



**Before:** Judge Sun Xiangzhuang

**Registry:** Geneva

**Registrar:** René M. Vargas M.

TROSSARELLI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Jeffrey C. Dahl

**Counsel for Respondent:**

Jérôme Blanchard, HRLU, UNOG

## **Introduction**

1. The Applicant, a staff member of the United Nations Interregional Crime and Justice Research Institute (“UNICRI”), contests the decision not to grant him 16 weeks of parental leave in respect of his daughter, born on 2 May 2022, under new staff rule 6.3.
2. For the reasons stated below, the Tribunal finds that the contested decision is lawful and rejects the application.

## **Facts**

3. The Applicant is a Finance and Budget Assistant at the GS-7 level with UNICRI in Turin, Italy. His contract is administered by the United Nations Office on Drugs and Crime (“UNODC”).
4. On 2 May 2022, the Applicant’s child was born through a surrogacy process.
5. From 9 May 2022 to 3 June 2022, the Applicant took four weeks of paternity leave in accordance with the applicable provisions at the time.
6. On 30 December 2022, the United Nations General Assembly adopted resolution 77/256 A-B, *inter alia*, welcoming the establishment of a new parental leave framework, and requesting the Secretary-General to implement it in the Secretariat of the United Nations within existing resources, on an exceptional basis, for the year 2023.
7. Effective 1 January 2023, the Organization promulgated new Staff Regulations and Rules (ST/SGB/2023/1), which included provisional staff rule 6.3 concerning parental leave.
8. By email of 27 February 2023 to the Human Resources Partner (“HRP”), the Applicant requested additional parental leave under the new provisional staff rule 6.3. On the same day, HRP responded that they were advised to wait for an administrative instruction to be issued and that, at that point in time, there was no clarity as to whether provisional staff rule 6.3 would apply retroactively.

9. Also on 27 February 2023, the Organization promulgated a new administrative instruction on “Parental leave and family leave”, namely ST/AI/2023/2.

10. On 28 February 2023, HRP informed the Applicant that the provisional Staff Rules were with effect from 1 January 2023. HRP also indicated that an administrative instruction was expected, but they were not aware of any retroactive application.

11. On 3 March 2023, HRP informed the Applicant that the provisional staff rule on parental leave, promulgated effective 1 January 2023, applied in respect of a child born or adopted on or after 1 January 2023 and did not apply retroactively.

12. On 15 March 2023, the Office of Human Resources, Department of Management Strategy, Policy and Compliance (“DMSPC”), informed the Chief of the Human Resources Management Service (“HRMS”) of UNOV of a transitional measure approved by the Secretary-General as part of the implementation of the new parental leave framework. The transitional measure involved granting staff members who were on maternity leave on 1 January 2023, 10 weeks of Special Leave With Full Pay (“SLWFP”) in addition to their entitlement to 16 weeks of maternity leave.

13. On 30 March 2023, the Applicant sought management evaluation of the contested decision.

14. On 25 May 2023, HRMS, UNOV, informed the Management Evaluation Unit (“MEU”) that the Director, UNICRI, had exceptionally approved adoption leave in the Applicant’s case. Said leave was granted because the birth of the Applicant’s daughter through surrogacy was considered similar to adoption, for which eight weeks of leave were granted under the previous Staff Rules and Regulations.

15. On 26 May 2023, the Applicant was informed of the outcome of the management evaluation, namely that the Under-Secretary-General, DMSPC, upheld the contested decision.

16. On 12 August 2023, the Applicant filed the instant application.
17. On 13 September 2023, the Respondent filed his reply.
18. By Order No. 152 (GVA/2023) of 10 November 2023, the Tribunal directed the Applicant to file a rejoinder, and the parties to explore resolving the dispute amicably, instructing them to revert to it in this respect by 15 December 2023.
19. On 8 December 2023, the Applicant filed his rejoinder.
20. On 15 December 2023, the parties informed the Tribunal that, following discussions, they were not in a position to explore alternative dispute resolution.
21. By Order No. 48 (GVA/2024) of 7 May 2024, the Tribunal instructed the parties to file closing submissions, which they did on 21 May 2024.

## **Consideration**

### *Legal Framework*

22. Under art. V.4 of the UNICRI Statute, the terms and conditions of service of UNICRI Staff shall be “those provided in the Staff Regulations and Staff Rules of the United Nations, subject to such arrangements for special rules or terms of appointment as may be proposed by the Director and approved by the Secretary-General”.
23. Up to 31 December 2022, paternity leave was regulated by the Staff Regulations and Rules issued under ST/SGB/2018/1/Rev.2 (“2018 Staff Rules”) and by ST/AI/2005/2 (“Family leave, maternity leave and paternity leave”), which provided the following in their relevant parts:

#### **ST/SGB/2018/1/Rev.2**

##### **Rule 6.3**

##### **Maternity and paternity leave**

- (b) Subject to conditions established by the Secretary-General, a staff member shall be entitled to paternity leave in accordance with the following provisions:

(i) The leave shall be granted for a total period of up to four weeks. In the case of internationally recruited staff members serving at a non-family duty station, or in exceptional circumstances as determined by the Secretary-General, leave shall be granted for a total period of up to eight weeks;

(ii) The leave may be taken either continuously or in separate periods during the year following the birth of the child, provided that it is completed during that year and within the duration of the contract;

(iii) The staff member shall receive paternity leave with full pay for the entire duration of his absence.

## **ST/AI/2005/2**

### **Section 10**

#### **Paternity leave requests**

10.3 The staff member may request paternity leave for a total period of up to four weeks or, in the case of an internationally recruited staff member serving at a nonfamily duty station, up to eight weeks. In exceptional circumstances, such as incapacity or death of the mother, inadequate medical facilities or medical complications encountered at time of pregnancy or after the birth, the staff member may request leave for a total period of up to eight weeks. Decisions regarding the adequacy of medical facilities at the duty station to address the medical condition of the mother or the existence of medical complications shall be made upon the recommendation of the authorized United Nations medical officer at the staff member's duty station.

24. Following the General Assembly's approval of resolution 77/256 A-B on, *inter alia*, a new parental leave framework, the Organization revised its staff rule on parental leave effective 1 January 2023 through ST/SGB/2023/1 ("2023 Staff Rules"). The former rules on maternity, paternity, and adoption leave were replaced in ST/SGB/2023/1 by staff rule 6.3, as follows (emphasis added):

#### **Rule 6.3**

##### **Parental leave**

(a) Under conditions established by the Secretary-General, staff members shall be granted:

(i) Sixteen weeks of parental leave with full pay in the case of the birth or adoption of a child;

(ii) An additional period of 10 weeks of prenatal and postnatal leave with full pay for the parent who gives birth, bringing the total duration of their parental leave to 26 weeks;

(b) Staff members may avail of the *16 weeks of parental leave* mentioned in paragraph (a) (i) above any time within a year *following the date of their child's birth or adoption*, provided that it is completed during that year.

(c) Parental leave in the case of the birth or adoption of a child under paragraph (a) (i) above may not be granted more than once in any 12-month period to be counted from the date of birth or adoption of the child. This paragraph (c) shall not apply to a parent who gives birth.

(d) Sick leave shall not normally be granted for maternity cases during the prenatal and postnatal leave mentioned in paragraph (a) (ii) above, except where serious complications arise.

(e) Annual leave shall accrue during periods of parental leave.

25. Subsequently, the Secretary-General established the conditions for granting parental leave by issuing ST/AI/2023/2 (“Parental leave and family leave”), which entered into force as of 1 January 2023 and provides the following:

1.1 Parental leave with full pay shall be granted under staff rule 6.3, subject to the provisions of the present instruction.

1.2 The present instruction governs the administration of parental leave in respect of a child born or adopted on or after 1 January 2023, provided that the staff member was in service at the time of the birth or adoption.

10.2 The provisions of administrative instruction ST/AI/2005/2 (“Family leave, maternity leave and paternity leave”) shall apply to those staff members who were eligible to 16 weeks of maternity leave, 4 or 8 weeks of paternity leave or 8 weeks of adoption leave, on or before 31 December 2022.

#### *Scope of judicial review*

26. The Tribunal recalls that in conducting a judicial review of the validity of the Secretary-General’s exercise of discretion, it reviews whether the decision was lawful and rational (*Sanwidi* 2010-UNAT-084, paras. 38-42), and will not substitute its views for those of the Administration but will evaluate whether that decision was

irrational or arbitrary (*Gisage* 2019-UNAT-973, paras. 37-40; *Millan* 2023-UNAT-1330, paras. 107-110).

27. It is well-established that it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst various available courses of action (*Sanwidi*, para. 40; *Belkhabbaz* 2018-UNAT-873, para. 66).

28. The Tribunal further recalls that it is bound by the law of the Organization and not mandated to legislate on its behalf.

29. Having examined the evidence on record, the Tribunal identifies the following issues for determination:

- a. Whether the Applicant is entitled to parental leave under staff rule 6.3;
- b. Whether ST/AI/2003/2 is inconsistent with staff rule 6.3;
- c. Whether ST/AI/2023/2 is discriminatory or violated staff rule 8.1(f) related to effective participation of staff representative bodies; and
- d. Whether the Applicant is entitled to the remedies requested.

*Whether the Applicant is entitled to parental leave under staff rule 6.3*

30. The Applicant's child was born on 2 May 2022 through surrogacy. He was then on paternity leave from 9 May 2022 to 3 June 2022 under the provisions of the 2018 Staff Rules and ST/AI/2005/2, followed by annual leave until 30 June 2022. Subsequently, the Director of UNICRI exceptionally approved adoption leave and the Applicant's annual and paternity leave days were converted to eight weeks of adoption leave under the same framework.

31. The Applicant claims that the new staff rule 6.3 is applicable to him and that he is entitled to 16 weeks of parental leave. He alleges that the plain language of new staff rule 6.3 allows him to seek benefits from the rule in 2023 as it provides for an entitlement to be exercised at any time within one year of the birth date of a child.

32. The Applicant asserts that staff rule 6.3 did not exclude children born or adopted in 2022. In his view, the date of birth is merely the triggering point for measuring the end of the benefit, not the benefit itself. He points out that he applied for this benefit in 2023 after staff rule 6.3 went into effect.

33. Contrary to the Applicant's argument, the benefit under new staff rule 6.3 on parental leave is only effective 1 January 2023, and its application is subject to the "conditions established by the Secretary-General" as per staff rule 6.3(a). These conditions are set out in ST/AI/2023/2.

34. Section 1.2 of ST/AI/2023/2 provides that the administrative instruction governs the administration of parental leave in respect of a child born or adopted on or after 1 January 2023, provided that the staff member was in service at the time of the birth or adoption. Similarly, sec. 10.1 of ST/AI/2023/2 specifies that the new policy on parental leave entered into force effective 1 January 2023.

35. Equally clear is sec. 10.2 of ST/AI/2023/2, which excludes staff members who were "eligible" to "4 or 8 weeks of paternity leave or 8 weeks of adoption leave, on or before 31 December 2022" from the entitlement under the new policy on parental leave.

36. Thus, from the outset, the applicable legal framework does not allow for any wider interpretation.

37. The Applicant, whose child was born on 2 May 2022, was entitled to four weeks of paternity leave or eight weeks of adoption leave under the 2018 Staff Rules and ST/AI/2005/2, which he exercised. He is not, as he contends, "placed in a no-man's land between two [Administrative Instructions]".

38. The fact that the Applicant requested and was exceptionally granted additional leave after 1 January 2023 is irrelevant to the applicability of new staff rule 6.3 and ST/AI/2023/2. The determining factor for the eligibility of the parental leave entitlement is the date of the child's birth for whom parental leave is requested and not the date on which the request was made or the benefit was granted.



39. Therefore, the Applicant has failed to demonstrate that he should have been considered eligible for the new parental leave benefit. As the parent of a child born in 2022 and whose parental leave entitlement ended well before the entry into force of new staff rule 6.3 and ST/AI/2023/2, which set a cut-off date of 1 January 2023, the Applicant was indeed not entitled to 16 weeks of paternity leave.

*Whether ST/AI/2003/2 is inconsistent with staff rule 6.3*

40. The Applicant claims that ST/AI/2023/2 is inconsistent with staff rule 6.3 because it limits the parental leave benefit to parents of children born or adopted after 1 January 2023, a restriction that the 2023 Staff Rules did not anticipate. He claims that creating a 1 January 2023 cut-off date is arbitrary and capricious in light of the plain meaning of staff rule 6.3(b).

41. The Tribunal recalls, however, that the 2023 Staff Rules, which contain staff rule 6.3, were only published on 1 January 2023.

42. As indicated in para. 38 above, the determining factor for the eligibility of the parental leave entitlement is the date of the child's birth which must take place on or after 1 January 2023 for the new staff rule 6.3 and ST/AI/2023/2 to apply.

43. Therefore, since the Applicant's child was born on 2 May 2022, he is not eligible to parental leave under new staff rule 6.3 or ST/AI/2023/2. However, by his argumentation, he in fact seeks the retroactive application of new staff rule 6.3.

44. In this respect, the Tribunal refers to the non-retroactivity principle, a general principle of law that prohibits applying law to an act that occurred before the law was adopted (see *McMillan* UNDT/2024/070, para. 50). While the Tribunal acknowledged that the principle of non-retroactive application of law is not absolute, exceptions are either stipulated in the law itself or justified in exceptional circumstances. Neither are present here.

45. Furthermore, within the legal framework of the United Nations, it is generally accepted that administrative instructions regulate the implementation of new law established by the Secretary-General through his bulletins.

46. As noted in *McMillan*, para. 52, ST/AI/2023/2 administered the implementation of the new parental leave entitlement approved by the General Assembly and converted into law in the 2023 Staff Rules. Under this scheme, ST/AI/2023/2 established that the new rule on parental leave would affect staff members who gave birth or adopted a child on or after 1 January 2023, which is precisely the date when the new parental leave entitlement was introduced in the Staff Regulations and Rules.

47. As determined in *Cadin and Langelaar* UNDT/2024/053, para. 55, the regulation is also consistent with the intention of the General Assembly, who “welcomed the establishment of the new parental leave framework and requested the Secretary-General to implement the framework in the Secretariat of the United Nations within existing resources, on an exceptional basis, for the year 2023”.

48. *Cadin and Langelaar* further noted:

56. [...] the General Assembly resolution in fact gives wide discretion to the Secretary-General to determine the modalities of implementation of the measures. It was on this basis that the Secretary-General promulgated staff rule 6.3(a)(i) of ST/SGB/2023/1, which provides “[u]nder conditions established by the Secretary-General, staff members shall be granted: (i) [s]ixteen weeks of parental leave with full pay in the case of the birth or adoption of a child”.

57. The Secretary-General’s determination of the limited category of staff members to whom the parental leave measures would apply is within his mandate under staff rule 6.3(a) of ST/SGB/2023/1.

49. Consequently, the Tribunal finds that ST/AI/2023/2 is consistent with new staff rule 6.3.

*Whether ST/AI/2023/2 is discriminatory or violated staff rule 8.1(f)*

50. First, the Applicant claims that the contested decision discriminates against him based on the way he became a parent.

51. The Appeals Tribunal held in *Tabari* 2011-UNAT-177, para. 26 that:

The different treatment becomes discriminatory when it affects negatively the rights of certain staff members or categories of them, due to unlawful reasons. But when the approach is general or abstract, by categories, there is no discrimination, if the difference is motivated in the pursuit of general goals and policies and it is not designed to treat individuals or categories of them unequally. Since Aristotle, the principle of equality means equal treatment of equals; it also means unequal treatment of unequals.

52. While the new parental leave policy includes a transitional measure only for staff members who were on maternity leave on 1 January 2023, the Tribunal finds that this is not discriminatory.

53. As indicated by DMSPC, the transitional measure was approved to facilitate the change from the previous maternity leave scheme to the new parental leave scheme, and to enable greater equity and fairness in the treatment of similarly situated staff members (i.e., those becoming parents by giving birth), while also being in line with the recommendation of the World Health Organization of six months minimum of breastfeeding.

54. Second, the Applicant alleges that, unlike other entities in the UN Common System, Secretariat staff members have been discriminated against because the Administration has not foreseen transitional arrangements to ensure that staff who had children in 2022 benefit from the new parental leave policy.

55. In this respect, the Tribunal finds that the UN Secretariat is not bound by decisions made by other UN entities who are not part of the UN Secretariat concerning how they implement new policies, including whether they adopt transitional measures to other categories of staff. Each entity exercises its discretion when applying policies, and the fact that an entity exercises its discretion differently concerning the adoption of transitional measures does not affect the legality of the decisions made.

56. Third, the Applicant asserts that the promulgation of ST/AI/2023/2 violated staff rule 8.1(f) because the Staff Unions were not consulted before its issuance. The Applicant claims that this violated his contractual right to participate, through the Staff Union, in matters concerning staff welfare and human resources policies.

57. According to Staff rule 8.1(f):

The staff representative bodies shall be entitled to effective participation, through their duly elected executive committees, in identifying, examining and resolving issues relating to staff welfare, including conditions of work, general conditions of life and other human resources policies, and shall be entitled to make proposals to the Secretary-General on behalf of the staff.

58. In this regard, the Tribunal notes that staff representatives participated in a working group established by the International Civil Service Commission (“ICSC”) to develop a proposal for a new parental leave framework, as shown in the ICSC Report for 2022 (see A/77/30, paras. 71-75). Therefore, the Applicant’s argument is unfounded.

*Whether the Applicant is entitled to the remedies requested*

59. Since the Tribunal finds the contested decision lawful, there is no basis for the remedies pleaded for in the application. Accordingly, the Tribunal rejects the Applicant’s request for remedies.

### **Conclusion**

60. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

*(Signed)*

Judge Sun Xiangzhuang

Dated this 31<sup>st</sup> day of October 2024

Entered in the Register on this 31<sup>st</sup> day of October 2024

*(Signed)*

René M. Vargas M., Registrar, Geneva