

The Administrative Tribunal,

Considering the complaint filed by Mr M.A. A. against the World Health Organization (WHO) on 26 August 2006, WHO's reply of 6 March 2007, the complainant's rejoinder of 22 March and the Organization's surrejoinder of 8 May 2007;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a national of Somalia born in 1966, worked as a radio operator for the WHO Representative's Office in Somalia from 15 February 2003 until 31 March 2005 under a series of Special Services Agreements. He was based at the Hargeisa sub-office. On 19 October 2004, in the course of an argument over the use of a shared printer, he was assaulted in his office by a colleague. He received several blows to the head and lost consciousness. This scene was witnessed by the acting Officer-in-charge. The complainant was immediately taken to hospital. His aggressor was taken into custody by the local police.

In accordance with local custom, the complainant's family met with the family of the aggressor to seek to resolve the dispute. On 21 October 2004 the two families signed an agreement in the presence of a notary whereby the aggressor accepted full responsibility for the incident. After having obtained a copy of this agreement as well as a report from the hospital on the complainant's condition, the police released the aggressor from custody and no charges were brought against him by the Somali authorities. He resumed his functions at the Hargeisa sub-office. The complainant returned to work on 21 December 2004. At the end of that year, his contract was renewed for a final period of three months.

On 30 March 2005 the complainant sent an e-mail to the Staff Counsellor at WHO Headquarters in Geneva, enquiring as to how he might claim for "blood compensation, medical expenses and moral damage" in connection with the assault. The matter was referred to the Ombudsman on 5 April. The Ombudsman made some initial enquiries with several of the Organization's services, after which it was decided that the complainant should undergo a thorough medical examination and that the administrative processes undertaken following his assault should be clarified.

In July 2005 the complainant was examined by several physicians in Nairobi (Kenya), where a United Nations Medical Service is available. The Ombudsman also travelled to Nairobi, where he interviewed all the staff members involved in the incident. In his report dated 23 September 2005 he observed that, after the notarised agreement had been signed by the protagonists' families, no WHO procedures had been followed, since it had been assumed by both the Hargeisa sub-office and the liaison office in Nairobi that this agreement had brought the matter to a close. He also noted that, although the aggressor had apologised and tendered his resignation on 10 November 2004, he had been allowed to continue working in the Hargeisa sub-office until his contract expired on 31 December without facing any disciplinary action. The Ombudsman recommended inter alia that, if the results of the complainant's medical examinations indicated that long-term sequelae and attendant costs or resulting loss of earnings were likely, a settlement based on the limits for accident insurance should be offered as soon as possible. He also recommended that the invoices presented by the complainant for treatment, transport and care after the assault should be accepted and paid by the Organization without delay.

By a letter of 12 March 2006 the Director of General Management of the Regional Office for the Eastern Mediterranean informed the complainant that, although the receipts presented by him did not meet WHO's requirements, the Organization was exceptionally prepared to reimburse him the sum of 1,072 United States dollars, on condition that he signed an agreement whereby he renounced all further claims against WHO in connection with the assault. The complainant rejected that offer. In his complaint filed with the Tribunal on 26 August 2006 he indicates that he is impugning the decision of 12 March 2006.

B. The complainant contends that the acting Officer-in-charge of the Hargeisa sub-office abused her authority by entering into an agreement with his aggressor to assault him in retaliation for the fact that he had complained about her to her superiors. The printer, he says, was merely a pretext.

He submits that under the contract between him and WHO he was entitled, in the event that he was the victim of an accident while performing his official duties, to reimbursement of his medical expenses and to compensation for physical injury. Yet he received neither. Instead, when he claimed compensation, his employment was terminated.

According to the complainant, the drugs administered to him in the course of his medical examinations in Nairobi in July 2005 caused him to suffer depression, loss of memory and loss of concentration, and these symptoms continue to this day. He asserts that the doctors in Nairobi produced false medical certificates in order to enable WHO to deny him compensation for his injuries. He adds that, by refusing to pay him compensation and by failing to take any disciplinary action against his aggressor, the Organization caused him further psychological injury.

Lastly, the complainant accuses the WHO management in Somalia of neglecting their duty to take appropriate action following the assault. He points out that because the incident was not reported to the United Nations security officer in the area, it was not dealt with through official channels.

He asks the Tribunal to order WHO to cover the costs of his medical treatment, to pay him compensation for physical injury, psychological injury and ill-treatment, and to continue to pay his salary. In addition, he seeks the reimbursement of printing, photocopying and postage expenses.

