UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2013/043
UNDT/GVA/2013/044
Judgment No.: UNDT/2014/035
Date: 25 March 2014
Original: English

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: René M. Vargas M.

OVCHARENKO ET AL.

KUCHEROV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
George G. Irving (for Case No. UNDT/GVA/2013/043)
Self-represented (for Case No. UNDT/GVA/2013/044)

Counsel for Respondent:
Stephen Margetts, ALS/OHRM, UN Secretariat

Introduction

Case No. UNDT/GVA/2013/043

1. By application filed on 29 April 2013 with the New York Registry of the Tribunal, the Applicants *Ovcharenko et al.* contest the Secretary-General's refusal to pay post adjustment based on the multiplier 68.0 which became due in New York on 1 August 2012. The application was registered under Case No. UNDT/NY/2013/043.

2. The Respondent filed his reply on 10 June 2013.

3. By Order No. 159 (NY/2013) of 27 June 2013, the Tribunal ordered the parties to file submissions with respect to the proposed change of venue of the case to the Geneva Registry of the Tribunal. The Applicants submitted their strong objection to a transfer on 28 June 2013. By Order No. 188 (NY/2013) of 5 August 2013, the Tribunal ordered that the case be transferred to the Geneva Registry of the Tribunal, where it was registered under Case No. UNDT/GVA/2013/43 and assigned to the undersigned Judge.

Case No. UNDT/GVA/2013/044

4. By application filed on 7 May 2013 with the New York Registry of the Tribunal, the Applicant *Kucherov* equally contests the Secretary-General's refusal to pay post adjustment based on the multiplier 68.0 which became due in New York on 1 August 2012. The application was registered under Case No. UNDT/NY/2013/087.

5. The Respondent submitted his reply on 10 June 2013.

6. By Order No. 160 (NY/2013) of 27 June 2013, the Tribunal ordered the parties to submit comments with respect to a proposed change of venue of the case to the Geneva Registry of the Tribunal. Neither party filed a submission on this matter. By Order No. 187 (NY/2013) of 2 August 2013, the Tribunal ordered that the case be transferred to the Geneva Registry of the Tribunal, where it was

registered under Case No. UNDT/GVA/2013/044 and assigned to the undersigned Judge.

7. By Order No. 13 (GVA/2014) of 21 January 2014, the Tribunal ordered that the cases be joined and that they be decided on the basis of the written pleadings. It further ordered that the parties submit final comments, if any, by 4 February 2014; the deadline was subsequently extended until 11 February 2014, and the parties—with the exception of Applicant *Kucherov*— submitted their final comments on that date.

Facts

8. In para. B.1. of its resolution A/RES/66/235 of 24 December 2011 (United Nations common system: report of the International Civil Service Commission), the General Assembly requested the ICSC:

> [T]o explore the feasibility and suitability of possible measures to reflect in the administration of the post adjustment system the pay freeze of the comparator civil service; to determine whether the implementation of such measures falls under its authority; to exercise such authority, as appropriate, and to report thereon to the General Assembly at its sixty-seventh session.

9. Paragraph 121 of the 2012 ICSC report to the General Assembly (A/67/30) reads:

> 121. The Commission:
>
> (a) Noted that a post adjustment multiplier of 68.0 would become due in New York on 1 August 2012 in accordance with the approved methodology;
>
> (b) Decided to defer the promulgation of the revised New York post adjustment multiplier in view of the financial situation of the United Nations as described by the Secretary-General;
>
> (c) Also decided that unless the General Assembly acted otherwise, the multiplier would be promulgated on 1 January 2013 with a retroactive effect as of 1 August 2012.

10. On 1 August 2012, the ICSC issued Circular ICSC/CIRC/PAC/452 (Consolidated Post Adjustment Circular), containing the following text:

> **IV. <u>Post Adjustment Classification for New York</u>**
>
> 1. Based on the review of the post adjustment classification for New York, a revised post adjustment multiplier of **68.0** would become due in New York, effective 1 August 2012. **However**, at its seventy-fifth session, from 9 – 20 July 2012, the ICSC decided to defer the promulgation of this revised multiplier to 1 January 2013, with retro-active (sic) as of one August 2012, unless the United Nations General Assembly acted otherwise. The post adjustment multiplier of 65.5 therefore remains in effect for New York until further notice. (emphasis in original)

11. The General Assembly, on 24 December 2012, adopted decision 67/551 (see A/67/49 (Vol. II) and A/C.5/67/L.14) (hereinafter General Assembly decision 67/551), which reads as follows:

> 67/551. United Nations common system
>
> At its 62nd plenary meeting, on 24 December 2012, the General Assembly, on the recommendation of the Fifth Committee, having considered the report of the International Civil Service Commission for 2012, requested the Commission to maintain the current New York post adjustment multiplier to 31 January 2013, with the understanding that the normal operation of the post adjustment system would resume on 1 February 2013.

