

2018-UNAT-843, Kozul-Wright

UNAT Held or UNDT Pronouncements

UNAT held that, when responding to requests for the waiver of an official's immunity, the Organisation must comply with its legal obligations to the requesting Member State under the relevant international instruments, which limit immunity to official acts and oblige the Secretary-General to cooperate at all times with the appropriate authorities to facilitate the proper administration of justice and to prevent the occurrence of any abuse in connection with the privileges and immunities. UNAT noted that the Secretary-General is best placed to appreciate the nature of the Organisation's obligations to a Member State, what form of cooperation will be in the interests of the Organisation, and whether non-waiver is necessary for the fulfillment of the purposes of the Organisation. The factors he will take into consideration often may be political in nature and will involve issues of comity. These considerations imbue a decision of the Secretary-General to waive immunity with an executive or political character, negating the categorization of the decision as one administrative in nature. Accordingly, UNAT held that the staff member's application to UNDT was not receivable *ratione materiae* and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The staff member contested the Secretary-General's decision to waive his diplomatic immunity regarding his dispute over the lease of an apartment at his duty station in Geneva. At the request of the Permanent Mission of Switzerland to the UN, the Secretary-General lifted the staff member's immunity with respect to the execution of a judgment issued by a Geneva court ordering the staff member to pay compensation to the landlord. UNDT found the application to be receivable on the grounds that the decision to waive immunity constituted an administrative decision that had a direct impact on the staff member. UNDT concluded, however, that the Administration had properly exercised its discretion to waive immunity and it had acted reasonably and properly, taking account of all relevant considerations, in

lifting the immunity.

Legal Principle(s)

The Secretary-General's decision to waive a staff member's immunity does not constitute an administrative decision. Rather, it is an executive or policy decision.

Outcome

Appeal dismissed on receivability; Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Kozul-Wright

Entity

UNCTAD

Case Number(s)

2017-1126

2017-1128

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Jun 2018

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Privileges and immunities

Private legal obligations

Waiver of immunity

Applicable Law

Agreements, conventions, treaties (etc.)

- Convention on the Privileges and Immunities of the UN

Staff Regulations

- Regulation 1.1(f)

Staff Rules

- Rule 1.2(b)

UN Charter

- Article 105

UNDT Statute

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

UNDT/2017/076