C. In its reply WHO submits that the Tribunal is not competent to hear the complaint, because as the holder of a Special Services Agreement the complainant was never a staff member of the Organization and was not covered by the Staff Rules. Referring to the Tribunal's Statute and case law, it recalls that the Tribunal may only hear complaints alleging non-observance of the terms of appointment of officials and of provisions of the Organization's Staff Regulations. It considers that the complaint does not satisfy those criteria and that the Tribunal must therefore decline jurisdiction.

The Organization also submits that the complaint is irreceivable on two counts. Firstly, it is not directed against a final decision within the meaning of Article VII, paragraph 3, of the Tribunal's Statute, since the offer of a settlement that was made to the complainant in the letter of 12 March 2006 cannot be construed as a final decision; secondly, it was not filed within ninety days of the date on which the complainant received the letter of 12 March, that is on 19 March 2006.

Subsidiarily, the Organization contends that the complaint is devoid of merit. It asserts that the dispute between the complainant and his aggressor was settled in accordance with local customary law by agreement between the two families concerned. It emphasises that such agreements are considered legally valid in Somalia, regardless of the consent of the protagonists. When the complainant subsequently claimed compensation from the Organization, his claims were treated very seriously, but he refused the offer of a settlement that was made to him. WHO considers that it has fulfilled all its obligations towards the complainant and that his claims should therefore be rejected.

D. In his rejoinder the complainant argues that the Organization's offer of compensation was not fair in light of the extent and consequences of his injuries. He contends that he did not receive the full text of the letter of 12 March 2006 until 8 June, and that his complaint was therefore filed within the applicable deadline.

With regard to the fact that he held a Special Services Agreement, he points out that he had no choice but to accept the contract that was offered to him by the Organization, which ought to have respected his rights and offered him a better contract, particularly as his duties were of a permanent nature.

He submits that he was not a party to the notarised agreement of 21 October 2004 and that, in any case, since the assault occurred while he was performing his official duties, the matter should have been resolved by the Organization and its insurers, and not by the families concerned. He adds that even though his contract was merely a Special Services Agreement, he was insured against such risks.

E. In its surrejoinder WHO maintains its position in full. It observes that, notwithstanding the complainant's dissatisfaction with the agreement reached between his family and the family of his aggressor, the matter was settled in accordance with local customary law, and the complainant received 300 dollars from the aggressor's

family to cover his medical expenses.

## CONSIDERATIONS

1. The complainant worked for WHO as a radio operator under a Special Services Agreement which provided in Annex B, paragraph 11, entitled “Settlement of Disputes”, that “[a]ny claim or dispute relating to the interpretation of [sic] the execution of the present Agreement [...] shall be settled by arbitration [...]. The arbitral panel shall be composed of one member nominated by the signatory, one member nominated by WHO and a Chairman agreed to by the two other members. The parties shall accept the arbitral award as final.”
2. The complainant suffered injuries when he was assaulted by a colleague whilst carrying out his duties. He seeks compensation for physical injury, psychological injury and ill- treatment, reimbursement of medical expenses and the expenses associated with his complaint, and the continued payment of his salary.
3. The Organization asserts that the dispute between the complainant and his aggressor was resolved by agreement between their families according to local customary law and that the complainant received 300 United States dollars in compensation from the aggressor’s family. He was also offered a settlement of 1,072 dollars by the Organization, but he declined that offer.
4. WHO contends that the Tribunal is not competent to hear the complaint and that the complaint is both irreceivable and devoid of merit. It argues that the Tribunal’s lack of competence derives from the fact that the complainant was not a WHO staff member but an independent contractor under a Special Services Agreement, which stipulates, inter alia, that “[t]he signatory shall have the status of a contractor and shall not be considered in any respect as being a staff member of WHO”.
5. The Tribunal’s competence is limited by the terms of the Organization’s voluntary declaration recognising its jurisdiction, made in accordance with Article II, paragraph 5, of its Statute. WHO’s recognition of the Tribunal’s jurisdiction does not extend to persons who, as in the present case, are not staff members of the Organization but independent contractors whose contracts of employment provide for dispute resolution by arbitration (see Judgment 2017). Consequently, the Tribunal cannot address either the receivability or the merits of the complaint.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 2 November 2007, Mr Seydou Ba, Vice-President of the Tribunal, Mr Agustín Gordillo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2008.

Seydou Ba

Agustín Gordillo

Dolores M. Hansen

Catherine Comtet