

2018-UNAT-892, Ozturk

UNAT Held or UNDT Pronouncements

UNAT noted that under the provisions of Staff Rule 1. 2(b), staff members must comply with local laws and honour their private legal obligations, including, but not limited to, the obligation to honour orders of competent courts. However, the ST/SGB/1999/4 legal framework has to be interpreted within the context of the authorizing Staff Rule 3. 18(c)(iii), which grants the Administration discretionary authority, as is reflected in the use of the word “may” in it, to make a proper and fair decision, in cases of indebtedness to third parties, under the proviso that a deduction for this purpose is authorized by the Secretary-General. In these cases, such as the present case of a family support court order, the Administration is entitled, and at the same time compelled, to engage in an exercise of its discretion by taking into consideration all relevant factors and, if need be, by varying the deductions made from the staff member’s salary or other emoluments. UNAT held that this approach does not contravene the provision of Article 2(7) of the Charter, that the UN should not intervene in matters which are essentially within the domestic jurisdiction of any state. UNAT further held that there is no valid exercise of the discretion vested in the Administration when the latter always addresses the administrative matters at issue in the same direction or acts in the misconception that it is fettered to make a specific choice, to the exclusion of all other choices amongst the various courses of action open to it. In these situations, the Administration has, illegally, failed to engage in a balancing exercise of the competing interests, by considering all aspects relevant for the exercise of its discretion, in order to select the proper legal consequence. UNAT dismissed the Secretary-General’s appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The staff member contested the Administration’s decision to deduct 25 per cent of his salary as child support for El. , one of his four children, in implementation of an order of a Kazakh court. UNDT held that the Administration was incorrect in

assuming that it had no discretion regarding the amount to be garnished from the staff member's salary. The Administration had discretionary authority under Staff Rule 3. 18(c)(iii) and Section 2. 1 of ST/SGB/1999/4 in determining the amount to be deducted. UNDT considered that the Administration had failed to lawfully exercise its discretion by taking into account all relevant considerations, including whether other national court orders had granted alimonies to the staff member's other family members. UNDT further found the monthly deduction of 25 percent (which ranged between USD 1,957 – 2,773) unreasonable in light of the amount of monthly child dependency allowance paid to the child's mother — who worked as a national staff member of OCHA in Kazakhstan — by the United Nations in Kazakhstan (USD 27). By way of remedy, UNDT rescinded the contested decision and ordered reimbursement of the amounts deducted from the date of the contested decision minus the child allowance paid to the staff member for El. as of that date. UNDT further held that the Organisation had to determine anew, in a legal exercise of its discretion, taking all relevant matters into account, the amount to be deducted from the staff member's salary in favor of El. from the date of the contested decision onwards.

Legal Principle(s)

Under Staff Rule 3. 18(c)(iii), the Secretary-General has discretionary authority to make a proper and fair decision, in cases of a staff member's indebtedness to third parties. In these cases, the Administration is entitled, and at the same time compelled, to engage in an exercise of its discretion by taking into consideration all relevant factors and, if need be, by varying the deductions made from the staff member's salary or other emoluments.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Ozturk

Entity

UNMIK

Case Number(s)

2018-1185

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Oct 2018

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Private legal obligations

Salary deduction

Discretionary authority

Applicable Law

Secretary-General's bulletins

- ST/SGB/1999/4

Staff Rules

- Rule 1.2(b)
- Rule 3.18(c)

UN Charter

- Article 2.7

Related Judgments and Orders

UNDT/2018/055