



**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

---

Judgment No. 2016-UNAT-663

**Al Abani  
(Appellant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT**

---

Before:	Judge Luis María Simón, Presiding Judge Rosalyn Chapman Judge Mary Faherty
Case No.:	2015-874
Date:	30 June 2016
Registrar:	Weicheng Lin

---

Counsel for Mr. Al Abani:	Jeffrey C. Dahl
Counsel for Secretary-General:	Stéphanie Cartier

**JUDGE LUIS MARÍA SIMÓN, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by Mr. Shadi Al Abani of Judgment No. UNDT/2015/089, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 24 September 2015, in the case of *Al Abani v. Secretary-General of the United Nations*. On 23 November 2015, Mr. Al Abani filed his appeal and, on 29 January 2016, the Secretary-General filed his answer to the appeal.

**Facts and Procedure**

2. The Dispute Tribunal made the following factual findings, which are undisputed:<sup>1</sup>

... The Applicant, a national from Lebanon, has been employed by the Information Technology Service, United Nations Office at Vienna (“UNOV”) since 3 January 2007, on the basis of a fixed-term appointment, as Information Systems Assistant (G-6). The appointment was extended several times and in October 2012, he was promoted to the G-7 level, to the post of Computer Information Systems Assistant, in which he is currently serving.

... The Applicant married a national from Malaysia in a religious ceremony in Vienna, on 22 June 2007, as reflected in a marriage certificate issued by the Islamic Association of Austria. The marriage certificate on file does not refer to the application of any national law. However, it was subsequently formally recognized and registered in Malaysia. In 2008, the Applicant applied for dependency benefits for his wife and stepdaughter.

... On 12 August 2008, UNOV sent a *Note Verbale* to the Permanent Mission of Lebanon, Vienna, seeking confirmation whether the marriage certificate of 22 June 2007 “[was] issued by a competent authority and [if] the State of Lebanon recognizes [said] marriage”.

... By *Note Verbale* dated 18 August 2008, the Permanent Mission of Lebanon informed UNOV that since it was a religious marriage concluded in Austria and not registered in Lebanon, the above-referenced marriage certificate was not recognized by the competent authorities of Lebanon. It further explained that only civil marriages performed in Austria according to the Austrian Civil Law were recognized by the Permanent Mission and the Lebanese Authorities.

... On 26 August 2008, UNOV informed the Applicant thereof and advised him that, as a consequence, it would not recognize his marital status for the purpose of United Nations benefits and entitlements.

---

<sup>1</sup> Impugned Judgment, paras. 2-24.

... By a further *Note Verbale*, dated 19 March 2009, the Permanent Mission of Lebanon informed UNOV that in order to be registered in the Lebanese civil status registers, the Applicant's marriage had to be confirmed by the Lebanese competent Islamic Authorities; the *Note Verbale* also advised UNOV that the Applicant had been informed that the file he had submitted to the Embassy needed to be sent to said authorities for finalisation, and that the formality process was in progress.

... By *Note Verbale* dated 1 April 2009, UNOV expressed its understanding that the file would be forwarded to the competent Islamic Authority in Lebanon, "in order for the marriage to be registered in the civil status registers and recognized under Civil Law provisions of Lebanon" and asked the Permanent Mission to keep it apprised of the verification received by it upon completion of the process.

... A document dated 15 July 2009 from the *Chargé des affaires consulaires* of the Embassy of Lebanon in Vienna confirmed "the authentication of the legalization of the [Ministry] of Foreign Affairs of Lebanon, which in its turn ha[d] verified that the signature of the *Chargé d'affaires* of the Malaysian Embassy in Beirut [was] authentic and valid".

... Through a further *Note Verbale*, dated 23 July 2009, UNOV, referring to its earlier note of 1 April 2009, asked the Permanent Mission to confirm whether the document of 15 July 2009 "communicate[d] verification by the Permanent Mission that [the Applicant's partner] [was] the legally recognized spouse [of the Applicant] under Lebanese law".

