

UNDT/2023/031, Ozturk

UNAT Held or UNDT Pronouncements

The Applicant essentially contests the Administration's execution of Judgment Ozturk 2018- UNAT-892, i.e., the Administration's reimbursement of USD41,173 made on 7 May 2019 for excess salary deducted pursuant to a child support court order.

While the Applicant sought to identify the UNMIK Administration's email response dated 19 January 2023 as a contested decision, that email merely constitutes a mere reiteration of the Administration's decision of 7 May 2019, and thus it does not constitute a new administrative decision.

The Applicant first became aware of the contested decision on 7 May 2019. He however only filed his application before the Tribunal on 14 April 2023, almost four years after being notified of the contested decision. Accordingly, the application is not receivable *ratione temporis*.

While the Organization reiterated to the Applicant the contested decision by email of 19 January 2023, the reiteration "does not reset the clock with respect to statutory timelines. Rather, time starts to run from the date on which the original decision was [notified]" (see Kerby 2020-UNAT-1064, para. 37).

Therefore, the 60-day deadline for requesting management evaluation of the contested decision started to run from 7 May 2019 and ended on 6 July 2019. Accordingly, the Applicant's request for management evaluation on 20 May 2021 was time-barred, and thus the present application is not receivable *ratione materiae*.

Decision Contested or Judgment/Order Appealed

By application filed on 14 April 2023, the Applicant, a staff member of the United Nations Interim Administration Mission in Kosovo ("UNMIK"), contests the amount of the reimbursement he received in 2019 for excess salary deducted pursuant to a

child support court order.

Legal Principle(s)

“[S]ummary judgment is an appropriate tool to deal with issues of receivability in the United Nations internal system of administration of justice” (see *Kazazi* 2015-UNAT-557, para. 41; see also *Auda* 2017-UNAT-740, para. 18). Indeed, the Tribunal has the competence to review an application’s receivability even if the parties do not raise the issue, because “it constitutes a matter of law and the Statute prevents the [Tribunal] from receiving a case which is [not receivable]” (see *Christensen* 2013- UNAT-335, para. 21).

It is well-settled law that the Tribunal has “the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review”, and “may consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed” (see, e.g., *Fasanella* 2017- UNAT-765, para. 20; *Cardwell* 2018-UNAT-876, para. 23).

Moreover, “[t]he date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine” (see, e.g., *Kerby* 2020-UNAT-1064, para. 37).

“The Dispute Tribunal may only review decisions that have been the subject of a timely request for management evaluation” (see *Khan* 2022-UNAT-1284, para. 52).

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Ozturk

Entity

UNMIK

Case Number(s)

UNDT/GVA/2023/021

Tribunal

UNDT

Registry

Geneva

Date of Judgement

19 May 2023

Duty Judge

Judge Tibulya

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Temporal (ratione temporis)

Subject matter (ratione materiae)

Jurisdiction / receivability (UNAT)

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

UNDT RoP

- Article 9

UNDT Statute

- Article 8.1(c)
- Article 8.4

Staff Rules

- Rule 11.2(c)