12. The ICSC, on 15 January 2013, issued Circular ICSC/CIRC/PAC/457 (Consolidated Post Adjustment Circular), providing *inter alia*:

> V. Post Adjustment Classification for New York
>
> 2. Based on General Assembly decision 67/551 of 24 December 2012, the current post adjustment multiplier for New York will be maintained at 65.5 until 31 January 2013. The normal operation of the post adjustment system will resume on 1 February 2013.

13. On 30 January 2013, the Applicants received a statement of earnings and deductions for the pay period 1 to 31 January 2013 showing the post adjustment multiplier as 65.5%. The same line with appropriate calculations is contained in each of the statements for the months of August to December 2012.

14. The ICSC, on 15 February 2013, issued a "Consolidated Post Adjustment Circular" (ICSC/CIRC/PAC/458) promulgating, under its Section IV, a post adjustment multiplier of 68.7 for United States, New York, effective 1 February 2013.

15. Some of the Applicants, including Applicants *Ovcharenko* and *Kucherov*, requested management evaluation of the "administrative decision of the Secretary-General to implement the…actions and recommendations of the ICSC and the General Assembly, i.e. the unlawful action of the Administration that resulted in denying staff members based in New York, the payment of post adjustment calculated on the basis of the multiplier value of 68.0 for the period from 1 August 2012 to 1 February 2013".

16. On 18 March 2013, the Management Evaluation Unit responded to those Applicants who had requested management evaluation, with a corrigendum issued on 20 March 20131, noting that the matter was not appealable under Chapter X of the Staff Rules and that it had no competence to evaluate the request.

Parties' submissions

17. The Applicants' principal contentions are:

a. In view of the response of the MEU, and in light of staff rule 11.2(b), applications should be considered receivable whether or not the Applicants had filed a request for management evaluation prior to the application to the Tribunal;

b. The decision they are contesting is the decision of the Secretary-General conveyed on 30 January 2013, as reflected in the Applicants' statements of earnings and deductions, to cancel their entitlement to the post adjustment based on the multiplier of 68.0 from 1 August 2012 to 31 January 2013, or, in other words, not to implement the deferred increase of the multiplier with retroactive effect to 1 August 2012;

c. They were entitled to a post adjustment multiplier of 68.0 for the period 1 August 2012 to 31 January 2013, therefore, the decision affects the Applicants' conditions of service and constitutes a violation of the rights they detain from their letter of appointment and Staff Rules and Regulations;

d. They do not contest the authority of the General Assembly to alter conditions of service for the future, including the method of calculation of the post adjustment, rather, their claim is limited to the remuneration for services already rendered, in accordance with the applicable rules in force at the time; that is, they have not contested the deferral of the increase by the ICSC or the General Assembly request of December 2012 to suspend the normal operation of the post adjustment system, but rather the amount of remuneration paid to them by the Secretary-General in January 2013;

e. While the Tribunal is not competent to review decisions of the General Assembly and the ICSC which are regulatory in nature, the Respondent cannot implement a decision of these bodies in a way that it violates the Applicants' terms of employment as in the case at hand; such breach by the Secretary-General can be subject to review by the Tribunal; which—though it may not have authority to compel the General Assembly to a specific performance—may very well award compensation for such breaches of contract;

f. The Appeals Tribunal stated in *Andati-Amwayi* 2010-UNAT-058 that administrative decisions may be of general application and that what constitutes an administrative decision "will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision"; if a decision with general application also affects other staff members this does not signify that an applicant cannot challenge such a decision;

g. Unlike in the case of *Obino* UNDT/2013/008, the contested decision in the present case is not simply a regulatory decision, since it violated the

terms of the Applicants' contracts and the principle of non-retroactivity and had a direct impact on the Applicants' legal rights;

h. The Tribunal should follow the same jurisdictional interpretation as the former Administrative Tribunal applied to similar cases;

i. As such, the decision they are contesting constitutes an administrative decision under the terms of art. 2 of the Tribunal's Statute and the applications are receivable *ratione materiae*;

j. On the merits, the decision is flawed, both procedurally and substantively;

k. The Administration wrongly interpreted the General Assembly decision 67/551, which should be correctly interpreted as requesting to maintain the current New York post adjustment, that is the 68.0 multiplier which had been determined automatically in accordance with the methodology endorsed by the General Assembly itself; if the intention of the General Assembly was indeed to maintain the multiplier of 65.5 during the period 1 August 2012 to 31 January 2013, this would be unlawful and constitute a violation of the principle of non-retroactivity; any suspension of the normal operation of the post adjustment could therefore only apply from 24 December 2012 to 1 February 2013;

l. An unlawful act does not become legal just because it is taken upon instruction; this seems to be the argument of the Respondent who notes that the Secretary-General was merely following directions from the ICSC; to argue that the Secretary-General was obliged to implement the decisions of the ICSC and the General Assembly cannot stand since it was in fact himself who initiated what resulted in the contested decision, since he had suggested that the methodology be relaxed to allow cost savings;

m. However, financial constraints of the Organization are no legitimate component of the methodology with respect to the changes in post

adjustment, at least for work already preformed and the ICSC, in taking these constraints into account acted outside its authority;

n. The decision constitutes a violation of acquired rights, and as such of staff regulation 12.1; the General Assembly cannot legally refuse to make payments which are due under the established rules;

o. The Secretary-General and the ICSC can only act in accordance with the legislation adopted by the General Assembly, including the Staff Regulations and the rules approved by the General Assembly with respect to the post adjustment;

p. Only the General Assembly has the authority to change the methodology for calculating post adjustment, and while the ICSC recommends the methodology to the General Assembly, it has no authority to modify it or discretion in promulgating increases due; following its requests to the ICSC to review the methodology, the General Assembly had made no change with respect to the rules governing the post adjustment;

q. The request of the General Assembly to resume normal operation of the post adjustment system as of 1 February 2013 never went back to the full ICSC as required under the Statute of the ICSC, and the Chairman does not have the authority to act on behalf of or change earlier decisions of the full Commission;

r. The decision to apply a universal system of compensation to some professional staff for increases in cost of living and at the same time to deny the same to professional staff members stationed in New York is discriminatory and constitutes a violation of the principle of equal treatment;

s. The Applicants *Ovcharenko et al.* request the Tribunal to order that the decision be entirely overturned; alternatively, they request the Tribunal to order:

i. "that the normal operation of post adjustment system should be restored in all duty stations with retroactive effect as of 1 August 2012";

ii. "payment to the Applicant[s] of post adjustment in accordance with the multiplier 68.0 from 1 August 2012 to 31 January 2013 with interest or alternatively, to pay compensation equivalent to the amount of post adjustment calculated at the rate using multiplier 68.0 for the period 1 August 2012 through 31 January 2013 with interest;"

iii. "payment of moral damages for the violation of the Applicant[s] contractual rights and the consequential effects on [their] entitlements."

t. Applicant *Kucherov* requests under remedies that:

i. "the contested decision be rescinded and that the Secretary-General undertake to revise his interpretation and implementation of the decisions taken by the [ICSC] and the General Assembly in conformity with the legal requirements of the post adjustment system;

ii. appropriate relief be afforded to address the unlawful interpretation and implementation of the post adjustment system, including retroactive payment of all monies owed to [him] in connection with the proper application of the methodology from August 2012, adjusted to include compound interest."

18. The Respondent's principal contentions are:

a. The applications are not receivable since staff members cannot appeal decisions of the General Assembly or the ICSC; the Secretary-General was bound to and merely applied the multiplier as promulgated by the ICSC at the direction of the General Assembly, as such, the Secretary-General did not take any decision; the Applicants recognise that the multiplier was

determined by the ICSC and the General Assembly, and not by the Secretary-General;

b. Also, the decision does not constitute an administrative decision under the terms and findings of Judgment no. 1157 *Andronov* of the former United Nations Administrative Tribunal, upheld by the Appeals Tribunal, since it does not have unilateral and direct effect on the rights of the Applicants, rather, it is a decision of general application;

c. The Applicants further argue that the relevant decisions of the General Assembly and of the ICSC were illegal; however, they did not and cannot appeal decisions of the General Assembly and of the ICSC and the lawfulness of these decisions is not an issue for determination by the Tribunal;

d. In any event, contrary to what is alleged by the Applicants, the decisions of the ICSC and the General Assembly were lawful; the General Assembly, the ICSC and the Secretary-General acted within their respective mandate and did not breach any term of appointment or alleged acquired right of the Applicants;

e. The ICSC is a subsidiary body of the General Assembly, established by the latter in 1974, with the aim to regulate and coordinate the conditions of service for the staff of the United Nations Common System; as such, the ICSC is responsible to the General Assembly and bound to exercise its mandate in line with the instructions and decisions of the latter; the ICSC referred the matter of the timing of the increase of the post-adjustment to the General Assembly; the ICSC did not misinterpret the decision of the General Assembly, which was unambiguous, in that it requested the ICSC to "maintain the current New York post adjustment multiplier to 31 January 2013", which, at the relevant time, was 65.5;

f. Once the General Assembly decided that the multiplier be maintained at the existing rate of 65.5 until the end of January 2013, and that the new

rate of 68.7 come into effect only as of 1 February 2013, the ICSC was bound to act accordingly;

g. Under its Statute, the ICSC is independent of the United Nations Secretariat and cannot take instructions from any Organization within the Common System; it is responsible for the calculation of post adjustment indices, classifications and multipliers; once promulgated by the ICSC, a post adjustment multiplier becomes immediately applicable throughout the Common System; as such, decisions of the ICSC are binding upon the members of the Common System and the Secretary-General does not have any discretion or authority in this respect;

h. Under art. 25(3) of its Statute, decisions of the ICSC must be applied by members of the Common System from the date determined by the ICSC; the only post adjustment multiplier in effect for the period between 1 August 2012 and 31 January 2013 was that of 65.5, and the ICSC did not promulgate the revised post adjustment multiplier of 68.7 until 1 February 2013; accordingly, under their terms of appointment, the Applicants were only entitled to payment of the post adjustment at the rate of 65.5 that prevailed from 1 August 2012 to 31 January 2013;

i. The General Assembly in its Resolution 67/241 (Administration of Justice at the United Nations) reaffirmed that "the decisions of the [ICSC] are binding on the Secretary-General and the Organization"; the United Nations Administrative Tribunal recognized the independence of the ICSC and noted that the Secretary-General does not have the authority to modify or suspend decisions of the ICSC (*Chatwani et al*, Judgment No. 421 (1988)); the Dispute Tribunal confirmed in *Obino* UNDT/2013/008 that actions of the Secretary-General to apply decisions of the ICSC do not constitute decisions under art. 2 of its Statute and that "the Tribunal cannot extend its jurisdiction to include decisions made by the ICSC, regardless of how those decisions are couched to appear like decisions of the Secretary-General";

j. The Applicants' claim that they were not treated equally as other staff members has no merit; the post adjustment multiplier is determined by the ICSC for each duty station individually, and no two duty stations are equal; all staff members were treated equally, in that the Secretary-General applied to them the relevant multiplier promulgated by the ICSC for each duty station, including that for New York;

k. The Tribunal does not have the power to order the General Assembly and the ICSC to withdraw its decisions; the Applicants' claim for retroactive payment of the post adjustment based on the 68 multiplier from 1 August 2012 to December 2013 is outside the scope of the applications, since the Applicants only appealed the decision reflected in their statement of earnings and deductions provided to them on 30 January 2013, which concerns only payment of the multiplier of 65.5 from 1 to 31 January 2013;

l. The applications should be dismissed.

Consideration

19. The above-referenced applications have been filed by several professional staff members, whose duty station at the relevant period was New York; since they raise the same legal question for adjudication by the Tribunal, the latter considers that it is in the interest of justice to join the applications and to decide upon them by one single judgment.

20. As a preliminary matter, and since the applications are being rejected on other grounds below, the Tribunal finds that it is not necessary to examine the question whether the Applicants were in fact obliged to submit a request for management evaluation prior to filing an application with the Tribunal and to determine the receivability *ratione temporis* of the applications.

21. The Tribunal further finds that it is not obvious to ascertain exactly what the Applicants wish to contest and recalls what the Appeals Tribunal held in *Massabni* 2012-UNAT-238:

> 2. The duties of a Judge prior to taking a decision include the adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content they assign to them, as the judgment must necessarily refer to the scope of the parties' contentions. Otherwise, the decision-maker would not be able to follow the correct process to accomplish his or her task, making up his or her mind and elaborating on a judgment motivated in reasons of fact and law related to the parties' submissions.
>
> 3. Thus, the authority to render a judgment gives the Judge an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and so, subject to judicial review which could lead to grant or not to grant the requested judgment.

22. The Tribunal notes that on the application form, the Applicants stated that the contested decision was the "refusal to pay post adjustment based on the multiplier 68.0 which became due for New York on 1 August 2012", as reflected in their statements of earnings and deductions for January 2013. The Tribunal further recalls that the Applicants in their applications stressed that they were in fact contesting the decision not to pay them post adjustment with the multiplier 68.0 for the period 1 August 2012 to 31 January 2013. At the same time, the Applicants *Ovcharenko et al.* in their submission of 11 February 2014 noted that they contested "the amount of remuneration the Secretary-General has paid them in January 2013".

Should the Applicants seek to contest the decision not to pay the 68.0 multiplier from 1 August 2012 to 31 January 2013

23. The scope of the Tribunal's jurisdiction is clearly determined and limited by its Statute, which provides in art. 2.1(a) that it is competent to hear and pass judgment on applications against administrative decisions "alleged to be in non-compliance with the terms of appointments or the contract of employment". Therefore, for an application to be receivable, the contested decision has to be an "administrative decision" under art. 2.1(a) of the Tribunal's Statute.

24. The Appeals Tribunal, in its established jurisprudence, adopted the terms of an administrative decision as defined by the former Administrative Tribunal of the

United Nations in its Judgement *Andronov* No. 1157 (2003) (see *Hamad* 2012-UNAT-269; *Al Surkhi et al.* 2013-UNAT-304). In its recent Judgment *Al Surkhi et al.* 2013-UNAT-304, it recalled once again the terms of the relevant definition, as follows:

> There is no dispute as to what an "administrative decision" is. It is acceptable by all administrative law systems, that an "administrative decision" is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

25. The Tribunal finds that the decision not to pay the Applicants the post adjustment multiplier 68.0 for the period 1 August 2012 to 31 January 2013 does not amount to an administrative decision under art. 2.1(a) of the Tribunal's Statute, as per the terms of the above-quoted definition adopted by the Appeals Tribunal. The decision was taken by the Secretary-General. It clearly applied to a group of staff members, namely professional staff members with duty station New York at the relevant period. As such, the group to which the decision applied was defined exclusively by their status and category in the Organization at a certain location and point in time. In view of its nature and scope, the decision is one of a general order and not one of individual application.

26. The Tribunal recalls what it noted in its recent decision *Tintukasiri et al.* UNDT-2014-026 and finds that the case at hand has to be equally differentiated from the case of *Al Surkhi et al.* (Judgment No. 2013-UNAT-304), in which the Appeals Tribunal ruled that an UNRWA Area Staff Circular—providing that the absence of staff members who had been on strike on two specific days, would be covered by a 50% payroll deduction from the next payroll and a 50% deduction from annual leave, and that 100% payroll deduction would be made for all staff who were absent from work on another specific day—constituted an appealable

administrative decision. In that Judgement, the Appeals Tribunal found that the Circular contained "all the necessary components referred to in *Andronov* to give rise to legal consequences for the striking staff" and that "it contained information which affected the rights of the staff members in question, given that it was being clearly communicated to the relevant staff members that deductions were going to be made from their salaries", hence, "vis-à-vis the striking staff members it had individual application".

27. The situation in the present case differs from the case of *Al Surkhi et al*. In the latter case, the Circular was addressed and applied to a certain and clearly definable group of staff members who had been on strike on two or three specific days, and who, therefore, by their own concrete action, were subjected to a certain decision by the Administration—to wit, a deduction from payroll/annual leave on the basis of the principle of no pay for days not worked. Thus, the decision, though collective, was of individual application, and its application was clearly defined in scope and time. In the present case, however, the post adjustment multiplier 65.5 instead of 68.0 was applied for the period from 1 August 2012 to 31 January 2013 to a group of staff members defined exclusively by their status and category within the Organization. In view of the foregoing, and in continuation of its jurisprudence *Tintukasiri et al.*, the Tribunal concludes that in applying the test of *Andronov*, the decision to apply the post adjustment multiplier of 65.5 for the period 1 August 2012 to 31 August 2013 instead of the multiplier 68.0 does not amount to an administrative decision for the purpose of art. 2.1(a) of the Tribunal's Statute, but constitutes a decision with regulatory power.

Should the Applicants seek to contest the decisions to pay the amount reflected in their January 2013 statement of earnings and deductions

28. The Tribunal considers that the decisions to pay each Applicant the amount contained in their respective statement of earnings and deductions of January 2013, determined in application of a 65.5 post adjustment multiplier, constitute administrative decisions under art. 2.1(a) of the Tribunal's Statute.

29. They were taken by the Secretary-General, who implemented the multiplier promulgated by the ICSC in Circular ICSC/CIRC/PAC/457 (Consolidated Post Adjustment Circular) of 15 January 2013, determined at the direction of the General Assembly, as reflected in General Assembly decision 67/551. The Tribunal finds no merit to the Applicants' claim that General Assembly decision 67/551 was ambiguous or wrongly interpreted by the Administration. There is no doubt that the explicit intention of the General Assembly, as contained in said decision of 24 December 2012, was that the current multiplier that ought to be maintained for the New York duty station through 31 January 2013 was 65.5, as reflected in ICSC/CIRC/PAC/452 in conjunction with the ICSC report 2012 to the General Assembly to which the latter clearly referred to. It is on the basis of the unambiguous decision of the General Assembly that the ICSC issued Circular ICSC/CIRC/PAC/457 on 15 January 2013, promulgating that the multiplier 65.5 be maintained through 31 January 2013.

30. The Tribunal notes that the General Assembly, in its resolution 67/241 (Administration of Justice at the United Nations) reaffirmed that "the resolutions of the General Assembly and the decisions of the International Civil Service Commission are binding on the Secretary-General and on the Organization".

31. Also, pursuant to art. 6 of the Statute of the ICSC, its members shall "perform their functions in full independence and with impartiality; they shall not seek or receive instructions from any Government, or from any secretariat or staff association of an organization in the United Nations common system". Articles 10 and 11 of the ICSC Statute provide for the functions and competence of the ICSC, as follows:

> Article 10
>
> The Commission shall make recommendations to the General Assembly on:
>
> (a) The broad principles for the determination of the conditions of service of the staff;
>
> (b) The scales of salaries and post adjustments for staff in the Professional and higher categories;

(c) Allowances and benefits of staff which are determined by the General Assembly;

(d) Staff assessment.

Article 11

The Commission shall establish:

(a) The methods by which the principles for determining conditions of service should be applied;

(b) Rates of allowances and benefits, other than pensions and those referred to in article 10 (c), the conditions of entitlement thereto and standards of travel;

(c) The classification of duty stations for the purpose of applying post adjustments.

32. Pursuant to art. 25, para.3 of its Statute, decisions of the ICSC shall be applied by each Organization concerned with effect "from a date to be determined by the Commission".

33. It results from these provisions that while the ICSC is clearly independent from the Secretariat and cannot take any instructions from the Secretariat of an Organization in the United Nations common system, it is answerable and accountable to the General Assembly. The Tribunal notes that it further results from General Assembly resolution 67/241 and the above-quoted provisions of the Statute of the ICSC, that the Secretary-General has not been vested with any discretionary authority with respect to the implementation of the decisions by the ICSC, as directed by the General Assembly, and that he was thus duty bound to implement the decision to apply the multiplier of 65.5 through 31 January 2013, in accordance with decision 67/551 of the General Assembly, as reflected in ICSC Circular ICSC/CIRC/PAC/457.

34. In view of the foregoing, and since the legality of the decision of the General Assembly itself does not fall within the purview of the Tribunal, it is not necessary for the Tribunal to examine any of the other arguments of the Applicants.

35. For the reasons outlined above, the Tribunal concludes that the decisions by the Secretary-General to determine the amount of the Applicants' pay for the month of January 2013, as contained in their respective statement of earnings and deductions of January 2013, in application of the 65.5 multiplier, are legal and the applications insofar as they are directed against these decisions have to be equally rejected.

Conclusion

36. In view of the foregoing, the Tribunal DECIDES:

The applications are rejected.

(*Signed*)

Judge Jean François Cousin

Dated this 25th day of March 2014

Entered in the Register on this 25th day of March 2014

(*Signed*)

René M. Vargas M., Registrar, Geneva