... The Permanent Mission never responded to UNOV query. However, in an email dated 28 October 2013 from the Chief, Human Resources Management Service ("HRMS"), UNOV, to the Office of Human Resources Management ("OHRM"), reference was made to the Applicant having indicated that his application had been denied by the competent Islamic Authorities in Lebanon since he was not of Muslim faith.

... The Applicant engaged in a continuous dialogue with UNOV over this matter and, on 8 October 2013, he requested the Chief, HRMS, UNOV, to reconsider the decision to deny him marital status, noting, *inter alia*, that his wife had been diagnosed with a serious medical condition that required medical insurance coverage.

... By email of 9 October 2013, the Chief, HRMS, UNOV, responded to the Applicant, noting that although in accordance with ST/SGB/2004/13 [entitled "Personal status for purposes of United Nations entitlements"], all supporting documentation had been sent to the Permanent Mission of Lebanon in Vienna, the latter had unfortunately not been forthcoming in verifying the Applicant's marital status as legally recognised under the laws of Lebanon. He further noted that although the Applicant had indicated that he had initiated arrangements for a civil marriage before the Magistrate in Vienna, he had not advised HRMS of any undertaking in this respect. He therefore asked the Applicant that if he had obtained

a civil marriage certificate, he should submit the original to UNOV for verification with the Permanent Mission. Finally, he suggested to bring the matter to the attention of OHRM.

... The Applicant responded by email of the next day, noting that the Austrian marriage had not gone through, since the marriage had already been registered at the Sharia court in Malaysia, and the Malaysian authorities would not give the single status certificate to his wife, as requested by the Magistrate. He further expressed his appreciation for the matter being brought up with OHRM.

... On 28 October 2013, the Chief, HRMS, UNOV, wrote an email to OHRM, referring to the various actions taken by UNOV vis-à-vis the Permanent Mission of Lebanon (including the latter's lack of response to the latest *Notes Verbales*) and requesting OHRM whether the Division for Management, United Nations Office on Drugs and Crime ("UNODC") could deviate from the practice set out in ST/SGB/2004/13 in this particular case, by considering the Applicant's partner as a spouse in reference to the law of her nationality (Malaysia) rather than that of the Applicant (Lebanon). OHRM responded by email of the next day, stating that it would submit the documents to the Permanent Mission of Lebanon to the United Nations in New York.

... On 17 January 2014 the Applicant requested management evaluation of the decision not to recognize his marital status for the purpose of United Nations entitlements.

... On 23 January 2014, the Permanent Mission of Lebanon to the United Nations in New York advised OHRM that it had sent the case to the Lebanese Government.

... By memorandum dated 7 February 2014, the Chief, Management Evaluation Unit ("MEU") informed the Applicant that since his request for reconsideration of his marital status was still under consideration within the legislative process of the Organization, his request for management evaluation was premature, hence MEU did not have competence to review it.

... On 26 June 2014, the Secretary-General issued ST/SGB/2004/13/Rev.1. According to the revised bulletin, the personal status of a staff member is determined by the domestic law where the marital status was established.

... By email of 19 August 2014, UNOV informed the Applicant that his personal status for the purpose of UN entitlements had been changed to married, effective 26 June 2014.

... By email of 2 September 2014, the Applicant requested to be granted recognition of his marital status retroactively from 22 June 2007, the date of his marriage.

... By email of 10 September 2014, the Chief, Staff Administration Unit, HRMS, Division for Management, UNODC, responded to the Applicant's request [by] confirming that the effective date of the change of personal status to "married and related" was 26 June 2014, that is, the date of issuance of ST/SGB/2004/13/Rev.1.

... On 4 October 2014, the Applicant requested management evaluation of the decisions of 19 August and 10 September 2014.

... By memorandum dated 15 December 2015, the Under-Secretary-General for Management informed the Applicant that the Secretary-General had decided to follow MEU advice to uphold the contested decision.

3. Mr. Al Abani filed an application with the UNDT contesting the decision to deny him dependency benefits retroactively from 26 June 2014, the date of issuance of ST/SGB/2004/13/Rev.1, to 22 June 2007, the date of his marriage. He argued, *inter alia*, that the Organization failed to observe his human right to marry without limitation on the ground of religion, as recognized by the Charter of the United Nations and Article 16(1) of the Universal Declaration of Human Rights.<sup>2</sup> The Organization's reliance on ST/SGB/2004/13 was unlawful as it gave effect to the discriminatory marital laws of Lebanon.

