



**Before:** Judge Francesco Buffa

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

NEWHOUSE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**

Self-represented

**Counsel for the Respondent:**

Yehuda Goor, AS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant, a Political Affairs Officer at the United Nations Assistance Mission for Iraq (“UNAMI”), holding a continuing appointment at the P-4 level and assigned to serve in Baghdad but on special leave without pay at the time of the application, is challenging the decision by the Administration to apply the United Nations Operational Rate of Exchange (“UNORE”) to determine his eligibility for dependency allowance.

## **Facts and procedural background**

2. The Applicant has served with UNAMI since 7 May 2019.
3. On 26 October 2021, the Applicant submitted a request for dependency allowance for his spouse. His spouse’s earnings were in Lebanese Lira (“LBP”).
4. The Applicant’s request was premised on the fact that the LBP had sufficiently depreciated against the United States Dollar (“USD”), so that her wages were below the threshold established for dependency benefits.
5. He supplemented this request with additional information and supporting documentation over the course of November and December 2021.
6. On 31 March 2022, UNAMI and the Kuwait Joint Support Office (“KJSO”) informed the Applicant that his spouse’s earnings had been calculated on the UNORE applicable at the time, and that she was well above the threshold established for the payment of the dependency allowance. The UNORE at the time was LBP1507.5 to the USD. Based on that exchange rate, the Applicant’s spouse was earning USD119,446.19. The threshold was USD46,231.
7. The Applicant filed for review of that decision by the Management Evaluation Unit (“MEU”) on 19 May 2022.
8. On 3 August 2022, the Applicant applied for Special Leave without Pay and permission to engage in outside employment beginning 1 September 2022. This request was approved on 7 August 2022.

9. As a result of being placed on Special Leave without Pay, the Applicant's entitlement to dependency benefits also ceased on 1 September 2022.

10. On 24 August 2022, MEU upheld the impugned decision.

11. On 13 October 2022, the Applicant filed the present application before the United Nations Dispute Tribunal sitting in Nairobi to challenge the Respondent's decision mentioned in para. 1.

12. The Respondent filed his reply on 11 November 2022.

13. On 22 June 2023, the Tribunal issued Order No. 110 (NBI/2023) directing the parties to file closing submissions by 30 June 2023. Both parties filed their respective submissions as directed.

#### **Submissions by the parties**

14. The thrust of the Applicant's case is that the actual exchange rate was well over "20x the former rate." The Applicant submits that the established UNORE and Financial Rules and Regulations do not reflect the realities on the ground. The Organization was well aware of the realities applicable at the time, and even adjusted the salaries of staff members serving in Lebanon to reflect the actual exchange rate.

15. The Respondent submits that the Applicant's request for dependency allowance in respect of his spouse was correctly considered using the then applicable UNORE. The decision to apply the UNORE to determine the Applicant's eligibility for dependency allowance was lawful and comports with the Financial Regulations and Rules and the rules on dependency allowance.

16. The Applicant has not demonstrated any unlawfulness or arbitrariness in how the impugned decision was made. The UNORE is consistently and transparently applied across the Organization in respect of all its financial transactions.

17. Since the filing of this application, the UNORE has been revised. It is now set at LBP30,100 to the USD. The Applicant will therefore be entitled to the

allowance on his return from Special Leave, but under no circumstances can the Organization pay him those entitlements retroactively. Entitlements can only be paid on the basis of established rates *at the time* the entitlement is due.

### **Considerations**

18. The Tribunal is aware that unstable political circumstances in Lebanon, along with security challenges and regional unrest, have impaired the Lebanese economy for the last several years and that since 2019 the situation has further exacerbated the economic environment and that economic imbalances have intensified deeply in 2020-2021 and vulnerabilities have continued growing, thus giving rise to severe financial challenges.

19. The notorious situation is well expressed in the Overview of the Recent Developments in Lebanon, 2021, published by the Lebanon Central Bank in its official website, and of which the Tribunal takes judicial note. The report reads:

Lebanon has been living multiple shocks in the past two years, starting with the liquidity crisis that erupted in the last quarter of 2019, followed by the government's decision to discontinue payments on all its outstanding US dollar-denominated Eurobonds in March 2020 -first sovereign default in Lebanon's history, the COVID-19 pandemic imposing lockdowns in the country starting the second quarter of 2020, and the Beirut port explosion in August 2020 which caused major destruction in the Lebanese capital and left the country without a government for more than a year.

The Lebanese economy has indeed plunged into a severe contraction across all economic sectors, combined with an unprecedented surge in prices. (The average inflation rate for 2021 has been forecasted at 154.76% against an average rate of 84.86% in 2020).

At the monetary level, Lebanon continues to suffer from contracting capital inflows, a massive shortage of US dollars and a sharp depreciation in the value of the local currency against the US dollar in the parallel market, hitting as high as LBP/USD 27,000 in December 2021.

20. In this situation, while in the first period the Central Bank still maintained the official rate of LBP1507.5 (that is the Bank's official rate for the last 25 years) in bank transactions, only as of 1 February 2023 Lebanon's Central Bank devalued its

currency and adopted an exchange rate of LBP15,000 per U.S. dollar, as part of a process to unify the country's multiple exchange-rate system.

21. Given this context, the Applicant recalls the economic collapse of the Lebanese currency in order to have the earnings of his wife properly assessed, considering the dramatically decreased effective value of the Lebanese Lira.

22. The Tribunal preliminarily notes that, as the Organization operates in numerous places worldwide and constantly deals with currency conversions, it is appropriate to use a consistent and uniform exchange rate for all financial obligations and transactions, including those related to staff member entitlements.

23. The setting of an official rate ensures the Organization's financial stability, predictability and transparency, as well as the equal treatment of all staff members.

24. The need to use a unique exchange rate is confirmed by staff rule 106.5(a) of ST/SGB/2013/4/Amend.1 (Financial Regulations and Rules), which provides that:

The Secretary-General shall establish the operational rates of exchange between the United States dollar and other currencies.

The operational rates of exchange shall be used for recording all United Nations transactions. (Emphasis added).

25. Absent other specific rules or agreements on the applicable exchange rate, whose existence the Applicant did not even allege, the said rule enables the Administration to apply the same exchange rate not only for the valuation of financial transactions, but also for the valuations of staff member entitlements.

26. Under the applicable legal framework, UNAMI and KJSO, like other United Nations organs, consistently and uniformly use the UNORE in all conversions to local currency, whether they involve transactions, determination of staff entitlements, or other financial recordings.

27. ST/SGB/2019/2 (Delegation of authority in the administration of the Staff Regulations and Rules and the Financial Regulations and Rules), does not allow for delegated authority in respect of "exchange rate fluctuations" (*see* p.11 at Annex 1). UNAMI and KJSO therefore had no authority to overrule the said provision or

to apply a different rate than the UNORE to an official United Nations financial obligation, merely due to a particular country's currency fluctuations.

28. The Tribunal notes that UNORE, which is set using specialized methodologies to establish rates, reflects also the Official exchange rate set by the Central Bank of the concerned country, which is impacted in turn by the cost of living in the country and by other factors of Monetary, Banking, and Financial Policy, included the decision by the Central Bank to devalue (or not) the national currency.

29. The Tribunal further observes that the UNORE exchange rate of the LBP to the USD was in the same wavelength of the change in the official rate set by the Lebanese Central Bank, and that when the latter was updated, the former changed as well.

30. In this situation, the decision by the Administration to apply the UNORE rate was lawful.

31. In this regard, it should be considered that in the case the Administration converted the earnings expressed in LBP into USD, in order to verify that the threshold (expressed in Dollars) relevant for the benefit was exceeded; the income in LBP- applying the old UNORE (still in force at the time) - was higher than the threshold, but, since the currency had devalued, in fact, the sum received by the Applicant's wife had less value (to an extent that, according to the Applicant, it was below the threshold).

32. However, the Applicant's claim forgets that the exchange into USD is a purely accounting operation, necessary to verify whether or not the threshold (expressed in USD) has been reached, and that this operation can only operate with the application of an official exchange rate.

33. Indeed, an assessment of the sufficiency of the Applicant's spouse's income could not be conducted in relation to the different value of the exchange rate, being instead relevant only to the economic conditions of the place where the spouse lives

(since the sums are normally spent there, without making any exchange in USD), and therefore it is an evaluation entirely internal to the State in question.

34. To this end, however, apart from the fact that the Applicant has made no deductions regarding the relative depreciation of his spouse's income compared to that received in the past, it can only be observed that the regulation of the allowance at stake refers only to the monetary threshold (expressed in USD) and not instead to other economic parameters, not contemplated by the Regulations.

35. The rules on dependency allowance in ST/AI/2018/6/Rev.1 (Dependency status and dependency benefits), section 2.1(b)(ii) provide, indeed, that

Dependency status of a spouse

2.1 A spouse shall be recognized as a dependant when the following conditions are met:

(a) For staff members in the General Service and related categories and National Professional Officers, the spouse's annual gross earnings, if any, do not exceed the lowest entry level of the United Nations General Service gross salary scale in force on 1 January of the year concerned for the closest United Nations duty station in the country of the spouse's place of work.<sup>2</sup> In duty stations where more than one salary scale is in force, the most recently issued salary scale shall apply for determining the threshold amount;

(b) For staff members in the Professional and higher categories and staff members in the Field Service category, the spouse's annual gross earnings, if any, do not exceed the higher of:

(i) The amount determined under section 2.1 (a); or

(ii) *The gross salary for the lowest entry level in force on 1 January of the year concerned at the base of the salary system (G-2, step 1, for New York).* [Emphasis added].

36. In other terms, the depreciation of the currency may be relevant only in case it makes the earning below the threshold expressed in USD.

37. It is not contested that in this case the UNORE was applied by the Administration to determine the Applicant's entitlement; in particular, the Administration considered the Applicant's spouse's annual gross earnings in LBP (equal to LBP180,065.131) and converted them into USD (equal

toUSD119,446.19), applying the relevant UNORE, in force at the moment of the earning (which was LBP1507.5to USD1).

38. In other terms, the Applicant's request for a dependency allowance was correctly considered using the then-applicable official United Nations operational currency exchange rate. Applying the said rate, the Administration noted that the earnings were over the threshold set to be entitled to the allowance.

39. Also, the reference to the rate at the moment of the entitlement is correct, being in line with the caselaw by UNAT, who affirmed the principle in *Ho* 2017-UNAT-791, para. 22, noting that referring to a different moment would be fallacious, as

the determinant time for the applicable UNORE and hence the calculation of the exchange rate would be dependent on random and unpredictable factors, notably on the Administration's choice of the relevant time of payment.

40. For this reason, it is not relevant for the adjudication of this case that, after the application was filed, the UNORE for LBP was updated to the rate advocated for by the Applicant, effective 1 November 2022, and the new rate was automatically applied to staff members' benefits and entitlements going forward, including dependency allowances.

41. Official exchange rates, as such, operate prospectively (commencing on their effective date), not retroactively. Therefore, the Administration's decision not to apply the new rates to the past was correct.

### **Conclusion**

42. In light of the foregoing, the application fails.



Case No. UNDT/NBI/2022/095

Judgment No. UNDT/2023/068

*(Signed)*

Judge Francesco Buffa

Dated this 4<sup>th</sup> day of July 2023

Entered in the Register on this 4<sup>th</sup> day of July 2023

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi