UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2018-UNAT-892

Ozturk

(Respondent/Applicant)

v.

Secretary-General of the United Nations

(Appellant/Respondent)

JUDGMENT

Before:	Judge Dimitrios Raikos, Presiding Judge John Murphy Judge Deborah Thomas-Felix
Case No.:	2018-1185
Date:	26 October 2018
Registrar:	Weicheng Lin

Counsel for Mr. Ozturk:	Not represented
Counsel for Secretary-General:	Rupa Mitra

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2018/055, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 1 May 2018, in the case of *Ozturk v. Secretary-General of the United Nations*. The Secretary-General filed the appeal on 2 July 2018, and Mr. Cevat Ozturk did not file an answer.

Facts and Procedure

2. The following facts are uncontested:[1]

> ... The Applicant joined the United Nations Interim Administration Mission in Kosovo ("UNMIK") in 2014, where he serves as a Civil Affairs Officer (P-3).
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> ... He is the father of five children, born respectively in 1991 ("M."), 2001 ("El."), 2003 ("B."), 2013 ("E.") and 2017 ("D.").
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> ... On 27 September 2001, the Applicant had a daughter, El., from a common law relationship with a citizen from [the Republic of Kazakhstan (Kazakhstan)]. The couple split and the relationship between the Applicant and El.'s mother became very difficult.
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> ... On 17 August 2005, a domestic court of Almaty, (...) Kazakhstan (...) issued an order for the Applicant to pay 25% of his salary to his former partner in support of their daughter El.. The court order was pronounced *in absentia* because the Applicant was not residing in Kazakhstan at the time and he stressed that no notice was sent to him.
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> ... On 23 October 2006, the Applicant and El.'s mother signed an agreement, which provided, *inter alia*, that El.'s mother would reimburse to the Applicant, in instalments, a considerable amount of money borrowed from him; that the Applicant on a monthly basis would bear the cost for El.'s nanny (USD 200), El.'s cloth[e]s and health expenses, and would pay USD 200 to cover necessary expenses for El. and her mother while they were living together with the Applicant, as well as cover for their international travel. It also provided for the Applicant to regularly spend time with El..
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> ... Emails on file show that relations between the Applicant and El.'s mother were very tense and that the Applicant complained to her about her not informing the Kazakh Court correctly, the fact that his visit rights for El. had been disturbed, and that the needs of his other kids had been disregarded and had to be equally respected taking into account the cost of living in their respective country of residency. According to the Applicant, he continued to pay child support in accordance with the agreement of October 2006

[1] Impugned Judgment, paras. 3-31.

until the mother kidnapped El. to Belgium and he had to seek Interpol's intervention, which found El. and brought her back to Kazakhstan.

... On 29 March 2012, the Legal Support Office, United Nations Development Programme, forwarded to UNMIK a copy of the [above-mentioned] Kazakh Court order of [17 August] 2005 (...), together with a request of El.'s mother to have 25% of his salary paid to her as alimony for El..

... After seeking advice from the Department of Field Support/Field Personnel Division, in Headquarters, the Chief Civilian Personnel Officer ("CCPO"), UNMIK, informed the Applicant, by letter of 7 August 2012, about the child support claim, and requested him to submit proof of compliance within 30 calendar days. The letter specified that should the Applicant wish to contest the order, he was required to provide a new order of a competent court setting aside, vacating or staying pending appeal [of] the original order, or to prove that the matter with the complainant had been otherwise amicably resolved.

... The Applicant replied to the CCPO on 7 September 2012, requesting UNMIK to hold the salary retentions in abeyance pending adjudication of certain proceedings that he had initiated as of 2010 before national courts of Kazakhstan and Belgium. He further stated that it was only on 12 March 2008 that he became aware of the judicial proceedings and the resulting court order of 17 August 2005 and added that, on 23 October 2006, he and El.'s mother had signed an agreement on child support. Also, the Applicant requested that UNMIK assist him in obtaining information from El.'s mother relevant for the domestic court cases.

... On 21 November 2012, UNMIK informed the Applicant that the documents he had submitted could not be considered by the Organization to stay the salary deductions, and referred the Applicant to the letter of 7 August 2012, which specified the documents that could be taken into account to this end.

... On 4 December 2012, UNMIK informed the Applicant that El.'s mother, as a staff member with the United Nations Office for the Coordination of Humanitarian Affairs ("OCHA"), had recorded their daughter (i.e., El.) as her dependant and was in receipt of a dependency allowance for her.

... On 28 December 2012, the Applicant provided documents tending to support that he had appealed the case to a higher court in Kazakhstan.

... On 28 February 2013, the CCPO, UNMIK, informed the Applicant that after review of his case, the Office of Human Resources Management ("OHRM") had concluded that the documents he had submitted did not constitute a court order to vacate the initial one, and noted that the appeal dated back to 2010. The CCPO also stated that the Organization would be bound to honour the court order and to proceed to request the Secretary-General to authorise the deductions, unless the Applicant submitted, within 10 days, a stay from the respective national court pending the appeal.

... On 2 March 2013, the Applicant's lawyer filed a complaint with the Chairman of the Almaty City Court, Kazakhstan, asking, *inter alia*, that the period for an appeal of the court order of 17 August 2005 be resumed.

... On 13 March 2013, the Applicant replied to the 28 February 2013 communication from the CCPO, UNMIK, objecting to the decision therein.

... The Applicant married a Kosovo citizen with whom he had a son born on 25 May 2013, namely E.. The Applicant's spouse later initiated divorce proceedings in a domestic court of Mitrovica, Kosovo, and asked that the Court rule upon the parental responsibilities for E..

... On 12 March 2014, the Auezovskiy district court in Almaty, Kazakhstan, rejected the Applicant's 2 March 2013 request for reinstatement deadline for objections to the alimony court order of 17 August 2005, and noted that its ruling could be appealed with the Almaty City Court.

... On 19 March 2014, the Applicant's lawyer filed a submission with the Almaty City Court, Kazakhstan, asking that the decisions of 17 August 2005 and of 12 March 2014 be overturned.

... On 1 August 2014, the United Nations started making monthly deductions of 25% from the Applicant's net salary in connection with alimony in favour of El. as follows:

a. From August to December 2014: USD 2,773 per month;

b. From January 2015 to December 2017: USD 2,326.97 per month; and

c. Since January 2018: USD 1,957.72 per month.

... The above deductions were paid to El.'s mother. It seems that, initially, the amount of USD 2,773 was determined taking into account the Applicant's other children's benefits.

... On 17 June 2015, a domestic court of Mitrovica, Kosovo, issued a judgment ordering, *inter alia*, that the Applicant pay as "financial contribution to the care and custody of [his child E.]", "the equal amount as for all his children up to 1/3 of his monthly income", until E.'s age 18 (...).

... Following this ruling, the Applicant again requested suspension of the deduction from his salary arising from the Kazakh court order. In his exchanges with UNMIK, he requested to be provided with a written explanation of his situation to be able to submit it to the Kazakh courts. To his request, he attached the Kosovo court decision of 17 June 2015.

... By email of 25 November 2015, UNMIK, *inter alia*, informed the Applicant that any change in the deductions being made was subject to his appealing "the Court Order issued by the District Court of Almaty in Kazakhstan with respect to [his] daughter and [providing] a new order from that Court".

> ... By submission dated 23 January 2016, completed on 1 February 2016, the Applicant requested management evaluation of the decision of 25 November 2015. In his request for management evaluation, the Applicant requested temporary suspension of the deductions from his salary.
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> ... At the time of the contested decision, El.'s mother worked as a national staff member of OCHA in Almaty, Kazakhstan, and was in receipt of a child dependency benefit for El.. The mother's monthly gross salary in Almaty, Kazakhstan, was around USD 1,345 per month, and the monthly dependency allowance for her daughter El. amounted to approximately USD 27.
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> ... By letter dated 20 April 2016, the Under-Secretary-General for Management informed the Applicant that the Secretary-General had decided to uphold the decision not to suspend nor modify the current deductions for child support from his salary and to allow him to include his daughter El. as a dependant.
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> ... On 27 July 2016, the Auezov Regional Court of Almaty City, Kazakhstan, confirmed that the Court order of 17 August 2005 "still ha[d] legal force".
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> ... On 13 April 2017, the Applicant filed an application with the Auezov District Court of Almaty City, Kazakhstan, asking for a review of his case, providing, *inter alia*, information on his other children, and asking that the monthly amount of alimony to be paid for El. be reduced to USD 500.
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> ... By decision of 12 September 2017, the Specialized Interdistrict Juvenile Court of the City of Almaty, Kazakhstan, rejected the Applicant's request for reduction of the amount of child support for El.. In its considerations, said court found that the Applicant's "arguments about his grave financial situation due to having four dependent children [were] not sound as they [were] rejected by the case files". It further noted that the Applicant was in receipt of a dependency allowance from the United Nations for each of his five children, and that his argument that living standards in the European Union were much higher than in Kazakhstan could not "serve as substantiation for reducing the amount of the child support payments to the hard sum of USD 500".

3. On 13 July 2016, Mr. Ozturk filed an application with the UNDT, contesting the decision to deduct 25 per cent of his salary as child support for one of his four children without enrolling the concerned child as his beneficiary, made on 28 February 2013, and implemented as of 1 August 2014.

4. The UNDT rendered its Judgment on 1 May 2018, granting Mr. Ozturk's application in part. It interpreted his application to challenge the following two decisions: (i) the deduction of 25 per cent of his salary in implementation of the alimony order of the Kazakh court; and (ii) the Administration's refusal to recognize his concerned daughter (El.) as his dependent for the

purpose of United Nations child dependency benefits. The UNDT found that the second part of his application was moot as the contested decision had been rescinded and Mr. Ozturk had been receiving a dependency allowance for his daughter El. retroactively, effective 1 August 2014. Regarding the first part of his application, the UNDT found that it was receivable *ratione materiae* to the extent that Mr. Ozturk was not contesting the February 2013 decision but rather the 25 November 2015 decision, which the UNDT considered was a new decision taken upon review in light of the 17 June 2015 Kosovo court order and thus new developments, against which Mr. Ozturk had submitted a timely request for management evaluation.

5. On the merits, the UNDT ruled that the decision to deduct 25 per cent of his salary was unlawful. It 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 Secretary-General's Bulletin ST/SGB/1999/4 (Family and child support obligations of staff members) in determining the amount to be deducted on the basis of the Kazakh court order. The UNDT considered that the Administration had failed to lawfully exercise its discretion by taking into account all relevant considerations including whether the relevant national court proceedings had been conducted *in absentia* and whether other national court orders had granted alimonies to the concerned staff member's other family members. The UNDT found, for instance that the Administration in its decision of 25 November 2015 had failed to consider the impact of the Kosovo court order "which referred to the alimonies to be paid to [Mr. Ozturk's] then three minor children by equal share".[2] The UNDT further found "[w]ithout substituting itself to the Secretary-General (...) that a monthly deduction of 25 % (...) appears unreasonable, in light, *inter alia*, of the amount of child dependency allowance paid to the mother by the [United Nations] in Kazakhstan (USD 27) and of the fact that [Mr. Ozturk] had, at the time of the contested decision, two–and since 21 February 2017 three–other minor children".[3]

6. By way of remedy, the UNDT rescinded the decision of 25 November 2015 to deduct 25 per cent from Mr. Ozturk's salary and ordered reimbursement of the amounts deducted from this date onwards minus the child allowance paid to Mr. Ozturk for El. as of that date. The UNDT further held that the Organization had to determine anew, in a legal exercise of its discretion

[2] *Ibid*., para. 70.
[3] *Ibid*., para. 73.

taking all relevant matters into account, the amount (or the percentage) to be deducted from Mr. Ozturk's salary in favour of El. from 25 November 2015 onwards.

Submissions

The Secretary-General's Appeal

7. The Secretary-General submits that the UNDT erred on a question of law in concluding that the Secretary-General had acted unlawfully by honouring a valid family support order issued by a national court.

