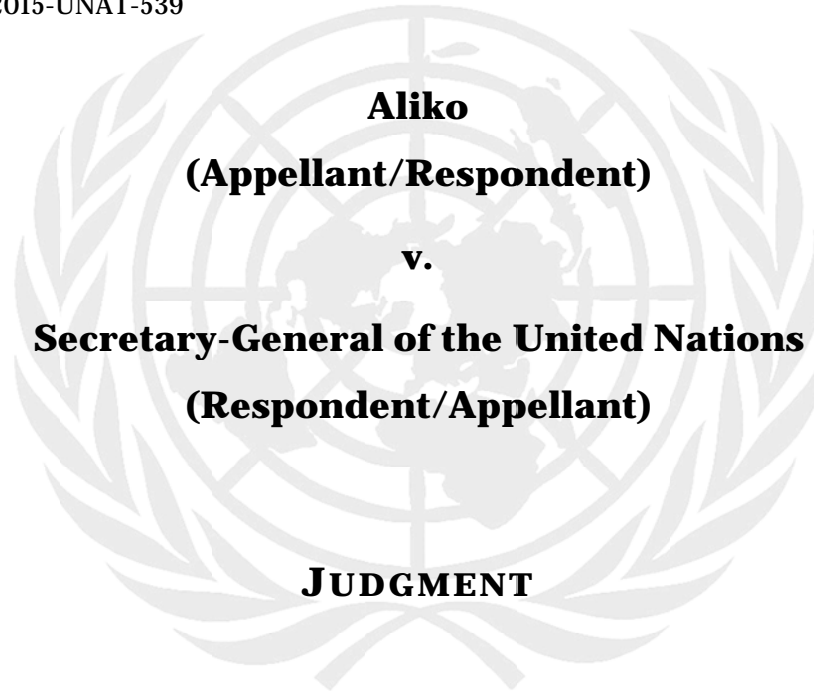




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-539



**Aliko
(Appellant/Respondent)**

v.

**Secretary-General of the United Nations
(Respondent/Appellant)**

JUDGMENT

Before:	Judge Luis María Simón, Presiding Judge Inés Weinberg de Roca Judge Deborah Thomas-Felix
Case Nos.:	2014-616 & 2014-617
Date:	2 July 2015
Registrar:	Weicheng Lin

Counsel for Mr. Aliko:	Self-represented
Counsel for Secretary-General:	John Stompor

JUDGE LUIS MARÍA SIMÓN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Artan Aliko against Judgment No. UNDT/2014/043, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 15 April 2014. Mr. Aliko appealed on 16 June 2014 and the Secretary-General answered on 8 August 2014.
2. The Appeals Tribunal also has before it an appeal filed by the Secretary-General on 16 June 2014 against the same Judgment. Mr. Aliko filed his answer on 1 August 2014.

Facts and Procedure

3. The following facts are uncontested:¹

... The Applicant started employment at the Switzerland Operations Center (“SWOC”), [United Nations Office for Project Services (UNOPS)], as Portfolio Manager of the Environment Portfolio, at the P-3 level, on 1 March 2009, in Geneva, Switzerland.

... In his Personal History Form (“P-11”), signed in December 2008, the Applicant indicated Albanian under “Nationality(ies) at birth” and French under “Present nationality(ies)”. He also indicated Thoiry, France, as his “Permanent address”.

... The offer of appointment, dated 23 February 2009, signed by the Applicant on the same day, stated “Education Grant and Education Grant Travel not applicable since your home country is within commuting distance of your duty station as per staff rule 203.8 (iv)”.

... The Applicant’s letter of appointment dated 9 March 2009 expressly stated that “[t]his appointment is offered on the basis, inter alia, of [the Applicant’s] certification of the accuracy of the information provided by [the Applicant] on the personal history form”.

