



that the rock-throwing was a common encounter in the line of duty, and officers were wary of this type of incident, because it had become a “local custom to frame an international [person] in order to ask money from UN”. The Applicant’s direct supervisor (of Spanish origin), who had been injured, and the UNPOL District Commander (of Portuguese origin) ordered the officers to leave the scene, advising that they would report the incident, which they did.

4. The Applicant states that some 51 days after the incident, in late September 2011, he was interviewed by a “PSDO officer”, who informed him that he was the subject of an internal investigation for allegedly failing to report the incident. The Applicant states that he was never informed that he was suspected or being charged with assault or destruction. The Applicant tendered a statement and also offered witnesses, if needed. Thereafter, he heard nothing further about the investigation. A month later the Applicant commenced his second extension of contract and was promoted as Officer-in-Charge of Moris Foun Police Post, achieving appraisals of “exceeding expectations” from the very same Portuguese District Commander present at the scene at the time of the incident, and two further commendations for his contribution to the Mission. He remained in the Mission for seven more months without hearing anything further about the incident. The Applicant states that he also has a confirmation from the prosecutor’s office in Dili, East Timor, that the criminal case against his colleague was closed as there was no evidence of wrongdoing on the part of the UNPOL officers. He contends that the decision of an independent Timor-Leste judicial authority is “more credible than an administrative matter conducted with obviou[s] unprofessionalism”.

5. The Applicant contends that the finding of the Romanian authorities that he was guilty of assault and destruction some two-and-a-half years after the incident, has, *inter alia*, breached his rights to a fair and impartial investigation, and on the basis of unfounded assumptions, prejudiced his rights to a further career with other UNPOL missions.

6. The Respondent contends that the application is not receivable *ratione personae* because the Applicant is not a staff member and cannot invoke the jurisdiction of the Tribunal since UNPOL is an international law-enforcement entity separately administered outside of the UN Secretariat. In terms of ST/SGB/2002/9 (Regulations Governing the Status, Basic Rights and Duties of

1. I'm not contesting a decision of Romanian Authority but an unlawful UN decision that breached my elementary rights and affects me. I'm not seeking for compensation; I'm looking just to clear my name and the image of Romanian Police Force.

2. Regarding the fact that I'm not considered a staff member, I would like to raise the following issue: if I'm not a staff member how come I can be the subject of an UN investigation and how come an UN disciplinary measure can be imposed upon me? UNPOL officers are serving with UN, are following UN's rules and procedures, so, unless UNPOL's are considered 2nd class persons, how it is possible to claim that I'm not allowed to contest a UN disciplinary decision? This shows me that I'm clearly discriminated (please see art. 7 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS) because I don't have the right to contest a UN decision, although art. 10 and 11 of THE UNIVERSAL DECLARATION OF HUMAN RIGHTS gives me this fundamental right.

3. If I'm serving with UN, if I'm found guilty by a body of UN in a disciplinary case, then *de lege ferenda* should be allowed to contest the UN decision to UN Dispute Tribunal.

Consideration

Request for summary judgment

9. Although the Respondent has raised issues of receivability, it is contended that the application may be summarily dismissed under art. 9 of the Rules of Procedure.

10. Article 9 of the Tribunal's Rules of Procedure provides that a party may move for summary judgment when there is no dispute as to the material facts of the case and a party is entitled to judgment as a matter of law. The Dispute Tribunal may determine, on its own initiative, that summary judgment is appropriate.

11. The appropriateness of an application for summary judgment was discussed in *Cooke* UNDT/2011/216, wherein the Tribunal indicated that if the receivability of a case is being challenged, the Tribunal cannot determine the facts of the application on the merits or even consider whether such facts are common cause or contested,

highlighting that summary judgment is a judgment on the merits and a party cannot ask for it if the full facts have not been pleaded. The Tribunal found the appropriate procedure would be to deal with the matter as a receivability issue. (Cooke UNDT/2011/216 was subsequently vacated in Cooke 2012-UNAT-275, in which the Appeals Tribunal found that the application was not receivable, but made no pronouncements regarding the Dispute Tribunal's observations regarding the nature of a summary judgment.)

