns to Host Country law enforcement, *I stand by my opinion*” (emphasis added).

34. In this regard, the Tribunal notes that the Appeals Tribunal’s jurisprudence does not require that a decision be communicated by the actual decisionmaker in order to be lawfully notified under staff rule 11.2(c). As such, no specific prerequisites are stated in this regard other than that the Appeals Tribunal has ruled that it is to be based on “objective elements”. In the present case, the Tribunal finds that the uncontested written meeting summaries by the Applicant of his 3 April and 4 May 2023 meetings with the SSS investigator, as well as DOS’s 14 April and 18 May 2023 emails constitute such elements. From all these communications, it is evident that DSS/SSS had decided to reject the Applicant’s request. The 21 and 22 August 2023 emails of the Deputy SSS Chief were therefore nothing but repetitions of the already conveyed contested decision.

35. Also, according to the Appeals Tribunal, the notification did not have to be in writing if the circumstances make it clear that the decision has been notified to the Applicant. The Applicant’s meeting summaries of his 3 April and 4 May 2023 meetings with the SSS investigator (as recorded by himself in his emails of 25 April and 5 May 2023 to DOS and the Deputy Secretary-General and the Chef de Cabinet, copied to DOS, respectively) explicitly show that the Applicant fully understood that DSS/SSS did not intend to do anything further unless the Applicant provided them with further information and evidence and/or contacted the local law enforcement agencies. The argument could therefore reasonably be made that the contested decision was already notified to the Applicant at the 3 April 2023 meeting between the Applicant and SSS investigator, but this is not of decisive importance to the issue of the timeliness of the Applicant’s management evaluation request.

36. Accordingly, the Tribunal finds that the Applicant’s 16 September 2023 request for management evaluation was not filed in a timely manner as it was filed after the expiry of the 60-day deadline stipulated in staff rule 11.2(c), which, in the

present case, at the very latest and if not before, would have been 18 July 2023, namely 60 days after DOS's 18 May 2023 email to the Applicant.

37. However, even if for this reason, the Tribunal does not find that the application is receivable, it will, for the sake of completeness, also assess the other non-receivability claims by the Respondent.

Has the issue already been determined in another judgment of the Dispute Tribunal (*res judicata*)?

38. The Appeals Tribunal has held that “[t]he authority of a final judgment—*res judicata*—cannot be so readily set aside” (see, *Costa* 2010-UNAT-063, para. 4, which has been affirmed in a number of subsequent judgments, including *Hossain* 2024-UNAT-1450). Also, “a person may not bring a case about an already resolved controversy (*res judicata*)” (see, *Kallon* 2017-UNAT-742, para. 44). The principle of *res judicata* has also endorsed in a number of other Appeals Tribunal judgments (see, for instance, *Soni* 2024-UNAT-1414, para. 25).

39. The Respondent submits that the matters of the present case are already adjudicated by the Dispute Tribunal and therefore *res judicata*, because in Case No. UNDT/NY/2023/030 (*Dolgopolov*), the Applicant “contested the same issues and made nearly identical arguments as those in the [present] Application”. He further contends that “[b]y way of [*Dolgopolov*] UNDT/2024/023, the Dispute Tribunal determined the Applicant’s claims in Case No. UNDT/NY/2023/030 were not receivable”. He also notes that the Applicant has “appealed Judgment No. UNDT/2024/023 to the United Nations Appeals Tribunal, where the matter is currently pending”.

40. The Tribunal notes that as admitted by the Respondent, the Applicant’s arguments in the present case are not fully identical to those made in Case No. UNDT/NY/2023/030. As follows from the facts of *Dolgopolov* UNDT/2024/023, the email exchange between the Applicant and the Deputy SSS Chief of 21 and 22 August 2023 were also not before the Dispute Tribunal in that case.

41. Consequently, the Tribunal finds that there is no issue of *res judicata* in the present case.

Other receivability claims

42. The Respondent further submits that the application is not receivable because (a) decisions about “the privileges and immunities of the Organization are not appealable administrative decisions”, and (b) the application “is premature, in view of the pending invitations to the Applicant to provide additional information to allow for further assessment”.

43. The Tribunal also rejects these two claims. Firstly, the merits of the present case do not solely turn on a question of privileges and immunities (see further below). Secondly, the contested decision was on its own terms a final decision; DSS/SSS inviting the Applicant to provide further information and/or evidence does not make it a preliminary and non-appealable decision under art. 2.1(a) of the Statute.

Did DSS/SSS act within the scope of its authority when rejecting the Applicant’s request for an intervention with the relevant law enforcement agency?

44. In order to ensure finality to the present case before the Dispute Tribunal, even if the Tribunal has already found that the application is not receivable, it will also provide its findings on the merits of the case.

The legal framework

45. Article 100.2 of the United Nations Charter stipulates that, “Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities”.

46. Staff regulation 1.2(c) provides that, “In exercising this authority, the Secretary-General shall seek to ensure, having regard to the circumstances, that all

necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them”.

