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JUDGE KANWALDEEP SANDHU, PRESIDING.

1. In 2017 and 2018, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in

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6. This panel, having reviewed the record before the Dispute Tribunal and the parties' briefs on appeal, find that the Appellants have raised neither factual differences nor legal issues different from those canvassed in companion cases and disposed of by a full bench of the Appeals Tribunal in Judgment No. 2021-UNAT-1107, (*Abd Al-Shakour et al.*).

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- f) In June 2017, an informal review team of senior statisticians requested by the Geneva Human Resources Group reviewed the survey to see if it was “fit for purpose” and concluded *inter alia* that due to serious calculation and systemic errors in the compilation of the results, the ICSC calculations could not be considered “sufficiently good quality to designate them fit for purpose” and the implementation did not always correspond with the approved methodology;⁷
- g) The ICSC thereafter engaged an independent consultant to review the methodology. The consultant’s report made 64 recommendations, some of which related to the methodology for the PAM;⁸
- h) The applicants contested the Secretary-General’s administrative decision to implement the PAM, resulting in a pay cut for Geneva-based staff members. The applicants in UNDT Judgment Nos. 106, 107 and 133 asserted the decision date was 1 August 2017, the date of their August 2017 pay-slips.⁹

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Secretary-General had little discretion to implement the PAM the Secretary-General's "mechanical power" was administrative in nature and therefore, reviewable on grounds of legality.

10. On the merits, the UNDT dismissed the applications finding that the Secretary-General had correctly implemented the PAM and that the ICSC had not acted *ultra vires* its statutory authority, as it always had the authority under Article 11(c) of its Statute to decide on the PAM without the General Assembly 's further approval or action.

ILOAT

11. On 3 July 2019, nearly a year prior to the UNDT's issuance of the impugned Judgments, the International Labor Organization Administrative Tribunal (ILOAT) issued Judgment No. 4134 regarding applications from ILO staff members based in Geneva, which challenged the same PAM.

¹⁴ ILOAT set aside the PAM on grounds that the ICSC's decisions were without legal foundation and thus the action of the ILO to reduce the salaries of the staff based on the ICSC decision, was legally flawed. It held that the ICSC acted outside its statutory authority and that the removal of the G(a) 1 anET Q qvne1583BTJ 1 (v) 18 583.98u1583BTt avut 0.24 1 TJ ET Q q 1583BTAda18 583.98tor1 TJ E(u)

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procedure in turn altered the meaning of the Statute. Since the practice no longer matched the Statute, the ICSC had acted *ultra vires*.

21. The Appellants also argue that the UNDT erred in interpreting the ICSC Statute. The UNDT

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Statute. The Statute itself has a mechanism for authorizing the new post adjustment practice but this process was not utilized.

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demonstrate they did not take a principled approach to ensure relative purchasing power. They

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expenditure weights were applied to the housing sub-index using 2010 data. However,

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demonstrate the shortcomings of the contested decision and support that such regulatory discretion was unlawful.

32. The Appellants request the contested decision be found unlawful and rescinded. They request retroactive pay on the basis of a PAM not based on the revised Post Adjustment Index resulting from the survey. In the alternative, they request a remand to the UNDT for correction of errors identified and a proper examination of the issues not addressed in the impugned Judgment.

The Secretary-General's Answers

33. The Secretary-General is duty bound to follow decisions of the General Assembly and the ICSC, such as in this case, and thus there is no discretion left to the Secretary-General. The ICSC is a subsidiary organ of the General Assembly. The Secretary-General and the Tribunals do not have authority to intervene or review the authority of the General Assembly. The ICSC is a technical body established under the authority of the General Assembly to assist the General Assembly in establishing compensation for the United Nations Common System. For decades the ICSC has exercised its authority to decide on PAM in line with its General Assembly mandate. The UNDT decision regarding the authority of the ICSC is correct and in-line with that of the General Assembly. The position of the General Assembly is expressed in its recent resolution 74/255 A-B, which stated in part that it:²⁶

Reaffirms the authority of the [ICSC] to continue to establish post adjustment multipliers for duty stations in the [UN] common system, under article 11(c) of the statute of the Commission.

Recalls that, in its resolution 44/198 and 45/259, it abolished the post adjustment scales mentioned in article 10(b) of the statute of the Commission, and reaffirms the

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Scope of the appeal

41. This is one of a series of cases dealing with a sensitive issue deriving from a reduction in the remuneration of staff in Geneva as a result of a downward revision in the Post Adjustment

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housing/incurred at the duty station).³² To obtain the inputs for these calculations, the Cost-of-Living Division of the ICSC Secretariat organizes the collection of data through cost-of-living surveys, while taking currency fluctuations into account.

44. The ICSC decision was based on new intercity cost-of-living differential coefficients among relevant reference headquarters locations which led to a revision in the post adjustment multiplier. A Gap Closure Measure was applicable to affected personnel based in Geneva in order to mitigate the impact of this revision and remedy the significant lower PAI resulting from the application of the place-to-place survey. In this regard, the PAI was augmented by a percentage, resulting in the PAM, which was implemented for all staff members at the duty station. Existing staff members, already at the duty station before the implementation date of the survey results, received the revised PAM together with a personal transitional allowance (PTA) calculated from the difference between the new PAM and the existing PAM, and adjusted every three months until it was phased out.³³

45. In the appeals now under consideration, the Appellants claim that: i) the ICSC acted *ultra vires* to its statute; ii) the ICSC applied an incorrect methodology in calculating the PAM and committed several calculation errors; and iii) the decision is in normative conflict with staff members' acquired rights.

46. In his answers to the appeals, the Secretary-General claims that i) the ICSC did not act *ultra vires*, because its decision was in accordance with its statute; ii) he properly implemented it; iii) the Tribunals lack competence (jurisdiction) to review legislative acts and cannot review the decision for alleged flaws in methodology; and iv) the issue of acquired rights does not arise.

47. It should be noted at the outset that on appeal the parties did not contest the receivability of the applications. The UNDT found that an individualized decision was made in relation to each applicant as the change in PAM to

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reviewable: the Secretary-General's decision to implement the PAM and/or the ICSC's decision to alter the PAM, which the Appellants claim was *ultra vires*. What is certain is that the UNDT treated the issue of the Secretary-General's lack of discretion in implementing the PAM as limiting the scope of review, which is in accordance with the Appeals Tribunal jurisprudence set in *Lloret Alcañiz et al.*³⁵

Merits of the appeal

48. The Appellants claim that the ICSC decision, which led to a pay reduction, was *ultra vires* because it conflicted with the powers conferred upon it by its own Statute. They submit that, for this cost-cutting measure to be viable in law, the statutory legal procedure must be followed.

49. In this regard, the UNDT concluded that the ICSC decision was lawful and not *ultra vires*, reasoning that subsequently issued General Assembly resolutions together with past practice, served to alter the statutory limits.³⁶

50. By General Assembly resolution 3042 issued in 1972, the General Assembly established the ICSC with the aim of regulating and coordinating the conditions of service of the United Nations Common System and answerable as a body to the General Assembly.³⁷!Further, the resolution stated that the ICSC should be provided with the report of the Special Committee for the review of the United Nations salary system, together with the comments of the then ICSC Advisory Board and other related documentation "for its consideration and the submission of recommendations for actions at the earliest possible date".³⁸

51. The Statute of the ICSC was approved by General Assembly resolution 3357, dated 18 December 1974. This Statute also refers to the mandate of the ICSC as aiming to regulate and coordinate the conditions of service of the United Nations Common System.³⁹ At the same time, it reiterates its function of developing a single unified international civil service through the application of common personnel standards, methods and arrangements.⁴⁰!!As per Article 6,

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³⁵ *Id.*, paras. 92 and 93.

³⁶ *Id.*, para. 74.

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53. As there is a direct order of the General Assembly to the Secretary-General to apply the ICSC decision, the United Nations Tribunals do not have the authority to review the lawfulness of such a general determination.

54. The UNDT correctly pointed out that the General Assembly was cognizant of the arguments advanced against the methodology for calculating the post adjustment and its financial impact on staff remuneration in Geneva. In this regard, the General Assembly, in its resolution 74/255, even expressed concern at the application of two concurrent post adjustment multipliers for the Geneva duty station, having urged the ICSC and members to the Organisation to uphold the unified post adjustment multiplier as a matter of priority.⁴²

55. We draw two conclusions from the above. First, that the ICSC is a technical subsidiary organ of the General Assembly, whose decisions⁴³ to and approval by the General Assembly are binding upon the Secretary-General.⁴⁴ As this Appeals Tribunal has consistently held, where the General Assembly takes regulatory decisions, which leave no scope for the Secretary-General to exercise discretion, the Secretary-General's decision to execute such regulatory decisions, depending on the circumstances, do not constitute administrative decisions subject to judicial review.⁴⁵

56. Therefore, judicial review is limited to the question of possible normative conflict between acts of the General Assembly or their implementation, and their execution by the Secretary-General.⁴⁶ In the present case, as correctly found by the UNDT, there is no dispute that the Secretary-General acted in accordance with the ICSC decision,⁴⁷ which, in turn, was

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⁴² General Assembly resolution, 74/255, 27 December 2019, para. 7, cited in impmt

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adopted to give effect to this right.⁵¹ Indeed, the very existence of the right to the post-adjustment allowance is not at stake. There is thus, no discussion about whether or not the implementation would eventually have an impact on the permanence of this type of remuneration. What remains to be discussed here, as raised in the appeals, is whether the reduction in the post adjustment allowance was: i) was based on methodological errors and miscalculations; and ii) harmed the staff members' stability of salary, thereby endangering the staff members' acquired rights.

63. In this regard, a comprehensive review of the methodology by the ICSC, as recommended by its consultant, seems to be still ongoing.⁵² More importantly, however, as discussed above and highlighted by the UNDT itself, is the fact that the General Assembly, as sovereign legislator, by means of some of its relevant resolutions, has issued a clear command in order for the ICSC decisions to be implemen40 (o)mb] TJ ET4 1 Tf (a23DTm /e7 1 (il)lp (si) -1 (on) 1 (t)-1pl) -1 y,,

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2. Recalls that, in its resolutions 44/198 and 45/259, it abolished the post adjustment scales mentioned in article 10 (b) of the statute of the Commission, and reaffirms the authority of the Commission to continue to take decisions on the number of post adjustment multiplier points per duty station, under article 11 (c) of its statute;
3. Urges the member organizations of the United Nations common system to cooperate fully with the Commission in line with its statute to restore consistency and unity of the post adjustment system as a matter of priority and as early as practicable;
4. Recalls its resolution 41/207 of 11 December 1986, and reaffirms the importance of

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General Assembly, and emphasizes that the decisions of the Assembly related to human resources management and administrative and budgetary matters are subject to review by the Assembly alone; (emphasis added)

45. Reaffirms that, in accordance with paragraph 5 of its resolution 67/241 and paragraph 28 of its resolution 63/253, the Dispute Tribunal and the Appeals Tribunal shall not have any powers beyond those conferred under their respective statutes;

5. Acknowledges the evolving nature of the system of administration of justice and the need to carefully monitor its implementation to ensure that it remains within the parameters set out by the General Assembly;

66. In light of the above, we conclude that the UNDT therefore did not err in not calling ICSC experts to discuss the reports of the Geneva Statisticians, nor did it err when it did not request further evidence on this topic.⁵⁷

67. The Appellants also claim that there has been infringement of his acquired rights by the change in the post-adjustment. The Appeals Tribunal finds that the fact that there has been no challenge to the Secretary-General's mechanical power being in compliance with the ICSC's decision, which in turn was endorsed by General Assembly's resolutions, together with the restricted scope of judicial review in the present case, is sufficient to rule out any argument related to the notion of "acquired rights".

68. Moreover, in *Lloret Alcañiz et al.*, the Appeals Tribunal has established that the term "acquire

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Judgment

75. The appeals are dismissed and Judgment Nos. UNDT/2020/118, UNDT/2020/130 and UNDT/2020/151 are hereby affirmed.

Original and Authoritative Version: English

Dated this 19th day of March 202

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ANNEX 1.

ANGELOVA ET AL. V. SECRETARY-GENERAL

1. Angelova , Valentina Tsvetkova
2. Belgacem, Nagette
3. Crausaz, Alain
4. Eatz, Jacqueline
5. Garcia Bouzas, Eva
6. Garcia Salazar, Luz Adriana
7. Hadziabdic, Meliha
8. Inder, Claire Eloise
9. Ntawuruhunga, Elias
10. Pohl, Scott
11. Shroff, Ritu
12. Sleeman, Patricia
13. Smoljan, Vladimir
14. Vidonne, Cedric

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ANNEX 2.

AVOGNON ET AL. V. SECRETARY-GENERAL

1. Avognon, Guy
2. Beltramo, Theresa
3. Cavicchioli, Lucia
4. Cecere, Angelita
5. Clerico, Tiziana
6. Corliss, Steven
7. Daubelcour, Helene
8. De Langhe, Inga
9. Dipretoro, Scott Christopher
10. Eyster, Caroline Elizabeht
11. Gerber, Karoline Elisabeth Ruth
12. Gottwald, Martin
13. Hansen, Ellen Bondebjerg
14. Hurley, Eilish
15. Kiiil-Nielsen, Alexandra Kirsten Rosa
16. Kojic, Branislav
17. Marcaccini, Benedetta
18. Mohammed Nisar Khan, Nisar
19. Natta, Pierfrancesco Maria
20. Odeima, Maha
21. Omer, Sanaa
22. Ridanovic, Lejla
23. Ridderbos, Tineke Margaretha
24. Rodriguez Viquez, Jose Alberto
25. Senelle, Melanie
26. Simone, Michele
27. Singh, Asharoop
28. Suzic, Dubravka
29. Vorontsova, Olga
30. Wall, Patrick