	MISSION APPEALS TRIBUNAL	Case No.:	MAT/2022/02 MAT/2022/03
		Judgment No.:	MAT/EUFOR/01
		Date:	02/09/2023
		Original:	English

Before:	Teresa Bravo Svetlana Zašova Gabriele Della Morte
Registry:	Naples
Registrar:	Patrizio Raimondi

K. & C.*v.*

EUROPEAN FORCE IN BOSNIA HERZEGOVINA

JUDGMENT

Counsel for Applicant:
M. and D.

Counsel for Respondent:
H.

Introduction

1. On 29th November 2022, Mr. C. and Mr. 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.

Facts

Employment relationship

5. Mr. K. joined EUFOR on 11th May 2007 as an Arms Control Advisor, then later become an Ammunition and Arms Control Advisor.

6. His contract was renewed on numerous occasions and under various lengths for thirteen years and he retired in October 2020.

7. Mr. C. joined EUFOR on 1st April 2010 as an Ammunition Technical Officer and later became an Ammunition Technical Advisor.

8. His contract was renewed on numerous occasions and under various lengths for nine years and he left EUFOR in November 2019 due to Brexit.

9. The Appellants therefore worked as ICCs for a total of 13 and 9 years respectively, under different lengths of contracts without any break in service, with EUFOR.

The complaint and the contested administrative decision

10. On 18th December 2018, the Appellants lodged a formal complaint addressed to EUFOR Headquarters Joint Military Affairs Chief, their immediate supervisor, pursuant to art. 33.2 of the Civilian Staff Rules (hereafter "CSRs"), claiming unequal treatment with Local Civilian Hires (hereafter "LCHs").

11. On 7th May 2019, their supervisor replied he did not have "competent jurisdiction" to determine the issue. He also confirmed on 15th May 2019 that, in

his capacity, he did not have the authority to decide on the modalities of the Appellants' contracts.

12. On 5th June 2019, the Appellants lodged the complaint to the head of EUFOR's chain of command at that time and received a response from his successor, who stated he only had the authority to resolve complaints regarding the wrongful implementation of the CSRs and that their complaint had been forwarded to the EUFOR Operation Headquarters (hereafter "OHQ") in Mons, Belgium.

13. After the complainants had sent two follow-up letters to the responsible for personnel issues at OHQ, they received a letter from NATO Legal Advisor, stating the organisation did not have jurisdiction to deal with the complaint and that EUFOR had been asked to proceed according to the CSRs.

14. On 20th May 2019, the Appellants brought their complaint to the Chief of Staff who responded on 29th May 2019, stating that "notwithstanding the basis of this complaint, it cannot be addressed to my level".

15. Between April and August 2020, there was continued correspondence between the Appellants' counsel, the European External Action Service (EEAS) and the EU Ombudsman Office. In one of the communications, the Appellant's council informed the Ombudsman that in light of Brexit, all UK nationals working for EUFOR had been terminated, which directly impacted Mr. C.

16. On 5th March 2021, the Head of the Ombudsman's case handling unit advised that, according to the EEAS analysis of the case, a possible avenue of redress could be found within the NATO structure, because the rules governing the Appellants' employment relationship "*form part of* [the] *NATO legal framework*".

17. Communication between the Applicants and the Office of the Legal Advisor at NATO HQ led to the later arguing that this matter would not be handled by NATO HQ. He advised the Applicants to contact SHAPE Legal Office of Allied Command Operations, which they did on 14th April 2021.

18. Further correspondence with the Office of the Legal Affairs, SHAPE, confirmed that it did not consider itself competent to hear the case.

19. On 31st May 2021, the Ombudsman's Office acknowledged the lack of clarity of the situation and recommended that the Appellants submit new complaints to several institutions including the EUSG, the EEAS, the European Commission, and the Council of the European Union[1].

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[1] The original reference was made to the «Council of Europe», but the MAT Panel understands that the correct entity is the «Council of the European Union».

20. On 2nd July 2021, the Appellants contacted, EU Operation Commander for ALTHEA EUFOR EUSG.

21. On 2nd February 2022, the Appellants received a response from EU Staff Group's Legal Advisor at SHAPE stating the following:

> *OHQ [...] and likewise, the relevant EU institutions have no competence in this matter as, according to the Civilian Staff Rules for Crisis Response Headquarters in the Balkans, 'COM EUFOR is the final authority in this matter (Art 33.2. leg cit.)'.*

22. On 18th March 2022, the Appellants addressed the current EUFOR Commander Major General requesting him to address the merits of their claim.

23. In response, COM EUFOR replied on 13th May 2022 that the case was *res judicata* as the Appellants' complaint was not granted in the letter of COM EUFOR dated 25th July 2019. He further advised that COM JFC Naples had recently published the (new) "Mission Civilian Rules (MCRs)" for Mission Civilians ('MCIVs' – replacing 'ICCs') employed by Allied Operations and Missions led by HQ JFC NAPLES and that such Rules would enter into force on 1st July 2022. MCRs replaced the CSR 2012 and under Art 35.3 MCR, a (new) Mission Appeals Tribunal (MAT) was established. Former MCIVs were entitled to complain against a decision before the MAT, once established and operative.

24. The 13th May 2022 decision was officially notified to the Appellants on 30th September 2022.

Parties' submissions

25. The Applicants' principal contentions are:

a. EUFOR was created by the Council of the European Union and NATO under the *Berlin Plus Agreements*, consequently, it is a European Union institution. Therefore, EU labour laws and legal principles, such as, the principle of non-discrimination and equality should be applicable to the case at hand;

b. The Appellants have been discriminated and subject to unlawful treatment under EU law as they were never entitled to benefit from a pension scheme, nor social security. They were never paid overtime, nor were entitled to paid sick leave, beyond the 40 days granted by EUFOR;

c. The Appellants have been denied justice for more than 4 years and therefore, they should be compensated for the moral damages suffered.

26. The Respondent's principal contentions are:

a. The Appellants are not entitled to any of the requested remedies since their contracts, which they have accepted, do not include any provisions in relation to pension, social security scheme, severance and overtime pay;

b. The only applicable legal framework to the case at hand, are the Mission's rules and not EU laws and legal principles;

c. The Appellants have not met their burden of proof in relation to any of their claims, *i.e.* they have not demonstrated they have performed overtime work;

d. In addition, both of them know that EUFOR has paid them a percentage of their salary to cover pension and social security rights;

e. As internationally recruited staff they cannot participate in the national pension schemes or social security mechanisms in the country where the Mission is based.

Consideration

Scope of judicial review

27. The MAT is seized of a complaint contesting the legality of the administrative decision taken by AOMO/ 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.

28. Being an administrative tribunal, the MAT finds that it is not within the scope of its judicial review to assess the legality of the CSRs nor of the SOP *per se*, but rather to decide if the decision to deny ICCs access to a pension scheme, social security benefits (extended sick leave beyond 40 days), overtime and severance pay constitutes an (un) lawful exercise of administrative discretion.

29. This assessment can only be performed in the context of an individual administrative decision which deprives or affects the Appellants' employment rights. In this area of law, it is unanimously accepted that an administrative decision is a unilateral decision taken by an administrative authority which has a direct and legal effect on an individual's employment status.

30. According to its Rules of Procedure, the MAT does not have jurisdictional powers over regulatory decisions. However, this does not mean that the MAT cannot incidentally declare the illegality of a specific norm or set of norms once it is reviewing a given administrative decision based on those norms.

31. 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 judgment:*
>
> *(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;*

32. In the case at hand, the Appellants argue that, as former ICCs they did not benefit of overtime payment, severance pay (in relation to Mr. C.), extended paid sick leave (beyond 40 days, in relation to Mr. K.), nor from a pension scheme or social security, contrary to what was granted to local civilian hires performing similar functions.

33. To substantiate their complaint, both argue that the applicable rules breach European Union law standards, namely, the principle of non-discrimination and equal pay.

34. The Respondent argues, instead, that the MAT cannot apply European law but rather the Mission Civilian Rules which are applicable to all EUFOR staff in field missions. From the Respondent's point of view, the Appellants have agreed to the working conditions established in their contracts and were both well aware of those conditions. Moreover, they have never claimed overtime payment and did not demonstrate the alleged moral damages they are now claiming.

The applicable legal framework

35. Through Order n. 13, the Tribunal has requested the Respondent to file the *Berlin Plus Agreements* as these appear to be the legal basis that has created EUFOR and established *inter alia*, the terms of cooperation and mutual assistance between NATO and the EU in relation to Missions in the Balkans.

36. The Respondent having argued the confidential nature of the document, the Panel decided not to initiate a disclosure procedure in conformity with the applicable rules as it found that said procedure would cause a significant delay in the adjudication of the case, which would not serve the interests of justice.

37. The lack of initiation of the disclosure procedure shall not be interpreted to the disadvantage of the Appellants.

38. In determining the applicable rules, the Tribunal performs a hermeneutical exercise that takes into consideration contractual provisions, the norms referenced therein, as well as international legal principles of administrative law.

39. Concerning the question of direct applicability of the law of European Union, the Panel considers that in the present case the most relevant EU provisions – *i.e.* the principle of equality of law and the principle of non-discrimination included in the Charter of Fundamental Rights – are hermeneutically incorporated and/or deductible from the principles of international administrative law.

40. As per MAT's Rules of Procedure the Appellants legal statute (as former ICCs) is governed by the Mission rules (*see* Rule 1, *a*), para. 3).

41. The Appellants' contract shows that the employment relationship between the Applicants and EUFOR is primarily governed by the provisions of the Balkans Civilian Staff Regulations for crisis response operations (Balkans CSR for CRO HQs. CSR, hereinafter the 2012 CSRs) and relevant applicable administrative procedures.

42. In this regard, the Panel recalls that, at the time their contracts were signed, the applicable legal framework was the 2012 CSRs, whose applicability was defined as follows:

> *1. These Rules are applicable to civilian staff in the following categories: Local Civilian Hires (LCH), Non-Appropriated Funded Staff (NAF), International Civilian Consultants (ICC) engaged by NATO Crisis Response Operation (CRO) Headquarters, established in the Balkans, as listed below: NATO Headquarters Skopje (NHQSk), FYROM NATO Headquarters KFOR (HQ KFOR), Kosovo NATO Military Liaison Office Belgrade (MLO Belgrade), Serbia NATO Headquarters Sarajevo (NHQSa), Bosnia-Herzegovina.*
> *2. These Rules will also be applicable to any new NATO CRO Headquarters or any NATO follow-on force, to be established or stationed in the Balkans […].*
>
> *5. On the date on which these Rules come into force, the contracts of civilian staff members in post will be renewed in accordance with the provisions of these Rules, as necessary and appropriate.*

43. As a consequence, the primary sources of legal interpretation of the Appellants' contracts are the Mission Rules, *i.e.* the 2012 CSRs.

Non-admissibility ratione materiae *of overtime payment*

44. The evidence on file as well as the one produced at the hearing shows that, throughout the duration of their contracts none of the Appellants has requested overtime payment to their supervisors.

45. While testifying, both confirmed they usually performed overtime work, especially when they travelled to remote areas of the country and admitted never having requested overtime payment because "they knew it would be denied".

46. Therefore, they were not able to provide any documentary nor witness evidence that an administrative decision was ever produced in this regard.

47. After a careful analysis of the case and the evidence produced, the panel has concluded that the Appellants have not met their burden of proof in relation to this specific claim, *i.e* they were not able to minimally demonstrate that, first they have requested overtime payment and second, that an administrative decision was produced in this regard.

48. Consequently, in the absence of an administrative decision, the Tribunal finds that this part of their Appeal must be dismissed as inadmissible *ratione materiae*, as per Rule 2, *a*), para. 1 of the Rules of Procedure.

The principle of equal pay for equal work

49. International administrative tribunals such as the ILOAT have extensively interpreted the prohibition of discriminatory treatment.

50. These Tribunals have used the "similarly situated test" for analyzing all claims of inequality and discrimination in employment cases; under the test, "[t]he principle of equality means that those in like case[s] should be treated alike, and that those who are not in like case[s] should not be treated alike".[2]

51. The Panel finds that this principle can also be applied *mutatis mutandis* to the case at hand, as it clearly results from Rule 4, *m*) of the MAT's Rules of Procedure (ROP):

> *The MAT shall not have any powers beyond those conferred under these ROP and under the MCRs or pertinent CSRs. In deciding on an Appeal, the MAT shall also apply the internal law of the AOMO and applicable*

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[2] *See*, Patterson, Brian D. in *The Jurisprudence of discrimination as opposed to simple inequality*, in Georgia Journal of International and Comparative Law, Vo. 36, 2007, number 1.

> *NATO Regulations including generally recognized principles of international administrative law concerning judicial review of administrative acts.*

52. Consequently, Rule 4, *m*) of the MAT's ROP is the reception clause that allows the MAT to make use of principles of international administrative law while performing its adjudicative task.

53. In *Tabari* 2011-UNAT- 177, the Appeals Tribunal of the United Nations has clarified the scope and meaning of the "principle equal pay for equal work" as follows:

> *2. We hold that there is no discrimination when the non-payment of a special compensation for working in hazardous duty stations is based on a general consideration of a category of staff members, in comparison to another category of staff members. The different treatment becomes discriminatory when it affects negatively the rights of certain staff members or categories of them, due to unlawful reasons. But when the approach is general or abstract, by categories, there is no discrimination, if the difference is motivated in the pursuit of general goals and policies and it is not designed to treat individuals or categories of them unequally. Since Aristotle, the principle of equality means equal treatment of equals; it also means unequal treatment of unequals*.

54. Another major reference in the field of international administrative law is the jurisprudence of the ILOAT (*see Judgement* 2313, WHO, excerpt 7) in which it is well-established that:

55.

> *2. It is the duty of international organisations to ensure that they abide by the principle of equality and, particularly, that they comply with its requirement that there be equal pay for work of equal value. And if their rules and procedures do not ensure adherence to that principle and its requirement of equal remuneration, it is their duty to initiate procedures that do, whether by way of general rule or some specific procedure for the particular case.*

56. In *Tabari* the UN Appeals Tribunal clarified that establishing different rules applicable to different categories of staff is not discriminatory *per se* unless it negatively affects the rights of certain categories of staff for unlawful reasons. If those differences are established in the pursuit of general goals and policies and reasonably justified, it would not breach the principle of non-discrimination.

57. Moreover, the ILOAT established that international organizations have a duty to comply with the principle of equality and to put in place the necessary mechanisms to ensure abidance to the principle of equal work for equal pay.

58. Bearing in mind the above-mentioned reception clause, the fact that this principle is recognized in international administrative law as a fundamental principle of law and applied by similar judicial instances, there is no doubt as to its applicability to the case at hand.

59. The Panel will address below how it impacts the Appellants' claims.

The alleged breach of the principle of equal pay and prohibition of discrimination

Pension scheme

60. The Appellants claim that being ICC's, they have been discriminated in relation to their peers LCHs because the last ones can participate in the local pension scheme whereas they cannot.

61. According to Article 23 Rule 10 SOP d), the monthly salary of ICC staff shall be all-inclusive, and it is the responsibility of the ICC staff member to pay for housing, food, 50% of medical insurance premiums, all other insurances, pension and retirement programmes *etc.*, as well as any income tax that may be required by the ICC staff members' national law.

62. Moreover, Rule 7 k) SOP (2) determined that LCH and ICC staff were not eligible to participate in the NATO Pension Scheme.

63. Therefore, the CSRs establish a clear distinction between these two categories of staff and opted to grant the second ones a percentage of their salary to cover the absence of institutional pension scheme and allow them to make contributions on their own.

64. The MAT has to decide if this represents a breach of the equality principle and prohibition of discriminatory treatment.

65. At the hearing, the successor of Mr. K. testified in this regard and explained that he has opted to use that money to contribute to his home country pension scheme.

66. In the case at hand, the Appellants' underlying argument is that the applicable CSR should be disregarded as they establish an illegal and unlawful distinction between ICC's and LCC's which is detrimental and discriminatory to the first ones.

67. The panel is of the view that there is no breach of the principle of equal treatment, nor those CSR provisions constitute a discriminatory treatment in relation to pensions.

68. Indeed, there is a rationale that explains why ICC's do not have access to a national pension scheme nor to NATO's Pension Fund.

69. ICCs are internationally recruited staff and in general do not have any personal or fiscal link to the host country where the Mission is based. In this regard, their situation clearly differs from locally recruited staff who are, generally speaking, nationals of the hosting country, have their permanent residence there and established a close personal and fiscal link to local authorities.

70. Also, they cannot be considered as NATO civil servants because no employment lien was established between them and NATO, as it clearly results from their contracts that their employer is EUFOR.

71. In principle, Missions of this sort are exceptional, temporary in nature and scope and so the employment liens it keeps with its staff.

72. This explains why their contracts were of short duration and kept being renewed several times as the Mission was extended over time.

73. Due to the temporary and exceptional nature of the Mission, as well as of its political, financial and institutional constraints, the solution which EUFOR has found seems reasonable, *i.e.* paying a percentage of the salary to ICC's as "pension contributions" which they could use as they wanted.

74. In fact, it allowed enough flexibility to the employer while, at the same time, granted ICCs some financial security.

75. The fact that the administration has denied them participation in a national pension scheme or NATO's own pension scheme does not represent an unlawful nor illegal exercise of administrative discretion.

76. Indeed, the Tribunal finds that in the case of the pension scheme they have not passed the "similarly situated" test in relation to their peer LCHs so as to justify an equivalent treatment.

Social security scheme and extended sick leave payment

77. One of the Appellants, Mr. K., claims payment of sick leave days

beyond the 40 days granted by EUFOR. He argues that he had a car accident that left him seriously ill and unable to perform his functions between 26th January and 30th June 2009.

78. EUFOR only paid 40 days of salary (around 2 months). Being an ICC, Mr. K. was not entitled to be transferred to the host nation/entity social security system. He claims he is entitled to approximately 3 months' salary payment.
79. Rule 14 e) SOPs provides that after a period of 40 consecutive days of sick leave, LCH staff members are transferred to the host nation/entity social security system and ICC staff members are suspended without pay.

80. Contrary to the issue related to the pension scheme, the Panel finds there is no reasonable explanation for this different treatment between ICCs and LCHs.

81. The underlying rationale of sick leave entitlements is to grant the employee financial support in times of distress and inability to work due to illness or accident.

82. When it comes to sick leave benefits, the fact that triggers those payments, irrespective of the contract's modality, is the incapacity to work. This situation can happen both to ICCs and LCHs and the Respondent has not provided any objective reason to justify such a different treatment.

83. Instead, the Respondent argued that the accident was caused by Mr. K.'s own actions and that he knew, when he signed his contract, that he would not be entitled to be paid sick leave beyond 40 days.

84. The panel disagrees with this line of argument and instead, points out that there is a universally recognized duty of care and due diligence in relation to staff members, which is incumbent on international organizations.

85. Regardless of the duration or contractual modality, the principle of social protection applies when a staff member is unable to work for health reasons.

86. Therefore, the Tribunal finds that EUFOR had the obligation to put in place the necessary arrangements (being it with an insurance provider or through a MOU with local authorities) to ensure that seriously ill ICCs would not be deprived of financial support in case their paid sick leave days expired.

87. It is manifestly unreasonable and illegal to put that burden on the shoulders of the employee, while ensuring that other categories of staff (LCHs) when placed in similar situations fall under the protection of alternative mechanisms.

88. The panel is of the view that EUFOR must therefore pay Mr. K. three months net-base salary as requested, in the total amount of 19.371,00 Euros.

Severance pay

89. Mr. C. being a UK national, was separated in November 2019 due to Brexit *i.e.* due to extraneous (political) circumstances and not on his volition or fault.

90. He was, therefore, deprived of his subsistence and had to find an alternative position.

91. Contrary to his peers LCHs and as per the applicable CSRs, he was not entitled to any severance payment.

92. In this regard, we recall that Pursuant to CSR Art. 14.1, the cases of separation on which a severance pay is due are outlined in art. 10 *c*) ("Post deletion due to operational requirements; changes in the Headquarters mission and activities; and/or organizational restructuring, as authorized by higher headquarters") and in art. 10 d) ("Poor health conditions affecting professional performance of duties").

93. The Panel finds that establishing a distinction between ICCs and LCHs which is detrimental to the first categories of staff without a proper rationale is not adequate, nor legal in light of the principle of prohibition of discrimination.

94. In addition to this, the Respondent could not provide a proper and convincing explanation for this situation, which placed the Appellant Mr. C. in a disadvantageous position *vis a vis* other staff who were entitled to severance pay when their contracts ended, under CSR Rule 14.1.

95. The fact that his salary was higher than the one of a LCH is not, *in and of itself* a valid reason to establish this discriminatory treatment.

96. In fact, he was internationally recruited, had to relocate, establish a new life and work away from his family and country of origin and when Brexit happened, had to leave his post at EUFOR.

97. The panel finds that since he was recruited due to his professional skills and in the best interest of EUFOR, the mission also had a duty of care towards him at the time he was obliged to separate.

98. As a Panel, we consider that art. 10c is applicable to Mr. C. separation, and that he would have been entitled to 6 months' severance pay according to

Rule 14.2: “The severance pay shall be half a month’s base salary for each full year of consecutive service, but under no circumstances more than 6 months salary”.

99. According to the evidence on file, the last salary earned by Mr. C. was 6,339 Euros.

100. Therefore, the Tribunal grants Mr. C. 38.034 Euros (EUR 6,339 x 6 months) as severance pay.

Access to justice and compensation for moral damages

101. The Tribunal will now address the issue of moral damages.

102. Appellants requested payment of moral damages for the discriminatory treatment they were subject to as well as for the denial of their access to justice and the inordinate delay it has taken for their case to be considered.

103. Moral damages refer to the harm suffered by a staff member *(i.e.* emotional distress, stress and anxiety, harm to *dignitas* or career prospects) which relate to a breach of his/ her rights, by the employer, that deserve compensation.

104. International administrative tribunals have recognised that moral damages deserve compensation, on a case-by-case basis, provided that some requirements are met.

105. In *Asariotis* 2013-UNAT- 309, the Appeals Tribunal of the United Nations held that:

> *(...)Th[e] identification [of the moral injury sustained by the employee] can never be an exact science and such identification will necessarily depend on the facts of each case. What can be stated, by way of general principle, is that damages for a moral injury may arise […] [f]rom a breach of the employee’s substantive entitlements arising from his or her contract of employment and/or from a breach of the procedural due process entitlements therein guaranteed.*

106. The Tribunal recalls that the Appellants bear the burden of proving:

i. The alleged unlawfulness of the administrative decision;
ii. The harm suffered;
iii. The causal link between the illegality and the damages suffered.

107. The Appellants claim that, despite their rank, seniority, and length of service to EUFOR, their dignity has been disregarded through their unequal treatment *vis-à-vis* their colleagues.

108. They maintain that the Respondent's breach of the Appellants' rights to basic entitlements continued for 9 and 13 years respectively and that there was no motive behind the differential treatment between ICCs and LCHs.

109. According to the Appellants, EUFOR is directly responsible for this harm as it was the Appellants' employer and controlled the distribution of tasks, duties, and responsibilities between ICCs and LCHs, as well as their access to basic employment rights.

110. The Appellants have been in pursuit of this claim for over four years, since 18th December 2018. During this time, they have both separated, and the Respondent has done very little, if nothing at all, to mitigate those damages.

111. The Panel finds that a distinction needs to be made between moral damages as a consequence of different treatment related to benefits and entitlements and moral damages emerging from denial of justice.

Moral damages as a consequence of (un)lawful discrimination

112. In relation to the pension scheme, the Panel is of the view that, by paying a certain percentage of salary to cover pension rights, EUFOR has not breached the Appellants equality rights. It was incumbent on the Appellants to make a proper use of those funds and EUFOR cannot be held accountable for any financial losses, nor any moral damages in this regard.

113. As for overtime payments, the Panel finds that, Appellants have failed to claim it and the Appeal ought to be dismissed as irreceivable *ratione materiae.*

114. As a consequence, a request for moral damages based on these premises cannot be granted.

115. In relation to the remaining benefits: absence of severance pay and extended paid sick leave (beyond 40 days) the Tribunal finds that no proper evidence of harm was placed before it. The Appellants have not even minimally shown if and how they were affected by the decision not to pay them those amounts and what sort of harm was caused to them.

Moral damages as a consequence of denial of access to justice

116. As mentioned above, the Appellants requested payment of moral damages for the denial of their access to justice and the inordinate delay it has taken for their case to be considered.

117. Actions of an international organization inevitably raise the question of how to reconcile the principle of its immunity with the right to a fair trial of individuals, which includes the material right of access to a tribunal.

118. The concept of a 'tribunal' is characterized not only by its jurisdictional function, but also by the fact that any question decided is the outcome of an organized procedure, which meets the guarantees of independence and impartiality.

119. If both States and international organizations have the opportunity to choose the means by which the result is achieved, the absence of the right to an effective remedy must not be the result of their passivity.

120. Moreover, limitations on the right to a judge must not restrict the access offered to the individual in such a way or to such an extent as to affect the very substance of that right.

121. Employment-related disputes between an international organization and its employees, who play an essential role in the accomplishment of its mission, belong in all cases to the type of disputes that are strongly linked to the accomplishment of this mission.

122. Employment relations fall par excellence within the internal sphere of activity of international organizations, with the result that national courts rightly declare themselves to be systematically incompetent to deal with employment disputes between the organization and its employees.

123. Having in mind the lack of competence of national courts and given the general nature of the principle of the right of access to a tribunal, international organizations have the obligation of creating alternative means of redress or establishing within status-of-forces agreements and status-of-missions agreements an independent and impartial body competent to rule on claims against the organization and effectively protect the rights of third parties.

124. In the present case, it was not until 1st July 2022 that the Appellants were able to bring the case before the MAT, the creation of which was brought to the attention of the Applicants by EUFOR Commander Major, by letter of 13th May 2022, after they had attempted to lodge appeals with a number of European and NATO bodies since 18th December 2018.

125. Consequently, the court will uphold the Applicants' claim for damages based on the violation by EUFOR of the right to an effective remedy by awarding them each the sum of 3.000 Euros.

Legal fees

126. Appellants have also claimed payment of legal fees. According to MAT's Rules of Procedure, in principle the parties shall not be reimbursed for expenses incurred during the proceedings, unless the Panel explicitly includes those in the judgement, *see* Rule 47 *b*).

127. In the case at hand, bearing in mind the time the Appellants spent in litigation and the fees they have to pay to their lawyers, the panel finds it is adequate, proportionate and in line with similar jurisprudence of the NATO Administrative Tribunal to grant them 4.000 Euros to cover legal expenses (NAT Judgement (2022), 0007, published on 12th May 2022).

Conclusion

128. In view of the foregoing, the Tribunal DECIDES:

a. The Appeal is partially granted.

b. EUFOR shall pay Mr. K., within 90 days after notification of this decision:
c. 19.371 Euros in relation to the period of unpaid sick leave;
d. 3.000 Euros as compensation for moral damages, in relation to the right of an effective remedy;
e. 4.000 Euros to cover legal fees.

c. EUFOR shall pay Mr. C., within 90 days after notification of this decision:
-38.034 Euros as severance pay;
-3.000 Euros as compensation for moral damages, in relation to the right of an effective remedy;
-4.000 Euros to cover legal fees.

d. 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.

e. All other pleas are rejected.

Naples, 2 nd September 2023

Chairperson

teresabravo

Judge Teresa Bravo

Panel Members

Judge Svetlana Zašova
Judge Gabriele Della Morte

In compliance with Rules 46 of the MAT Rules of Procedures for publication purposes, identity of the parties and representatives has been omitted in connection with ACO Directive 015-026.

Avv. Patrizio Maria Raimondi
MAT Registrar