

UNDT/2017/076, Kozul-Wright

UNAT Held or UNDT Pronouncements

Receivability Immunities have been incorporated into the terms of appointment of United Nations staff members—including at the highest level of the Organization's legal order and ever since its inception—thereby becoming part and parcel of their status and conditions of service. Furthermore, a decision to waive the immunity of a given staff member has evident—potentially dramatic—effects on his or her legal situation. Thus, the contested decision meets all the features of the definition of an administrative decision adopted by the Appeals Tribunal. Accordingly, the Tribunal found the application receivable. Proper exercise of discretion in lifting the Applicant's immunity

The Tribunal noted that in the present case there was no indication of procedural flaw, bias or improper motivation, material error, arbitrariness, manifestly unreasonable results, or else consideration of improper or irrelevant factors or failure to take into account relevant ones. The lease of an apartment for a staff member's personal accommodation is eminently a private matter. The move of the Applicant's then spouse was not for official purposes, and there are not the slightest indicia—nor does the Applicant argue so—that the proceedings that ensued in the dispute with their landlord were prompted, influenced or in any way related to their status as UNCTAD senior officials or to statements made or activities undertaken in this capacity. By virtue of the lease contract he had signed, he ought to honour such obligations or to bring them to an end in conformity with the applicable law. Under Swiss law, a tenant wishing to leave a rented apartment before the agreed term must not merely look for a replacement tenant but actually identify a fully satisfactory one. It is not for the Tribunal to double-guess the appropriateness of the Swiss regime on leases. It shall solely observe that this is the law in force as applied to any tenant at the duty station and that the Applicant was bound to respect it. The fact that the Applicant enjoys diplomatic immunity does not place him above the law. If anything, as a senior official of the Organization, he has an enhanced responsibility to abide by it, however, he failed to do so. Refraining from lifting a staff member's immunity would run counter to the United Nations' explicit undertaking to waive an official's

immunity when it would impede the course of justice. In addition, the Organization has no interest whatsoever in assisting one of its employees in hiding behind immunity to avoid being held accountable for breaching private obligations. Lastly, the Applicant's suggestion that the Organization bent to undue influence or instructions by the Swiss authorities, in violation of its independence, is entirely unfounded. The Administration acted lawfully in processing the request as per the established procedures and practice, and in examining it in light of the relevant factors and respective legal obligations. Respect of due process requirements The lifting of a staff member's immunity requires respect of due process rights and a fair treatment of the staff member, including the right to be informed about the existence of a request for a waiver of immunity and its basis, as well as the right to have legal counsel and to contradict the request by providing evidence and formulating objections. In this case, it is documented that every step of the established procedure was followed meticulously and conducted correctly. Specifically, the waiver procedure regarding the immunity of execution was triggered on the basis of an executable judgment by a competent jurisdiction, and the Administration showed diligence in verifying that the judgment was a valid final title for execution. Further, the Organization afforded the Applicant a timely and meaningful opportunity to be heard before reaching the contested decision. Duty of care The record shows that the Applicant was promptly made aware of each of the requests for waiver of his immunity, and of each of the steps in their processing. He was given all relevant information to apprehend the likelihood of his immunity being waived. The Administration acted transparently and fairly towards the Applicant and in keeping with its duty of care towards him.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision to waive his diplomatic immunity with regard to a dispute over the lease of an apartment, as notified to him by memorandum dated 10 May 2016.

Legal Principle(s)

International organizations and their officials enjoy functional immunities so they can undertake their work without undue interference by the states in which they operate.; Privileges and immunities are only accorded to officials in the interests of

the Organization and not for the benefit of the individual concerned. The decision to waive or maintain the immunity covering a staff member belongs to the Secretary-General, who essentially must weigh the need not to impede the course of justice and, the interests of the Organization that could be prejudiced by such a lifting of immunity. Like for any discretionary decision, the Tribunal should not disturb the decision by the Secretary-General to lift immunities unless such discretionary power has been abused. The Organization has an obligation to act fairly and in good faith with its staff and a duty of care concerning its employees.

Outcome

Dismissed on merits

Outcome Extra Text

Judgment vacated by UNAT Judgment Kozul-Wright 2018-UNAT-843.

Full judgment

[Full judgment](#)

Applicants/Appellants

Kozul-Wright

Entity

UNOG

Case Number(s)

UNDT/GVA/2016/093

Tribunal

UNDT

Registry

Geneva

Date of Judgement

13 Sep 2017

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Private legal obligations

Indebtedness to a third party

Privileges and immunities

Applicable Law

Administrative Instructions

- ST/AI/2000/12

Agreements, conventions, treaties (etc.)

- Agreement on Privileges and Immunities of the United Nations concluded between the Swiss Federal Council and the Secretary General of the United Nations on 19 April 1946
- Convention on the Rights of Persons with Disabilities and its Optional Protocol

Staff Regulations

- Regulation 1.1
- Regulation 1.2

Staff Rules

- Rule 1.2

UN Charter

- Article 105

UNDT Statute

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

2010-UNAT-058

2015-UNAT-509

2014-UNAT-457

UNDT/2010/175

2012-UNAT-190

2010-UNAT-098

2013-UNAT-311

UNDT/2010/009

UNDT/2012/018