



Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

SELLAMI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Federica Midiri, UNDP

Introduction

1. On 12 April 2024, the Applicant, a former staff member with United Nations Development Programme (“UNDP”), filed an application challenging: (a) an alleged data breach which involved the unauthorized disclosure of personal information, including the full name and bank account number of the Applicant; and (b) the decision by the Office of Staff Legal Assistance (“OSLA”) not to provide legal assistance to the Applicant in relation to the alleged data breach.
2. On 4 May 2024, the Respondent filed a motion submitting that the application was not receivable and requested that the Dispute Tribunal determine the receivability of the application as a preliminary matter.
3. By email dated 21 May 2024, the Tribunal informed the parties that the Duty Judge had granted the Respondent's motion to determine receivability as a preliminary matter.
4. By Order No. 060 (NY/2024) dated 24 May 2024, the Tribunal directed the Applicant to file a response to the Respondent’s motion on receivability.
5. On 28 May 2024, the Applicant duly filed his response.
6. On 29 May 2024, the case was assigned to the undersigned Judge.

Receivability as a preliminary matter

7. The Appeals Tribunal has held that the Dispute Tribunal may consider the receivability of an application as a preliminary matter before reviewing the merits of the case (see, for instance, *Pellet* 2010-UNAT-073). Based on the 4 May 2024 motion of the Respondent on non-receivability, and for the fair and expeditious disposal of the case in accordance with art. 19 of its Rules of Procedure, the Tribunal has decided to do so.

The parties' submissions on receivability

8. The Respondent's contentions may be summarised as follows:
- a. The application is not receivable *ratione materiae* on three grounds. First, the Applicant did not submit a management evaluation request of the decisions that he contests. The Applicant does not assert that the decisions arise from the technical panels, which do not require a management evaluation request prior to appeal to the Tribunal under staff rule 11.2(b). Accordingly, the Respondent submits that the application should be found non-receivable on this basis.
 - b. Second, the Applicant does not identify an administrative decision by UNDP that is susceptible to challenge under art. 2(1)(a) of the Dispute Tribunal's Statute. The first matter that the Applicant contests – the UNDP “data breach” – does not constitute an administrative decision. The data breach is not a unilateral decision taken by UNDP, nor has the data breach adversely affected the rights of the Applicant in regard to his contract of employment. The jurisprudence of the Appeals Tribunal defines an administrative decision susceptible to challenge as “a unilateral decision of an administrative nature taken by the administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another and produces direct legal consequences” (*Lloret Alcañiz et al*, 2018-UNAT-840, para 61).
 - c. Third, the Applicant challenges OSLA's decision not to provide legal assistance upon his request. The Appeals Tribunal has accepted that administrative decisions taken by bodies which are operationally independent of the Secretary-General, such as OSLA, are reviewable administrative decisions (*Larkin*, 2011-UNAT-135; *Worsely*, 2012-UNAT-199). However, as an independent body, OSLA is not part of

UNDP. As a result, OSLA's decision is not receivable *ratione materiae* under the present application, which has been brought against UNDP.

9. The Applicant's contentions may be summarised as follows:
 - a. The Applicant acknowledges that a request for management evaluation was not formally submitted in relation to the contested decisions. He, however, states that "it is crucial to consider the urgency and severity of the data breach. The unauthorized disclosure of [the Applicant's] personal information demanded immediate judicial intervention to mitigate potential risks to [the Applicant's] privacy and financial security. Any delay caused by the formal [request for management evaluation] process would have further compromised [the Applicant's] interests".
 - b. The Applicant has identified an administrative decision. The data breach constitutes an administrative decision as it directly impacts the Applicant's terms of employment and personal data rights. UNDP is obligated to protect personal data and uphold the fundamental rights to privacy. The failure to safeguard the Applicant's personal information and the inadequate response to the breach are unilateral actions by UNDP that adversely affect the Applicant's rights.
 - c. The decision by OSLA not to provide legal assistance further exacerbated the issue. As an independent body mandated to assist staff members, OSLA's refusal to support the Applicant in addressing a serious breach of the Applicant's privacy rights constitutes an administrative decision affecting the Applicant's access to justice.

Legal framework

10. Under art. 2.1(a) of the Dispute Tribunal’s Statute, the Tribunal “is competent to hear and pass judgment on applications” against administrative decisions “alleged to be in non-compliance with the terms of appointment or the contract of employment”.

11. Staff rule 11.2(a) requires that “[s]taff members wishing to formally contest an administrative decision alleging non-compliance with their contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1(a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision”.

12. Article 8.1(c) of the Dispute Tribunal’s Statute states that an applicant wishing to challenge an administrative decision before the Tribunal must first submit it for management evaluation.

Discussion

13. The Tribunal finds that the application is not receivable *ratione materiae* because the Applicant, by his own admission, failed to request management evaluation of the contested decisions. In accordance with staff rule 11.2(a), an application is only receivable if an applicant first sought management evaluation of the administrative decisions he or she wishes to challenge. The Applicant, however, has not requested management evaluation of the decisions that he wishes to challenge in this application. As a result, the Dispute Tribunal cannot conduct a judicial review of the contested decisions.

14. Based on the foregoing, the Tribunal finds that the application not receivable *ratione materiae*.

Conclusion

15. The application is dismissed for lack of receivability.

(Signed)

Judge Joelle Adda

Dated this 10th day of June 2024

Entered in the Register on this 10th day of June 2024

(Signed)

Isaac Endeley, Registrar, New York