



**Before:** Judge Margaret Tibulya

**Registry:** Geneva

**Registrar:** René M. Vargas M.

OZTURK

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**SUMMARY JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Maureen Munyolo, AS/ALD/OHR, UN Secretariat

## **Introduction**

1. By application filed on 14 April 2023, the Applicant, a staff member of the United Nations Interim Administration Mission in Kosovo (“UNMIK”), contests the amount of the reimbursement he received in 2019 for excess salary deducted pursuant to a child support court order.

## **Facts and procedural history**

2. In 2014, the Applicant joined UNMIK as a Civil Affairs Officer (P-3).

3. By Judgment *Ozturk* UNDT/2018/055, dated 1 May 2018, this Tribunal found that that the 25 November 2015 decision of the Administration to deduct 25 percent from the Applicant’s salary in favour of his daughter (El.), in execution of the terms of a Kazakh court’s child support order without any exercise of discretion, was unlawful.

4. By way of remedy, this Tribunal rescinded said decision and ordered the Administration to reimburse the amounts deducted from 25 November 2015 onwards, minus the child allowance the Applicant received for El. from that date (see *Ozturk* UNDT/2018/055, para. 77). This Tribunal further held that the Administration had to determine, anew, the amount (or percentage) to be deducted from the Applicant’s salary in favour of El. from 25 November 2015 onwards in a legal exercise of its discretion (see *Ozturk* UNDT/2018/055, para. 79).

5. On 2 July 2018, the Secretary-General appealed Judgment *Ozturk* UNDT/2018/055.

6. By Judgment *Ozturk* 2018-UNAT-892, the Appeals Tribunal dismissed the Secretary-General’s appeal and affirmed this Tribunal’s judgment.

7. The Appeals Tribunal upheld this Tribunal’s conclusions, including that following the rescission of the impugned decision, the Applicant should be reimbursed the amounts deducted from his salary from 25 November 2015 onwards, minus the child allowance paid to the Applicant for El. from that date. However, “such reimbursement would be subject to any new deductions from

[the Applicant'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" (see *Ozturk* 2022-UNAT-1274, para. 9, referring to *Ozturk* 2018-UNAT-892, paras. 43, 44).

8. On 7 May 2019, the Applicant acknowledged receipt of a wire transfer to his account as reimbursement of the excess salary deducted pursuant to the child support court order, in accordance with the Appeals Tribunal's Judgment *Ozturk* 2018-UNAT-892.

9. By e-mail of 17 July 2020 to the Human Resources Office ("HRO"), UNMIK, the Applicant requested reimbursement of what he considered to be over-deductions from his salary following the above-mentioned UNDT and UNAT Judgments.

10. On 14 May 2021, in response to several follow-up messages from the Applicant between July 2020 and March 2021, HRO, UNMIK, informed the Applicant *inter alia* that it was satisfied that the payment made to him in May 2019 was in accordance with the Appeals Tribunal's Judgment *Ozturk* 2018-UNAT-892, and thus considered the matter as closed.

11. On 20 May 2021, the Applicant submitted a request for management evaluation of the 14 May 2021 decision of the HRO, UNMIK.

12. By letter dated 1 June 2021, the Management Evaluation Unit ("MEU") found that the Applicant's request for management evaluation was not receivable.

13. On 10 November 2021, the Applicant filed an application for execution of the Appeals Tribunal's Judgment *Ozturk* 2018-UNAT-892 objecting to the amount he received in 2019.

14. By Judgment *Ozturk* 2022-UNAT-1274, dated 28 October 2022, the Appeals Tribunal concluded to be satisfied that execution of its previous judgment had occurred and dismissed the application.

15. Between mid-December 2022 and mid-January 2023, the Applicant met with/wrote to UNMIK Administration concerning the reimbursed amount and its calculation.

16. By email of 19 January 2023 to the Applicant, UNMIK Administration reiterated *inter alia* that the reimbursement start date was 25 November 2015 and that the reimbursed amount resulted from extensive consultations with him. The email also confirmed the view of UNMIK that it had complied with judicial orders and that no further action was needed. On the same day, the Applicant requested management evaluation of this decision.

17. By letter dated 3 March 2023, the MEU found the Applicant's 19 January 2023 request for management evaluation time-barred and, consequently, not receivable.

18. On 14 April 2023, the Applicant filed the application referred to in para. 1 above.

19. The application was served on the Respondent with a deadline for reply set to 17 May 2023.

20. On 27 April 2023, the Respondent filed a motion for summary judgment, requesting the Tribunal to dismiss the application by way of summary judgment.

### **Consideration**

#### *Motion for summary judgment*

21. The Respondent moved for summary judgment on the grounds that the application is not receivable as a matter of law.

22. Art. 9 of its Rules of Procedure provides that “[a] party may move for summary judgment when there is no dispute as to the material facts of the case and a party is entitled to judgment as a matter of law”.

23. Moreover, the Appeals Tribunal has consistently held that “summary judgment is an appropriate tool to deal with issues of receivability in the United Nations internal system of administration of justice” (see *Kazazi* 2015-UNAT-557, para. 41; see also *Auda* 2017-UNAT-740, para. 18). Indeed, the Tribunal has the competence to review an application’s receivability even if the parties do not raise the issue, because “it constitutes a matter of law and the Statute prevents the [Tribunal] from receiving a case which is [not receivable]” (see *Christensen* 2013- UNAT-335, para. 21).

24. Accordingly, the Tribunal grants the Respondent’s motion for summary judgment pursuant to art. 9 of its Rules of Procedure and will dispose of the application by way of a summary judgment.

#### *Receivability*

25. The Respondent submits that the application is not receivable, arguing *inter alia* that it was filed more than three years after the Applicant received the contested decision (receivability *ratione temporis*), and that the Applicant failed to timely request management evaluation (receivability *ratione materiae*).

26. The Tribunal will address these issues in turn. However, prior to this, the Tribunal finds it appropriate to first identify the contested decision.

#### The contested decision

27. It is well-settled law that the Tribunal has “the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review”, and “may consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed” (see, e.g., *Fasanella* 2017- UNAT- 765, para. 20; *Cardwell* 2018-UNAT-876, para. 23).

28. Moreover, “[t]he date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine” (see, e.g., *Kerby* 2020-UNAT-1064, para. 37).

29. The Tribunal determines that the Applicant essentially contests the Administration’s execution of the Appeals Tribunal’s Judgment *Ozturk* 2018- UNAT-892, i.e., the Administration’s reimbursement of USD41,173 made on 7 May 2019 for excess salary deducted pursuant to a child support court order. In this respect, the Tribunal notes that the Appeals Tribunal in *Ozturk* 2022-UNAT-1274 (para. 33) confirmed that the 7 May 2019 execution of the Appeals Tribunal’s Judgment is the appealable administrative decision.

30. While the Applicant sought to identify the UNMIK Administration’s email response dated 19 January 2023 as a contested decision, the Tribunal holds that that email merely constitutes a mere reiteration of the Administration’s decision of 7 May 2019 with respect to the calculation of the reimbursement that the Applicant received, and thus it does not constitute a new administrative decision.

31. Accordingly, the Tribunal finds that the contested decision in the present case is the 7 May 2019 decision reimbursing USD41,173 to the Applicant for excess salary deducted pursuant to a child support court order.

Whether the application is receivable *ratione temporis*

32. Art. 8.4 of the Tribunal’s Statute provides that “an application shall not be receivable if it is filed more than three years after the applicant’s receipt of the contested administrative decision”. In this respect, the Appeals Tribunal has consistently held that:

Article 8(4) is an “absolute restriction on [the UNDT’s] judicial discretion”. Put differently, “under Article 8(4) of the UNDT Statute, the UNDT cannot waive the time limit to file an appeal, more than three years after the applicant’s receipt of the contested administrative decision.<sup>1</sup>

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<sup>1</sup> See, e.g., *Mpacko* 2020-UNAT-990, para. 50; *Khan* 2017-UNAT-727, para. 23.

33. In the present case, the Applicant first became aware of the contested decision on 7 May 2019. He however only filed his application before the Tribunal on 14 April 2023, almost four years after being notified of the contested decision.

34. Accordingly, the Tribunal finds that the application is not receivable *ratione temporis*.

Whether the application is receivable *ratione materiae*

35. Under art. 8.1(c) of the Tribunal's Statute, an application is receivable if an "applicant has previously submitted the contested administrative decision for management evaluation, where required". Staff rule 11.2(c) provides that a request for management evaluation shall not be receivable "unless it is sent within 60 calendar days from the date on which the staff member received notification of the administration decision to be contested." It is well-settled case law that "the Dispute Tribunal may only review decisions that have been the subject of a timely request for management evaluation" (see *Khan 2022-UNAT-1284*, para. 52).

36. The chronology of the events in the present case shows that the Applicant acknowledged receipt of a wire transfer to his account of the reimbursement for excess salary deducted pursuant to the child support court order on 7 May 2019. While the Organization reiterated to the Applicant the contested decision by email of 19 January 2023, the Tribunal recalls that "the reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to statutory timelines. Rather, time starts to run from the date on which the original decision was [notified]" (see *Kerby 2020-UNAT-1064*, para. 37).

37. Therefore, the 60-day deadline for requesting management evaluation of the contested decision started to run from 7 May 2019 and ended on 6 July 2019. Accordingly, the Tribunal finds that the Applicant's request for management evaluation on 20 May 2021 was time-barred, and thus the present application is not receivable *ratione materiae*.

**Conclusion**

38. In view of the foregoing, the Tribunal DECIDES to reject the application as not receivable.

*(Signed)*

Judge Margaret Tibulya

Dated this 19<sup>th</sup> day of May 2023

Entered in the Register on this 19<sup>th</sup> day of May 2023

*(Signed)*

René M. Vargas M., Registrar, Geneva