

UNDT/2018/022, Cardenas Fischer et al.

UNAT Held or UNDT Pronouncements

Assuming that the 11 May 2017 communication conferred a general intent to implement the ICSC decision with respect to each and every staff member based in Geneva, such individual decisions had not yet been taken. This rendered the applications irreceivable. Moreover, even the decision of general order would have been rescinded by the next communication of 18 July 2017 in which the ICSC determined that its earlier measures would not be implemented as originally proposed. The application was dismissed as not receivable.

Decision Contested or Judgment/Order Appealed

All the Applicants were requesting the rescission of the decision to implement a post adjustment change resulting in a pay cut notified to them on 11 May 2017. The Applicants also sought compensation for any loss accrued prior to such rescission.

Legal Principle(s)

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 legal consequences. Onerousness, or gravamen, of an administrative decision for an applicant is a basic requirement determining the applicant's standing in any proceedings before the UNDT. Where an applicant has no

stake in the contested administrative decision, since his rights and terms of employment were not affected by it, the application must be rejected for the lack of legal standing. The doctrine of administrative law recognizes both discretionary decisions and constrained decisions, the latter having basis in substantive law which determines that where elements of a certain legal norm are fulfilled, the administrative authority will issue a specific decision. Substantive law may be a primary or secondary general legislation or may be an administrative decision of a general order. Constrained decisions are as a rule reviewable for legality, i.e., their compliance with the elements of the controlling legal norm. To exclude a limine judicial review of constrained decisions would unjustly restrain the staff members' right to a recourse to court.

Outcome

Dismissed as not receivable

Outcome Extra Text

The Tribunal held that as no individual decisions had been taken in respect of the individual staff members, the application was not receivable.

Full judgment

[Full judgment](#)

Applicants/Appellants

Cardenas Fischer et al.

Entity

UNEP

Case Number(s)

UNDT/NBI/2017/079

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

23 Feb 2018

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

UNDT Statute

UNAT Statute

- Article 2.1(a)