4. The UNDT issued Judgment No. UNDT/2015/089 on 24 September 2015, which rejected Mr. Al Abani's application. The UNDT recalled the general principle of non-retroactivity of law and found that the Organization was correct not to apply ST/SGB/2004/13/Rev.1 retroactively.

5. The UNDT observed that it did not have jurisdiction to deal with potential breaches of the Universal Declaration of Human Rights by a Member State and therefore could not determine whether the relevant Lebanese marital laws were discriminatory. The UNDT also noted that Mr. Al Abani did not contest that he had the opportunity, prior to his religious marriage, to enter into a civil marriage in Austria, and to have the same registered and recognized in Lebanon. In this regard, the UNDT considered that it is the responsibility of international civil servants to organize their affairs so that they comply with the Staff Regulations and Rules, including any reference to the laws of their country of nationality.

---

<sup>2</sup> Article 16(1) of the Universal Declaration of Human Rights states as follows: "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution."

6. In considering the lawfulness of the Organization's choice prior to the revised Bulletin to determine personal status by reference to a staff member's law of nationality, the UNDT stated as follows:<sup>3</sup>

[T]he Organization needs a consistent and entirely transparent rule for the identification and determination of the personal status of [a] staff member, while respecting and relying on the sovereignty of its member states. It finds that the "choice" by the Organization to refer to a staff member's law of nationality, prior to the revised bulletin, was not unreasonable, nor did it constitute a violation of any higher norm in the internal legislation of the Organization, or of the Charter of the United Nations.

7. The UNDT considered that the right to enter into a marriage without distinction as to religion had to be distinguished from the recognition of the marriage by the Organization, and the consequences of such recognition under its Staff Regulations and Rules. Further, the Organization properly followed the procedures set out in ST/SGB/2004/13 in determining Mr. Al Abani's personal status. The UNDT concluded that the decision to grant him the status of "married and related" as from 26 June 2014 only, that is, not to grant him retrospective benefits under the terms of ST/SGB/2004/13 to the date of his marriage, was legal.

8. Following the filing of Mr. Al Abani's appeal against the UNDT Judgment and the Secretary-General's answer, the Appeals Tribunal issued Order No. 264 (2016), which scheduled an oral hearing in New York on 24 June 2016. At the hearing, counsel for Mr. Al Abani appeared via video-conference and counsel for the Secretary-General appeared in person.

### **Submissions**

#### **Mr. Al Abani's Appeal**

9. The UNDT erred in rejecting Mr. Al Abani's claim that the Organization violated his human rights by not recognizing his marriage and denying him dependency benefits. The Charter and Article 16(1) of the Universal Declaration of Human Rights recognize his right to marry without limitation as to religion. Moreover, those involved in denying his request for dependency benefits violated their obligations as international civil servants by failing to

---

<sup>3</sup> Impugned Judgment, para. 46.

ensure non-discriminatory treatment in the award of dependency benefits. The Organization is required to recognize and remedy the violation of his human rights.

10. The UNDT erred in failing to examine the obligations of the Organization when its internal legislation created a human rights violation. At issue is the Organization's failure to accord benefits under its own legal system, not whether the Dispute and Appeals Tribunals should examine the laws of a sovereign Member State. The Organization is obliged to recognize and remedy the human rights violation that arises from Lebanon's failure to recognize his marriage.

11. The UNDT erred in finding that Mr. Al Abani could not succeed in his claim because he did not choose a civil marriage ceremony. This finding is incompatible with his human right to marry without limitation as to religion.

12. Mr. Al Abani respectfully requests that the Appeals Tribunal reverse the UNDT Judgment and award him damages in an amount equivalent to his dependency benefits from the date of his marriage until 26 June 2014, and moral damages for pain, frustration, disappointment, and anger at having his employer deny his basic human right to marry without limitation as to religion.

### **The Secretary-General's Answer**

13. Mr. Al Abani has not established that the UNDT erred on a question of law, warranting a reversal of the Judgment. The UNDT correctly determined that: the Organization followed the procedures set forth in ST/SGB/2004/13 while it was in force; Mr. Al Abani was not entitled to dependency benefits thereunder; and the rule promulgated under ST/SGB/2004/13 was not unreasonable or otherwise unlawful.

14. The Organization and its staff have a positive obligation to abide by the rules adopted by the Organization. The UNDT is not an appropriate forum to address issues relating to disputes between a staff member and the Government of a Member State regarding international human rights law.

15. The UNDT properly determined that the Administration's decision not to apply ST/SGB/2004/13/Rev.1 retroactively was lawful, in accordance with the terms of the revised Bulletin and previous case law. Neither the issuance of the revised Bulletin, nor the

explanatory statement made by the Secretary-General regarding its issuance constituted an admission that the Organization's previous policy set forth in ST/SGB/2004/13 was unreasonable or otherwise unlawful. Rather, this was evidence of the Secretary-General's authority and broad discretion as Chief Administrative Officer to issue and revise the Organization's policies regarding staff-related matters.

16. Mr. Al Abani was on notice that his marriage would have to meet the conditions for recognition of the marriage by Lebanon in order for him to receive the related benefits from the Organization. He lost his chance of obtaining those benefits by not concluding a civil marriage prior to his religious marriage.

17. Mr. Al Abani has not established any basis for an award of damages equivalent to the dependency benefits that he would have received for the period from the date of his marriage to the date of issuance of the revised Bulletin. Nor has he provided any evidence justifying an award of moral damages.

18. The Secretary-General requests that the Appeals Tribunal affirm the UNDT Judgment and dismiss the appeal in its entirety.

### **Considerations**

19. The Appeals Tribunal, Judge Chapman dissenting, is not persuaded that the UNDT Judgment contains any error of fact or law that would warrant its reversal. Mr. Al Abani's appeal fails because he has not established, as required by Article 2(1) of the Appeals Tribunal Statute, that the Dispute Tribunal reached a manifestly unreasonable decision caused by any error of fact or error on a question of law.

20. There is no dispute about the main facts of this case. Mr. Al Abani, a Lebanese national, married a Malaysian national in a religious Islamic ceremony in Vienna. The marriage was not recognized as valid by Lebanon.

21. Mr. Al Abani's request for dependency benefits for his wife and stepdaughter was denied because ST/SGB/2004/13, which was in force at the relevant time, provided that the marital status of a staff member was determined by reference to the law of his or her nationality, which, in Mr. Al Abani's case, was the law of Lebanon.

22. Mr. Al Abani challenges the application of ST/SGB/2004/13 in his case on the ground that it violated his fundamental right to marry without limitation as to religion and his right not to be discriminated against on religious grounds. He requests the retroactive application of ST/SGB/2004/13/Rev.1 in his case, that is, from the date of his marriage on 22 June 2007 to the date of the entry into force of the revision to ST/SGB/2004/13 on 26 June 2014. The revised Bulletin changed the practice of the Organization for determining the personal status of staff members for the purposes of entitlements under the Staff Regulations and Rules. The personal status of a staff member is no longer determined by reference to the law of nationality of the staff member concerned, but is to be determined by reference to the law of the competent authority under which the personal status has been established.<sup>4</sup>

23. Therefore, we unanimously consider that the appeal is admissible under those grounds, irrespective of its merits, which will be examined through the following paragraphs. We do not agree with the Secretary-General's submissions at the oral hearing that the appeal was not receivable.

24. The Tribunal unanimously shares the view of the Dispute Tribunal that the principle of non-retroactivity of law precludes the application of ST/SGB/2004/13/Rev.1 prior to its entry into force.

25. This well-known general principle is also compatible with fundamental human rights. Principles of security and certainty of law require the stability of law during the period that it is in force, and that laws are not applied to events that occurred before their entry into force.

26. In *Hunt-Matthes*, *Nogueira*, and *Assale*, the Appeals Tribunal recalled the general principle of law against retrospective effect/application of laws and held in each case that the administrative issuance in question could not be applied to incidents that occurred before its promulgation.<sup>5</sup>

---

<sup>4</sup> ST/SGB/2004/13, sect. 1, and ST/SGB/2004/13/Rev.1, sect. 1.