... In his Personnel Induction Questionnaire, which the Applicant sent to the UNOPS Human Resources (“HR”) and the Benefits and Entitlements Services (“BES”), [United Nations Development Programme (UNDP)], upon his recruitment, he indicated “Albanian” under “Official nationality” and “French” under “Other Nationalities”.

... On 6 October 2009, upon the Applicant’s request, UNDP, BES, sent the Applicant a Personnel Action (“PA”) Form and on 7 October 2009, he requested UNDP, BES, to correct and add some missing information to the PA, which related to

¹ Impugned Judgment, paras. 10-42.

his place of home leave and his dependents. He stressed that “[w]hile [he had] double nationality: Albanian and French, [his] home leave should be Albania since that is the country where [he was] born, grew up, where [his] family...and [his] home [are]”.

... On 5 January 2010, the Applicant again requested BES, UNDP, to change his place of home leave from France to Albania. After several exchanges of emails, a Team Lead and HR Associate, BES, UNDP, informed the Applicant by email of 7 October 2010 that “[she had] received the decision from BES Management on [his] request to change [his] official UN nationality from French to Albanian” and that his request was not granted, since at the time of his appointment with UNOPS, as well as now, he was more closely associated to France than to Albania.

... On the same day, namely on 7 October 2010, BES, UNDP, advised the Applicant that if he wanted to appeal the decision, he should submit his request to the General Counsel, UNOPS.

... Still on the same day, the Applicant asked HR, UNOPS, to inform him about the internal recourse procedure and on 8 October 2010, a Human Resources Specialist, UNOPS, confirmed that HR, UNOPS, would review his request.

... On 11 November 2010, a Legal Associate, UNOPS, EMO, requested the Applicant to respond to some questions and provide supporting documents to allow UNOPS to better assess the merits of his request for change of his nationality for UN purposes. The Applicant provided additional information with respect to, *inter alia*, his Albanian passport, countries where he had resided, property (real estate), mother tongue and nationality of himself and his children, on 15 November 2010.

... On 20 June 2011, the Applicant submitted an education grant request for the school year 2009/2010 for his daughter.

... By notification of 22 June 2011, the Director, HR, UNOPS, informed the Applicant that his nationality for UNOPS purposes would not be changed to Albanian.

... On 6 July 2011, the Applicant sent a message to the Executive Director and the Deputy Executive Director, UNOPS, expressing his disagreement with the decision of the Director, HR, UNOPS, to reject his request to change his official nationality with the UN, and requested whether there was still a chance that the merits of his case be reviewed.

... The first payment of education grant for the Applicant’s daughter was made to the Applicant on 31 July 2011.

... On 4 August 2011, the Deputy Executive Director, UNOPS, replied to the Applicant, confirming the decision that his request for change of nationality for UN purposes was rejected.

... On 1 March 2012, the Applicant submitted a request for payment of education grant for the school year 2010/2011 and of education grant advance for the school year

2011/2012; payment of the education grant 2010/2011 and the education grant advance 2011/2012 were made on 30 April 2012.

... At a face-to-face meeting between the Applicant and the Director, HR, UNOPS, in April 2012, with respect to his request for change of nationality, the latter suggested to the Applicant to send him a new request, which he did on 30 April 2012. On 8 May 2012, the Director, HR, UNOPS, sent a message to the Applicant, noting that there was no new element which would justify reopening his case.

... The Applicant was separated from UNOPS on 30 September 2012.

... By email of 8 October 2012, a Team Lead and HR Associate, BES, informed the Applicant that as he had been advised earlier, in his offer of appointment and through subsequent email correspondence, he was not entitled to international entitlements and that he had nevertheless, unduly, received education grants for his daughter for the period 2009 through 2012, and that monies paid would need to be recovered upon his separation from UNOPS. The Applicant did not receive that email, since his UNOPS account had been removed as of 1 October 2012; it was, however, forwarded to his private email address on 2 November 2012.

... The separation letter of 23 October 2012 referred to the email of 8 October 2012, and confirmed to the Applicant that the recovery of the overpayment of education grant amounts—totalling CHF 53,644.83—had to be settled upon his separation from UNOPS and that no salary or repatriation grant from which the overpayment could be recovered were available.

... On 2 November 2012, the Applicant wrote to the Team and HR Associate, BES, stressing that as an international staff he should be entitled to international entitlements. He noted that he was not aware of any email correspondence advising him that he was not entitled to education grant. He requested that the separation letter be amended accordingly. The same day, namely 2 November 2012, the Team Lead and HR Associate, BES, wrote to the Applicant, noting that they were pleased that he had now received the separation letter and her earlier email of 8 October 2012. She reiterated that in view of the fact that he was a French national, residing in France, he was not entitled to international benefits, including education grant, since his duty station, Switzerland, was within commuting distance from France. She further noted that due to an oversight on the side of the Administration, the requests for education grant had nevertheless been processed, despite the fact that he was not entitled to them, and that they would need to be recovered upon his separation from UNOPS.

... Yet, on 2 November 2012, the Applicant responded that his first nationality and that of his wife and children was Albanian and that he found it unreasonable to retroactively advi[s]e of the recovery of education grant. He noted that if that decision were maintained, he would have to explore options to challenge the same.

... After several exchanges of emails, the Applicant, by email of 29 November 2012, asked the Officer, BES, UNDP, to correct his nationality in the system to Albanian, and noted that that correction would make BES request for recovery of the education grant irrelevant; he also asked to be provided with the amount of repatriation grant to which he was entitled.

... By email of the same day, a Human Resources Specialist, BES, UNDP, informed the Applicant that “a decision ha[d] already been made by UNOPS on the determination of [his] official nationality” and that his entitlements were administered on the basis of that decision, hence he was not entitled to education or repatriation grant.

... By another email of 29 November 2012 to the Director, HR, UNOPS, the Applicant noted that in his view, BES['] request for recovery of the approved education grant payments constituted a good opportunity to reopen the case of changing his nationality to Albanian.

... By email of 3 December 2012, the Director, HR, UNOPS, responded to the Applicant, stating that though he was not sure that this was a good opportunity to reopen the case, he would review it with his team. By email of 13 December 2012, he informed the Applicant that after further review of his case, he still considered that UNOPS['] original decision was correct.

... By email of 17 December 2012, a UNDP Officer requested the Applicant to pay back the overpayment of the education grant he had received. The Applicant, in an email of the same day, responded that he had no intention to pay the education grant back, since, in his view, the decision with respect to his nationality was unlawful; moreover, the education grant had been approved by the Administration since 2009 and if he had known that he was not entitled to it, he could have made other choices for his daughter's schooling. He also asked BES to confirm that the [United Nations Staff Pension Fund (UNJSPF or Fund)] received all necessary separation documentation. Yet, by email of the same day, the UNDP Officer responded to the Applicant, stressing that any pending entitlements to him would be used to recover the overpayment made and that UNDP/UNOPS could not certify his pension papers until the overpayment was settled.

... After some further exchanges, by email of 20 December 2012 to the Applicant, the Deputy Director, HR, UNOPS, recalled that in the Applicant's offer of appointment of 23 February 2009, which the latter had signed, it was clearly noted that education grant was not applicable to him since his home country, France, was within commuting distance of his duty station, as per the applicable staff rule and that he was neither entitled to home leave. The Deputy Director, HR, UNOPS, also referred to email communications from 2011 with respect to the Applicant's request for change of his nationality and related denial of his request for home leave. He noted that UNOPS provided the Applicant advice that his nationality for UN purposes was French

in 2009, 2011 and 2012 and that the relevant administrative instruction on Education grant puts an obligation on staff members to verify the correctness of the information provided. The Deputy Director, HR, UNOPS, noted that all of the above should have prompted the Applicant not to submit any education grants. He noted that “upon the finalisation of the separation procedures relating to [the Applicant’s] employment...[his] pension papers [would] be finalised”, while recalling that the Applicant still owed the Organisation the amount of USD 60,743.27 (CHF 53,644.83), and urged him to make the necessary arrangements to reimburse the overpayment.