8. First, the UNDT erred on a question of law in concluding that Staff Rule 3.18(c) required the Administration to consider in every case whether a deviation from valid family support orders is warranted. While the UNDT was correct in its interpretation that the use of the word "may" in Staff Rule 3.18(c) showed the Secretary-General's discretion to authorize deductions to satisfy the indebtedness of staff members to third parties, the Secretary-General has exercised this discretion in the specific case of family support obligations by promulgating ST/SGB/1999/4. The framework contained therein has to be interpreted in light of the reference in its preamble to Staff Rule 1.2(b), which stipulates a strict obligation for staff members to honour their private legal obligations and local court orders, and of Article 2(7) of the United Nations Charter which prevents the Organization from second-guessing valid national court orders. The Organization's intention to voluntarily act in full accord with family support orders becomes clear from the use of the word "will" in Section 2.2 of ST/SGB/1999/4. Within this established framework, there is no possibility for a staff member to request the Administration to deviate from valid court orders and the circumstances in which the Organization may decline to honour such court order all require the staff member to diligently pursue legal avenues to set aside, vacate or stay a court order. Although the UNDT repeatedly stated that it was not substituting itself for the Secretary-General in the exercise of his discretion, it ultimately did exactly that by re-formulating the promulgated policy and listing examples of "relevant" factors to take into account in deciding how to honour such court orders, which essentially requires the Organization to intervene in matters purely within the domestic jurisdiction of member states. Moreover, the UNDT improperly pronounced on the reasonableness of the Kazakh court order without showing any of

the "extreme cases" in which this might be justifiable in light of the Appeals Tribunal jurisprudence in *Benamar*.[4]

9. Second, the UNDT incorrectly drew a parallel between the policy of the United Nations Secretariat and that of the United Nations Joint Staff Pension Fund (UNJSPF) and erred in referring to the Appeals Tribunal jurisprudence on the UNJSPF as relevant precedent. The UNJSPF is not part of the Secretariat but is an inter-agency entity that operates under its own regulations and policies. The UNJSPF's legal framework is significantly different from the one applicable to this case. In particular, Article 45 of the UNJSPF Regulations does not state anywhere that the UNJSPF "will" make deductions from the participant's benefits "in respect of the amounts ordered" by national courts, as ST/SGB/1999/4 does, but even stipulates that only "a portion" will be remitted. In addition, according to the UNJSPF, the 50 per cent cap applied under Article 45 of the UNJSPF Regulations is applied "as a matter of policy" which has no bearing on how the Secretary-General decides to exercise his discretion under the Secretariat's legal framework.

10. The Secretary-General further asserts that the UNDT erred as a matter of law in its interpretation of the Kosovo court order. Contrary to the UNDT's interpretation, the Kosovo court did not order that Mr. Ozturk pay the same amount for all his children but rather that he pay his son's mother the same amount of child support as he paid for all his children but no more than 1/3 of his monthly income. The Kosovo court was aware of the previous order. In addition, Mr. Ozturk should not be heard complaining about the deductions after he had voluntarily agreed to pay alimony and then had waived his right to appeal the judgment.

11. Finally, the Secretary-General argues that the UNDT erred in ordering remedies, including rescission of the contested decision. The UNDT failed to address the aspect that the basis for the child benefit allowance would be eviscerated with the contested decision having been rescinded as the benefit was accorded only based on the 25 per cent deductions. Moreover, in view of the above submissions, there was no basis for any of the remedies awarded.

12. In light of the foregoing, the Secretary-General requests that the Appeals Tribunal vacate the UNDT Judgment, save for the UNDT's finding that Mr. Ozturk's claim regarding the decision not to list El. as his dependent child was moot.

[4] *Benamar v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-797, para. 44.

Considerations

13. The issue for consideration in the context of the present appeal is whether the UNDT erred in finding that the Administration's decision to deduct 25 per cent of Mr. Ozturk's salary was unlawful as the Secretary-General was incorrect in assuming that he had no discretion regarding the amount to be garnished from Mr. Ozturk's salary and by failing to take into account relevant considerations.

14. The applicable legal framework provides as follows:

> Article 2(7) of the United Nations Charter
>
> Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter Vll.
>
> Staff Rule 1.2
>
> Basic rights and obligations of staff
>
> (...)
>
> (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.
>
> Staff Rule 3.18
>
> Deductions and contributions
>
> (c) Deductions from salaries and other emoluments may also be made for:
>
> (...)
>
> (iii) Indebtedness to third parties when any deduction for this purpose is authorized by the Secretary-General[.]

15. To give effect to Staff Rule 3.18(c)(iii), the Secretary-General issued ST/SGB/1999/4, which states as follows:

> The Secretary-General, for the purpose of implementing staff rule 101.2 (c)[5] and pursuant to staff rule 103.18 (b) (iii)[6] promulgates the following:

[5] Current Staff Rule 1.2(b).

> (...)
>
> Section 2
>
> Procedures when staff members fail to comply with family support court orders
>
> 2.1 Under staff rule 103.18 (b) (iii), the Secretary-General may authorize deductions from staff members' salaries, wages and other emoluments for indebtedness to third parties. Family support court orders create indebtedness to third parties, such as the staff member's spouse, former spouse and/or dependent children.
>
> 2.2 To ensure effective relief when staff members fail to comply with family support court orders, the Organization will voluntarily take the following actions when it receives a family support court order against a staff member which is final and which is not being honoured by the staff member:
>
> (a) The staff member will be requested to comply with the order immediately and to submit proof of compliance to the Organization within 30 calendar days from the date of receipt of the request from the Organization;
>
> (b) If the staff member does not submit the proof of compliance within 30 days, the Organization will commence deductions from the staff member's United Nations emoluments in respect of the amounts ordered;
>
> (c) The amounts deducted will then be paid to the spouse, former spouse or the dependent child(ren), in accordance with the order.
>
> 2.3 For the purpose of the present bulletin, a family support court order will be deemed final if the only action left in regard of that court order would be to have the order executed. If the staff member concerned contests the order, he or she must submit a new order of a competent court, setting aside or vacating the original order or staying the original order pending appeal, or proof that he or she has otherwise amicably resolved the matter with his or her spouse or former spouse. Until such evidence is submitted, the Organization will honour the original court order.

16. When it comes to the discretionary authority of the Administration, the Administration is under an obligation to exercise it lawfully according to the purpose of the authorizing statute and within the existing statutory limits. The Administration has not validly exercised its discretion if it has addressed a particular administrative matter in the same way it always has without any additional considerations or has operated under the erroneous belief that it was 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, not engaged in

[6] Current Staff Rule 3.18(c)(iii).

a balancing exercise of the competing interests, by considering all aspects relevant for the exercise of its discretion, in order to select the proper course of action.

17. The Appeals Tribunal has held that as a matter of general principle, in exercising its judicial review, the Dispute Tribunal will not lightly interfere with the exercise of managerial discretion.[7]

18. Nevertheless, a discretionary administrative decision can be challenged on the grounds that the Administration has not acted fairly, justly or transparently.[8] The staff member has the burden of proving that such factors played a role in the administrative decision.[9]

19. When judging the validity of the Administration's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The first instance Judge can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Administration amongst the various courses of action open to it. Nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Administration.[10]

20. In the case at hand, it is not disputed by the parties that the use of the word "may" in Staff Rule 3.18(c) establishes that the Secretary-General has the discretion to authorize deductions to satisfy the indebtedness of staff members to third parties. Rather, what is disputed is whether the Administration disposes and has to properly exercise its discretion when it comes to the application of Staff Rule 3.18(c)(iii), in light of the provisions of Secretary-General's Bulletin ST/SGB/1999/4.

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[7] Comp. *Beidas v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-685, para. 18; *Abdullah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-482, para. 59.

[8] *Kule Kongba v. Secretary General of the United Nations*, Judgment No. 2018-UNAT-849, para. 26; *Pirnea v. Secretary General of the United Nations*, Judgment No. 2013-UNAT-311, para. 32, citing *Obdeijn v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-201 and *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153.

[9] *Pirnea v. Secretary General of the United Nations*, Judgment No. 2013-UNAT-311, para. 32, citing *Assad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-021.

[10] *Kule Kongba v. Secretary General of the United Nations*, Judgment No. 2018-UNAT-849, para. 27; *Said v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-500, para. 40; *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40.

21. The Secretary-General contends that he has exercised his discretion in the specific case of family support obligations by promulgating ST/SGB/1999/4. He argues that the framework contained therein has to be interpreted in light of the reference in its preamble to Staff Rule 1.2(b), which stipulates a strict obligation for staff members to honour their private legal obligations and local court orders, and of Article 2(7) of the United Nations Charter which prevents the Organization from second-guessing valid national court orders. He claims that the Organization's intention to voluntarily act in full accord with family support orders becomes clear from the use of the word "will" in Section 2.2 of ST/SGB/1999/4.

22. In this regard, the Dispute Tribunal found that:[11]

> ... (...) In light of its judicial immunity, the United Nations disposes and has to properly exercise its discretion when it comes to the application of staff rule 3.18(c)(iii). This is reflected by the use of the word "may" in staff rule 3.18(c)(iii), as mirrored in ST/SGB/1999/4. It is also reflected by the fact that such deduction requires the Secretary-General's authorization, which implies that it is not an automatic action but provides the Secretary-General with the final decision making power in this respect.

23. The UNDT went on to opine that:[12]

> ... The [Dispute] Tribunal is mindful that sec. 2.3 of ST/SGB/1999/4 states that "[u]ntil such evidence is submitted, the Organization *will* honour the original court order" (emphasis added). In light of the foregoing, that provision cannot entail an absolute obligation, on behalf of the Organization, to honour the original court order. Rather, honouring the court order is a possibility (may), if authorized by the Secretary-General upon the exercise of his discretion. Any other interpretation would be a clear misconception of the Organization's judicial immunity, as reflected in the wording of staff rule 3.18(c)(iii). The [Dispute] Tribunal also recalls that the Staff Rules prevail over administrative instructions and, hence, the latter have to be interpreted and applied in accordance with the Staff Rules.

24. We find no fault in these findings.

25. There is no doubt 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 local courts.

[11] Impugned Judgment, para. 62.
[12] *Ibid.*, para. 63.

26. As the Appeals Tribunal held in *Benamar*:[13]

> ... [A]lthough a decision of a national court may be subject to criticism by both parties (and also by a third party), it must be obeyed if and to the extent that it is enforceable. Consequently, the parties should generally comply with an executable judicial decision; otherwise they would be taking justice into their own hands, which is not acceptable according to general principles based on the rule of law.
>
> (...)
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> ... (...) The Organization's internal justice system does not have jurisdiction over civil cases concerning the private or personal life of its staff members, much less to reconsider or ignore a judicial decision by a national court, which is immediately enforceable, albeit subject to appeal. Although this is an international tribunal, it does not have a jurisdictional function over the Member States of the Organization, nor over their nationals. Both the Dispute Tribunal and the Appeals Tribunal are administrative and internal courts, designed to deal with administrative decisions concerning the Organization's staff members and other cases within the narrow scope of competence accorded by Article 2(1) of their respective Statutes.

27. Turning to the grounds of appeal, we agree, at first, with the Secretary-General that, for the purpose of implementing Staff Rule 1.2(b), as reflected in the express reference made in the preamble of ST/SGB/1999/4, and pursuant to Staff Rule 3.18(c)(iii), ST/SGB/1999/4 establishes a legal framework, indicating the Organization's commitment to voluntarily act in full accord with family support orders, as it becomes clear from the use of the word "will" in Section 2.2 of ST/SGB/1999/4. According to this framework, the staff member is requested to comply with the relevant final court order immediately and to submit proof of compliance. Otherwise, the Organization will commence deductions from his or her emoluments in respect of the amounts ordered, which will then be paid to the beneficiary of the court order.

28. Where we disagree with the Secretary-General is his interpretation of the scope of ST/SGB/1999/4 that there is no possibility whatsoever for the staff member to request the Administration "to deviate from valid court orders", and that the circumstances in which the Organization may decline to honour such court order all require the staff member to diligently pursue legal avenues to set aside, vacate or stay a court order. Thus, in the Secretary-General's view, the Administration flatly does not enjoy discretion in varying the deductions made from the staff member's emoluments.

[13] *Benamar v. Secretary General of the United Nations*, Judgment No. 2017-UNAT-797, paras. 44 and 48.

29. The starting point in interpreting Secretary-General's Bulletin ST/SGB/1999/4 are the principles of interpretation set out by the Appeals Tribunal in the case of *Scott*:[14]

> ... The first step of the interpretation of any kind of rules, worldwide, consists of paying attention to the literal terms of the norm. When the language used in the respective disposition is plain, common and causes no comprehension problems, the text of the rule must be interpreted upon its own reading, without further investigation. Otherwise, the will of the statute or norm under consideration would be ignored under the pretext of consulting its spirit. If the text is not specifically inconsistent with other rules set out in the same context or higher norms in hierarchy, it must be respected, whatever technical opinion the interpreter may have to the contrary, or else the interpreter would become the author.

30. The interpretation of a rule is made within the context of the hierarchy in which the rule appears.[15] In general terms, administrative issuances set out instructions and procedures for the implementation of the Staff Regulations and Rules. Just as a Staff Rule may not conflict with the Staff Regulation under which it is made, an administrative issuance may not conflict with the applicable Staff Regulation or Rule which it implements. Finally, in interpreting the terms of a staff member's status (entitlements, obligations etc.), we may also draw upon general principles of law insofar as they apply to the international civil service.[16]

31. As already noted above, the aim of ST/SGB/1999/4 was to specify the cases where deduction from staff member's salaries, wages and other emoluments for indebtedness to third parties "may" be made by the Administration. In this vein, Section 2 of ST/SGB/1999/4 specifies, as such kind of indebtedness, family support court orders and sets out the principles and procedures to be followed by the Organization in making such deductions.

32. However, the ST/SGB/1999/4 legal framework has to be interpreted within the context of the authorising 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

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[14] *Scott v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-225, para. 28.
[15] *Timothy v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-847, para. 54, citing *De Aguirre v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-705, para. 44, in turn citing *Mashhour v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-483, para. 22.
[16] *Comp. Timothy v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-847, para. 54, citing *Assale v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-534, para. 34, in turn citing *Hunt-Matthes v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-444/Corr.2, para. 26.

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.

33. At first, on the face of ST/SGB/1999/4, we draw the conclusion that its framework is not designed to provide for the specific type of situation where more than one family court order is executable against the staff member, or in situations where there are competing interests, such as the needs of the staff member's own or his or her family subsistence amount or minimum vital, which call for a balancing act on the part of the Administration in terms of determining the sum to be deducted from the staff member's emoluments in respect of the amounts ordered.

34. The Appeals Tribunal's understanding in this regard is reinforced by the wording of the authorising provisions of Section 2.3 of ST/SGB/1999/4, which provide, *inter alia*, that:[17]

> (...) [i]f the staff member concerned contests the order, he or she must submit a new order of a competent court, setting aside or vacating the original order or staying the original order pending appeal, or proof that he or she has otherwise amicably resolved the matter with his or her spouse or former spouse. Until such evidence is submitted, the Organization will honour *the original court order*.

It is apparent from the foregoing that ST/SGB/1999/4 does not envisage regulating a concurrence of more than one family court order or other competing interests, when the Administration determines the amount to be deducted from the staff member's salary or other emoluments in order for him or her to honour such kind of indebtedness to third parties.

35. Consequently, having found the legal framework in ST/SGB/1999/4 not self-sufficient and clear on this issue, recourse to Staff Rule 3.18(c)(iii) is necessary and appropriate in order to provide guidance on the matter(s) not addressed in the administrative issuance. Such guidance should be treated as authoritative since Staff Rule 3.18(c)(iii) is of a higher order in the hierarchy of norms than the administrative instruction. Relevantly, the latter bestows on the Administration discretionary authority to make a proper and fair decision in cases of indebtedness to third parties.

[17] Emphasis added.

36. This approach does not, contrary to the Secretary-General's contention, contravene the provision of Article 2(7) of the United Nations Charter, that the United Nations should not intervene in matters which are essentially within the domestic jurisdiction of any state. In contrast, due deference, without any distinction, is to be shown by the Administration to all of the relevant family court orders of the same or different national jurisdictions and to all of the competing interests, while balancing them upon exercising its discretion.

37. Hence, the Appeals Tribunal shares the view of the Dispute Tribunal that, when applying Staff Rule 3.18(c)(iii), the Administration exercises its discretion in determining the amount to be deducted on the basis of national court orders.

38. We further find no fault with the UNDT's conclusion that the Administration's failure to exercise its discretion and to take all relevant considerations into account, including the impact of the Judgment from the Kosovo court, the needs of the other (minor) children of Mr. Ozturk, as well as the Organization's duty of care vis-à-vis him (his own subsistence amount as minimum vital), lead to the illegality of the decision of 25 November 2015.[18]

39. Indeed, under the aforementioned legal and factual circumstances, the Administration's failure to exercise its discretion, as required by Staff Rule 3.18(c)(iii), resulted in the Administration's decision of 25 November 2015 being an unlawful decision which was inconsistent with Staff Rule 3.18(c)(iii). The Administration concededly acted in the erroneous belief that it did not have and could not exercise any discretion; thus, it failed to exercise the discretionary authority vested in it, in terms of determining the amount to be deducted from Mr. Ozturk's salary, by balancing the conflicting interests in the best interest of the Organization. Accordingly, the UNDT did not make an error of law when it found that the Administration's decision of 25 November 2015 was unlawful and should be rescinded.

40. Generally, when the Administration's decision is unlawful because the Administration, in making the decision, failed to properly exercise its discretion and to consider all requisite factors or criteria, the appropriate remedy would be to order the

[18] Impugned Judgment, paras. 70 and 71.

Administration to consider anew all factors or criteria;[19] it is not for the Dispute Tribunal and the Appeals Tribunal to exercise the discretion accorded to the Administration.

41. Clearly then, once the UNDT had decided to rescind the Administration's decision of 25 November 2015 for the above reasons, the only proper course for it to take, since the issue was about the failure of the Administration to determine the amounts to be deducted from Mr. Ozturk's salary in view of the family support court orders of the Kazakh and Kosovo courts, was to order the Administration to exercise the discretion granted to it on this issue.

42. In this respect, the UNDT held as follows:[20]

> ... [I]n light of its finding that the decision of 25 November 2015 to deduct 25% from the Applicant's salary on the basis of the Kazakh court order was illegal, said decision has to be rescinded. As a consequence of the rescission, the Applicant will have to be reimbursed the amounts deducted from him from 25 November 2015 onwards, minus the monthly child benefit allowance he received for El.
>
> (...)
>
> ... [T]he Tribunal notes that in light of the rescission of the 25 November 2015 decision, and since a legal obligation to pay child alimony for El. existed under the Kazakh court order, the Organization, taking all relevant matters into account, has to determine, anew, the amount (or percentage) to be deducted from the Applicant's salary from 25 November 2015 onwards, in favour of El., in a legal exercise of its discretion.

43. Appropriately, the UNDT decided that Mr. Ozturk be

> ... reimbursed the amounts deducted from his salary from 25 November 2015 onwards, minus the child allowance paid to the Applicant for El. as of that date; such reimbursement is subject to any deductions to be made from the Applicant's salary after a new determination has been made by the Organization as to the amount to be deducted in light of the Kazakh court order, in a legal exercise of discretion, pursuant to staff rule 3.18(c)(iii)[.]

44. The Appeals Tribunal cannot find fault with the UNDT's above reasoning and decisions, which comport with our jurisprudence on the exercise of discretion in administrative matters. The mere disagreement by an appellant with the UNDT's statement

[19] *Egglesfield v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-399, para. 27, citing *Branche v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-372 and *O'Hanlon v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-303.
[20] Impugned Judgment, paras. 77 and 79.

of its reasons or the facts and law supporting its Judgment is not a basis for overturning the Judgment. We therefore uphold the conclusions of the UNDT on those issues.

45. This conclusion renders it unnecessary to examine the other grounds of appeal advanced by the Secretary-General that the UNDT erred in law in drawing parallels and relying on Appeals Tribunal precedent regarding the UNJSPF legal framework, and in pronouncing itself on the soundness of the Kazakhstan court order. They are not decisive for the outcome of the present case.

46. Accordingly, the Secretary-General's appeal is dismissed.

Judgment

47. The appeal is dismissed and Judgment No. UNDT/2018/055 is hereby affirmed.

Original and Authoritative Version: English

Dated this 26th day of October 2018 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Raikos, Presiding	Judge Murphy	Judge Thomas-Felix

Entered in the Register on this 20th day of December 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar