



UNITED NATIONS DISPUTE TRIBUNAL

Cases Nos.: UNDT/GVA/2018/001,  
002, 003, 004 and 005  
Judgment No.: UNDT/2018/013  
Date: 31 January 2018  
Original: English

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**Before:** Judge Rowan Downing (Presiding)  
Judge Teresa Bravo  
Judge Alexander W. Hunter, Jr.

**Registry:** Geneva

**Registrar:** René M. Vargas M.

LLORET ALCANIZ

ZHAO

XIE

KUTNER

KRINGS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT  
ON APPLICATIONS FOR  
INTERPRETATION**

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**Counsel for Applicant:**

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**Counsel for Respondent:**

Bettina Gerber, HRLU/UNOG

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## **Introduction**

1. By applications filed on 16 January 2018, the Applicants request interpretation of judgment *Lloret Alcañiz et al.* UNDT/2017/097 issued on 29 December 2017 in Cases Nos. UNDT/GVA/2017/020, UNDT/GVA/2017/029, UNDT/GVA/2017/031, UNDT/GVA/2017/037 and UNDT/GVA/2017/040 (“Judgment”).

2. The applications were served on the Respondent on 22 January 2018 and he was given until 30 January 2018 to submit his reply, which the Tribunal advised could be limited to the receivability of the applications at this stage. The Respondent did not submit any reply by the set deadline.

## **Consideration**

3. Pursuant to art. 30 of the Dispute Tribunal’s Rules of Procedure, “[e]ither party may apply to the Dispute Tribunal for an interpretation of the meaning or scope of a judgment, provided that it is not under consideration by the Appeals Tribunal. ... The Dispute Tribunal will decide whether to admit the application for interpretation and, if it does so, shall issue its interpretation”.

4. By its Judgment, the Tribunal “rescind[ed] the Secretary-General’s decisions to pay the Applicants a salary reduced from the portion which was previously paid on the basis that they have a dependent child entitling them to be paid at the dependency rate in implementing the Unified Salary Scale”. In view of the fact that the salary scale from 1 January 2017 was based on the reduced salaries, the Tribunal clarified at para. 161 that:

[T]he effect of the rescission entails that the 6% reduction of the Applicants’ net salary plus post adjustment should be reintegrated as part of their salary from 1 January 2017 onwards. This amount will not be subject to any reduction as long as the Applicants continue to meet the eligibility criteria for payment at the dependency rate, as defined under former staff regulation 3.4, staff rule 3.6 and ST/AI/2011/5 (Dependency status and dependency benefits). This amount, being part of their salary, shall be taken into

account in the calculation of any other allowance or benefit that is based on the net base salary. Staff rule 13.11 concerning the transitional allowance will not apply to the Applicants because otherwise they would receive the 6% twice.

5. In their applications, the Applicants refer to sec. 3.5 of former ST/AI/2011/5 and former staff regulation 3.4(a) which define the eligibility criteria for payment at the dependency rate in respect of staff members with a non-dependent spouse and allege that “[i]n practice, in circumstances where the staff member had a non-dependent spouse and more than one dependent child, the ‘dependency rate’ of salary was carried over to the second dependent child after the first dependent child was no longer considered to be dependent”. They raise the following question to the Tribunal:

Is it the intention of the Tribunal in this Judgment for the Applicants to continue to receive a “dependency rate of salary” after their first dependent child ceases to be dependent and up until their youngest dependent child is no longer recognised as a dependent?

6. The Tribunal finds that the Applicants ask it to go beyond the conclusions of its Judgment in raising *ex post facto* a question about the interpretation of the former regime, which was not raised nor discussed during the proceedings. The Judgment is clear that the former regime for determining eligibility to payment of salary at the dependency rate as it stood before the introduction of the new Unified Salary Scale on 1 January 2017 shall apply to the Applicants. No issue was raised during the proceedings about possible divergent interpretations of sec. 3.5 of former ST/AI/2011/5 and former staff regulation 3.4(a) and it was commonly understood that under the former regime, staff members who have a non-dependent spouse were paid at the dependency rate as long as they have a dependent child. This notably appears from paras. 112 to 116 of the Judgment, where the Tribunal estimates the losses that the Applicants will suffer consequent to the introduction of the Unified Salary Scale based on the estimations provided by them.

7. The Applicants now appear to raise doubts about the compatibility of the practice adopted by the Administration with the relevant rules. This matter does not involve the interpretation of the Tribunal’s judgment but rather constitutes a new question in respect of the interpretation of the former legal regime governing

dependency benefits. The question is hypothetical at this stage as there is no indication that there is a disagreement between the parties. In effect, the Applicants seek a declaratory judgment on the Tribunal's interpretation of the former legal regime governing dependency benefits. The Tribunal does not have jurisdiction to resolve hypothetical or academic questions through declaratory judgments nor to consider new issues that go beyond the scope of its Judgment.

8. Therefore, the Tribunal finds that the applications are irreceivable *ratione materiae* and can thus not be admitted by the Tribunal.

### **Conclusion**

9. In view of the foregoing, the applications are dismissed.

(Signed)

Judge Rowan Downing    Judge Teresa Bravo    Judge Alexander W. Hunter, Jr.

Dated this 31<sup>st</sup> day of January 2018

Entered in the Register on this 31<sup>st</sup> day of January 2018

(Signed)

René M. Vargas M., Registrar, Geneva