



his place of home leave and his dependents. He stressed that “[w]hile [he had] double nationality: Albanian and French, [his] home leave should be Albania since that is the country where [he was] born, grew up, where [his] family...and [his] home [are]”.

... On 5 January 2010, the Applicant agai

2011/2012; payment of the education grant 2010/2011 and the education grant advance 2011/2012 were made on 30 April 2012.

... At a face-to-face meeting between the Applicant and the Director, HR, UNOPS, in April 2012, with respect to his request for change of nationality, the latter suggested to the Applicant to send him a new request, which he did on 30 April 2012. On 8 May 2012, the Director, HR, UNOPS, sent a message to the Applicant, noting that there was no new element which would justify reopening his case.

... The Applicant was separated from UNOPS on 30 September 2012.

... By email of 8 October 2012, a Team Lead and HR Associate, BES, informed the Applicant that as he had been advised earlier, in his offer of appointment and through subsequent email correspondence, he was not entitled to international entitlements and that he had nevertheless, unduly, received education grants for his daughter for the period 2009 through 2012, and that monies paid would need to be recovered upon his separation from UNOPS. The Applicant did not receive that email, since his UNOPS account had been removed as of 1 October 2012; it was, however, forwarded to his private email address on 2 November 2012.

... The separation letter of 23 October 2012 referred to the email of 8 October 2012, and confirmed to the Applicant that the recovery of the overpayment of education grant amounts—totalling CHF 53,644.83—had to be settled upon his separation from UNOPS and that no salary or repatriation grant from which the overpayment could be recovered were available.

... After several exchanges of emails, the Applicant, by email of 29 November 2012, asked the Officer, BES, UNDP, to correct his nationality in the system to Albanian, and noted that that correction would make BES request for recovery of the education grant irrelevant;

in 2009, 2011 and 2012 and that the relevant administrative instruction on Education grant puts an obligation on staff members to verify the correctness of the information provided. The Deputy Director, HR, UNOPS, noted that all of the above should have prompted the Applicant not to submit any education grants. He noted that “upon the finalisation of the separation procedures relating to [the Applicant’s] employment...[his] pension papers [would] be finalised”, while recalling that the Applicant still owed the Organisation the amount of USD 60,743.27 (CHF 53,644.83), and urged him to make the necessary arrangements to reimburse the overpayment.

... On 21 December 2012, the Applicant responded to that email and expressed his disagreement; he thanked the Deputy Director, HR, UNOPS, for having withdrawn the decision to keep his pension fund pending by not providing the UNJSPF with the relevant separation documentation, and asked him about the decision with respect to the outstanding leave balance and other separation entitlements, noting that in his view, any recovery of overpayment should be made [b]y means of deductions from salaries.

... By email on 5 October 2012, the Deputy Director, UNOPSE
informed the Applicant that the decision to keep his pension fund pending was
based on the fact that the Applicant had not provided the UNJSPF with the
relevant separation documentation. He noted that the Applicant’s pension
papers would be finalised upon the completion of the separation procedures.

considered that the 22 June 2011 communication constituted a new administrative decision and the time limits started to run as of that date. However, the UNDT held that the subsequent decisions of 4 August 2011, 8 May 2012 and 13 December 2012 were mere confirmations of the 22 June 2011 decision and that therefore his request for management evaluation of 8 February 2013 was time-barred

5. The UNDT further held that Mr. Aliko was informed that he was not entitled to an education grant for the first time through the offer of appointment dated 23 February 2009 and by separation letter dated 23 October 2012, he was informed that the education grant payments were to be recovered in the context of his separation. Since Mr. Aliko requested management evaluation only on 8 February 2013, any claims against the decision that he was not entitled to an education grant and against the recovery of the overpayment were time-barred.

6. The UNDT held that the actual decisions to use the leave balance and to withhold separation documents were communicated to Mr. Aliko on 20 and 23 December 2012 and accordingly these decisions were receivable *ratione temporis*. The UNDT noted that pursuant to Section 2.2 of Administrative Instruction ST/AI/2009/1

found that the Organization had no legal grounds for refusing to issue the separation notification to the UNJSPF to secure the payment of debt Mr. Aliko had vis-à-vis UNOPS.

8. The UNDT concluded that Mr. Aliko had suffered material damages on the ground that the Administration had illegally withheld his separation notification, as a result of which payment of his pension entitlements since his separation had not been made. The UNDT awarded USD 3,000 for material damages. The UNDT also ordered that the Secretary-General transmit to the UNJSPF Mr. Aliko's separation notification (PF.4) within 60 days of the issuance of the UNDT Judgment.

Submissions

Mr. Aliko's Appeal

9. The UNDT erred in finding that Mr. Aliko's request was not receivable. The 13 December 2012 decision was a new administrative decision as the two pieces of information provided by Mr. Aliko concerning his citizenship were discrete from the original decision and had major consequences for Mr. Aliko. His receipt of the Administration's claim for reimbursement of education grant payments and his planned relocation to Tirana, Albania, effective 18 December 2012 were both material.

10. Mr. Aliko submits that the Director of HR of UNOPS "confirmed the materiality of information by recognizing its importance and informing [him] of a new review process and decision". "Notwithstanding the fact that the outcome of this process was to maintain a previous decision, a new process as confirmed by the UNOPS HR Director lead inevitably to a new decision."

11. Mr. Aliko further contends that there should be no time limit to request the correction of a decision that violates individual rights protected by the Universal Declaration of Human Rights. As a consequence, any request for review that involves allegations of violations of human rights should call for an administrative decision and, notwithstanding the reaction of the Administration, any of the subsequent administrative statements should be considered as administrative decisions vis-à-vis Mr. Aliko's human rights violation claim.

12. On the merits, Mr. Aliko contends that “[i]t seems fairly obvious that [his] links to his native Albania [...] are much stronger than with France”. In support of this contention, he refers, inter alia, to his birth and lifelong residence in Albania, his family ties, his ownership of several properties in the country; his education there until the age of 20; his regular return there even upon moving to France between 1987-1994, his permanent return to Albania after completing said studies and his recent repatriation in 2012.

13. The decision not to change his nationality for United Nations purposes is arbitrary and violates the Universal Declaration of Human Rights. UNOPS denied him the right to change his nationality and arbitrarily deprived him of his Albanian nationality.

14. The UNDP BES, UNOPS HR Director and UNOPS Deputy Executive Director abused their authority and improperly influenced employment conditions related to Mr. Aliko’s appointment with the purpose of arbitrarily depriving him and his family of the right to benefit entitlements related to international staff, including home leave, education grant and repatriation grant. The impugned decision is not supported by facts and evidence and is inconsistent with the purposes and intent of the Staff Regulations and Rules.

15. Mr. Aliko asks that UNOPS officially recognize Albanian as his first nationality and change his status in the system retroactively as of 1 March 2009; release all pending payments related to his separation, including his salary payments; and pay a lump sum to compensate him for all missed entitlements since 1 March 2009 related to the new status.

The Secretary-General’s Answer

16. The UNDT correctly concluded that Mr. Aliko’s application was not receivable with respect to its claims regarding the decision on change of nationality. The Administration’s response of 13 December 2012 was not a new administrative decision. Contrary to Mr. Aliko’s contention,

Rather, the contested decision in the present case dealt with which of his two nationalities would be recognized for the purposes of determining his eligibility for entitlements under the Staff Regulations and Rules.

17. The UNDT further correctly concluded that the application was not receivable with respect to its claims regarding the decisions on ineligibility for an education grant and on education grant recovery. Mr. Aliko was notified on 23 February 2009 and 2 November 2012, respectively, that he was not eligible to receive an education grant. While under Staff Rule 11.2(c), he had at most until 1 January 2013 to submit a request for a management evaluation of these decisions, he waited until 8 February 2013 - more than one month beyond the expiration of the mandatory time limit - to send his request.

18. The UNDT correctly upheld the decision to use Mr. Aliko's pending entitlements to recover part of the overpayments to him. Pursuant to Staff Rule 3.18(c) and ST/AI/2009/1, it was lawful for the Administration to deduct part of the indebtedness from his pending entitlements.

19. The UNDT correctly concluded that Mr. Aliko's allegations of harassment were not relevant to the contested decisions that were found to be receivable. The Secretary-General reiterates that the UNDT correctly concluded that Mr. Aliko's appeals against the decisions on change of nationality and on ineligibility for education grant were not receivable. The UNDT was therefore also correct in declining to examine the merits of the Appellant's claims regarding these decisions, including whether these decisions were arbitrary and improperly motivated.

20. The UNDT correctly held that the Administration, including the Deputy Executive Director and the Director of HR of UNOPS did not abuse their authority to improperly influence employment conditions related to Mr. Aliko's appointment. Contrary to Mr. Aliko's contention, the Administration's notifications of 7 October 2010 and 22 June 2011 set forth the reasons for the denial of his requests. Thus, the UNDT correctly concluded that Mr. Aliko's allegations of harassment were not relevant to the contested decisions that were found to be receivable.

21. The Secretary-General requests that the Appeals Tribunal dismiss Mr. Aliko's appeal in its entirety. In the alternative, should the Appeals Tribunal determine that the UNDT erred in concluding that certain claims by Mr. Aliko were not receivable, the Secretary-General requests that those claims be remanded to the UNDT for adjudication on the merits.

The Secretary-General's Appeal

22. The UNDT erred in concluding that there were no legal grounds for refusing the issuance of the PF.4 form. UNOPS' refusal to issue the PF.4 form when Mr. Aliko had failed to settle all indebtedness with the United Nations is consistent with the purpose of ST/AI/155/Rev.2. Under the provisions of paragraphs 1, 11, and 13 of ST/AI/155/Rev.2, Mr. Aliko was on notice that his failure to settle his indebtedness to UNOPS might result in the suspension of the separation procedure and one way of suspending such procedure was for UNOPS to refuse to issue the PF.4 form.

23. Moreover, the UNDT's interpretation of ST/AI/155/Rev.2 was unreasonably restrictive. ST/AI/155/Rev.2 contains no express prohibition on withholding the PF.4 form when a staff member has failed to settle any indebtedness with the Organization. Furthermore, since the issuance of ST/AI/155/Rev.2, there have been many technological changes with regard to the payroll clearance action. The P.35 form for example is no longer used and the information contained therein is readily accessible by the UNJSPF through the electronic Enterprise Resource Planning system. In order to continue to interpret meaningfully the provisions of ST/AI/155/Rev.2 regarding the suspension of separation procedures in a case such as the present, it was reasonable for UNOPS to refuse to issue the PF.4 form.

24. The UNDT erred in concluding that the rights of staff members to payment of their pension benefits are determined exclusively under the UNJSPF Regulations. While the beneficiaries and amounts of payments of pension benefits are determined by the UNJSPF Regulations, the timing of the payment of pension benefits is determined by the operation of ST/AI/155/Rev.2, where applicable. ST/AI/155/Rev.2 expressly provides for the suspension of separation procedures in instances, for example, in which staff members have failed to settle their indebtedness to the Organization. Such suspension, in turn, prevents staff members from receiving their pension benefits. By ordering UNOPS to transmit to the

UNJSPF Mr. Aliko's PF.4 form without issuing a corresponding order to Mr. Aliko to settle his indebtedness to the Organization, the UNDT exceeded its competence and infringed upon the right of the Organization

30. UNOPS deprived Mr. Aliko and his family without notice of “all financial resources, essential and critical for subsistence”. ST/AI/2009/1 provides for recovery of overpayments “in instalments and by means of deductions from salaries, wages and other emoluments” precisely to protect a staff member’s integrity. UNOPS did not try to find a “decent agreement”. Its refusal to issue the PF.4 form in fact served the purpose of “draining out [Mr. Aliko]’s resources needed to draft his application” to the UNDT.

31. Mr. Aliko contends that at the end of 2011, he contracted a mortgage for the apartment that he acquired with his wife in Tirana, Albania. The material damage suffered is the actual interest rate (seven per cent) he paid over the amount of pension benefits which he was entitled to under the Staff Regulations over a period starting the day of his separation. He asks that the Appeals Tribunal adjust the level of interest awarded by the UNDT to adequately compensate him for the actual level of material damage suffered.

32. Mr. Aliko asks that the Appeals Tribunal award compensation in the amount of USD 10,000 for the costs incurred to obtain “legal assistance and representation to defend against illegal decision”.

33. Mr. Aliko contends that the failure by the UNJSPF to meet the responsibilities under its Regulations by not disbursing his pension immediately after his separation and by not communicating “essential facts to the beneficiary”, combined with the role played by UNOPS resulted in illegal conduct that warrants an additional award of punitive damages equal to that of the material damages requested.

Considerations

Mr. Aliko’s Appeal

34. The UNDT correctly concluded that Mr. Aliko’s application contesting the decision refusing his request to change nationality for United Nations’ purposes was time-barred.

35. What Mr. Aliko claims to be a new administrative decision - the communication dated

evaluation which expired on 21 August 2011. Mr. Aliko's repeated communications with the Administration are a mere restatement of his original claim, which did not stop the time limit for contesting the decision from running or give rise to a new administrative decision thereby restarting the time period in which to contest the original decision.³

36. Similarly, the UNDT did not err in rejecting as not receivable Mr. Aliko's claims challenging the decisions on his ineligibility for education grant and on education grant recovery. The Appellant was notified, on 23 February 2009 and 2 November 2012, that he was not eligible to receive an education grant and failed to submit a timely request for management evaluation.

37. The ground of appeal with regard to the recovery of overpayments by using Mr. Aliko's pending entitlements must also fail. As that procedure is permitted under Staff Rule 3.18(c) and ST/AI/2009/1, it was lawful for the Administration to use Mr. Aliko's pending entitlements to recover part of the indebtedness to the Organization.

The Secretary-General's Appeal

38. The Secretary-General contends that the UNDT erred in concluding that there were no legal grounds for the Administration's refusal to issue the PF.4 form.

39. According to Section 11 of ST/AI/155/Re

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Thomas-Felix

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar