



**UNITED NATIONS DISPUTE TRIBUNAL**

**Case No: UNDT/NE/2023/013**

**Judgment No: UNDT/2023/083**

**Date: 1 August 2023**

**Original: English**

**Before: Judge Sean Wallace**

**Registry: Nairobi**

**Registrar: Eric Muli, Officer in Charge**

**JSV and JPSV**

**v.**

**SECRETARY-GENERAL  
OF THE UNITED NATIONS**

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**JUDGMENT**

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**Counsel for the Applicants  
Self-represented**

**Counsel for the Respondent:  
Isabel Martinez, UNEP  
Carila Fumera Nwenti, UNEP  
Saïdu Ndoy, UN Habitat  
Nara Elsler, UN Habitat**



for adoption purposes, anticipating the birth of their child<sup>1</sup>

**8** On 20 April 2022, UNON replied stating

the request is usually submitted in Employee Self Service ('ESS') but she has not submitted the documentation for review and we will advise you on further steps<sup>2</sup>

**9** Following the inquiry, the Applicant submitted a request for parental leave of

**apply for 8 weeks of adoption leave? Can JPSV apply for 4 weeks of paternity leave? Do they have to divide the leaves, i.e. JSV takes 4 weeks of adoption leave and JPSV takes 2 weeks of paternity leave?**

**13 In response, DOS informed UNON that they were also consulting with the Office of Human Resources (“OHR”) for further guidance**

**14 Between 12-15 July 2022, Mr. JSV took annual leave for four days**

**15 On 12 July 2022, Mr. JSV wrote to UNON informing that the child had been**

In the case in hand, Mr. JPSV (the biological father of the child) may avail of 4 weeks of paternity leave for his biological child, under the provisions of section III of ST/AI/2005/2. An additional period of 4 weeks of special leave with full pay may be granted to make the combined leave period of the two staff members reach 8 weeks. This 4-week period of special leave with full pay may be taken by Mr. JSV or split between the two staff members as they wish. The periods of special leave with full pay of each spouse may be taken concurrently or sequentially.<sup>6</sup>

17. Based on the advice from DOS, on 19 July 2022, UNON granted a maximum of eight weeks of leave to both Applicants (four weeks for paternity leave and four weeks for adoption leave).<sup>7</sup>

18. On 25 August 2022, the Applicants requested management evaluation challenging a decision to grant them a combined parental leave of eight weeks following the birth of their daughter.<sup>8</sup>

19. During the pendency of the management evaluation, UNON revised the leave period earlier granted by providing eight weeks adoption leave for Mr. JSV, in addition to the four-week leave granted to Mr. JPSV earlier.

20. On 15 November 2022, the Management Evaluation Unit ("MEU") informed the Applicants that their request had become moot following UNON's revision of the leave earlier granted.<sup>9</sup>

## Receivability

### Respondent's submissions on receivability

21. The Respondent contends that pursuant to art 2(1)(a) of the UNDT Statute, the decision contested is not receivable. The Tribunal lacks the jurisdiction to conduct a judicial review of the propriety of United Nations Staff Regulations and Rules

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<sup>6</sup> *Ibid*, annex 4

<sup>7</sup> Application, section VII, p 6 reply, annex 5

<sup>8</sup> Application, annex 5

<sup>9</sup> *Ibid*, annex 6

**22** The Applicants are challenging the decision not to grant them additional paternity leave and adoptive leave on the basis that the decision is discriminatory in nature, and they are not receiving equal treatment as other couples in the United Nations, i.e., heterosexual couples with children born via surrogacy or couples with children born through “a conventional pregnancy”. In essence, they are arguing that the applicable policies, ST/SGB/2018/1/Rev.1 (Staff Regulations and Rules of the United Nations) and ST/AI/2005/2 result in discriminatory outcomes for children of staff members with regard to their parents’ sexual orientation and family composition.

**23** In view of the above and relying on Reid<sup>40</sup>, the Respondent submits that the Tribunal does not have the competence or jurisdiction to review whether a United Nations policy is discriminatory in nature and how it is applied towards heterosexual couples and same-sex couples. Its jurisdiction is limited to a review of the Respondent’s application of the Organization’s legal framework and does not extend to a review of United Nations General Assembly resolutions.

**Applicants’ submissions on receivability of review**



targeting this question led to disinformation by the Administration on leave  
evidences

31. The Applicants maintain that it is clear from the Administration's (in)action,



**ST/AI/20052**

**35 The Respondent maintains that the Administration complied with ST/AI/20052. The leave days were given to the Applicants in accordance with the applicable rules and the Organization acted fairly and indeed gave the Applicants what was entitled to them<sup>12</sup>**

**36 With regard to the length of time the Administration took to address the Applicants' request, and which seem to have caused them grief and unhappiness, the Respondent submits that the Applicants were not entitled to any leave entitlements prior to the birth of their child. Their child was born prematurely on 2 July 2022, yet she was expected in August 2022. By the time the child was born on 2 July 2022, none of the Applicants was entitled to any form of leave as they were not natural parents of the child.**

**37 JPSV is the biological father of the child, and he was entitled to paternity leave of four weeks only at the point when the child was born. This means, his leave was only allowable from 2 July 2022 when the child was born. The second part of this leave was adoptive leave, which was special leave granted to Mr. JSV, which was supposed to be applicable only when the adoption documents were provided to the Administration.**

**38 In relation to adoption, the Respondent emphasizes that pursuant to sec. 3(b) of ST/AI/20052, adoption leave is only granted when the legal adoption of the child has been recognized and finalized. Until present, the Applicants have not yet provided legal documents indicating that the child has been adopted by them. Despite the foregoing, the Organization was gracious enough to grant Mr. JSV at least four weeks leave in the absence of the required documentation on the adoption of the child.**

**39 Regarding the Applicants' allegation that the Organization did not provide them necessary assistance, the Respondent asserts that the allegation is incorrect and not true.**

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<sup>12</sup> Respondent's submissions during the CMD held on 25 July 2023

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The Organization listened to them and granted them several options, including taking annual leave or granting adoption leave even before the finalization of the adoption process

**Considerations**

40 The nature of the Applicants' claims somewhat had to pin down. They repeatedly say that they are asking for equal treatment with respect to the parental leave they were granted for the birth of their child. However, what equal treatment amounts to seems to be an ongoing target.

41 On 11 July 2022 they stated that;

our request in the interest of the baby's health and care, and in the interest of having equal treatment to same sex staff families is that [J P's] paternity leave, which is only 4 weeks, is accepted immediately, and that my request for adoption leave with pay for 8 weeks is granted ... In the absence of accepting my request for special adoption leave, we request to have rule 5.3a) on special leave for child care following clause ii) which states that in exceptional circumstances this leave can be granted with pay. We therefore request this leave to be granted with pay for 8 weeks to be able to care for the newborn.<sup>13</sup>

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**discriminatory outcome with regards to same sex couples who would be granted a total of 21 weeks<sup>15</sup>**

**44 Finally, as noted above, their application to the UNDI requests 21 weeks total leave. This request is premised on the allegation repeatedly stated by the Applicants'**

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the legal adoption proceedings, but that UN Habitat could still exceptionally agree to adoption leave upon the expectation that the Applicants would submit the documents when available. The decision also expressed regret for any delay.<sup>19</sup>

55 Five weeks later, the Applicants requested management evaluation of the decision.<sup>20</sup>

56 On 15 November 2022, the MEU review was issued, granting the total of 12 weeks leave that the Applicants had requested.<sup>21</sup>

57 In sum, the Applicants were trailblazers raising an issue that was not covered by the existing policies and had never been reviewed by the involved Human Resources staff. Under these circumstances, the Tribunal cannot find that the Applicants' case

**60 In conclusion, the Tribunal finds that the claim of unequal treatment has not been proven by the Applicants**

**JUDGMENT**

**61 In view of the Tribunal's findings, the application is denied**

**(Signed)**

**Judge Sean Wallace**

**Dated this 1<sup>st</sup> R m p**