

# **UNDT/2015/089, Al Abani**

## **UNAT Held or UNDT Pronouncements**

Receivability: Confirmative decisions do not reset the clock with respect to statutory time limits; however, if, despite having issued an earlier decision denying benefits, 1) the Organization undertakes a new verification procedure under the terms of the applicable rules at the time of said earlier decision (in this case ST/SGB/2013/4), 2) that process is not finalized, and 3) a subsequent decision denying benefits is taken under a new set of rules (in this case ST/SGB/2003/14/Rev. 1), the latter decision constitutes a new, final decision, and statutory time limits start to run anew. Non-retroactivity: If an incident occurred before an administrative issuance was promulgated, and unless otherwise provided for in the instruction, the latter is not applicable to the case at hand. Jurisdiction: The Tribunal does not have jurisdiction to deal with potential breaches of the Universal Declaration of Human Rights by the legislation of a sovereign national member state; nor it is competent to examine whether a national marital law is discriminatory. Ignorance of the law: While it is most regrettable that (wrong) choices by a staff member precluded the Organization from changing his/her personal status under the provisions in force at the time, it is the responsibility of international civil servants to be aware of the Staff Regulations and Rules and to organize their affairs, when necessary, so that they may comply with such, including reference to their national law. This is especially so when an administrative issuance in respect of which a staff member may seek to rely on does not include discretion. Hierarchy of norms: In its dealing with its staff members, the Organization is bound to respect the hierarchy of the Organization's internal legislation, or the Charter. Determination of personal status: The Organization needs a consistent and entirely transparent rule for the identification and determination of the personal status of its staff members, while respecting and relying on the sovereignty of its member states. The "choice", prior to the revised bulletin, to refer to a staff member's law of nationality 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. Right to marry: The right to enter into a marriage, without distinction, has to be distinguished from the recognition of said marriage by

the Organization, and from what benefits may or may not derive from such recognition under its Rules and Regulations. The decision to grant the Applicant the status as “married and related” as of 26 June 2014 only, that is, not to grant him retrospective benefits to the date of his marriage, was legal.

## Decision Contested or Judgment/Order Appealed

The Applicant, a national from Lebanon, married his Malaysian partner under a religious ceremony celebrated by the Islamic Association, Vienna, on 22 June 2007. The Malaysian authorities subsequently registered and recognized the marriage. In accordance with ST/SGB/2004/13, UNOV and OHRM sought confirmation from the Lebanese Permanent Mission on whether Lebanon would recognize the marriage. While the Mission initially stated it would not, since only civil marriages contracted elsewhere could be registered in Lebanon, it later stated in a Note Verbale that to be registered in the Lebanese civil status registers, the marriage had to be confirmed by the Lebanese competent Islamic Authorities. However, the Lebanese Permanent Mission never responded to a subsequent Note Verbale from UNOV, seeking verification of whether said confirmation was sought, completed and resulted in Lebanon recognizing the marriage. When a revised bulletin (ST/SGB/2004/13/Rev. 1) was issued on 26 June 2014, the Applicant's personal status was changed to “married and related” and he was granted dependency benefits for his wife and stepdaughter, as of that date, on the basis of the recognition of the marriage by Malaysia. He was, however, not granted retroactive benefits. The Applicant contested the non-granting of dependency benefits retroactively to 22 June 2007.

## Legal Principle(s)

N/A

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Al Abani

## Entity

UNOV

## Case Number(s)

UNDT/GVA/2015/113

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

24 Sep 2015

## Duty Judge

Judge Downing

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Benefits and entitlements

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

## Applicable Law

Secretary-General's bulletins

- ST/SGB/2004/13
- ST/SGB/2004/13/Rev.1

UNDT Statute

UNAT Statute

- Article 2.1(a)

## Related Judgments and Orders

UNDT/2012/110

UNDT/2011/126

2012-UNAT-238

2010-UNAT-079

2012-UNAT-271

2014-UNAT-402

2015-UNAT-546

2012-UNAT-196

2015-UNAT-534

2015-UNAT-557

2012-UNAT-225

2010-UNAT-007