



MISSION APPEALS
TRIBUNAL

Case No.:	MAT/2022/02
	MAT/2022/03
Judgment No.:	MAT/EUFOR/03
Date:	06/11/2023
Original:	English

Before: Teresa Bravo,
Svetlana Zašova
Gabriele Della Morte

Registry: Naples

Registrar: Patrizio Raimondo

E K & J C

v.

EUROPEAN UNION FORCE IN BOSNIA
AND HERZGOVINA

REVISION OF JUDGMENT

Counsel for Applicant:

L M, N D

Counsel for Respondent:

C H

Procedural Background

1. On 29th November 2022, J C and E K, both former international civil consultants (hereafter “ICCs”) working for the European Union Force in Bosnia and Herzegovina (hereafter “EUFOR”) have filed separate appeals before the Mission Appeals Tribunal (hereafter “the MAT”) to contest the legality of the administrative decision taken by the EUFOR Commander (hereafter “EUFOR COM”) dated 13th May 2022, to close their complaint submitted on 18th December 2018, without further action, for alleged discriminatory treatment, breach of their employment rights and principle of equal pay for equal work.
2. Both complainants requested joinder of their cases, which was accepted and determined by the President of the MAT, by Order N. 3.
3. On 13th April and 3rd May 2023, a hearing on the merits took place through the network Polycom.
4. The two complainants and three witnesses have testified before the panel of judges.
5. On 2nd September 2023, a final judgement was issued on both cases.
6. On 22nd September 2023, the Respondent filed a Motion for revision of judgement under Article 49 of the MAT’s Rules of Procedure (hereinafter, the ROPs).
7. On 27th September 2023, both Appellants filed comments on said Motion for Revision of Judgement.

Parties’ submissions

8. The Respondent principal contentions are:
 - i.) HQ EUFOR Sarajevo Chief Finance Officer informed the Defendant’s council that it is impossible to proceed with the payment stipulated to Mr. K due to the applicable financial regulations of EUFOR;
 - ii.) Salaries of ICCs are common costs relative to the active phase of European Union operations (Annex IV, 2. (e) Council Decision

(CFSP) 2021/509 establishing a European Peace Facility (EPF) and repealing Decision (CFSP) 2015/528, dated 22 March 2021). One of the budgetary principles pursuant to Art. 17 2021/509 is the authorization for the duration of a financial year, which begins on 1st January and ends on 31st

December of the same year;

- iii.) Paying Mr. K 19.371 euros for the period of unpaid sick leave in 2009 would constitute an unjustified double payment;
- iv.) EUFOR paying unpaid sick leave, which would be further barred by the statute of limitations, would not only contradict EU budgetary regulations but also Rule 2 a (1) of the MAT ROPs, *ratione materiae*, as there was no administrative decision taken by the COM EUFOR in relation to the car accident, since there was never a claim by Mr. K in 2009 or the following years. This was stated in the respondents closing submission;
- v.) The MAT ROPs do not stipulate that the MAT is entitled to review regulations, but only to decide upon administrative decisions of a AOMO COM/COM EUFOR;
- vi.) The United Kingdom decided not to conclude a Framework Partnership Agreement (FPA) between the UK and the EU in order to contribute furthermore to EUFOR ALTHEA. On 8th Oct 2020, the UK communicated the UK Government's decision to withdraw from CSDP operations and missions by the end of BREXIT Transition Period on 31st December 2020. This decision was acknowledged by the Operation Commander;
- vii.) EUFORALTHEA cannot be held responsible for the withdrawal of the United Kingdom from the European Union and the follow on consequences for British employees in the operation;
- viii.) Mr. C reached the retirement age (65) in February 2019 (Termination per age limit in the CSR). The argumentation of the MAT Panel in point 96 for the granting of severance pay, based on the fact that Mr. C

had to establish a new life and work away from his family and country of origin as an argument, is not convincing.

ix.) Like in the case of Mr. K, it follows further that the indemnities for moral damages and legal fees are equally not justifiable.

9. The Appellant's principal contentions are:

i. The Application does not meet any of the requirements of Rule 49(a) and ought to be dismissed in its entirety;

ii. The alleged decisive fact(s) were "discovered" on 19 September 2023 when the Chief Financial Officer and NATO HQ Human Resources Manager advised EUFOR of the various regulations;

iii. Those facts have been known to the Respondent at all material times and he was negligent in not bringing these arguments to the Tribunal's attention before the judgment was issued; iv. Its comments in this regard are embarrassing and reflect a total disregard for the Tribunal's jurisdiction and the Tribunal members' review of legal principles and carefully considered;.

v. The Respondent does not have any right of appeal from the Judgment. Its commentary on the Judgment is not a "decisive fact". The Respondent did not raise any of these arguments or present this evidence in any of its written submissions or during the oral hearings;

vi. It is not the responsibility of the Appellants or the MAT to consider if and how the Respondent disburses funds to ensure compliance with the Judgment.

vii. Respondent's motion constitutes abuse of proceedings that has caused further unnecessary waste of the MAT's resources. Therefore, the Appellants should be granted 1000 euros each as punitive damages, under article 44 (a) of the ROP.

Consideration

Request for revision of judgement

10. In cases 02/2022 and 03/2022, the MAT was seized of a complaint contesting the legality of the administrative decision taken by AOMO/EUFOR COM, dated 13 May 2022, to close the Appellants complaint, submitted on 18 December 2018, without further action, for alleged discriminatory treatment, breach of their employment rights and principle of equal pay for equal work.

82. Being an administrative Tribunal, the MAT's competence and scope of judicial review is established in Rule 2 - Competence of the Rules of Procedure, as follows:

Rule 2 Competence

a. The Mission Appeals Tribunal (here after "MAT") shall be competent to hear and pass judgement:

(1) Rationae materiae:

(a) The MAT shall be competent to hear Appeals against:

i) a Final Decision of the AOMO COM or their delegated authority;

83. It is clearly established in the Rules of Procedure that the MAT is a last instance tribunal, and its judgements are final and binding on EUFOR, *as per* Rule 45 of the MAT ROPs, which provides that "the MAT judgment shall be final and binding for all parties involved".

84. In addition, Rule 49(a) of the MAT ROPs provides that either party can apply: *for a revision of a judgment on the basis of the **discovery of a decisive fact** that, at the time the judgment was rendered, **was unknown to the Panel** and to the party applying for revision, always provided that such ignorance was not **due to negligence**.*

85. The Motion for Revision of Judgement filed by the Respondent on 22nd September 2023, does not meet any of the requirements included in article 49(a) of the Rules of Procedure.

86. The arguments raised do not constitute "new facts", but legal arguments and it is obvious that they were all well-known by counsel for the Respondent.

87. In fact, after having carefully read those arguments, the Panel finds that the Respondent appears to disagree with some of the legal findings contained in the judgement and his underlying intention is to re-argue the case and reopen the legal discussion.
88. The Respondent takes issue with the MAT's decision to grant Mr. K and Mr. C some of the remedies requested.
89. The Panel recalls that it has always granted both parties the opportunity to argue their case and Respondent had several opportunities to raise these arguments during the judicial proceedings.
90. In addition, EUFOR bears the responsibility of accommodating MAT's Judgements since it has accepted its jurisdiction.
91. The Panel is of the view that EUFOR is delaying the final adjudication of the Appellant's case and denying them justice in due time.
92. Consequently, the Panel considers that EUFOR has abused the proceedings and should compensate the Appellants for the delays in the execution of the judgement which was issued more than one month ago.
93. **In view of the foregoing, the Tribunal DECIDES:**
- a. To reject, as inadmissible, the Respondent's request for revision of the judgement;
 - b. To deem the Respondent responsible for an abuse of proceedings and;
 - c. To order payment of 1.000 Euros to each Appellant to compensate them for the delay in the execution of judgement and Respondent's unfounded claim;
 - d. In addition, all amounts shall bear interest at the European Central Bank prime rate, with effect from the date this Judgment becomes executable, until payment of said compensation is done.

Chairperson

Judge Teresa Bravo
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Dated 6 th November 2023

Entered in the Register on 6 th November 2023

Firmato digitalmente da: RAIMONDI PATRIZIO MARIA
Ruolo: 4.6 Avvocato
Organizzazione: ORDINE DEGLI AVVOCATI DI NAPOLI
Data: 27/11/2023 16:51:34