

UNDT/2018/055, Ozturk

UNAT Held or UNDT Pronouncements

Receivability; The Tribunal was satisfied that the object of the application was sufficiently clear and determined that it was two-folded finding that: a) On the one hand, the Applicant challenged the deduction of 25% of his salary implementing the alimony order of a Kazakh court; and; b) On the other hand, the Applicant contested the Administration's refusal to recognize his concerned daughter (El.) as his dependent for the purpose of the United Nations' child dependency benefits.; With respect to the refusal to recognize child El. as the Applicant's dependent for the purpose of the United Nations' dependency benefits, the Tribunal noted that that decision was rescinded and that said child was recognized as the Applicant's dependent, and he has been receiving dependency allowance for her retroactively, effective 1 August 2014. The Tribunal therefore noted that this part of the application was moot and was not reviewed.; Merits; The Tribunal recalled that it is not a family Court and its jurisdictional powers are limited to those granted by its Statute. As a consequence, the Tribunal cannot rescind or vacate the Kazakh court order or the order of any other national court. Its judicial review is limited to adjudicate on the lawfulness of the decision taken by the Organization to honour the Kazakh court order, in light of the Applicant's terms of appointment.; Does the Organization have discretion in determining the amount to be garnished from the Applicant's salary?; The Tribunal noted that, on the one hand, staff members are bound by and should generally comply with final and executable national court orders (cf. Benamar; cf. also staff rule 1.2(b)) and, on the other hand, that the United Nations enjoys judicial immunities. As such, while the Organization cannot ignore national court decisions, these are not binding and enforceable vis-à-vis it. In light of its judicial immunity, the United Nations disposes of and has to properly exercise its discretion when it comes to the application of staff rule 3.18(c)(iii). This is reflected by the use of the word "may" in staff rule 3.18(c)(iii), as mirrored in ST/SGB/1999/4. It is also reflected by the fact that such deduction requires the Secretary-General's authorization, which implies that it is not an automatic action but provides the Secretary-General with the final decision-making power in this respect.; Did the Organization legally exercise its discretion when it decided to deduct 25 % of the Applicant's salary for child support for El.?; The Tribunal found that when applying staff rule 3.18(c)(iii), the Organization had discretion in determining the amount to be deducted on the basis of the Kazakh court order.; The Tribunal noted that discretionary power of the Secretary-General in implementing these deductions cannot be such as to deprive a staff member e.g. of his/her own subsistence amount or minimum vital. As in any exercise of discretion, the Organization has to take into account all relevant considerations, which may include the terms of the final and executable court order and whether the staff member participated in the court proceedings (cf. Gonzalez-Hernandez 2014-UNAT-465), or whether a judgment was rendered in absentia, its duty of care vis-à-vis the staff member, as well as the needs of the family members for whom the national court order provided alimonies for. Relevant considerations may also include other final court orders on alimonies from other jurisdictions, to the extent they may have an impact on the financial situation of the staff member, or the cost-of-living at the place of residence of the minor child(ren), the minimum vital of the staff member and the like.; The Tribunal noted that where the Organization enjoys discretion, it has to exercise it and, more importantly, it has to do so legally. The Organization's failure to exercise its discretion and to take relevant considerations into account, including its duty of care vis-à-vis the Applicant must, in and of itself, lead to the illegality of the decision of 25 November 2015.; The Tribunal did not enter into an analysis of the actual amounts that were deducted, respectively as of November 2015 and thereafter. It limited its findings to the conclusion that a 25% monthly deduction from the Applicant's salary, in execution of the terms of the Kazakh court order, without any exercise of discretion was unlawful.; Remedies; The Tribunal decided that the decision of 25 November 2015 to deduct 25% from the Applicant's salary as alimony in favour of El. from that moment onwards had to be rescinded.; As a consequence, the Tribunal ordered that the Applicant be reimbursed the amounts deducted from his salary from 25 November 2015

onwards, minus the child allowance paid to the Applicant for El. as of that date; such reimbursement was subject to any deductions to be made from the Applicant's salary after a new determination had been made by the Organization as to the amount to be deducted in light of the Kazakh court order, in a legal exercise of discretion, pursuant to staff rule 3.18(c)(iii).

Decision Contested or Judgment/Order Appealed

The Applicant contests 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.

Legal Principle(s)

The Tribunal is to examine and interpret an applicant's submission 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 (O'Neill 2011-UNAT- 182, Longone UNDT/2015/001).

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

UNDT Judgment affirmed by UNAT Judgment Ozturk 2018-UNAT-892.

Full judgment

[Full judgment](#)

Applicants/Appellants

Ozturk

Entity

UNMIK

Case Number(s)

UNDT/GVA/2016/46

Tribunal

UNDT

Registry

Geneva

Date of Judgement

1 May 2018

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Applicable Law

Secretary-General's bulletins

- ST/SGB/1999/4

Staff Rules

- Rule 3.18(c)(iii)

Related Judgments and Orders

2012-UNAT-238

UNDT/2015/001

2010-UNAT-030

2013-UNAT-304

2012-UNAT-189

2014-UNAT-465

2011-UNAT-182

2010-UNAT-013

2017-UNAT-797