<sup>5</sup> *Hunt-Matthes v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-444/Corr.2, paras. 26-30; *Nogueira v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-409, para. 14; *Assale v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-534, para. 34.

27. The application of this principle is not avoided in circumstances where the application of a previous norm was allegedly in breach of fundamental rights because this would constitute an indirect way of securing the retroactive application of the new norm which replaced the questionable precedent.

28. If Mr. Al Abani's submissions are accepted, this may lead to the violation of the fundamental rights of other staff members who made certain choices concerning their personal status under the terms of the previous Bulletin or the revised Bulletin. These staff members could then claim that the retroactive application of the revised Bulletin affects their status and past choices, which would have been different or would not have existed had the revisions to the Bulletin and its retroactive application been foreseeable.

29. Law evolves and changes all over the world, but that does not necessarily mean that any law that is later superseded breached the fundamental rights and freedoms protected under the Charter of the United Nations. Both national and international laws, and the internal norms of the United Nations are subject to this comment.

30. As we stated in *El-Zaim*, the reference to the law of the staff member's nationality in the area of marital status allowed the United Nations "to respect the various cultural and religious sensibilities existing in the world, as no general solution is imposed by the Organization, which simply tolerates and respects national choices. ... Reference to national law is the only method whereby the sovereignty of all States can be respected".<sup>6</sup>

31. That case also found that the principle of determining personal status by reference to the law of the staff member's nationality could only apply to a staff member who concluded a marriage or entered into another partnership recognized under his or her national law, and not to a staff member who chose to enter into a marriage or partnership under a law other than the one of his or her nationality.

32. This possibility could have been the answer to Mr. Al Abani's situation. If he had also entered into a civil marriage in Austria, it would have been recognized in Lebanon and within the Organization as a choice to enter into a marriage under a law other than the law of his nationality, allowing him to receive the entitlements that he was seeking. Other options were

---

<sup>6</sup> *El Zaim v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT 007, para. 22, citing the former Administrative Tribunal Judgment No. 1183, *Adrian* (2004), para. II.

also open to Mr. Al Abani in order for him to freely marry but at the same time to do it in such a way that made it possible for the Organization to award him the entitlements that he claimed.

33. There must be no confusion: the fundamental right in Article 16(1) of the Universal Declaration of Human Rights consists of the freedom to marry or not to marry, in a religious ceremony or in a non-religious ceremony. However, a staff member cannot assert that a marriage concluded through any means or in any place must lead to the award of entitlements by the Organization and, if it does not, that such a decision violates his or her freedom to marry. The Organization recognizes the freedom to marry consistent with the principles of sovereignty and self-determination of Member States, and the freedom of all people around the world to regulate what constitutes marriage, divorce, partnership unions, and all aspects related to these institutions.

34. Hence, the Organization is bound to select one method or system by which to determine the marital status of its staff members. The determination of staff members' marital status ought to be made as broadly as possible to reflect the range and diversity of staff members' rights, the laws of Member States, and human rights throughout the world.

35. Both under the former and current Bulletin, the United Nations allows the fundamental rights protected by the Charter to be exercised, recognizing also the freedom of staff members to make their choices and abide by their consequences, as in every case and situation related to marriage or similar unions in private life.

36. We cannot ignore the fact that Mr. Al Abani did have choices with respect to his marriage status and that it was not the United Nations that prevented him from being entitled to the entitlements that he claimed. This situation was the result of the law of his nationality and his freely adopted decisions concerning his marriage.

37. As we stated in *Bezziccheri*:<sup>7</sup>

[W]e have consistently held that staff members have to ensure that they are aware of the Staff Regulations and Rules and the applicable procedures in the context of the administration of justice in the United Nations' internal justice system and that ignorance of the law is no excuse[.]

---

<sup>7</sup> *Bezziccheri v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-538, para. 40.

