



**Before:** Judge Alessandra Greceanu

**Registry:** New York

**Registrar:** Hafida Lahiouel

KISIA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON RECEIVABILITY**

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**Counsel for Applicant:**

Antonio Gonzales

**Counsel for Respondent:**

Alan Gutman, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat



damage to [the Applicant], out of acts, or omissions of The Administration at UN Headquarters District in New York.

5. In this letter, Counsel for the Applicant detailed his views regarding the factual and legal circumstances and the consequences of this event.

6. Counsel for the Applicant requested, *inter alia* consent to Arbitration as provided for under UN tort Claims and this claim should serve as your notice to arbitration. We further propose that this dispute be determin and stated that it would be in the interest of both parties that this dispute be amicably resolved by arbitration or mediation.

7. In response, on 11 August 2015, OLA wrote to Counsel for the Applicant as follows:

I refer to your letter, dated 22 July 2015, in which you advanced a claim on behalf of your client, former United Nations staff member [the Applicant], in the amount of US\$5,631,132.10, arising from an incident at the United Nations Headquarters on 27 July 2013. In your letter, you alleged that on said date, [the Applicant] suffered personal injury and damage to his vehicle while passing through the arm barrier at the main gate at United Nations Headquarters. You further alleged that said loss occurred as a result of the gross negligence, willful and wanton misconduct on the part of the United Nations. You also advised that your letter should serve as a Notice of Arbitration, and propose that the dispute be determined by way of sole arbitrator.

We note that your client applied for relief to the United in respect of his vehicular claim and to the



The MEU noted that your request for management evaluation contests the contents of a letter informing you that staff members or former staff members do not have the right to pursue claims against the Organization outside the formal system of administration of justice and that there is no recou

14. The case was assigned to the undersigned Judge on 18 September 2015.
15. By Order No. 288 (NY/2015) dated 12 November 2015, the Tribunal ordered

information on the relevant legal framework *vis-à-vis* t



a. \_\_\_\_\_, in its 11 August 2015 letter, OLA had rejected his request for arbitration filed on 22 July 2015 and that this denial constitutes an administrative decision according to the Dispute \_\_\_\_\_ ;

b. Counsel for the Respondent stated that, based on the arguments presented in the reply, the letter received by the Applicant from OLA is not an administrative decision and the application is therefore not receivable.

### **Consideration**

20. Pursuant to art 2.1(a) of the Statute of the Dispute Tribunal:

#### **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

relevant administrative issuances in force at the time of alleged noncompliance;

21. It follows from the consistent jurisprudence of the United Nations Appeals Tribunal that, for an application to be receivable by the Dispute Tribunal, an applicant must identify, or define, a specific administrative decision capable of being reviewed and which has a direct and adverse impact on her/his contractual rights (see, for instance, *Planas*



and of individual application, and they carry direct legal

18. The key characteristic of an administrative decision subject

constitutes an administrative decision will



2. As used in this regulation:

(a) Economic loss means the reasonable cost of repairing or replacing property, and, in respect of death, injury or illness, any reasonable past, present and estimated future:

- (i) Health care expenses;
- (ii) Rehabilitation expenses;
- (iii) Loss of earnings;
- (iv) Loss of financial support;
- (v) Cost of homemaker services;
- (vi) Transportation expenses;
- (vii) Burial expenses;
- (viii) Legal expenses.

(b) Headquarters district means the district by that name as defined in section 1 of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, of 26 June 1947.

29. ST/SGB/230, in relevant parts:

Submission of claims

1. Any accident or other occurrence in the Headquarters district that is likely to result in a tort action or claim by any person, other than a staff member or a member of a commission, committee or similar body listed in annex A to ST/SGB/107/Rev.4 and Amend.1, must be reported to the United Nations Security and Safety Service immediately in order to permit a timely investigation.

2. All tort actions or claims shall be addressed to the Legal Counsel, Office of Legal Affairs, Room S-3427, United Nations, New York, N.Y. 10017.

Preliminary review of claims

3. If, upon its preliminary review of all the facts and circumstances, the Office of Legal Affairs is of the view that a claim is justified and can be settled by payment of a sum not in excess of \$5,000, it shall so report to the Controller and, subject to his approval, negotiate an appropriate settlement. Any claim not so settled shall be reported to the Tort Claims Board referred to below.



Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.

*Notice of arbitration*







[ ]: (a) an appeal of the outcome of the UNCB in respect of the vehicular claim; and (b) a motion seeking leave of the UNDT to introduce three causes of action in said appeal, namely,

misconduct of the United Nations. In addition, your client has received a management evaluation of the outcome of the claim before the ABCC and has not submitted an appeal to the UNDT to date.

to observe that General Assembly resolution 41/210 [Limitation of damages in respect of acts occurring within the Headquarters district], which you cite, does not establish a recourse mechanism for staff members or former staff members to pursue claim against the Organization. Rather, the United Nations General Assembly established a two-tier formal system of administration of justice, comprising a first instance [UNDT] and an appellate instance United Nations Appeal Tribunal as from 1 January 2009 pursuant to resolution 62/228.

Since the system, as established by the General Assembly, does not provide for recourse to arbitration for the resolution of former reormer re61eB4mer tion for the resolution of



