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6. On 16 October 2017, the present group of Applicants filed an application regarding another decision concerning the post adjustment, one conveyed to them in communications dated 19 and 20 July 2017. That application had been filed before the management evaluation was completed. It was the subject of Judgment No. UNDT/2018/036, whereby this Tribunal rejected it on the ground, *inter alia*, that the decision required a management evaluation and thus the Applicants had an obligation to await management evaluation before filing their application has become final. At the date of this judgment the Tribunal is also seised of applications against the same 19-20 July decision, which have been filed after the receipt of the management

7. The present case results from the application filed pursuant to staff rule 11.4(a) on the basis that the decision from 11 May 2017 was one requiring management evaluation, after the Applicants have obtained a management

Summary of relevant facts

8. In September and October 2016, cost-of-

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members were then informed by broadcasts dated 19 and 20 July 2017 that there would be no post adjustment-related reduction in net remuneration for serving staff members until 1 February 2018, and that from February 2018, the decrease in the post adjustment would be significantly less than originally expected.⁸

15. In _____ dated 31 July 2017, the ICSC indicated that post adjustment multipliers for Geneva had been revised as a result of cost-of-living surveys approved by the ICSC during its 85th session. The post adjustment multiplier for Geneva was now set at 77.5 as of August 2017. The memorandum also indicated that staff serving in Geneva before 1 August 2017 would receive a PTA as a gap closure measure that would totally offset for a six-month period any negative impact of the reduction in the post adjustment amount; and that this allowance would be revised in February 2018.⁹ The Tribunal has no information as to whether the memorandum was made accessible to the Applicants.

16. Following this new ICSC decision, retroactive payments were made to new staff members in Geneva who joined after 1 May 2017, and had not received a PTA.¹⁰

17. In the period from July to September 2017 the post adjustment multiplier has been further revised, mainly as a result of fluctuation of the US dollar. The decision of ICSC of May 2017 has not been implemented. The 19-20 July 2017 decision has been implemented to the extent that the affected staff received a PTA meant to moderate the impact of the decreased post adjustment. This was reflected by pay check at the end of August 2017.¹¹ That decision was appealed in the second and the fourth wave of Geneva cases.

18. On 6 November 2017, OSLA filed the present application.

19. On 24 December 2017, the General Assembly adopted resolution A/RES/72/255 on the United Nations common system, calling, inter alia, for the

⁸ Reply, Annexes 8 and 9; paragraph 4 and Annex 3 of the application.

⁹ Paragraph 13 and Annex 10 of the reply.

¹⁰ Paragraph 14 and Annex 11 of the reply.

¹¹ Application, Annex 4.

were not made by technical bodies falling under staff rule 11.2(b). The subject to change over time and is not necessarily consistent between the MEU and Counsel representing the Respondent before the UNDT (for example as illustrated by *Syrja* UNDT/2015/092).

32. Given the difficulty in predicting the position that might be taken by the Respondent in the instant case, the Applicants are obliged to file multiple applications in order to ensure that they are not procedurally barred.

33. The instant application is filed pursuant to staff rule 11.4(a) on the basis that the decision was one requiring management evaluation.

Deadline is triggered by communication of a decision not implementation.

34. Staff rule 11.2(c) provides that the time limit for contesting an administrative decision runs from notification rather than implementation.

35. The Applicants understood the 11 May 2017 email as having notified them of a decision to implement a post adjustment change as of 1 May 2017 with transitional measures applied from that date meaning it would not impact the amount of salary received until August 2017. Since the time limit runs from communication rather than implementation of a decision and no rule specifies the means of communication required to trigger that deadline, the Applicants considered that the 60-day deadline ran from the 11 May 2017 communication.

36. The email makes clear that the post adjustment change will result in a decrease in net remuneration of 7.7%. As such it communicated a final decision of individual application which will produce direct legal consequences to the Applicants. The case should be distinguished from that in *Obino* 2014-UNAT-405, which dealt with a decision within th distinguished from *Tintukasiri et al.* 2015-UNAT-526 which related to a methodology specifically approved by General Assembly Resolution and from *Ovcharenko* 2015-UNAT-530 which similarly related to a decision pursuant to a General Assembly Resolution.

37. In turn, in *Pedicelli* 2015-UNAT-555 it was held that, notwithstanding a finding that the Secretary-General had no discretion in the implementation of an ICSC decision, the negative impact of that decision still rendered it capable of review. To find otherwise would be to render decisions regarding fundamental contractual rights of staff members immune from any review regardless of the circumstances. This is inconsistent with basic human rights and the
 ation to provide staff members with a suitable alternative to
recourse in national jurisdictions. Since the International Labour Organization Administrative Tribunal (ILOAT) has consistently reviewed decisions relating to post adjustment, it would further risk the breakup of the common system with staff members from one jurisdiction afforded recourse denied in other parts.

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amendment. Through an abundance of caution, the Applicants, therefore, consider it necessary to maintain this challenge even while a further challenge relating to the communications of 19 and 20 July 2017 is filed.

Considerations

42. The layered argument concerning receivability of the application involves the following issues: whether the application required a prior request for management evaluation; whether the application is directed against a reviewable administrative decision in the sense of art. 2.1(a) of the UNDT Statute; and, an issue that the Tribunal takes on *ex officio*, albeit prompted by

against the same decision, i.e., whether by the virtue of final Judgment UNDT/2018/021, which found the lack of an administrative decision capable of being reviewed, the adjudication of the present application is barred by *res judicata*.

Whether the application required prior request for management evaluation

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Annex I

List of Applicants

16	Ms	Muzafarova	Nigorsulton
17	Mr	Nasser	Mohammad
18	Mr	Senanayake	Ravini
19	Ms	Weerasinghe Roy	Sulochana