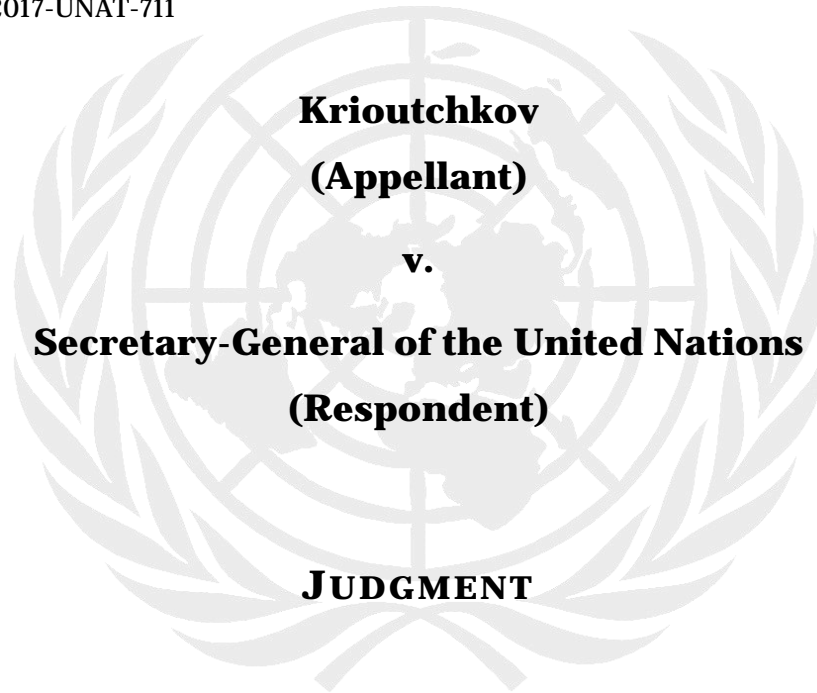




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2017-UNAT-711



**Krioutchkov  
(Appellant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT**

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Before:	Judge Dimitrios Raikos, Presiding Judge Rosalyn Chapman Judge Martha Halfeld
Case No.:	2016-946
Date:	31 March 2017
Registrar:	Weicheng Lin

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Counsel for Mr. Krioutchkov:	Self-represented
Counsel for Secretary-General:	Carla Hoe

**JUDGE DIMITRIOS RAIKOS, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2016/042, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 26 April 2016, in the case of *Krioutchkov v. Secretary-General of the United Nations*. Mr. Vladislav Krioutchkov filed the appeal on 27 June 2016, and the Secretary-General filed an answer on 6 September 2016.

**Facts and Procedure**

2. Mr. Krioutchkov is a Russian Translator at the P-3 level with the Economic and Social Commission for Asia and the Pacific (ESCAP) in Bangkok, Thailand.

3. On 13 March 2014, a job opening (JO) for the post of Russian Reviser/Self-revising Translator at the P-4 level with the United Nations Office at Vienna (UNOV) was advertised in Inspira (14-LAN-UNOV-33223). The JO required a successful candidate *inter alia* to have “knowledge of electronic terminology databases, electronic referencing, [computer assisted translation] tools and other relevant software used in the United Nations”. It informed the applicants that they would be assessed by way of a “[w]ritten test and competency-based interview”. Mr. Krioutchkov applied and was shortlisted.

4. In an e-mail dated 30 June 2014, the Office of the Chief and Deputy Chief of the Conference Management Service, UNOV, as the test administrator, invited Mr. Krioutchkov to a written test for the purpose of assessing his competencies for the JO. The e-mail informed Mr. Krioutchkov that the test would consist of questions related to the activities and the responsibilities of the advertised post, and it would be eliminatory, meaning that only the successful candidates in the written test would be invited to a competency-based interview. The e-mail advised Mr. Krioutchkov that he must provide his own answers, and must not copy-paste answers from the writings of others.

5. On 7 July 2014, the test administrator e-mailed two test questions to Mr. Krioutchkov with instructions on how to submit the answers. On the same day, Mr. Krioutchkov sent an e-mail to the test administrator, stating that he was not able to take the test, as it required the use of a Russian keyboard and typing in Russian and he did not have a computer with a Russian keyboard at home. Mr. Krioutchkov complained that the test administrator had not mentioned that the test would require the use of special equipment (a Russian keyboard) and special skills

(typing in Russian). He also complained that the JO did not mention typing in Russian as a requirement.

6. By e-mail dated 27 November 2014, Mr. Krioutchkov was notified of his non-selection for the P-4 post. On 22 January 2015, he filed a request for management evaluation of the 27 November 2014 decision and was informed on 23 February 2015 that the Secretary-General had decided to uphold the contested decision.

7. On 20 May 2015, Mr. Krioutchkov applied to the Dispute Tribunal to contest the decision not to select him for the P-4 post. In Judgment No. UNDT/2016/042 now under appeal, the Dispute Tribunal found Mr. Krioutchkov's application to be without merit and rejected it.

### **Submissions**

#### **Mr. Krioutchkov's Appeal**

8. By unofficially making typing in Russian a disqualifying requirement, when not a single official document lists typing in Russian as a requirement, the Administration undermined Mr. Krioutchkov's selection chances and denied him the protection of his conditions of service. The fact that the Administration allowed hand writing in some tests while banning it in others created unequal conditions and undermined the objectivity of the selection process. And to make somebody type under the threat of being disqualified from the selection process "means to intimidate, discriminate against and demonstrate bias and prejudice".

9. It is manifestly unreasonable for the Administration to conduct one test after another, when "the best qualified candidates" such as Mr. Krioutchkov due to his roster status are already available, causing considerable duplication of evaluation activities and waste of human and financial resources.

10. Mr. Krioutchkov has been on the P-4 roster since 2008 and his repeated non-selection does not serve the interest of the Organization to use rosters as the primary means of filling vacancies so as to ensure significant gains in time. This treatment is not a valid exercise of the Administration's discretion in the roster usage, but is the result of a biased approach of a particular manager. The fact that these restrictive practices have been used for P-3 to P-4 promotions for Russian translators does not make them legitimate since they do not serve the best interest of the Organization and contradict Staff Regulation 4.2.

11. Mr. Krioutchkov requests that the Appeals Tribunal modify the UNDT Judgment and award him appropriate relief.

**The Secretary-General's Answer**

12. The Dispute Tribunal correctly upheld the contested decision. Requiring candidates to type their answers to the questions in the test was lawful, reasonable and rational. As the majority of the tests are administered online and through e-mail submissions, it is necessary for the test takers to type both answers to the test questions and the accompanying correspondence. It was reasonable for the Administration, within its discretion, to decide to administer a written test to assess the shortlisted candidates, including Mr. Krioutchkov.

13. In the present case, all shortlisted candidates were invited to take the written test, and the clear implication of the JO and the e-mail invitation from the test administrator was that the completion of the test would require a word processor and thus typed answers. Mr. Krioutchkov's candidacy was removed from further consideration after the test because he had failed to answer the questions and to complete the test. The Administration thus acted validly within its discretion and Mr. Krioutchkov's candidacy was given full and fair consideration.

14. Mr. Krioutchkov asserts generally and vaguely that the UNDT erred in law and in fact, without establishing any ground for appeal as set forth in Article 2(1) of the Statute of the Appeals Tribunal (Statute) or specifying how or in what way the UNDT Judgment is defective.

15. In his appeal, Mr. Krioutchkov either reiterates the arguments he advanced before the Dispute Tribunal or the comments he made on the Secretary-General's reply before the Dispute Tribunal. He is essentially rearguing his case.

16. The Secretary-General requests that the Appeals Tribunal uphold the Dispute Tribunal Judgment and dismiss the appeal in its entirety.

## Considerations

### *Procedural issues*

17. As a preliminary matter, Mr. Krioutchkov filed a request for an oral hearing to “clarify the reasons for the very compelling case”. Oral hearings are governed by Article 8(3) of the Statute and Article 18(1) of the Appeals Tribunal’s Rules of Procedure (Rules). The factual and legal issues arising from this appeal have already been clearly defined by the parties and there is no need for further clarification. In addition, we do not find that an oral hearing would “assist in the expeditious and fair disposal of the case”, as required by Article 18(1) of the Rules. Thus, the request for an oral hearing is denied.

18. The Appellant requests that the Appeals Tribunal order the Secretary-General to produce the underlying job description for the P-4 post, in order to verify if it includes typing in Russian as a requirement. In light of the reasons below, having exhaustively examined the case, this Tribunal finds that it is neither necessary nor useful for the fair and expeditious resolution of the case to grant Mr. Krioutchkov’s request.

### *Merits*

19. The new internal justice system, as established by the General Assembly, is based on a two-tier system, consisting of a first instance, the Dispute Tribunal, and an appellate instance, the Appeals Tribunal, the latter rendering binding decisions and ordering appropriate remedies.<sup>1</sup> This system is highly centered on “the importance for the United Nations to have an efficient and effective system of administration of justice so as to ensure that individuals and the Organization are held accountable for their actions in accordance with relevant resolutions and regulations”.<sup>2</sup>

20. The Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and, thus, is not an opportunity for a dissatisfied party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed before the lower court. The function of the Appeals Tribunal is to determine if the first instance Tribunal has made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as

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<sup>1</sup> General Assembly resolution 61/261, para. 19.

<sup>2</sup> *Ibid.*, preamble para. 8.

prescribed in Article 2(1) of the Statute. The appellant has the burden of satisfying the Appeals Tribunal that the judgment he or she seeks to challenge is defective.

21. It follows that the appellant must identify the alleged defects in the judgment and state the grounds relied upon in asserting that the judgment is defective.<sup>3</sup>

22. In the present case, however, this did not occur. The Appellant merely reiterates allegations already thoroughly examined by the UNDT. He has failed to demonstrate any error in the UNDT's findings such as to warrant its reversal. In fact, he is advancing before this Tribunal the same arguments that he raised in a similar case for which we have issued a judgment.<sup>4</sup>

23. Having carefully examined the case, the Appeals Tribunal finds no merit in Mr. Krioutchkov's appeal.

### **Judgment**

24. The appeal is dismissed and Judgment No. UNDT/2016/042 is hereby affirmed.

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<sup>3</sup> *Haimour and Al Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-688, para. 36, citing *El Saleh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-594, para. 30, *Achkar v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-579, para. 15, and *Ruyooka v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-487, para. 24.

<sup>4</sup> See *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-707.

Original and Authoritative Version: English

Dated this 31<sup>st</sup> day of March 2017 in Nairobi, Kenya.

*(Signed)*

Judge Raikos, Presiding

*(Signed)*

Judge Chapman

*(Signed)*

Judge Halfeld

Entered in the Register on this 26<sup>th</sup> day of May 2017 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar