



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

Judgment No. 2022-UNAT-1274

**Cevat Ozturk
(Applicant)**

v.

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

JUDGMENT ON APPLICATION FOR EXECUTION

Before: Judge Dimitrios Raikos, Presiding
Judge Graeme Colgan
Judge John Raymond Murphy

Case No.: 2021-1629

Date of Decision: 28 October 2022

Date of Publication: 21 November 2022

Registrar: Juliet Johnson

Counsel for Applicant: Self-represented

Counsel for Respondent: Rupa Mitra

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. The United Nations Appeals Tribunal (UNAT or Appeals Tribunal) has before it an application for execution of Judgment No. 2018-UNAT-892¹ (the UNAT Judgment) submitted by Mr. Cevat Ozturk.
2. In the UNAT Judgment, the Appeals Tribunal dismissed the appeal and affirmed United Nations Dispute Tribunal (UNDT or Dispute Tribunal) Judgment No. UNDT/2018/055² (the UNDT Judgment).
3. For the reasons as set out below, we dismiss the application.

Facts and Procedure

4. The extensive factual background of this case is provided at paragraph 2 of the UNAT Judgment and will not be reproduced in full here.
5. Mr. Ozturk joined the United Nations Interim Administration Mission in Kosovo (UNMIK or Administration) in 2014, where he serves as a Civil Affairs Officer (P-3).

The UNDT Judgment

6. In the part relevant to the present application, the UNDT Judgment found that the Administration's decision of 25 November 2015 to deduct 25 percent of Mr. Cevat's salary in favour of his daughter (El.), in execution of a Kazakh court's child support order, without applying any exercise of discretion, was unlawful.³
7. By way of remedy, the UNDT rescinded the decision to deduct 25 percent from Mr. Ozturk's monthly salary⁴ and ordered reimbursement of the amounts deducted from 25 November 2015 onwards minus the child allowance paid to Mr. Ozturk for El. from that date. The UNDT further held that the Administration had to determine anew the amount to be deducted from Mr. Ozturk's salary in favour of El. from 25 November 2015 onwards.⁵

¹ *Ozturk v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-892.

² *Ozturk v. Secretary-General of the United Nations*, Judgment No. UNDT/2018/055.

³ *Ibid.*, para. 74.

⁴ *Ibid.*, para. 80 (b).

⁵ *Ibid.*, para. 80 (c).

The UNAT Judgment

8. On 26 October 2018, the Appeals Tribunal dismissed Mr. Ozturk's appeal and affirmed the UNDT Judgment.⁶

9. The Appeals Tribunal upheld the conclusions of the UNDT, including that following the rescission of the impugned decision, Mr. Ozturk should be reimbursed the amounts deducted from his salary from 25 November 2015 onwards, minus the child allowance paid to Mr. Ozturk for El. from that date. However, such reimbursement would be subject to any new deductions from Mr. Ozturk's salary after the Administration, in a legal exercise of its discretion under Staff Rule 3.18(c)(iii), made its own determination as to the amount to be deducted in light of the Kazakh court's child support order.⁷

Additional facts post-UNAT Judgment

10. On 7 May 2019, the Applicant received a wire transfer to reimburse him for the excess salary deductions. According to the letter of the Management Evaluation Unit (MEU), Mr. Ozturk acknowledged receipt of these funds on the same day, a fact that he does not deny.

11. More than a year later, by e-mail dated 17 July 2020, Mr. Ozturk raised the issue of over-deductions from his salary with the UNMIK Human Resources office (HR).

12. By e-mail dated 20 July 2020, HR acknowledged receipt of Mr. Ozturk's e-mail of 17 July 2020.

13. On 17 December 2020 and 11 March 2021, Mr. Ozturk followed up on his e-mail of 17 July 2020.

14. On 14 May 2021, HR responded, *inter alia*, that they were satisfied that the payment made in May 2019 was in accordance with the UNAT Judgment and viewed the matter as closed.

15. On 20 May 2021, Mr. Ozturk submitted a request for management evaluation of the UNMIK HR decision with respect to the refund calculations he received pursuant to the UNAT Judgment.

⁶ *Ozturk v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-892, para. 47.

⁷ *Ibid.*, paras. 43-44.

16. On 1 June 2021, the MEU found Mr. Ozturk's request for management evaluation was not receivable.

Application for execution of UNAT Judgment

17. On 10 November 2021, Mr. Ozturk submitted an application for execution of the UNAT Judgment.

18. On 15 December 2021, the Secretary-General submitted a response to the application.

Submissions

Mr. Ozturk's Application

19. At the outset, Mr. Ozturk states that he agrees with the UNDT and UNAT Judgments and the revised decision of the Administration to make monthly child support deductions of USD759.39 from his salary.

20. Mr. Ozturk's objection is to the reimbursement amount he received for the prior over-deductions from his salary. He submits that the refund calculation by UNMIK was not correct and was never shared with him.

21. Mr. Ozturk requests a "full refund of over deductions from my salary for many years".

The Secretary-General's Comments

22. The Secretary-General submits that on 7 May 2019, Mr. Ozturk received a wire transfer to reimburse him for excess salary deducted pursuant to the Kazakh court's child support order, pursuant to the UNAT Judgment, for which Appellant acknowledged receipt on the same day.

23. The Secretary-General submits that Mr. Ozturk has not established a basis for UNAT to order execution of the UNAT Judgment as the rescission of the Administration's earlier decision already took effect as a direct consequence of the UNDT Judgment. Since then, the Administration has exercised its judgment anew with regard to the child support deductions. The Secretary-General points out that in Mr. Ozturk's application for execution of judgment, he specifically states that he agrees with the Administration's subsequent decision to deduct USD759.39 as child support as reasonable, fair and acceptable.

24. The Secretary-General submits that Mr. Ozturk appears to disagree with the refund calculation by UNMIK, which is not a matter of execution of the UNAT Judgment. The Secretary-General submits that the reimbursement constitutes a new administrative decision which Mr. Ozturk could have challenged through management evaluation and before the UNDT but failed to do so. Rather than requesting management evaluation for the amount of the reimbursement within 60 days of receiving notification (by 6 July 2019), Mr. Ozturk wrote to UNMIK HR more than one year later (17 July 2020). Accordingly, the Secretary-General submits that Mr. Ozturk waited over 2.5 years from this new administrative decision to submit an application for execution, which is the incorrect mechanism to challenge the reimbursement amount.

25. The Secretary-General submits that the assertions that the UNAT Judgment has not been executed is not supported by the facts. The Secretary-General submits that both the UNDT and UNAT Judgments were fully executed.

26. The Secretary-General requests that the UNAT dismiss the application in its entirety.

Considerations

27. In Judgment No. 2018-UNAT-892, the Appeals Tribunal affirmed Judgment No. UNDT/2018/055, rendered by the United Nations Dispute Tribunal in Geneva on 1 May 2018, in the case of *Ozturk v. Secretary-General of the United Nations*, which had ordered rescission of the administrative decision of 25 November 2015 to deduct 25 percent from Mr. Ozturk's salary for child support in favor of his daughter (El.). In the UNDT Judgment, the UNDT had ordered the Administration to take all relevant matters into account and to determine anew the amount or percentage to be deducted from Mr. Ozturk's salary in favor of his daughter from 25 November 2015 onwards, in a legal exercise of the Administration's discretion. In this regard, the UNDT had decided that Mr. Ozturk should be "reimbursed the amounts deducted from his salary from 25 November 2015 onwards, minus the child allowance paid to the Applicant for [his daughter] as of that date". Notably, such reimbursement was ordered to be "subject to any deductions to be made from the Applicant's salary after a new determination had been made by the Organization as to the amount to be

deducted in light of the [national court] order, in a legal exercise of discretion, pursuant to staff rule 3.18(c)(iii).”⁸

28. Moreover, the amount to be reimbursed was to be paid within 60 days after the judgment became executable, during which period the US Prime Rate applicable as of that date would apply. If the reimbursement was not made within the 60-day period, an additional five percent was to be added to the US Prime Rate until the date of payment.⁹

29. In the present case, it is not in dispute that, following the issuance of our Judgment No. 2018-UNAT-892, the Administration consulted with Mr. Ozturk at meetings held in early 2019 on the latter’s financial circumstances and on the calculations for repayment in execution of that Judgment and in compliance with Staff Rule 3.18(c)(iii). Subsequent to such consultations, Mr. Ozturk was notified of the Administration’s calculations and, on 7 May 2019, he received a wire transfer to his account of the reimbursement for excess salary deducted pursuant to the Kazakh court’s child support order, in accordance with the UNAT Judgment. On that same day, Mr. Ozturk acknowledged receipt of the payment without raising any objections to the calculations in execution of the UNAT Judgment.

30. Mr. Ozturk now seeks execution of Judgment No. 2018-UNAT-892 arguing that, while he agrees with the decision of the Administration to make revised deductions of USD759.39 monthly from his salary for child support, he finds that the refund calculation by the Administration was not correct.

31. Article 11(4) of the Appeals Tribunal’s Statute provides that “[w]here the judgement requires execution within a certain period of time and such execution has not been carried out, either party may apply to the Appeals Tribunal for an order for execution of the judgement”. A similar provision has been established in Article 27 of the UNAT’s Rules of Procedure, which states: “Where a judgement requires execution within a certain period of time and such execution has not been carried out, either party may apply to the Appeals Tribunal for an order for execution of the judgement.”

⁸ *Ozturk v. Secretary-General of the United Nations*, Judgment No. UNDT/2018/055, para. 80 (c).

⁹ *Ibid.*, para 80 (d).

32. Having considered the record and the parties' submissions, we dismiss Mr. Ozturk's application. Pursuant to the orders made by the UNDT in its judgment referred to above, and affirmed by the Appeals Tribunal, we are satisfied that execution has occurred in Mr. Ozturk's case. The Administration has complied with the UNAT Judgment and exercised its discretion in determining a new, revised amount to be deducted for child support on the basis of national court orders. Thus, the present application does not merit an order for execution pursuant to Article 11(4) of the Appeals Tribunal Statute and Article 27 of the Rules of Procedure.

33. Mr. Ozturk appears only to disagree with the "refund calculation" by the Administration. However, the implementation by the Administration of a Tribunal's order constitutes in itself an administrative decision appealable before the UNDT. Accordingly, recourse for the complaints of Mr. Ozturk regarding the "refund calculation", undertaken subsequent to Judgment No. 2018-UNAT-892, is not to be found in an application for execution but rather in Staff Rule 11.2. This rule provides the mechanism whereby the complained-of decisions of the Administration can be challenged by the affected staff members. Thereafter, if necessary, the staff members may seek judicial review.¹⁰

34. In view of the foregoing, we find no merit in Mr. Ozturk's application for execution of judgment.

¹⁰ *Comp. Sutherland et al. McIlwraith Ademagic et al. and Longone v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-494, para. 39; *Sanbar v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2012-UNAT-279, para. 18.

Judgment

35. Mr. Ozturk's application for execution of Judgment No. 2018-UNAT-892 is dismissed.

Original and Authoritative Version: English

Decision dated this 28th day of October 2022 in New York, United States.

(Signed)

Judge Raikos

(Signed)

Judge Colgan

(Signed)

Judge Murphy

Judgment published and entered into the Register on this 21st day of November 2022 in New York, United States.

(Signed)

Juliet Johnson, Registrar