

# **UNDT/2018/105, Kortes**

## **UNAT Held or UNDT Pronouncements**

General Assembly Resolution 61/264 (Liabilities and proposed funding for after-service health insurance), adopted on 4 April 2007, introduced a major change in relation to a fundamental and essential contractual right, namely the right to after-service health insurance. The Tribunal is of the view that General Assembly Resolution 61/264 relates to the fundamental human right of medical care/health, which includes the right to after-service health insurance, and should have been implemented through specific and clear staff rules adopted by the Secretary-General. However, due to an inherited practice, over the years, this important contractual right was and is currently implemented through inferior legislation—administrative instructions. The implementation of General Assembly Resolution 61/264 through ST/AI/2007/3 (After-Service Health Insurance) is unlawful. The right to equal access to ASHI is not granted under the current legal framework and therefore not respected by the Organization for all staff members under the parallel system established by ST/AI/2007/3. The Tribunal is of the view that the General Assembly made no pronouncement on the right for staff members recruited on or after 1 July 2007 to buy-in extra years of contribution to make up the 10 year minimum participation in the United Nations health insurance plans, in order to deny this right after more than five years of contribution or to eliminate it completely. There is no basis for distinguishing eligibility for after-service health insurance coverage based solely on the date of recruitment of a staff member. To do so, as in ST/AI/2007/3, creates an arbitrary and discriminatory system which contravenes the mandatory standards established in the following provisions of the universal international conventions, as detailed in the section “Applicable law”: art. 55 of the Charter of the United Nations, arts. 1, 2, 7 and 25 of the Universal Declaration of Human Rights, art. 26 of the International Covenant on Civil and Political Rights, arts. 2, and 7 of the Equality of Treatment (Social Security Convention, 1962) and arts. 6 and 7 of the Maintenance of Social Security Rights Convention, 1982. The Administration’s position regarding the interpretation and application of the provisions of ST/AI/2007/3 in the Applicant’s case, a retired staff member who was

recruited after 1 July 2007, is incorrect. The denial of the Applicant's right to cover, from her own pocket, the buy-in for the remaining period up to 10 years, in order to enroll in ASHI, resulted not only in a discriminatory and unfair denial of her fundamental right to after-service medical care, but also of her spouse's derivative right for after-service health insurance coverage. The non-United States citizen staff members have an option that allows them to transit to another more appropriate health plan in their new country of residence. Such a right is denied to the after-service participants who reside in the United States, who may transfer from one plan to another, but in doing so may be made subject to the additional condition that there must be two years' coverage under any such plan before a change can be made.

## Decision Contested or Judgment/Order Appealed

The decision to find the Applicant ineligible for After-Service Health Insurance ("ASHI").

## Legal Principle(s)

At the top of the hierarchy of the Organization's internal legislation is the Charter of the United, which was signed on 26 June 1945 and entered into force on 24 October 1945, together with other universal conventions/treaties, including but not limited to the Universal Declaration of Human Rights adopted by the General Assembly on 10 December 1948, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both adopted by the General Assembly on 16 December 1966 and entered into force respectively on 3 January 1976 and 23 March 1976, followed by the Staff Regulations adopted by the General Assembly and Staff Rules adopted by the Secretary-General and other relevant resolutions and decisions adopted by the General Assembly, Secretary-General's bulletins and administrative instructions (see Hastings UNDT/2009/030, affirmed in Hastings 2011-UNAT-109 Amar UNDT/2011/040). Information circulars, office guidelines, manuals, and memoranda are at the bottom of this hierarchy and lack the legal authority vested in properly promulgated administrative issuances. The purpose of compensation is to place the staff member in the same position s/he would have been had the Organization complied with its contractual obligations.

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Kortes

## Entity

DESA

## Case Number(s)

UNDT/NY/2017/014

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

19 Oct 2018

## Duty Judge

Judge Greceanu

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Benefits and entitlements

Health (medical) and/or dental insurance

Compensation

Non-pecuniary (moral) damages

## Applicable Law

Administrative Instructions

- ST/AI/2007/3

Agreements, conventions, treaties (etc.)

- Universal Declaration on Human Rights

UN Charter

- Article 55

## Related Judgments and Orders

UNDT/2011/126

2011-UNAT-160

UNDT/2012/178

UNDT/2009/030

2011-UNAT-109

UNDT/2011/040

2015-UNAT-530

2013-UNAT-367

UNDT/2011/012

UNDT/2011/068

2018-UNAT-847