47. In this regard, the Tribunal notes that the Appeals Tribunal held in *AAG 2022-UNAT-1308* that “Staff Regulation 1.2(c) establishes a duty of care of the Organization towards its staff members”. When the Administration exercises its authority under this duty of care, it “should seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them”. Also, the “duty of care must be exercised with reasonable discretion, necessary for the managerial process to run, manage and operate the Organization” (see, paras. 69 and 70).

48. Concerning the Organizations’s duty of care towards its staff members, the Dispute Tribunal also provided in *Campeau UNDT/2017/091* that “it is a commonly accepted principle of international law that International Organizations have a duty of care towards their staff members”. The duty of care “has a multidimensional nature and can have different meanings depending on the context in which it is applied”. The Organization’s duty of care towards its staff implies, “first and foremost, that it has to provide a healthy and safe working environment for and to ensure the safety of its staff”, which “may encompass a duty to protect its staff against outside risks, e.g. when divulging information, including personal data, that may impact on the safety and security of the staff member or his immediate family”. In *Campeau*, it was “understood as the obligation of the Organization to safeguard the physical and psychological integrity of the Applicant and his family, as well as his and his family’s personal data” (See, para. 38.)

49. On the other hand, the Tribunal observes that ST/SGB/198 (Security, safety and independence of the international civil service), to which the Applicant refers in his submissions (see more below) in regard to the duty of care, is no longer in force.

50. The Secretary-General’s discretionary administrative authority is, however, not unfettered. In the Appeals Tribunal’s seminal judgment in *Sanwidi 2010-UNAT-*

084, it stated that, “Administrative tribunals worldwide keep evolving legal principles to help them control abuse of discretionary powers. There can be no exhaustive list of the applicable legal principles in administrative law, but unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias, capriciousness, arbitrariness and lack of proportionality are some of the grounds on which tribunals may for good reason interfere with the exercise of administrative discretion” (see, para. 38).

51. When “judging the validity of the Secretary-General’s exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate”. The Tribunal can “consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse”. But “it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him”. Nor “is it the role of the Tribunal to substitute its own decision for that of the Secretary-General” (see, *Sanwidi*, para. 40).

52. In exercising judicial review, the “role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate”. As a result of judicial review, the Tribunal “may find the impugned administrative decision to be unreasonable, unfair, illegal, irrational, procedurally incorrect, or disproportionate”. During this process “the Dispute Tribunal is not conducting a merit-based review, but a judicial review”. Judicial review “is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decisionmaker’s decision”. This process “may give an impression to a lay person that the Tribunal has acted as an appellate authority over the decision-maker’s administrative decision”. This “is a misunderstanding of the delicate task of conducting a judicial review because due deference is always shown to the decision-maker, who in this case is the Secretary-General” (see, *Sanwidi*, para. 42).

The parties' submissions

53. The Applicant's submissions may be summarized as follows:

a. The "attempt" by the relevant law enforcement agency "to recruit the staff member ... is a violation of the privileges and immunities of the Organization" and "the failure of the Secretary-General and the administration makes them an accomplice". ST/SGB/198, para. 5, "imposes a duty of care on the administration, in cases of non-observance of the applicable privileges and immunities by the Government concerned, the duty of care to preserve the contractual rights of the staff member until the case is clarified". Reference is also made to the International Court of Justice's advisory opinion of 29 April 1999 in which it is stated that "it is up to [the Secretary-General] to assess whether its agents acted within the scope of their functions and, where he so concludes, to protect these agents, including experts on mission, by asserting their immunity. This means that the Secretary-General has the authority and responsibility to inform the government of a [M]ember State of his finding and, where appropriate, to request it to act accordingly" (see, para. 60).

b. The "administrative decision in question is [a] unique decision—this is a first time when the administration blatantly refused to help [the Applicant]". Before that, "the administration was trying 'to save the face' and imitated activities on this case". The Management Evaluation Unit's reference to "DSS's comment that, as stated in the United Nations Security Management System Policy Manual ... 'the primary responsibility for the Government' is not applicable in this case because of the following reasons": (a) in "no jurisdiction the crime investigation is given to the criminal who have committed that crime", and (b) the Applicant's "main concern is not [his family's and his own] physical security but the expectation that the host country government could delay or non-renew [his] ... visa, or deny [his] entry to the duty station for [his] report of [the relevant law enforcement agency's] attempt to recruit [him]".

c. However, “what the Respondent defined as: ‘an attempt by the law enforcement agency of the host country to recruit the Applicant as its agent against his country of nationality’ is an attempt of the host country government to force [him, a United Nations staff member and an international civil servant] to get involved in the prohibited conduct and to violate the provisions of the [United Nations] Charter, [the] Staff Regulations and Rules, the Standards of conduct for the international civil service”.

d. The Applicant “took that attempt very seriously because the [host country] government did not issue the ... visa to [the United Nations] staff nationals of [the Applicant’s country] at [certain professional levels] and the absence of any actions from the respondent side to help the affected staff—one of them lost his contract and another one was forced to move to another duty station ([the Applicant] informed the respondent about that problem ...).”.

e. In accordance with that staff rule 1.2(c), “in good faith, [the Applicant] reported the attempt to the respondent on 28 March 2023 in hope, that the respondent would help [him] and properly handle this case, however the respondent first tried to actively discourage [him] from fulfilling [his] duties established by Staff Rule 1.2 (c), then refused to communicate with [him], and at the end, during the management evaluation decided that the recruitment attempt did not take place, using only the partial information, [he] shared with the respondent without conducting proper investigation”.

f. The Applicant has “enough evidence to prove that the recruitment attempt did take place and [is] ready to share it with [any] independent body assigned for the investigation”.

g. The “referral of this case to [SSS] was a very questionable decision because: [a] The SSS does not have a capacity to conduct proper investigation. [b] The SSS is heavily dependent on the cooperation with and

support of the host country law enforcement in the provision of its services, including the provision of the personal protection to the [United Nations] Secretary-General and other high level [United Nations] officials ([the Applicant] worked for nine years in the SSS on different assignments from 2005 to 2014 ...).”.

h. When the relevant law enforcement agency attempted to “recruit [the Applicant] the host country government also violated article 100.2 of the United Nations Charter”. Reference is also made to *Campeau*, para. 38.

i. In the present case, “the Secretary-General has a responsibility to protect the staff member against violation of [art. 100.2] of the [United Nations] Charter by the host country government”. Also, a “violation of the privileges and immunities of the International Civil Servant is a violation of the [art. 105.2] of the [United Nations] Charter”. ST/SGB/198, para. 5 “imposes a duty of care on the administration, in cases of non-observance of the applicable privileges and immunities by the Government concerned [and] duty of care to preserve the contractual rights of the staff member until the case is clarified”.

54. The Respondent, in essence, submits that DSS/SSS acted within its scope of authority when deciding to reject the Applicant’s request for intervention in the relevant law enforcement agency’s alleged attempt to recruit the Applicant as an agent.

The lawfulness of the contested decision

55. In support of the Respondent’s contentions, he appends to his reply a WhatsApp text message exchange from November/December 2021 between the Applicant and another person. He contends that this is the WhatsApp text message exchange that the Applicant provided to DSS/SSS as the sole evidence of the purported attempt to recruit him as an agent. The Applicant does not deny this, but explains in the application that this WhatsApp text message exchange had been

tampered with and made to “look like just a common conversation”. The Tribunal notes that in the relevant WhatsApp text message exchange, the Applicant and another person refer to each other by first names and appear to be on very friendly and cordial terms as they write about different personal affairs, mainly on whether to meet up for a fishing trip or a drink. No indication whatsoever, explicit or implicit, is made of any attempt to recruit him as an agent, or otherwise intending to solicit any type of official and/or confidential information from him.

56. The Applicant, conversely, submitted no evidence of the purported attempt to recruit him as an agent or of the alleged tampering with the WhatsApp text message exchange. Instead, he submits in the application that, prior to the tampering allegedly occurring, he had been approached several times, also through WhatsApp, by persons, who claimed to be employees of the relevant law enforcement agency and that, eventually, it “became apparent that these persons were gradually trying to convince [him] to work for them to gather information” from his country’s diplomatic service.

57. In the reply, the Respondent further explains that the “OiC/SIU [on 31 March 2023 or immediately thereafter, see the facts above] advised the Applicant that further action would require the involvement of Host Country law enforcement, but the Applicant refused to consent to pursue the matter with Host Country law enforcement. As a result of the Applicant’s decision, DSS could not take any further action regarding the Applicant’s expressed security concerns. DSS lacked the legal jurisdiction and technical means to investigate the Applicant’s claims that the WhatsApp conversation had been subject to tampering. DSS does not have subpoena power over WhatsApp, and DSS does not have the forensic capability to track and identify the person with whom the Applicant was allegedly communicating” (reference to footnote omitted).

58. The Tribunal accepts these explanations of the Respondent. It further notes that the Applicant has not as much as explained how he, as a United Nations staff member, would have access to any confidential information from his country’s

diplomatic service for which reason the alleged attempt, on the face of it, would appear pointless and futile.

59. In the absence of any further information and/or evidence, the Tribunal finds that DSS/SSS indeed acted within its scope of discretion under staff regulation 1.2(c) and art. 100.2 of the United Nations Charter, when deciding not to take any further action on the Applicant's request for action regarding his complaint concerning the relevant law enforcement agency.

60. Consequently, the Tribunal finds that the contested decision was lawful.

Conclusion

61. The application is rejected on receivability.

(Signed)

Judge Joelle Adda

Dated this 29th day of October 2024

Entered in the Register on this 29th day of October 2024

(Signed)

Isaac Endeley, Registrar, New York