12. The contextualization of an application for summary judgment, whilst determined by individual jurisdictional experience and familiarity, will also no doubt entail some general principles commonly adopted in multiple jurisdictions with a view to expediting proceedings where facts are not in dispute and the law is clear. A cursory overview of common law jurisdictions is indicative of the position that summary judgment is normally granted on the filing of affidavits on substantive claims, and is not a procedure normally used for disposal of matters on receivability or admissibility. Whatever nomenclature is given to the process is, to my mind, not material, as the Tribunal has dealt with matters summarily by striking out or dismissal on the grounds of vexatiousness, frivolity, abuse of process, manifest inadmissibility, failure to disclose cause of action, and so on. 12.

As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change.

14. In the instant case, the Applicant faces several preliminary hurdles with respect to the Tribunal's jurisdiction over his application.

Contested decision

15. Articles 2.1(a) and (b) of the Tribunal's Statute state:

Article 2

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance;

(b) To appeal an administrative decision imposing a disciplinary measure;

16. In his submission of 21 April 2014, the Applicant stated that he was "not contesting a decision of Romanian Authority but an unlawful UN decision that breached [his] elementary rights and affect[ed] him". However, in his application he clearly states that he "was informed by Romanian authorities that [he] was found guilty for 'assault and destruction', together with [VN] and [RA]" and that the same authorities informed him that his "tour of duty is considered ended on disciplinary grounds and [he] won't be accepted to any UN missions".

17. Thus, the decision that he seeks to contest was made and communicated to him by the relevant Romanian authorities. Notably, the Applicant did not attach to

his application or the submission of 21 April 2014 any documents to suggest that any administrative or disciplinary decision in relation to him as a staff member was made by the United Nations Administration, the Secretary-General or his duly delegated officers.

18. As the contested decision was made by the Romanian Ministry of Internal Affairs, the present application is not receivable under art. 2.1 of the Tribunal's Statute.

Applicant's status

19. Article 3.1 of the Tribunal's Statute states:

Article 3

1. An application under article 2, paragraph 1, of the present statute may be filed by:

(a) Any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

(b) Any former staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

(c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes.

20. In order to invoke the jurisdiction of the Tribunal, therefore, an applicant must be a staff member, former staff member or person making a claim in the name of an incapacitated or deceased staff member. The Respondent contends that the Applicant does not have a letter of appointment with the United Nations and has not been employed as a United Nations staff member. As stated by the Tribunal (Judge Boolell) in *El Moctar* UNDT/2012/113, “[a]lthough their operational activities are controlled by the United Nations, it is clear that UNPOL officers are kept at arm’s length from the Organization, remaining part of their national police

2012-UNAT-249); El Issawi UNDT/2012/038; El Moctar UNDT/2012/113; Ur Rehmar UNDT/2012/182).

23. In all the circumstances, this matter is clearly not receivable and stands to be to be dismissed.

Observation

24. In *di Giacomo* UNDT/2011/168, the Tribunal made the following observation:

46. Where rights and obligations attach, there must be an effective mechanism for resolution of disputes and for reparation of breached rights through appropriate remedies (see *Gabaldon* 2011-UNAT-120 and *Bertucci* 2011-UNAT-121, referring to “the right to an effective remedy”). The Tribunal notes, in this regard, the Universal Declaration of Human Rights, which refers to “the right to an effective remedy” and states that “[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial Tribunal, in the determination of his rights and obligations ...” (see arts. 8 and 10), as well as the International Covenant on Civil and Political Rights (1966), which refers to access to “an effective remedy” (art. 2.3(a)), encourages the development of “the possibilities of judicial remedy” (art. 2.3(b)), and provides that “[i]n the determination ... of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law” (art. 14.1).

25. The Tribunal is unable to assist the Applicant, and it would be unfortunate if he were to be left without a remedy. However, although the Tribunal is not the proper forum for the Applicant to raise his grievance arising from the March 2014 decision relating to his service with UNPOL, the Applicant may not have exhausted all remedies that may be available to him. The Applicant has indicated that no criminal findings were made against him in a court of competent jurisdiction in Timor-Leste. However, he has not indicated whether he has availed himself of remedies that may be available in the country of his domicile, or within the applicable jurisdiction, for instance either in a civil court or criminal court.

Conclusion

26. There being no challengeable administrative decision within the meaning of art. 2.1 of the Tribunal's Statute, and the Applicant not being a staff member and therefore having no standing before the Tribunal under art. 3.1 of its Statute, this matter is not receivable. The application is accordingly dismissed.

(Signed

Judge Ebrahim-Carstens

Dated this 23rd day of April 2014

Entered in the Register on this 23rd day of April 2014

(Signed

Hafida Lahiouel, Registrar, New York