38. Therefore, the Appeals Tribunal, Judge Chapman dissenting, holds that the administrative decision to deny Mr. Al Abani the payment of dependency benefits before the promulgation of ST/SGB/2004/13/Rev.1 was based on a correct application of the provisions of ST/SGB/2004/13, and that ST/SGB/2004/13 was in accordance with the Charter of the United Nations and did not cause or otherwise result in an alleged breach of the fundamental freedom to marry. Further, no entitlement to dependency benefits arose through the application of ST/SGB/2004/13/Rev.1 prior to the date of its promulgation. To do so would result in an unlawful retroactive application of the revised Bulletin which would, *per se*, violate the fundamental rights of other staff members and have negative consequences for the Organization's day-to-day administration *vis-a-vis* the marital status of its staff members or any other matter subject to changes in the norms governing the entitlements of staff members.

39. Thus, Mr. Al Abani's application was correctly dismissed by the Dispute Tribunal in its Judgment, which we affirm.

### **Judgment**

40. The Appeals Tribunal, by majority with Judge Chapman dissenting, dismisses the appeal in its entirety and affirms Judgment No. UNDT/2015/089.

Original and Authoritative Version: English

Dated this 30<sup>th</sup> day of June 2016 in New York, United States.

*(Signed)*

Judge Simón, Presiding

*(Signed)*

Judge Faherty

Entered in the Register on this 24<sup>th</sup> day of August 2016 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar

**Judge Chapman's Dissenting Opinion**

1. I respectfully dissent, in part.

2. As the majority has correctly determined, Mr. Al Abani's application before the Dispute Tribunal, as well as his request for management evaluation and the Management Evaluation Unit's response, included two separate claims: (1) the decision to apply ST/SGB/2004/13 to him was unreasonable and violated his human rights to marriage; and (2) the decision not to retroactively apply ST/SGB/2004/13/Rev.1 was unlawful. Thus, the UNDT properly addressed Mr. Al Abani's challenges to both ST/SGB/2004/13 and its revision, ST/SGB/2004/13/Rev.1.

3. I also agree with the majority's conclusion that there is no merit to Mr. Al Abani's second claim, that ST/SGB/2004/13/Rev.1 should be retroactively applied. Rather, as the UNDT correctly found, ST/SGB/2004/13/Rev.1 can only be applied to Mr. Al Abani from its effective date, 26 June 2014.<sup>8</sup>

4. However, I disagree with the majority's rejection of Mr. Al Abani's first claim, that the decision to apply ST/SGB/2004/13 to him was unreasonable and unlawful in that it violated his human rights to marriage. As discussed below, I find that the UNDT erred in law when it concluded that the Administration's decision to apply ST/SGB/2004/13 to Mr. Al Abani was lawful.

5. In 2008, when Mr. Al Abani first applied for recognition of his marriage by the Organization and dependency benefits for his wife and stepdaughter, ST/SGB/2004/13 provided:

1. The practice of the Organization when determining the personal status of staff members for the purpose of entitlements under the Staff Regulations and Rules has been done, and will continue to be done, by reference to the law of nationality of the staff member concerned. When a staff member has more than one nationality, and in accordance with applicable rules, the Organization recognizes the nationality of the State with which the staff member is most closely associated.

---

<sup>8</sup> *Hunt-Matthes v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-444/Corr.2, paras. 26-30; *Assale v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-534, para. 34.

2. Requests relating to the determination of the personal status of staff members in connection with their entitlements will be submitted by the Secretariat for verification by the Permanent Mission to the United Nations of the country of nationality of the staff member concerned. Once the Mission has verified that the status in question is legally recognized under the law of that country for the purposes of granting benefits and entitlements, the Secretariat will take action in accordance with that verification.

6. As ST/SGB/2004/13 makes clear, the law of nationality of the staff member affects the staff member's entitlements under the Staff Regulations and Rules. In turn, the Staff Regulations and Rules are incorporated into the staff member's terms and conditions of appointment.<sup>9</sup> Thus, it is not disputed that Mr. Al Abani could properly challenge the decision to apply ST/SGB/2004/13 to him over a six-year period.

7. Generally, the Appeals Tribunal has upheld the principle that the personal status of a staff member will be determined by the staff member's nationality.<sup>10</sup> We have also held, however, that the Charter, the Universal Declaration of Human Rights, and the General Assembly's resolutions and decisions take precedence over the Organization's regulations, rules and administrative issuances.<sup>11</sup>

8. There is no doubt the Administration has wide discretion in making administrative decisions.<sup>12</sup> Nevertheless, we have found that the Tribunals may properly determine whether the exercise of that discretion has been abusive:<sup>13</sup>

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.

---

<sup>9</sup> *Badawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2012-UNAT-261, para. 28, citing *Gabaldon v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-120; and *El-Khatib v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-029.

<sup>10</sup> *El Zaim v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-007, para. 22.

<sup>11</sup> *Tabari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-030, paras. 17, 18 and 21; *Chen v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-107, paras. 15, 21 and 22.

<sup>12</sup> *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 48.

<sup>13</sup> *Ibid.*, para. 38.

9. On its face, ST/SGB/2004/13 was not an unreasonable issuance. It was not unreasonable for the Secretary-General to base a staff member's personal status on the law of the staff member's nationality, and it was not unreasonable for the Organization to base its recognition of a staff member's marriage on whether the staff member's country of nationality verified the marriage. The majority focuses on the historical reasons for basing the recognition of a staff member's marriage on the law of the staff member's country of nationality, and I do not quarrel with such analysis.

10. However, I find it was unreasonable, unfair and unlawful for the Administration *to apply* ST/SGB/2004/13 to Mr. Al Abani—in the circumstances of his case. Specifically, it was unreasonable and unfair for the Organization to refuse to recognize Mr. Al Abani's marriage and to deny the award of dependency benefits flowing from such recognition when Mr. Al Abani had a religious marriage ceremony that his country of nationality, Lebanon, would not recognize *solely on religious grounds* and, thus, Mr. Al Abani was unable to obtain Lebanon's verification of his marriage, as required by ST/SGB/2004/13.

11. It was also unlawful for the Organization to refuse to recognize Mr. Al Abani's marriage and to deny the award of dependency benefits flowing from such recognition when, based on the circumstances of his case, the application of ST/SGB/2004/13 violated Article 16(1) of the Universal Declaration of Human Rights (Universal Declaration).

12. The General Assembly in 1948 adopted the Universal Declaration of Human Rights.<sup>14</sup> Article 16(1) of the Universal Declaration provides:

Men and women of full age, *without any limitation due to race, nationality or religion*, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (Italics added.)

Staff Regulation 1.1(c) provides that “[t]he Secretary-General shall ensure that the rights and duties of staff members, as set out in the ... relevant resolutions and decisions of the General Assembly, are respected”.

13. Effective 26 June 2014, the Secretary-General issued ST/SGB/2004/13/Rev.1, which superseded ST/SGB/2004/13. Under the revised Bulletin, a staff member's personal status as to marriage “will be determined by reference to the law of the competent authority under

---

<sup>14</sup> A/RES/3/217 A.

which the personal status has been established”.<sup>15</sup> The “country of that competent authority” must verify “that the status in question is legally recognized for the purposes of granting benefits and entitlements, [and] the Secretariat will take action in accordance with that verification”.<sup>16</sup>

14. By issuing the revised Bulletin, the Secretary-General implicitly recognized that in order to meet changing and modern principles of human rights in the employment context, the Administration could no longer justify determining a staff member’s personal status as to marriage for purposes of entitlements by reference to the staff member’s nationality.

15. In considering the application of ST/SGB/2004/13 to Mr. Al Abani, the UNDT found that the Administration did not violate Article 16(1) of the Universal Declaration, stating:<sup>17</sup>

[Mr. Al Abani] was not precluded from marrying his wife, which he did[.] ... However, ... the Tribunal notes that such right to enter into marriage, without distinction, has to be distinguished from the recognition of said marriage by the Organization, and from what flows from such recognition under its Rules and Regulations.

16. In my view, the UNDT construed Article 16(1) of the Universal Declaration too narrowly; thus, the UNDT erred in law. If Article 16(1) has any purpose at all, it is to require the Secretary-General to apply and enforce the Staff Regulations and Rules and his own issuances “without any limitation” to a staff member’s “equal rights as to marriage” due to race, nationality or religion. Yet applying ST/SGB/2004/13 to Mr. Al Abani’s marriage *did* limit his right to marriage in a significant manner in that the Organization did not recognize his marriage and he could not obtain benefits flowing from such recognition—*solely* because Lebanon would not verify the marriage on *religious grounds*.

17. In the employment context, the recognition of a marriage is especially important as it affects the staff member’s rights to entitlements, such as in Mr. Al Abani’s case. Article 16(1) of the Universal Declaration protects more than the right to enter into marriage; it protects the right to the recognition of the marriage. Marriage is more than a civil or a religious ceremony; it encompasses the recognition of the marriage ceremony by others, including a staff member’s employer. The refusal to recognize a marriage ceremony denigrates the marriage.

---

<sup>15</sup> ST/SGB/2004/13/Rev.1, sect. 1.

<sup>16</sup> *Ibid.*, sect. 2.

<sup>17</sup> Impugned Judgment, para. 47.

18. Accordingly, I find the Administration unreasonably, unfairly and unlawfully failed to accord “equal rights”—as required by Article 16(1) of the Universal Declaration—to Mr. Al Abani’s marriage over a six-year period, by applying ST/SGB/2004/13 to deny recognition of his marriage by the Organization. As Lebanon, Mr. Al Abani’s country of nationality, would not verify Mr. Al Abani’s marriage *solely on religious grounds*, the Administration should have applied Article 16(1), rather than ST/SGB/2004/13. Under Article 16(1), the Organization should have recognized Mr. Al Abani’s marriage and afforded him dependency benefits flowing from such recognition. Article 16(1) is more than an abstract principle; it is a universal norm.

19. The majority fails to directly address the lawfulness of the *application* of ST/SGB/2004/13 to Mr. Al Abani. Rather, they are concerned that if the Appeals Tribunal were to conclude that the Administration unlawfully applied ST/SGB/2004/13 to Mr. Al Abani, that conclusion would undermine our jurisprudence holding that legal provisions cannot be applied retroactively and would open the floodgates to additional litigation. But that is not so. ST/SGB/2004/13 has not been in effect since 26 June 2014, and the time has long since run for other staff members to timely challenge its application to them.

20. Moreover, upholding a universal norm such as Article 16(1) should be paramount to any concerns about potential increased litigation. Although the majority recognizes that Mr. Al Abani’s “situation was the result of the law of his nationality”, they fail to acknowledge that this finding supports the view that the *application* of ST/SGB/2004/13 to Mr. Al Abani was unlawful. It was unlawful precisely because the law of Lebanon would not recognize Mr. Al Abani’s marriage *solely for religious reasons*. Thus, Mr. Al Abani’s rights under Article 16(1) of the Universal Declaration were violated.

21. Finally, the majority improperly blames Mr. Al Abani for “his freely adopted decisions concerning his marriage” and opine that if he “had also entered into a civil marriage in Austria, it would have been recognized in Lebanon” or that “[o]ther options were also open to Mr. Al Abani in order for him to freely marry”. As it is solely the staff member’s choice whether to have a civil or a religious marriage ceremony, or to choose how, when and where to marry, it is not appropriate for the majority to intrude on the staff member’s prerogative or to offer its opinions on how the staff member might have avoided the application of ST/SGB/2004/13. It is the role of the Appeals Tribunal to determine whether the

Administration unlawfully applied ST/SGB/2004/13 in a manner that violated the staff member's rights under Article 16(1) of the Universal Declaration. Having determined that the administrative decision to deny Mr. Al Abani's request for recognition of his marriage and to refuse dependency benefits for his wife and stepdaughter flowing from such recognition was unreasonable, unfair and unlawful, as being in violation of Article 16(1) of the Universal Declaration, I would vacate the UNDT Judgment and remand the case to the United Nations Office at Vienna for the calculation and payment of the dependency benefits due to Mr. Al Abani.

Original and Authoritative Version: English

Dated this 30<sup>th</sup> day of June 2016 in New York, United States.

*(Signed)*

Judge Chapman

Entered in the Register on this 24<sup>th</sup> day of August 2016 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar