UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/GVA/2016/046
Order No.:	150 (GVA/2016)
Date:	28 July 2016
Original:	English

Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

OZTURK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON A MOTION FOR

INTERIM MEASURES

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Steven Dietrich, ALS/OHRM, UN Secretariat

Introduction

1. In the context of a substantive application, filed on the 13 July 2016 and completed on 15 July 2016, contesting the decision to deduct 25% of his salary as child support for one of his four children without enrolling the concerned child as his beneficiary, the Applicant moved for the following interim measures:

a. Suspend the salary deductions until the final settlement of the issue;

b. Refund all previous deductions;

c. Make the required adjustments to provide retroactive, fair, non-discriminatory deductions for all his children only if enrolled in the UN system as his beneficiaries;

d. Provide the Applicant with a letter by the Administration "stating facts in [his] file, explaining the situation" with a view to use it in seeking justice before national courts.

Facts

2. The Applicant joined the United Nations Interim Administration Mission in Kosovo ("UNMIK") in 2014, where he serves as a Civil Affairs Officer (P-3).

3. The Applicant was married from 1998 until 2006, to a Kazakh citizen with whom he had a daughter born in September 2001.

4. The Applicant is also the father of three more children who are his dependents under the United Nations dependency benefits system.

5. On 17 August 2005, a domestic court of Almaty, Republic of Kazakhstan, issued an order for the Applicant to pay 25% of his salary to his former wife in support of their daughter.

6. On 29 March 2012, the Legal Support Office, United Nations Development Programme forwarded to UNMIK a copy of that court order, together with a request of the Applicant's former wife to have 25% of his salary paid to her.

7. After seeking advice from the Department of Field Support/Field Personnel Division, in Headquarters, the Chief Civilian Personnel Officer ("CCPO"), UNMIK, informed the Applicant, by letter of 7 August 2012, about the child support claim, while requesting him to submit proof of compliance within 30 calendar days. The letter specified that, should the Applicant wish to contest the order, he was required to provide a new order of a competent court setting aside, vacating or staying pending appeal the original order, or prove that the matter with the complainant had been otherwise amicably resolved.

8. The Applicant replied to the CCPO on 7 September 2012, requesting UNMIK to hold the salary retentions in abeyance pending adjudication of certain proceedings that he had initiated as of 2010 before national courts of Kazakhstan and Belgium. He stated that it was only on 12 March 2008 that he became aware of the judicial proceedings and the resulting court order of 17 August 2005, and added that, on 23 October 2006, he and his former wife had signed an agreement on child support. Further, the Applicant requested that UNMIK assist him in obtaining information from his former wife relevant for the domestic court cases.

9. On 21 November 2012, UNMIK informed the Applicant that the documents he had submitted could not be considered by the Organization to stay the salary deductions, and referred the Applicant to the letter of 7 August 2012, which specified the documents that could be taken into account to this end.

10. On 4 December 2012, UNMIK informed the Applicant that his former wife, being also a UN staff member, had recorded their daughter as her dependant and was in receipt of a dependency allowance for her.

11. On 28 December 2012, the Applicant provided documents tending to support that he had appealed the case to a higher court in Kazakhstan.

12. On 28 February 2013, the CCPO, UNMIK, informed the Applicant that after review of his case, the Officer of Human Resources Management had concluded that such documents did not constitute a court order to vacate the initial one, and noted that the appeal dated back to 2010. The CCPO also stated that the Organization would be bound to honour the court order and to proceed to request the Secretary-General to authorise the salary deductions, unless the Applicant submitted, within 10 days, a stay from the national court pending the appeal.

13. On 13 March 2013, the Applicant replied to the CCPO, UNMIK, objecting to this decision.

14. On 22 March 2013, he requested management evaluation of it, and, by letter dated 14 May 2013, the Under-Secretary-General for Management upheld the decision.

15. After divorcing his Kazakh spouse, the Applicant married a Kosovo citizen with whom he had a son born on 25 May 2013. She later initiated divorce proceedings in a domestic court of Mitrovica, Kosovo, requesting to have the parental responsibilities of this child ruled upon.

16. On the 17 June 2015, the domestic court of Mitrovica issued a judgment ordering, *inter alia*, that the Applicant pay as "financial contribution to the care and custody of [the above-mentioned minor son]", "the equal amount as for all his children up to 1/3 of [his] monthly income", until the child's age 18.

17. Following this ruling, the Applicant requested again the suspension of the deduction on his salary arising from the Kazakh court order. In his exchanges with UNMIK, he requested to be provided with a written explanation of his situation to be able to submit it to the Kazakh courts. By email of 25 November 2015, UNMIK restated the position that it had expressed in the past, namely that the Applicant was required to provide a new order of a competent court setting aside, vacating or staying pending appeal the original order, or to prove that the matter with his ex-spouse had been otherwise amicably resolved.

18. By submission dated 23 January 2016, completed on 1 February 2016, the Applicant requested management evaluation of the decision contested in the present case.

19. By letter dated 20 April 2016, the Management Evaluation Unit dismissed the Applicant's claims on the salary deductions, while recommending that the daughter receiving such deductions be established as a dependent of the Applicant.

Parties' contentions

20. The Applicant's primary contentions may be summarized as follows:

a. The mother of the Applicant's daughter obtained a court decision from a Kazakh court without his participation to the proceedings. Moreover, she receives an allowance from the UN for said daughter, whereas the Applicant could not establish her as his dependent due to the mother's failure to provide him with required information to do so;

b. It is discriminatory, unfair and illegal that one of the Applicant's children receives 25% of his salary, while the other three cannot receive as much;

c. The Kazakh judicial system is ineffective and openly favours its citizens against foreigners. Although he has appealed the litigious order within the national jurisdiction, he has been so far unable to reach a positive settlement of the matter;

d. The issues at hand have been long pending and resulted in considerable stress, time and financial costs for the Applicant and his family;

e. The requested measures are expected to encourage the mother of the child for whom 25% salary deductions are made to accept a fair settlement of the matter and to protect the interest of all the Applicant's children, including the interest of her own daughter to regain contact with her father and three brothers.

21. The Respondent's primary contentions may be summarized as follows:

Receivability

a. An application must properly identify in a clear and concise manner each and every administrative decision that it is meant to contest. Challenges are not receivable where the administrative decision aimed at is not precisely identified;

b. The Organization is bound to execute the terms of the Kazakh court order. Neither the Administration nor the Dispute Tribunal is competent to vary or negate such orders;

Prima facie unlawfulness

a. The Applicant has not discharged his burden of proving there to be serious and reasonable doubts about the lawfulness of the contested decision;

b. Under Secretary-General's bulletin ST/SGB/1999/4 (Family and child support obligations of staff members), the Organization is bound to execute an original family support order, unless the staff member submits a new court order of a competent court setting aside or vacating the original orders, which the Applicant has not done. The Kosovo court order does not vary, vacate, stay or otherwise impact the original Kazakhstan court order. In the absence of a new court order from the Kazakh jurisdiction, the Organization is bound to continue to execute the original order;

c. With respect to the second contested decision, action has been taken in response to the recommendation of MEU in this respect;

Urgency

d. The Applicant makes no claim indicating that the matter is urgent. Furthermore, any claimed urgency would be self-created. The Kazakh court order has been in execution since August 2014;

Irreparable damage

e. The Applicant is free to petition the competent national courts for variation of his child support obligations. Any claimed irreparable harm is self-created.

Considerations

Receivability

22. The Respondent claims that the application at hand is irreceivable on the grounds that the Applicant does not challenge an administrative decision within the meaning of art. 2.1(a) of the Tribunal's Statute. In this respect, he argues that challenges where the administrative decision is not precisely defined are irreceivable, and also that the Applicant failed to identify an administrative decision that is in non-compliance with his terms of appointment.

23. The Tribunal recalls that, as the Appeals Tribunal held in *Massabni* 2012-UNAT-238:

> 2. The duties of a Judge prior to taking a decision include the adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content they assign to them, as the judgment must necessarily refer to the scope of the parties' contentions. Otherwise, the decision-maker would not be able to follow the correct process to accomplish his or her task, making up his or her mind and elaborating on a judgment motivated in reasons of fact and law related to the parties' submissions.
>
> 3. Thus, the authority to render a judgment gives the Judge an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and so, subject to judicial review which could lead to grant or not to grant the requested judgment.

24. In his application, the Applicant described the decision at issue as follows: "The deductions of 25% my salary (sic) as child support for only one of my child without enrolling the child as my beneficiary".

25. It goes without saying that it is in the interest of any applicant to be clear when defining the subject-matter of his or her challenge. This does not mean, however, that any somehow ambiguous statement of the contested decision(s) should *per se* lead to declare an application irreceivable. The Tribunal is to examine and interpret an applicant's submissions to ascertain the decisions that he or she intended to appeal. Further, in doing so, both the Appeals and the Dispute Tribunal have consistently taken into account whether an applicant was represented by counsel and/or could rely on a legal background (see, e.g., *O'Neill* 2011-UNAT-182, *Longone* UNDT/2015/001).

26. Having carefully reviewed the Applicant's submissions, and noting that the Applicant in this case is self-represented and not a trained lawyer, the Tribunal is satisfied that the object of this application appears sufficiently clear, and that it is two-folded:

a. On the one hand, the Applicant challenges the deduction of 25% of his salary implementing the alimony order of the Kazakh court;

b. On the other hand, he contests the Administration's refusal to establish his concerned daughter as his dependent for the purpose of the United Nations' dependency benefits.

27. The Tribunal is of the view that both of the foregoing decisions are appealable administrative decisions, according to the definition adopted by the Appeals Tribunal (*Tabari* 2010-UNAT-030, *Schook* 2010-UNAT-013, *Al-Surkhi et al*. 2013-UNAT-304, endorsing that of the former United Nations Administrative Tribunal in Judgment *Andronov* No. 1157 (2003)), to wit:

> It is acceptable by all administrative law systems, that an "administrative decision" is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished

> from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

28. In addition, the Respondent's contention that the Applicant has not identified any decision "in non-compliance with his terms of reference", since the Administration was bound to implement the 2005 order from the Kazakh court has pertinence, if any, for the merits of the case. The legality of the contested decision is by no means a cause of irreceivability of an application, but rather constitutes the substantive question to be determined.

29. In light of the above, and without prejudice to the Tribunal's authority to further examine and rule upon the receivability of the application on the merits under consideration, the receivability issues raised by the Respondent must fail. Accordingly, the Tribunal shall undertake to analyse whether the conditions for the granting of the requested interim measures are met.

Conditions for the granting of interim relief

30. Pursuant to art. 10.2 of the Tribunal's Statute and art.14 of its Rules of Procedure, the Tribunal may order interim measures at any time during the proceedings, provided that three conditions be fulfilled, namely:

a. The contested decision appears prima facie to be unlawful;

b. In cases of particular urgency; and

c. Where implementation of the contested decision would cause irreparable damage.

31. These are cumulative pre-requisites, therefore, the Tribunal may not grant interim measures if at least one of them is missing (*Nadeau* Order No. 116 (NY/2015), *Awomeyi* Order No. 165 (GVA/2015), *Kazagic* Order No. 20 (GVA/2015), *Auda* Order No. 156 (GVA/2016)).

32. In the instant case, the temporary relief sought consists primarily of the cessation of the salary deductions made in application of the 2005 Kazakh court order, as well as the reimbursement of the sums already deducted since August 2014. The Applicant requests as well that deductions be made only for those children who are registered as his dependents under the Organization's system of benefits and entitlements, and to be provided with an explanatory letter by the Administration that he could use in his litigation before national courts.

33. With this in mind, the Tribunal stresses that, as per its constant jurisprudence regarding temporary relief, the "irreparable damage" requirement involves the existence of harm that goes beyond mere financial loss, considering that the latter may be appropriately repaired through pecuniary compensation at a later stage (*Fradin de Ballabre* UNDT/2009/004, *Utkina* UNDT/2009/096, *Jaen* Order No. 29 (NY/2011)). Relevantly, three out of the four measures requested concern directly salary deductions, otherwise said, they are of a purely financial nature.

34. As to the fourth measure sought, it is noted that the Applicant's litigation has been on-going for many years, and that he has not indicated that such proceedings have reached a point where it is critical to adduce specific allegations or evidence. More importantly, the Tribunal fails to see, and the Applicant has not specified, which kind of information the Administration could provide that could have an impact before a domestic court on family matters and that he could not substantiate by producing his salary statements and/or any other domestic ruling affecting his family situation and his financial capacity (e.g., the Judgment of the Kosovo court of 2015).

35. For all of the above, it is not established that the Applicant will suffer irreparable damage while his application on the merits remains under consideration if the interim relief requested is not granted.

36. Having concluded that one of the three cumulative conditions is not satisfied, and for the sake of procedural economy, the Tribunal will not enter into examining the remaining conditions.

Conclusion

In view of the foregoing, the motion for interim measures is rejected.

(*Signed*)
Judge Teresa Bravo
Dated this 28th day of July 2016

Entered in the Register on this 28th day of July 2016
(*Signed*)
René M. Vargas M., Registrar, Geneva