



**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2022-UNAT-1198

**Mehmet Selman Ergüden**

**(Appellant)**

**v.**

**United Nations Joint Staff Pension Board**

**(Respondent)**

**JUDGMENT**

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Before:	Judge John Murphy, Presiding Judge Martha Halfeld Judge Graeme Colgan
Case No.:	2021-1557
Date:	18 March 2022
Registrar:	Weicheng Lin

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Counsel for Appellant: Self-represented

Counsel for Respondent: Rosemarie McClean

**JUDGE JOHN MURPHY, PRESIDING.**

1. The United Nations Appeals Tribunal (UNAT or Appeals Tribunal) has before it an appeal by Mr. Mehmet Selman Ergüden against the decision of the Standing Committee of the United Nations Joint Staff Pension Board (Standing Committee and UNJSPB, respectively) rejecting his request to change his pension payment from the local-currency track to the USD track on the grounds that he did not fulfil the requirements of Paragraphs 31 and 38 of the Pension Adjustment System (PAS).
2. For the reasons below, we dismiss the appeal.

**Facts and Procedure**

3. Mr. Ergüden joined the United Nations Joint Staff Pension Fund (UNJSPF) on 26 November 1984. He separated from the service of the United Nations Office at Nairobi (UNON) on 31 July 2007.
4. Mr. Ergüden elected to take a lump sum with reduced monthly periodic benefit under Article 28 of the UNJSPF Regulations, which was paid as of 1 August 2007 on the USD track (dollar track).
5. On 7 August 2008 Mr. Ergüden requested that his benefit be established on the two-track system under the Pension Adjustment System (PAS), with Turkey as his country of residence.
6. The two-track system is a feature whereby a beneficiary's pension is calculated and maintained both in USD and in the currency of the country where a member actually resides. It is composed of two elements, the dollar track and the local-currency track or local track. On the US dollar track all pensions are calculated initially in USD. If a beneficiary does not declare a country of residence but requests payment in a currency other than USD, his or her pension will remain on the dollar track but is converted by the UNJSPF to the local currency equivalent on a quarterly basis by using the applicable United Nations operational exchange rate. If, on the other hand, a beneficiary declares a country other than the United States as his or her country of residence and submits acceptable proof thereof, his or her pension will be recalculated in the currency of the country of residence. This is the "local track", which is thus established in the currency of the chosen country of residence and adjusted by the

official cost of living index published by the country where the beneficiary resides. If the beneficiary opts for the two-track system, the UNJSPF will still calculate his or her pension based on the dollar track and each quarter the two (i.e. the local and dollar tracks) will be compared and the member is paid the higher amount, subject to a specified maximum and a specified minimum. It is possible that the dollar track will sometimes be more beneficial than the local track, and vice versa. The decision to elect the two-track system is an option, not an obligation.

7. Thus, the pension is calculated initially in USD. If the beneficiary so elects, and provides proof of residence in a country other than the United States, the UNJSPF will establish the local-currency track pension by converting the value of the dollar track pension at an average exchange rate between the USD and the local currency (this average is computed over the 36 consecutive calendar months up to and including the month of retirement). Every quarter, the local currency equivalent of the USD amount (the dollar track) is compared to the local track amount and the beneficiary is generally entitled to the higher of the two.

8. The two-track system thus makes provision for fluctuations in local currency through the mechanism in Paragraph 23 of the PAS, which provides protection for payment of benefits through a ceiling of 110 per cent of the dollar track amount and a base/floor of 80 per cent of the dollar track amount. Should the dollar track amount be higher, it would be subject to a maximum amount of 110 per cent and an adjustable minimum guaranteed amount which ensures that the benefit will not be smaller than either the beneficiary's USD monthly base amount (converted to the local currency using the applicable quarterly exchange rate) or 80 per cent of his or her adjusted USD track.

9. On 6 March 2009, in response to Mr. Ergüden's request of 7 August 2008, the UNJSPF advised Mr. Ergüden that the two-track would not be financially advantageous to him at that time. On 27 March 2009, presumably on the basis of that advice, Mr. Ergüden requested UNJSPF to disregard his request.

10. On 14 October 2009, Mr. Ergüden again requested that his benefit be established on the two-track system under the PAS, with proof of residency in Turkey. The UNJSPF implemented his request with effect from 1 January 2010 and his new benefit was calculated under Paragraph 38 of the PAS which provided a special measure governing the situation

where a new currency unit was introduced on or after 1 January 1990, which represented an increase in the value of the local currency in relation to the USD of at least 100 per cent. Turkey introduced a new currency in 2005.

11. When Mr. Ergüden elected the two-track option, he was required to submit a declaration of country of residence by completing a Pens.E/10 form. The consequence of the decision and the way in which the benefit is then adjusted is set out clearly in the Pens. E/10 form, which clearly states that once proof of country of residence has been submitted, the beneficiary remains permanently on the two-track feature of the PAS and he or she will not be able to renounce the local currency track and revert to the dollar track only, unless Paragraph 31 (b) of the PAS is applicable.

12. Paragraph 31(b) of the PAS provides for the reversion from the two-track system to the dollar track by beneficiaries who have opted for the two-track system. In terms of that provision, reversion to the dollar track may be permitted on a case-by-case basis only for beneficiaries who, for compelling personal reasons, move from a high-cost to a low-cost country, subject to the two following specified conditions: i) the move is to the country of nationality of the beneficiary or of a family member, or to a country of a former duty station of the retiree, or was due to other personal and compelling reasons; and ii) the beneficiary had been on the two-track system for a minimum of one year before the submission of the request for such reversion.

13. Paragraph 38(e) of the PAS afforded beneficiaries who fell within the ambit of the special measures, including Mr. Ergüden, to revert to the dollar track in the event that the newly introduced local currency (the new Turkish lira) depreciated against the USD by 50 per cent or more from its value on the date of introduction. This option, however, could only be exercised within two years as from the date of implementation of the special measure, 1 January 1997, and thus on the face of it did not apply to Mr. Ergüden. However, the UNJSPF has interpreted Paragraph 38(e) to mean that Mr. Ergüden had the right to revert to the dollar track within two years after the two-track became applicable to him and thus in its view he could have done so at any time before 1 January 2012.

14. Mr. Ergüden's benefit began to decline below 100 per cent of the dollar track amount in April 2015 (97 per cent) and the decrease continued to reach the protected level of 80 per cent as of June 2021. If this was not a feature of the two-track, Mr. Ergüden's benefit

would have been around 50 per cent of its dollar-track amount. Prior to April 2015, the ratio of total benefit amount paid to Mr. Ergüden was between 100 per cent and 122 per cent during the period August 2007 to March 2015. During this period, Mr. Ergüden understandably raised no complaint about his benefit.

15. However, not long after Mr. Ergüden's pension began to decline, on 20 December 2015 and again on 7 August 2016, he enquired about the possibility of reverting to the US dollar track.

16. On 10 August 2016, the UNJSPF advised Mr. Ergüden that following his 2009 election to have his benefit paid in the local track for Turkey, and in accordance with Paragraph 31 of the PAS, he was unable to revert payment of his benefit to the dollar track unless he moved to the United States or to a country where the local track was not applicable.

17. On 23 December 2019 and 25 March 2020, Mr. Ergüden requested the UNJSPF to consider his request, on an exceptional basis, to revert payment of his benefit to the dollar track.

18. On 5 October 2020, the Chief of Operations of the UNJSPF addressed a letter to Mr. Ergüden in which she informed him that since he had not relocated to another country of residence nor moved from a different country to his country of nationality or to the country of his former duty station, he failed to meet the requirements of Paragraph 31(b). Nor did Paragraph 38(e) apply as the two-year time period had lapsed. In the result, the Chief of Operations of the UNJSPF informed Mr. Ergüden that the UNJSPF had no discretion to permit him to revert from the two-track system to the dollar track.

19. On 19 October 2020, Mr. Ergüden submitted a request for review of the decision of the Chief Executive of Pension Administration by the Standing Committee, and also argued for a change in policy. The request for review does not form part of the record, but it seems that Mr. Ergüden may also have desired relief in terms of Paragraph 26 of the PAS, which confers authority to suspend a country from the two-track on the Chief Executive of Pension Administration when: i) the application of the local currency track would lead to aberrant results, with wide fluctuations depending on the commencement date of the benefit entitlement; ii) up-to-date Consumer Price Index (CPI) data is not available, after examining possible alternative sources of cost-of-living data and considering the particular circumstances of the beneficiaries residing in those countries; or iii) the 36-month average of exchange rates covers different currency unit or includes a currency unit that is

no longer applicable and reasonable adjustment and/or conversions are not available or cannot be determined in accordance with Section Q of PAS.

20. The Standing Committee upheld the decision of the Chief Executive of the UNJSPF and rejected Mr. Ergüden's request on the basis that he did not fulfil the requirements of Paragraphs 31 and 38 of the PAS. In its letter of 17 March 2021, the Standing Committee stated:

After reviewing all the documents, the Committee upheld the decision of the Chief Executive. The Standing Committee found that you do not fulfil the requirements of paragraph 31 of the Pension Adjustment System (PAS) in that you did not change your country of residence, therefore there is no basis to revert your pension benefit payment to the US dollar track. The Committee observed that your benefit is currently being paid at 80 per cent of the adjusted United States dollar-track amount in accordance with paragraph 23 of the PAS; therefore, the two-track is working as it should. The Committee noted that the two-track system is not a system to be applied only when it is of benefit to the retiree; in electing the two-track, retirees take on the risk of the fluctuations that are inherent in the system, which result in increased or reduced benefits with the guarantees set in paragraph 23 of the PAS. The Standing Committee also emphasized that the two-track is optional, and once elected by the retiree, the choice is irreversible unless certain conditions apply that were not met in your case.

With regard to your request to change the policy of how the PAS is applied, the Standing Committee notes that while such a revision is not within its mandate, the two-track system is not set up to hedge benefits and that the Fund cannot change its Regulations, Rules and Pension Adjustment System to adapt to the personal circumstances of a beneficiary, when they do not meet the conditions set. ...

21. On 12 May 2021, Mr. Ergüden submitted his appeal to UNAT. The UNJSPB submitted its answer on 2 July 2021.

22. Mr. Ergüden subsequently filed three motions to present additional evidence and seeking additional relief. He submitted that, since the presentation of his case to UNAT, the financial and economic conditions in Turkey had taken a significant downturn. He provided evidence in particular of the inflation rate and questioned how a country with such an unstable currency and so high an inflation rate could remain on the two-track. He provided various sources of data claiming that Turkey had an inflation rate of 114.87 per cent from January 2021 until January 2022. Mr. Ergüden maintains that the Chief Executive should have already taken action in accordance with Paragraph 26 of PAS.

23. The UNJSPF did not object to the additional evidence but pointed out that it has undertaken systematic reviews of the countries on the two-track and has concluded that nothing had changed to warrant suspension of Turkey from the two-track since the decision of the Standing Committee in March 2021. Paragraph 14 of the PAS provides that for the purpose of measuring changes in the CPI for a particular country of residence, the index used is the official CPI for the country as issued by the national government and published in the United Nations Monthly Bulletin of Statistics. Where no such index is published in the United Nations Monthly Bulletin of Statistics for a particular country, another regularly published index specified by the Statistics Division of Department of Economic and Social Affairs of the United Nations (DESA) may be utilised. Once an index has been utilised to give effect to an adjustment, any subsequent amendment or correction of that index will not give rise to retroactive correction of the adjustment.

24. After consultation with DESA and the International Monetary Fund (IMF), the UNJSPF has concluded that there is insufficient evidence to dismiss the official data from the Turkish Government. UNJSPF states that it cannot take action based on reports issued by various sources in each country. UNJSPF continues to monitor the situation in Turkey and will continue to do so as part of its normal operation of the PAS.

### **Submissions**

#### **Mr. Ergüden's Appeal**

25. Mr. Ergüden submits that there is an “unfair and unprecedented situation” regarding the PAS framework, particularly as it relates to the CPI and the under-calculation and under-reporting by certain countries. In addition, from 4 January 2010 to 30 March 2021, there has been a devaluation of 566% in the Turkish Lira versus the USD.

26. Mr. Ergüden submits that the accumulated under-calculation and under-reporting of the Turkish Government over many years is responsible for the low amount of his monthly pension payment and how little it is able to increase. Other factors also play into the inaccuracy and untrustworthiness of the CPI calculation in Turkey.

27. Mr. Ergüden submits that that PAS “only safeguards the rights and benefits of the pensioners residing in the countries where the national currencies, the fiscal and the economic policies and conditions are stable” and that it is unfair and against basic human rights that pensioners should have to accept such risk and be expected to change their country of residence in order to regain their “already established rights/benefits”.

28. Mr. Ergüden requests that: i) the PAS be reviewed and corrected “to facilitate justice and equality to all pensioners” and specifically making the “adjusted Dollar amount to be the minimum pension payment (the base) which ever track option the pensioners had selected” ii) there are periodic opportunities granted to pensioners to review and change their option as to which track they prefer; iii) the status of Turkey should be carefully and urgently reviewed as to whether there is under-reporting of CPI, in consultation with independent experts or institutions; iv) his monthly pension be paid according to an adjusted dollar track amount; v) he receive compensation for the period up to April 2021 and beyond of 60 months at a total amount of approximately USD 40,000 (exact figures to be provided by UNJSPF); and vi) UNAT draw the current shortcomings of PAS and the unjust situation to the attention of all related parties and particularly the policy-making bodies of UNJSPF.

### **The Answer of the UNJSPB**

29. The UNJSPB submits that the Applicant’s benefit is being paid within the parameters of Paragraph 23 of the PAS and Mr. Ergüden has not met the requirements under Paragraph 31 of the PAS for reversion to the dollar track. The decision to have a benefit paid on the two-track is solely at the request and instance of the retiree. Once elected by the retiree and approved by UNJSPF, it becomes irrevocable unless there is a change in country of residence in accordance with Paragraph 31 of the PAS. Mr. Ergüden took upon himself the risks associated with opting for the two-track option.

30. The UNJSPB submits that the UNJSPF does not have the discretion to change a benefit from the local track to the dollar track if the required conditions under Paragraph 31 have not been met. Mr. Ergüden has neither advised that he has changed his country of residence nor has he moved from another country to his country of nationality or to the country of his former duty station, therefore, he had not met the requirements for reversion to the dollar track under Paragraph 31 of the PAS.



31. The PAS specifies the source of data for determining adjustments under the PAS. Specifically, the Respondent submits that the official source of data for CPI under the PAS is the United Nations Monthly Bulletin of Statistics, read with the provisions in Paragraph 15 of the PAS for dealing with the time-lag between the date of publication and its effective date. The ENAG, the author of the information submitted by Mr. Ergüden, is not an official body for CPI data nor is it internationally recognized. Neither the IMF nor DESA see any basis to doubt the official DPI data issued by the Government of Turkey as included in the Monthly Bulletin of Statistics. The situation in Turkey does not fall under any of the conditions in Paragraph 26 of the PAS and therefore there is no basis for the Chief Executive of Pension Administration to suspend Turkey from the two-track.

32. The UNJSPB requests the Appeals Tribunal to uphold the decision of the Standing Committee and to dismiss the appeal.

### **Considerations**

33. The issues for determination in this appeal are straightforward.

34. Article 2(9) of the Statute of the UNAT confers limited jurisdiction on the UNAT to hear and pass judgment on an appeal of a decision of the Standing Committee alleging non-observance of the regulations of the UNJSPF.

35. The only decision that appears properly to be in contention is the decision of the Standing Committee of 17 March 2021 which dismissed Mr. Ergüden's appeal against the decision of the Chief Executive of Pension Administration denying his request for the reversion of his benefit to the dollar track under the PAS.

36. After reviewing the evidence, the Standing Committee upheld the decision of the Chief Executive of Pension Administration on the grounds that Mr. Ergüden did not meet the mandatory pre-conditions for reversion set out in Paragraph 31(b) of the PAS in that he did not change his country of residence and was time-barred after two years from relying on the provisions of Paragraph 38(e) of the PAS. His freely made and informed choice to move to the two-track was irreversible unless the pre-conditions in Paragraph 31(b) and 38(e) applied. It is not disputed that Mr. Ergüden did not meet the pre-conditions. Therefore, the decision of the Standing Committee was in observance of the regulations of the UNJSPF and there is no basis on appeal to grant Mr. Ergüden the right to revert to the dollar track.

37. Mr. Ergüden has sought to widen the ambit of the relief he seeks against the UNJSPF on appeal. He, in effect, wants the UNAT to compel the Chief Executive of Pension Administration to suspend Turkey from the two-track. There is no proper basis to grant such relief. Firstly, there is no evidence that Mr. Ergüden asked the Chief Executive of Pension Administration to make a decision to suspend Turkey for the two-track. Secondly, the Standing Committee was not specifically requested by Mr. Ergüden in his appeal to it to review any decision the Chief Executive of Pension Administration in that regard. Thirdly, insofar as the UNJSPF may have considered Turkey's position, it did so in accordance with the provisions of Paragraph 14 of the PAS by using the official CPI issued by the government of Turkey as published in the United Nations Monthly Bulletin of Statistics and further consulted DESA and the IMF. In all of this there is no decision of the Standing Committee that is not in observance of the regulations of the UNJSPF and thus there is no basis for the UNAT to grant any relief.

38. It might be added in passing that, even if the Chief Executive of Pension Administration had taken a decision refusing to suspend Turkey from the two-track and an appeal against that decision to the Standing Committee, this Tribunal would be obliged to observe a measure of deference. It is not the province of this Tribunal, when judging the financial decisions of the UNJSPF, to make its own evaluation of the financial wisdom of the UNJSPF, or to substitute its personal assessment of the economic advantages of its decision. It is not the role of judges to set the levels of benefits in the UNJSPF on the basis of their financial acumen or their own perceptions of equity. These are matters of policy for the UNJSPF, best left to its specialists with appropriate expertise. Whether Turkey should remain on the two-track is a polycentric issue – being a question that cannot be settled in isolation from other issues that are not before the Tribunal, the determination of which might have multiple repercussions beyond the writ of the Tribunal. Ordinarily, such matters are not amenable to resolution by adjudication. The lowest tier of judicial review therefore applies in such instances. If the refusal of the Chief Executive of Pension Administration to suspend Turkey from the two-track bears a rational relationship to the purpose of the two-track system and is based on reasonable data (the official CPI supported by DESA and the IMF) there can be no basis for review, whatever the view of the Tribunal on the wisdom of the policy and the adequacy of the steps taken to implement it.

39. The appeal must accordingly fail.

**Judgment**

40. The appeal is dismissed and the decision of the Standing Committee is affirmed.

Original and Authoritative Version: English

Dated this 18<sup>th</sup> day of March 2022.

*(Signed)*

Judge Murphy, Presiding  
Cape Town, South Africa

*(Signed)*

Judge Halfeld  
Juiz de Fora, Brazil

*(Signed)*

Judge Colgan  
Auckland, New Zealand

Entered in the Register on this 19<sup>th</sup> day of April 2022 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar