



**Before:** Rowan Downing

**Registry:** Geneva

**Registrar:** René M. Vargas M.

AL ABANI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Jeffrey Dahl

**Counsel for Respondent:**

Kara D. Nottingham, UNOG

## **Introduction**

1. By application filed on 12 March 2015, the Applicant contests the decision to deny him dependency benefits for his wife and stepdaughter, retroactively to the date of his marriage.

## **Facts**

2. The Applicant, a national from Lebanon, has been employed by the Information Technology Service, United Nations Office at Vienna (“UNOV”) since 3 January 2007, on the basis of a fixed-term appointment, as Information Systems Assistant (G-6). The appointment was extended several times and in October 2012, he was promoted to the G-7 level, to the post of Computer Information Systems Assistant, in which he is currently serving.

3. The Applicant married a national from Malaysia in a religious ceremony in Vienna, on 22 June 2007, as reflected in a marriage certificate issued by the Islamic Association of Austria. The marriage certificate on file does not refer to the application of any national law. However, it was subsequently formally recognized and registered in Malaysia. In 2008, the Applicant applied for dependency benefits for his wife and stepdaughter.

4. On 12 August 2008, UNOV sent a *Note Verbale* to the Permanent Mission of Lebanon, Vienna, seeking confirmation whether the marriage certificate of 22 June 2007 “[was] issued by a competent authority and [if] the State of Lebanon recognizes [said] marriage”.

5. By *Note Verbale* dated 18 August 2008, the Permanent Mission of Lebanon informed UNOV that since it was a religious marriage concluded in Austria and not registered in Lebanon, the above-referenced marriage certificate was not recognized by the competent authorities of Lebanon. It further explained that only civil marriages performed in Austria according to the Austrian Civil Law were recognized by the Permanent Mission and the Lebanese Authorities.

6. On 26 August 2008, UNOV informed the Applicant thereof and advised him that, as a consequence, it would not recognize his marital status for the purpose of United Nations benefits and entitlements.

7. By a further *Note Verbale*, dated 19 March 2009, the Permanent Mission of Lebanon informed UNOV that in order to be registered in the Lebanese civil status registers, the Applicant's marriage had to be confirmed by the Lebanese competent Islamic Authorities; the *Note Verbale* also advised UNOV that the Applicant had been informed that the file he had submitted to the Embassy needed to be sent to said authorities for finalisation, and that the formality process was in progress.

8. By *Note Verbale* dated 1 April 2009, UNOV expressed its understanding that the file would be forwarded to the competent Islamic Authority in Lebanon, "in order for the marriage to be registered in the civil status registers and recognized under Civil Law provisions of Lebanon" and asked the Permanent Mission to keep it apprised of the verification received by it upon completion of the process.

9. A document dated 15 July 2009 from the *Chargé des affaires consulaires* of the Embassy of Lebanon in Vienna confirmed "the authentication of the legalization of the ministry of Foreign Affairs of Lebanon, which in its turn ha[d] verified that the signature of the *Chargé d'affaires* of the Malaysian Embassy in Beirut [was] authentic and valid".

10. Through a further *Note Verbale*, dated 23 July 2009, UNOV, referring to its earlier note of 1 April 2009, asked the Permanent Mission to confirm whether the document of 15 July 2009 "communicate[d] verification by the Permanent Mission that [the Applicant's partner] [was] the legally recognized spouse [of the Applicant] under Lebanese law".

11. The Permanent Mission never responded to UNOV query. However, in an email dated 28 October 2013 from the Chief, Human Resources Management Service ("HRMS"), UNOV, to the Office of Human Resources Management ("OHRM"), reference was made to the Applicant having indicated that his

application had been denied by the competent Islamic Authorities in Lebanon since he was not of Muslim faith.

12. The Applicant engaged in a continuous dialogue with UNOV over this matter and, on 8 October 2013, he requested the Chief, HRMS, UNOV, to reconsider the decision to deny him marital status, noting, *inter alia*, that his wife had been diagnosed with a serious medical condition that required medical insurance coverage.

13. By email of 9 October 2013, the Chief, HRMS, UNOV, responded to the Applicant, noting that although in accordance with ST/SGB/2004/13, all supporting documentation had been sent to the Permanent Mission of Lebanon in Vienna, the latter had unfortunately not been forthcoming in verifying the Applicant's marital status as legally recognised under the laws of Lebanon. He further noted that although the Applicant had indicated that he had initiated arrangements for a civil marriage before the Magistrate in Vienna, he had not advised HRMS of any undertaking in this respect. He therefore asked the Applicant that if he had obtained a civil marriage certificate, he should submit the original to UNOV for verification with the Permanent Mission. Finally, he suggested to bring the matter to the attention of OHRM.

14. The Applicant responded by email of the next day, noting that the Austrian marriage had not gone through, since the marriage had already been registered at the Sharia court in Malaysia, and the Malaysian authorities would not give the single status certificate to his wife, as requested by the Magistrate. He further expressed his appreciation for the matter being brought up with OHRM.

15. On 28 October 2013, the Chief, HRMS, UNOV, wrote an email to OHRM, referring to the various actions taken by UNOV vis-à-vis the Permanent Mission of Lebanon (including the latter's lack of response to the latest *Notes Verbales*) and requesting OHRM whether the Division for Management, United Nations Office on Drugs and Crime ("UNODC") could deviate from the practice set out in ST/SGB/2004/13 in this particular case, by considering the Applicant's partner as a spouse in reference to the law of her nationality (Malaysia) rather than that of the Applicant (Lebanon). OHRM responded by email of the next day, stating that

it would submit the documents to the Permanent Mission of Lebanon to the United Nations in New York.

16. On 17 January 2014 the Applicant requested management evaluation of the decision not to recognize his marital status for the purpose of United Nations entitlements.

17. On 23 January 2014, the Permanent Mission of Lebanon to the United Nations in New York advised OHRM that it had sent the case to the Lebanese Government.

18. By memorandum dated 7 February 2014, the Chief, Management Evaluation Unit (“MEU”) informed the Applicant that since his request for reconsideration of his marital status was still under consideration within the legislative process of the Organization, his request for management evaluation was premature, hence MEU did not have competence to review it.

19. On 26 June 2014, the Secretary-General issued ST/SGB/2004/13/Rev. 1. According to the revised bulletin, the personal status of a staff member is determined by the domestic law where the marital status was established.

20. By email of 19 August 2014, UNOV informed the Applicant that his personal status for the purpose of UN entitlements had been changed to married, effective 26 June 2014.

21. By email of 2 September 2014, the Applicant requested to be granted recognition of his marital status retroactively from 22 June 2007, the date of his marriage.

22. By email of 10 September 2014, the Chief, Staff Administration Unit, HRMS, Division for Management, UNODC, responded to the Applicant’s request b confirming that the effective date of the change of personal status to “married and related” was 26 June 2014, that is, the date of issuance of ST/SGB/2004/13/Rev.1.

23. On 4 October 2014, the Applicant requested management evaluation of the decisions of 19 August and 10 September 2014.

24. By memorandum dated 15 December 2015, the Under-Secretary-General for Management informed the Applicant that the Secretary-General had decided to follow MEU advice to uphold the contested decision.

#### **Parties' submissions**

25. The Applicant's principal contentions are:

a. The denial of retroactive dependency benefits constitutes a denial of a basic human right as recognized by art. 16 of the Universal Declaration of Human Rights and of the Charter of the United Nations; as such, the reliance on ST/SGB/2004/13 unlawfully subordinates superior norms;

b. Despite a positive obligation to do so (cf. *Khisa* UNDT/2014/047), the Organization failed to observe his human rights by giving effect to the discriminatory marriage laws of Lebanon that do not allow certain interfaith or intersect marriages;

c. The application of ST/SGB/2004/13 constitutes a violation of his fundamental right to marry without limitations on the grounds of religion; the promulgation of ST/SGB/2004/13/Rev.1 was done to correct a situation in which the application of the former bulletin could, in certain cases, lead to the violation of the human rights of staff members;

d. He is entitled to retroactive dependency benefits as an effective remedy for the violation of his human rights, and there is no need to apply the revised bulletin retroactively;

e. The Organization was competent to recognize the violation of the universally accepted human right to marry without limitation as to religion, and had an affirmative obligation to recognize the marriage without reliance on the position of Lebanon;

f. The Applicant requests rescission of the denial of retroactive dependency benefits and to be granted such benefits from 2007 until 26 June 2014. He further requests moral damages for pain and frustration triggered by the Organization's denial of a basic human right.

26. The Respondent's principal contentions are:

a. Matters of national law are outside the competence of the Tribunal and the scope of the present application; the authority of the Organization is limited to register marriages contracted according to the respective national law of the competent authority, which, under the terms of the former ST/SGB, was that of the nationality of the staff member concerned (here Lebanon); in determining the personal status of staff members, the Organization is competent only to rely on and bound by choices made by national law, and there is no universally accepted principle as to what is a legally binding marriage;

b. In accordance with ST/SGB/2004/13, failing the recognition of his marital status by Lebanon, the Applicant's country of nationality, the Organization had no choice but to maintain his status as single; as such, the relevant regulations with respect of the determination of the personal status of staff members were correctly applied to the Applicant;

c. The Applicant was granted marital status and related benefits under the revised bulletin, effective 26 June 2014; since the provisions of the revised bulletin do not allow for retroactivity, the Applicant is not entitled to retroactive benefits dating back to 2007;

d. The Tribunal is competent to award compensation only for harm suffered by an applicant as a result of an unlawful act; since the Organization did not commit any unlawful act, there is no harm which can be attributed to it and for which the Applicant can be granted compensation;

e. The application should be dismissed in its entirety.

## Consideration

27. The Tribunal first has to determine which decision the Applicant is contesting, and whether his application is receivable under the terms of its Statute. It recalls what the Appeals Tribunal held in *Massabni* 2012-UNAT-238, namely that:

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.

28. In his application, the Applicant contests the decision to deny him dependency benefits retroactively to the date of his marriage.

29. The Applicant, more precisely, identifies the contested decision as that notified to him on 19 August 2014 and 10 September 2014. The email of 19 August 2014 from the Chief, SAU, HRMS, UNODC, informed the Applicant that "OHRM had confirmed that action [could] be taken to effect the change in [his] personal status to recognise [his] marriage, with effect from 26 June 2014, and grant the applicable UN entitlements under the Staff Regulations and Rules". The subsequent email of 10 September 2014 confirmed that the effective date of the change of personal status to "married and related" was the date of issuance of ST/SGB/2004/13/Rev. 1, that is, 26 June 2014, and that in light of the terms of the previous bulletin, and the fact that Lebanon had not confirmed his personal status, the Administration was not in a position to grant said benefits prior to that date.



30. The Tribunal notes that the change of the Applicant's personal status to "related and married" and the granting of the related benefits, as of 26 June 2014, constitutes a decision that is favourable to the Applicant, which, to the extent it is granting him a benefit, cannot be the subject of an application under the terms of art. 2.1(a) of the Tribunal's Statute (cf. *Applicant* UNDT/2012/110). The only aspect of the decision that is open to appeal is the fact that the benefits were not granted prior to the issuance of the revised bulletin, in other words, retrospectively.

31. In this respect, the Tribunal recalls the longstanding jurisprudence of the Appeals Tribunal that the reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to the statutory time limits, which start to run from the date of the original decision (*Sethia* 2010-UNAT-079; *Odito-Benito* 2012-UNAT-196; *Cremades* 2012-UNAT-271). Thus, the Tribunal has to examine whether the decision of 19 August/10 September 2014 constitutes a mere confirmation of an earlier decision to deny the Applicant the benefits under the terms of former ST/SGB/2004/13; hence, if the application is irreceivable, *ratione materiae* (cf. *Egglesfield* 2014-UNAT-402), since the Applicant failed to file timely management evaluation against said decision.

32. The record shows that after a long and continuous dialog at various levels of the Organization to resolve the matter, the Applicant did file, on 17 January 2014, a first request for management evaluation against the decision not to recognize his marital status for the purpose of the United Nations entitlements under the terms of the former bulletin. The Management Evaluation Unit ("MEU") informed him on 7 February 2014 that his request in respect of the "first decision" of 26 August 2008 was time-barred. At the same time, it stated with respect to his request for reconsideration of his marital status, that his request for management evaluation was premature; hence, MEU did not have competence to review it, since the matter "was still under consideration within the legislative process of the Organization". The Tribunal notes that, indeed, the matter was still under review and that in light of the lack of responsiveness on the part of the Lebanese authorities, no final decision had been taken by the Administration at the time of

the Applicant's first request for management evaluation. Further, the record does not show that after the MEU response and prior to 19 August/10 September 2014, a final decision was taken in the matter.

33. Thereafter, the revised bulletin was issued on 26 June 2014, and following the above-referenced decision of 19 August/10 September 2014—which constitutes a final administrative decision, based on a new set of rules—the Applicant filed a timely request for management evaluation against the denial of retroactive benefits, on 14 October 2014.

34. Therefore, the Tribunal notes that the application is receivable, insofar as it is directed against the denial, through the decision of 19 August/10 September 2014, of the retrospective change of marital status and related dependency benefits.

#### *Merits*

35. The revised bulletin (ST/SGB/2004/13/Rev.1 (Personal status for purposes of United Nations entitlements)) provides that “[t]he personal status of staff members for the purpose of entitlements under the Staff Rules and Staff Regulations of the United Nations will be determined by reference to the law of the competent authority under which the personal status has been established”. It further provides that “Secretary-General’s bulletin ST/SGB/2004/13 is hereby superseded. The present bulletin shall enter into force on the date of its issuance”, that is, on 26 June 2014.

36. In light of the recognition by the Malaysian authorities of the marriage contracted on 22 June 2007 under the auspices of the Islamic Association of Austria, and the above-referenced provisions of the revised bulletin, the Applicant's personal status was changed to “married and related”, and he was granted the related dependency benefits for his wife and step-daughter as of 26 June 2014. By the same token, he was, however, denied such change in status and benefits prior to that date.

37. The Appeals Tribunal recently “recall[ed] the general principle of law against retrospective effect/application of laws and [held] that since the incident in question occurred before [the administrative issuance] was promulgated [the latter] [was] not applicable in this case (*Assale* 2015-UNAT-534 quoting *Hunt-Matthes* 2014-UNAT-444).

38. In the present case, the incident in question before the Tribunal is the Applicant’s religious marriage on 22 June 2007 (recognized by the Malaysian authorities), and the failure, by the Lebanese authorities, to recognize said marriage, which led to the denial by the Organization to change his personal status for the period prior to the issuance of the revised bulletin. The Tribunal notes that the denial by the Administration, upon issuance of the revised bulletin, to apply its terms retroactively, was legally correct.

39. The bulletin, prior to its revision, provided that “the practice of the Organization when determining the personal status of staff members for the purpose of entitlements under the Staff Regulations and Rules has been done, and will continue to be done, by reference to the law of nationality of the staff member concerned”. It further clarifies that:

Requests relating to the determination of the personal status of staff members in connection with their entitlements will be submitted by the Secretariat for verification by the permanent mission to the United Nations of the country of nationality of the staff member concerned. Once the Mission has verified that the status in question is legally recognized under the law of that country for the purposes of granting benefits and entitlements, the Secretariat will take action in accordance with that verification.

40. The Applicant argues that he is entitled to retrospective benefits as “an effective remedy of the human rights violation when the Organisation used discriminatory national laws to deny his application for benefits”.

41. First, the Tribunal notes that it does not have jurisdiction to deal with potential breaches of the Universal Declaration of Human Rights by the legislation of a sovereign national (member) state. It can therefore not look into whether the relevant Lebanese marital law was indeed discriminatory, as submitted by the Applicant.

42. The foregoing notwithstanding, the Tribunal notes that the Applicant did not contest that he had the opportunity, prior to the religious marriage as recognized by the Malaysian authorities, to contract a civil marriage in Austria, and to have the same registered and recognized in Lebanon. By failing to do so, he lost the chance to have his marriage recognized by his country of nationality (Lebanon), and as a consequence, to have his marital status changed, at the time, for the purpose of the entitlements under the United Nations Rules and Regulations.

43. While it is most regrettable that the Applicant's choices precluded the Organization from changing his personal status under the provisions in force at the time, the Tribunal reiterates that it is the responsibility of international civil servants to be aware of the Staff Regulations and Rules (*Staedtler* 2015-UNAT-546; *Kazazi* 2015-UNAT-557) and to organise their affairs, when necessary, so that they may comply with such, including the reference to the laws of their country of nationality. This is especially so when any administrative issuance in respect of which a staff member may seek to rely does not include a discretion which may be exercised in appropriate cases. ST/SGB/2004/13 was clear in its requirements; the Administration followed them strictly and diligently, as it was bound to do.

44. Further, the Tribunal recalls that in dealing with its staff members, the Organization is bound to respect the hierarchy of the Organization's internal legislation (cf. *Scott* 2012-UNAT-225; *Villamorán* UNDT/2011/126). It further notes that the Appeals Tribunal also explicitly referred to the Universal Declaration of Human Rights when examining the legality of decisions taken by the Administration.<sup>1</sup>

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<sup>1</sup> Cf. *Tabari* 2010-UNAT-030 with respect to the right of equal pay for equal work.

45. The Tribunal also notes that the Appeals Tribunal has confirmed the validity of the Organization's choice to refer to a staff member's law of nationality in determining his or her personal choice, as a way to make "it possible to respect the various cultural and religious sensibilities existing in the world, as no general solution is imposed by the Organization, which simply tolerates and respects national choices" and that "[r]eference to national law is the only method whereby the sovereignty of all States can be respected" (*El-Zaim* 2010-UNAT-007 quoting former Administrative Tribunal Judgment No. 1183 *Adrian* (2004)).

46. The Tribunal agrees that the Organization needs a consistent and entirely transparent rule for the identification and determination of the personal status of its staff member, while respecting and relying on the sovereignty of its member states. It finds that the "choice" by the Organization to refer to a staff member's law of nationality, prior to the revised bulletin, was not unreasonable, nor did it constitute a violation of any higher norm in the internal legislation of the Organization, or of the Charter of the United Nations.

47. Further, and more specifically, with respect to the Applicant's reference to art. 16 of the Universal Declaration of Human Rights and his "human right to marry without limitation based on religion", the Tribunal notes that he was not precluded from marrying his wife, which he did, as recognized by the Malaysian authorities. However, and the foregoing notwithstanding, the Tribunal notes that such right to enter into a marriage, without distinction, has to be distinguished from the recognition of said marriage by the Organization, and from what flows from such recognition under its Rules and Regulations.

48. The Tribunal concludes that the Administration, in denying the Applicant retroactive benefits prior to ST/SGB/2004/13/Rev.1—that is, under the terms of ST/SGB/2004/13—relied on the orderly and clear procedure provided for under said bulletin. It undertook considerable efforts to receive confirmation from the Lebanese authorities but, most unfortunately, to no positive avail.

49. It follows from the above that the decision to grant the Applicant the status as "married and related" as of 26 June 2014 only, that is, not to grant him retrospective benefits to the date of his marriage, was legal.

**Conclusion**

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

The application is rejected.

*(Signed)*

Judge Rowan Downing

Dated this 24<sup>th</sup> day of September 2015

Entered in the Register on this 24<sup>th</sup> day of September 2015

*(Signed)*

René M. Vargas M., Registrar, Geneva