... On 21 December 2012, the Applicant responded to that email and expressed his disagreement; he thanked the Deputy Director, HR, UNOPS, for having withdrawn the decision to keep his pension fund pending by not providing the UNJSPF with the relevant separation documentation, and asked him about the decision with respect to the outstanding leave balance and other separation entitlements, noting that in his view, any recovery of overpayment should be made [b]y means of deductions from salaries.

... By email of 23 December 2012, the Deputy Director, HR, BES, UNOPS, informed the Applicant that “separation procedures include ensuring that staff members have settled all their indebtedness to the Organization” and that “therefore [his] pension papers [would] be finalized after the CHF 53,644.83 [were] recovered from [him]” and that “any amounts...otherwise due to [him]—including any annual leave balance—[would] be credited against this debt”.

... On 8 February 2013, the Applicant requested management evaluation of the decision of the Director, HR, UNOPS, dated 13 December 2012, not to change his nationality recognized under the UN Rules and Regulations and of the decision of the Deputy Director, HR, UNOPS, dated 23 December 2011 (sic), “to use his leave balance and separation entitlements to compensate for [UNDP BES] Education Grant reimbursement claim or to keep pension contribution on hold by not providing [UNJSPF] with separation documentation.”

... By letter of 18 March 2013, in response to his request for management evaluation, the Applicant was informed that both decisions were upheld.

... The Applicant filed [his] application [to the UNDT] on 23 April 2013.

4. On 15 April 2014, the UNDT rendered Judgment No. UNDT/2014/043. The UNDT found that the decision not to change Mr. Aliko’s nationality for United Nations purposes was communicated to him for the first time on 7 October 2010. On 11 November 2010, Mr. Aliko was requested to submit additional information to allow UNOPS to make a better assessment of the merits of his request to have his nationality changed for United Nations purposes. Mr. Aliko provided such additional information on 15 November 2010 and on 22 June 2011, he was informed that his nationality would not be changed. The UNDT

considered that the 22 June 2011 communication constituted a new administrative decision and the time limits started to run as of that date. However, the UNDT held that the subsequent decisions of 4 August 2011, 8 May 2012 and 13 December 2012 were mere confirmations of the 22 June 2011 decision and that therefore his request for management evaluation of 8 February 2013 was time-barred

5. The UNDT further held that Mr. Aliko was informed that he was not entitled to an education grant for the first time through the offer of appointment dated 23 February 2009 and by separation letter dated 23 October 2012, he was informed that the education grant payments were to be recovered in the context of his separation. Since Mr. Aliko requested management evaluation only on 8 February 2013, any claims against the decision that he was not entitled to an education grant and against the recovery of the overpayment were time-barred.

6. The UNDT held that the actual decisions to use the leave balance and to withhold separation documents were communicated to Mr. Aliko on 20 and 23 December 2012 and accordingly these decisions were receivable *ratione temporis*. The UNDT noted that pursuant to Section 2.2 of Administrative Instruction ST/AI/2009/1 (Recovery of overpayments made to staff members), “overpayment creates on the part of the staff member an indebtedness which shall normally be recovered by means of deductions from salaries, wages and other emoluments under Staff Rule 3.17(c)(ii)” and former Staff Rule 3.17(c)(ii)² applicable at the time stated that “deductions from salaries and other emoluments may also be made for: indebtedness to the United Nations”. The UNDT held that leave balance and separation entitlements fall under the notion of “other emoluments” for the purpose of Staff Rule 3.17 and, accordingly, it was legal to use these emoluments to partially settle Mr. Aliko’s indebtedness to the Organization.

7. The UNDT recalled that staff members’ rights to payment of their pension benefits are determined exclusively under the Regulations of the UNJSPF and no deductions may be made from the benefits due from the Pension Fund except for indebtedness to the Fund. Moreover, the terms of Administrative Instruction ST/AI/155/Rev.2 (Personnel Payroll Clearance Action) are unambiguous in that they only allow for the withholding of the P.35 (Personal Payroll Clearance Action), not the PF.4 (Separation Notification). The UNDT

² Staff Rule 3.17(c)(ii) subsequently became Staff Rule 3.18(c)(ii).

found that the Organization had no legal grounds for refusing to issue the separation notification to the UNJSPF to secure the payment of debt Mr. Aliko had vis-à-vis UNOPS.

8. The UNDT concluded that Mr. Aliko had suffered material damages on the ground that the Administration had illegally withheld his separation notification, as a result of which payment of his pension entitlements since his separation had not been made. The UNDT awarded USD 3,000 for material damages. The UNDT also ordered that the Secretary-General transmit to the UNJSPF Mr. Aliko's separation notification (PF.4) within 60 days of the issuance of the UNDT Judgment.

Submissions

Mr. Aliko's Appeal

9. The UNDT erred in finding that Mr. Aliko's request was not receivable. The 13 December 2012 decision was a new administrative decision as the two pieces of information provided by Mr. Aliko concerning his citizenship were discrete from the original decision and had major consequences for Mr. Aliko. His receipt of the Administration's claim for reimbursement of education grant payments and his planned relocation to Tirana, Albania, effective 18 December 2012 were both material.

10. Mr. Aliko submits that the Director of HR of UNOPS "confirmed the materiality of information by recognizing its importance and informing [him] of a new review process and decision". "Notwithstanding the fact that the outcome of this process was to maintain a previous decision, a new process as confirmed by the UNOPS HR Director lead inevitably to a new decision."

11. Mr. Aliko further contends that there should be no time limit to request the correction of a decision that violates individual rights protected by the Universal Declaration of Human Rights. As a consequence, any request for review that involves allegations of violations of human rights should call for an administrative decision and, notwithstanding the reaction of the Administration, any of the subsequent administrative statements should be considered as administrative decisions vis-à-vis Mr. Aliko's human rights violation claim.

12. On the merits, Mr. Aliko contends that “[i]t seems fairly obvious that [his] links to his native Albania [...] are much stronger than with France”. In support of this contention, he refers, inter alia, to his birth and lifelong residence in Albania, his family ties, his ownership of several properties in the country; his education there until the age of 20; his regular return there even upon moving to France between 1987-1994, his permanent return to Albania after completing said studies and his recent repatriation in 2012.

13. The decision not to change his nationality for United Nations purposes is arbitrary and violates the Universal Declaration of Human Rights. UNOPS denied him the right to change his nationality and arbitrarily deprived him of his Albanian nationality.

14. The UNDP BES, UNOPS HR Director and UNOPS Deputy Executive Director abused their authority and improperly influenced employment conditions related to Mr. Aliko’s appointment with the purpose of arbitrarily depriving him and his family of the right to benefit entitlements related to international staff, including home leave, education grant and repatriation grant. The impugned decision is not supported by facts and evidence and is inconsistent with the purposes and intent of the Staff Regulations and Rules.

15. Mr. Aliko asks that UNOPS officially recognize Albanian as his first nationality and change his status in the system retroactively as of 1 March 2009; release all pending payments related to his separation, including his salary payments; and pay a lump sum to compensate him for all missed entitlements since 1 March 2009 related to the new status.

The Secretary-General’s Answer

16. The UNDT correctly concluded that Mr. Aliko’s application was not receivable with respect to its claims regarding the decision on change of nationality. The Administration’s response of 13 December 2012 was not a new administrative decision. Contrary to Mr. Aliko’s contention, the Administration’s decision to recover the overpayments of education grants and an education grant advance was irrelevant to the determination of his nationality for the purposes of the Staff Regulations and Rules. Furthermore, the responses of the Director of HR of UNOPS did not have the effect of re-starting the applicable time limits. Finally, Mr. Aliko’s contention that the decision not to recognize Albanian as his nationality is a clear violation of the Universal Declaration of Human Rights is without merit. Mr. Aliko was not deprived of his nationality nor denied the right to change his nationality.

Rather, the contested decision in the present case dealt with which of his two nationalities would be recognized for the purposes of determining his eligibility for entitlements under the Staff Regulations and Rules.

17. The UNDT further correctly concluded that the application was not receivable with respect to its claims regarding the decisions on ineligibility for an education grant and on education grant recovery. Mr. Aliko was notified on 23 February 2009 and 2 November 2012, respectively, that he was not eligible to receive an education grant. While under Staff Rule 11.2(c), he had at most until 1 January 2013 to submit a request for a management evaluation of these decisions, he waited until 8 February 2013 - more than one month beyond the expiration of the mandatory time limit - to send his request.

18. The UNDT correctly upheld the decision to use Mr. Aliko's pending entitlements to recover part of the overpayments to him. Pursuant to Staff Rule 3.18(c) and ST/AI/2009/1, it was lawful for the Administration to deduct part of the indebtedness from his pending entitlements.

19. The UNDT correctly concluded that Mr. Aliko's allegations of harassment were not relevant to the contested decisions that were found to be receivable. The Secretary-General reiterates that the UNDT correctly concluded that Mr. Aliko's appeals against the decisions on change of nationality and on ineligibility for education grant were not receivable. The UNDT was therefore also correct in declining to examine the merits of the Appellant's claims regarding these decisions, including whether these decisions were arbitrary and improperly motivated.

20. The UNDT correctly held that the Administration, including the Deputy Executive Director and the Director of HR of UNOPS did not abuse their authority to improperly influence employment conditions related to Mr. Aliko's appointment. Contrary to Mr. Aliko's contention, the Administration's notifications of 7 October 2010 and 22 June 2011 set forth the reasons for the denial of his requests. Thus, the UNDT correctly concluded that Mr. Aliko's allegations of harassment were not relevant to the contested decisions that were found to be receivable.

21. The Secretary-General requests that the Appeals Tribunal dismiss Mr. Aliko's appeal in its entirety. In the alternative, should the Appeals Tribunal determine that the UNDT erred in concluding that certain claims by Mr. Aliko were not receivable, the Secretary-General requests that those claims be remanded to the UNDT for adjudication on the merits.

The Secretary-General's Appeal

22. The UNDT erred in concluding that there were no legal grounds for refusing the issuance of the PF.4 form. UNOPS' refusal to issue the PF.4 form when Mr. Aliko had failed to settle all indebtedness with the United Nations is consistent with the purpose of ST/AI/155/Rev.2. Under the provisions of paragraphs 1, 11, and 13 of ST/AI/155/Rev.2, Mr. Aliko was on notice that his failure to settle his indebtedness to UNOPS might result in the suspension of the separation procedure and one way of suspending such procedure was for UNOPS to refuse to issue the PF.4 form.

23. Moreover, the UNDT's interpretation of ST/AI/155/Rev.2 was unreasonably restrictive. ST/AI/155/Rev.2 contains no express prohibition on withholding the PF.4 form when a staff member has failed to settle any indebtedness with the Organization. Furthermore, since the issuance of ST/AI/155/Rev.2, there have been many technological changes with regard to the payroll clearance action. The P.35 form for example is no longer used and the information contained therein is readily accessible by the UNJSPF through the electronic Enterprise Resource Planning system. In order to continue to interpret meaningfully the provisions of ST/AI/155/Rev.2 regarding the suspension of separation procedures in a case such as the present, it was reasonable for UNOPS to refuse to issue the PF.4 form.

24. The UNDT erred in concluding that the rights of staff members to payment of their pension benefits are determined exclusively under the UNJSPF Regulations. While the beneficiaries and amounts of payments of pension benefits are determined by the UNJSPF Regulations, the timing of the payment of pension benefits is determined by the operation of ST/AI/155/Rev.2, where applicable. ST/AI/155/Rev.2 expressly provides for the suspension of separation procedures in instances, for example, in which staff members have failed to settle their indebtedness to the Organization. Such suspension, in turn, prevents staff members from receiving their pension benefits. By ordering UNOPS to transmit to the

UNJSPF Mr. Aliko's PF.4 form without issuing a corresponding order to Mr. Aliko to settle his indebtedness to the Organization, the UNDT exceeded its competence and infringed upon the right of the Organization pursuant to ST/AI/155/Rev.2 to suspend the separation procedure until the staff member's indebtedness has been settled.

25. The UNDT erred in awarding USD 3,000 to Mr. Aliko as compensation for material damages. Since it was lawful for UNOPS to refuse to issue the PF.4 form, Mr. Aliko's rights were not violated and there was no basis for an award of compensation. In the alternative, should the Appeals Tribunal find that it was unlawful for UNOPS to refuse to issue the PF.4 form, the Secretary-General asks that the Appeals Tribunal find the amount awarded (calculated at the five per cent interest rate) does not correspond to Mr. Aliko's actual material damages.

26. The Secretary-General asks that the Appeals Tribunal vacate the UNDT Judgment.

Mr. Aliko's Answer

27. Contrary to the Secretary-General's contention, staff members' rights to payment of their pension benefits are determined exclusively by the Regulations of the UNJSPF. The UNJSPF is an independent entity and may only under very restrictive conditions, expressly set out in its Regulations, remit a portion of a benefit payable to a participant or former participant to a third party. He further contends that the assignment or alienation of pension benefits is prohibited by good practices and national laws.

28. Turning to the Secretary-General's submission that ST/AI/155/Rev.2 is outdated, Mr. Aliko contends that ST/AI/2009/1 dated 30 November 2009 supersedes ST/AI/155/Rev.2 in all provisions that relate to the recovery of overpayment. Furthermore, the legislator intentionally excluded "overpayment" from Article 45*bis* of the UNJSPF Regulations to preserve the assets from arbitrary decisions by the Administration. Article 45*bis* was approved in December 2012 and allows the Fund to pay a portion of a retiree's benefit directly to a retiree's former employing organization only where amounts were embezzled by a staff member from the Organization.

29. Mr. Aliko contends that UNOPS abused its discretionary power and authority and knowingly engaged in unlawful acts in violation of the UNJSPF Regulations and the Organization's Staff Regulations and Rules.

30. UNOPS deprived Mr. Aliko and his family without notice of “all financial resources, essential and critical for subsistence”. ST/AI/2009/1 provides for recovery of overpayments “in instalments and by means of deductions from salaries, wages and other emoluments” precisely to protect a staff member’s integrity. UNOPS did not try to find a “decent agreement”. Its refusal to issue the PF.4 form in fact served the purpose of “draining out [Mr. Aliko]’s resources needed to draft his application” to the UNDT.

31. Mr. Aliko contends that at the end of 2011, he contracted a mortgage for the apartment that he acquired with his wife in Tirana, Albania. The material damage suffered is the actual interest rate (seven per cent) he paid over the amount of pension benefits which he was entitled to under the Staff Regulations over a period starting the day of his separation. He asks that the Appeals Tribunal adjust the level of interest awarded by the UNDT to adequately compensate him for the actual level of material damage suffered.

32. Mr. Aliko asks that the Appeals Tribunal award compensation in the amount of USD 10,000 for the costs incurred to obtain “legal assistance and representation to defend against illegal decision”.

33. Mr. Aliko contends that the failure by the UNJSPF to meet the responsibilities under its Regulations by not disbursing his pension immediately after his separation and by not communicating “essential facts to the beneficiary”, combined with the role played by UNOPS resulted in illegal conduct that warrants an additional award of punitive damages equal to that of the material damages requested.

Considerations

Mr. Aliko’s Appeal

34. The UNDT correctly concluded that Mr. Aliko’s application contesting the decision refusing his request to change nationality for United Nations’ purposes was time-barred.

35. What Mr. Aliko claims to be a new administrative decision - the communication dated 13 December 2012 - was merely a reiteration of the original decision denying his request to change his nationality, of which he had been notified on 7 October 2010, 22 June 2011, 4 August 2011, and 8 May 2012. Nothing in the Administration’s actions in relation to the requested change in nationality led to a waiver of the time limit to request management

evaluation which expired on 21 August 2011. Mr. Aliko's repeated communications with the Administration are a mere restatement of his original claim, which did not stop the time limit for contesting the decision from running or give rise to a new administrative decision thereby restarting the time period in which to contest the original decision.³

36. Similarly, the UNDT did not err in rejecting as not receivable Mr. Aliko's claims challenging the decisions on his ineligibility for education grant and on education grant recovery. The Appellant was notified, on 23 February 2009 and 2 November 2012, that he was not eligible to receive an education grant and failed to submit a timely request for management evaluation.

37. The ground of appeal with regard to the recovery of overpayments by using Mr. Aliko's pending entitlements must also fail. As that procedure is permitted under Staff Rule 3.18(c) and ST/AI/2009/1, it was lawful for the Administration to use Mr. Aliko's pending entitlements to recover part of the indebtedness to the Organization.

The Secretary-General's Appeal

38. The Secretary-General contends that the UNDT erred in concluding that there were no legal grounds for the Administration's refusal to issue the PF.4 form.

39. According to Section 11 of ST/AI/155/Rev.2, "[s]taff members separating from service, in accordance with their contractual obligations to the United Nations are responsible for: (a) Settling all indebtedness to the United Nations". Section 12 allows the Administration to refuse or delay the release of the P.35 form until the settlement of the staff member's indebtedness, and inform the staff members of the possibility of delays in the separation procedure and payments due to them in cases where the quoted requirement is not fulfilled. Section 13 states that "the non-issuance of a P.35 form will prevent them from receiving their pension benefits" and that a failure to comply with Section 11 "may result in the suspension of the separation procedure, which may delay any payments otherwise due to the staff member".

³ *Fiala v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-516, para. 39, citing *Sethia v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-079, paras. 18-22 (internal footnote omitted).

40. The Tribunal is satisfied with the Secretary-General's explanation that as a result of the technological changes, the P.35 form has been replaced with the PF.4 form. Thus, the delay in issuing the latter to Mr. Aliko in the present case was consistent with the purpose of ST/AI/155/Rev.2.

41. Moreover, the electronic resources implementing or complementing the aforementioned legal provisions benefit both the staff member and the Administration, as they allow identifying and pursuing the best way of settling indebtedness for the staff member as a debtor and recovering debts for the Administration as a creditor. As such, it is possible to advance a lump sum, to plan monthly or periodical payments, their amounts, etc.

42. It is easy to understand the difficulties of the payment and of the recovery after the staff member's separation or to be reasonably certain that he or she will honour the debt.

43. Thus, the Appeals Tribunal finds that the UNDT erred in concluding that the Administration had no legal grounds for refusing to issue the separation notification to the UNJSPF. It follows that the award of damages in Mr. Aliko's favour cannot be allowed to stand.⁴

Judgment

44. Mr. Aliko's appeal is dismissed. The Secretary-General's appeal is allowed and the UNDT's order to issue the PF.4 form to the UNJSPF and its award of compensation are vacated.

⁴ *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-508, para. 27, quoting *Oummih v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-420 and *Antaki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-095.

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Thomas-Felix

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar