



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

Judgment No. 2021-UNAT-1103

**Vladislav Krioutchkov
(Appellant)**

v.

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

JUDGMENT

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| Before: | Judge Martha Halfeld, Presiding Judge Dimitrios Raikos Judge Sabine Knierim |
| Case No.: | 2020-1393 |
| Date: | 19 March 2021 |
| Registrar: | Weicheng Lin |

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| Counsel for Appellant: | Mohamed Abdou, OSLA |
| Counsel for Respondent: | André Luiz Pereira de Oliveira |

JUDGE MARTHA HALFELD, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by Vladislav Krioutchkov (Mr. Krioutchkov), a Russian Translator serving at the P-3 level with the Economic and Social Commission for Asia and the Pacific (ESCAP).
2. Mr. Krioutchkov filed an application to the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) challenging the Administration's decision not to select him for the position of Russian Reviser at the P-4 level with the Division of Conference Management in the United Nations Office at Geneva (UNOG). On 16 March 2020, the Dispute Tribunal issued Judgment No. UNDT/2020/040,¹ rejecting the application and finding that Mr. Krioutchkov's candidacy was given full and fair consideration.
3. For the reasons set out below, we dismiss the appeal and affirm the UNDT Judgment.

Facts and Procedure

4. Mr. Krioutchkov applied for the position of Russian Reviser at the P-4 level (the P-4 Position) on 17 April 2017. He was invited to take a written test for this position, which he sat on 26 May 2017.
5. On 18 November 2017, Mr. Krioutchkov was notified of his non-selection for the position. He requested management evaluation of the decision, and on 12 February 2018, the Management Evaluation Unit (MEU) upheld the contested decision.
6. On 10 May 2018, Mr. Krioutchkov filed an application with the UNDT challenging the contested decision. He claimed that the Administration committed several errors in the grading of the written tests and that the outcome of the selection process was pre-arranged to exclude all candidates from outside UNOG.
7. On 18 June 2018, the Administration filed its reply in which it indicated that the hiring manager had short-listed Mr. Krioutchkov along with four other job applicants for the job opening. However, the Administration argued that because Mr. Krioutchkov did not pass

¹ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/040 dated 16 March 2020 (Impugned Judgment).

the written assessment, he was not shortlisted for an interview or recommended for selection. Mr. Krioutchkov had scored only 58.8 percent in the written assessment, which was well below the passing score of 70 percent.

8. On 12 February 2020, Mr. Krioutchkov filed his observation pursuant to UNDT Order No. 11 (GVA/2020) indicating that the version of his answers to the written test, which was shared with the assessors, was substantially different from the documents he had originally submitted. Additionally, Mr. Krioutchkov also pointed to misrepresentations contained in the Administration's final transmittal memorandum to the Central Review Body (CRB). The appellant explained in his observation that the candidates had used different fonts and styles, which enabled the assessors to identify some of the candidates.

9. On 20 February 2020, the Secretary-General (the Respondent) explained that the tests were modified to ensure anonymity of all candidates by clearing any metadata and redacting the editor's initials to allow for onward transmission to the test markers. The Respondent did not, however, make any submission on the alleged misrepresentation contained in the transmittal memorandum to the CRB.

10. On 2 March 2020, Mr. Krioutchkov filed his closing submissions reiterating his position that the Administration's failure to harmonize the fonts used by the candidates in their written tests enabled their identification.

The UNDT Judgment

11. On 16 March 2020, the Dispute Tribunal issued its Judgment rejecting the application. The tribunal found that the appellant's candidacy had been given full and fair consideration and that there was no evidence of any ulterior motive in his non-selection. Specifically, the UNDT found that the appellant's allegations, concerning the candidates' responses not being anonymized, were actually not supported by the evidence. Further, the tribunal also explained that the fact the candidates used different fonts, which could allow for identification, was not enough to vitiate the procedure for the tests, unless there was specific evidence of collusion with the examiners, which was not the case.

12. Regarding the fact that only two members of the three-member panel graded the written exercises, the tribunal found that did not affect the lawfulness of the evaluation since the panel may decide to delegate some of its functions to part of its members, and it was not

unreasonable that the ones who in this case graded the exercises were the most qualified experts of the panel in the particular subject matter. The tribunal thus concluded that the review of the written test was reasonable and did not violate Administrative Instruction ST/AI/2010/3 (Staff selection system).

13. The UNDT further found no evidence of any bias or conflict of interest deriving from one of the panel members being involved in a previous litigation brought on by Mr. Krioutchkov, due to the fact that the tests were graded anonymously.

14. On the issue of the appellant's claim of loss of opportunity for career development due to limited mobility for United Nations translators, the UNDT considered that this claim was not relevant and represented a general administrative practice, which was beyond the scope of the decision under review. It was, in any case, a practice consistent with the principle that there is no expectancy or entitlement to promotion.

15. Relying on *Lemonnier*,² the Dispute Tribunal thus concluded that Mr. Krioutchkov's candidacy was given full and fair consideration and that he had failed to prove by clear and convincing evidence that there was any ulterior motive in his non-selection.

Submissions

Mr. Krioutchkov's Appeal

16. Mr. Krioutchkov requests the Appeals Tribunal to vacate the UNDT Judgment and remand the case for further consideration on the following issues:

- (a) Whether anonymity was breached in the selection process at issue;
- (b) Whether a conflict of interest arose as a result of the participation of a panel member in a previous litigation with the appellant; and
- (c) Whether the transmittal memorandum to the CRB contained any misrepresentations and whether any such misrepresentation affected the legality of the process.

² *Lemonnier v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-762, para. 32.

17. Mr. Krioutchkov contends that the UNDT erred in law in requiring the appellant to establish collusion in order to find the selection process unlawful and to rescind it. He maintains that even if evidence of collusion was required, the UNDT erred in procedure in finding that the appellant had not provided such evidence. In addition, he contends that the Judgment is reversible on procedural grounds as the appellant was never specifically requested to adduce evidence of collusion.

18. Mr. Krioutchkov further claims that the UNDT failed to consider the impact of a possible breach of confidentiality as a result of the Organization's failure to harmonize the fonts across the different candidates' tests, which would have inevitably hurt the integrity of the process. He contends that this is a reversible error. Relying mostly on *Rehman* and on the importance of protecting tests from editing, and alterations, and noting that the UNDT recognized that the use of fonts could, in the abstract, potentially lead to the identification of candidates, Mr. Krioutchkov submits that the use of different fonts had failed to preserve the integrity of the process.³

19. For Mr. Krioutchkov, the Dispute Tribunal failed to make any determination as to whether the involvement of a panel member in a previous litigation with the appellant gave rise to a conflict of interest. He also contends that the UNDT failed to address his concerns regarding the transmittal memorandum, which stated that the assessment panel consisted of the same members throughout the evaluation process, when, in fact, only two were involved in reviewing the written test. This misrepresentation in the composition of the panel precluded the subsequent CRB from properly exercising its function. Mr. Krioutchkov considers that the UNDT erred in focusing only on the legality of the constitution of the assessment panel. He thus contends that the selection process was vitiated by a procedural error, affecting its legality.

The Secretary-General's Answer

20. The Secretary-General maintains that the Dispute Tribunal correctly held that Mr. Krioutchkov's candidacy for the P-4 Position was given full and fair consideration on the following grounds: (a) The fact that the candidates had used different fonts was insufficient to vitiate the process as there was no requirement to use a specific font and there was no evidence that the tests were assessed without anonymity being preserved; (b) The composition of the assessment panel complied with ST/AI/2010/3; (c) The fact that the tests were graded

³ *Rehman v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-795, paras. 23-24.

anonymously meant that the assessors could not have exercised bias, in light of the jurisprudence set in *Savadogo, Nwuke, Rolland and Azzouni*.⁴

21. The Secretary-General contends that the Administration followed all of the applicable procedures required by the Staff selection system. Mr. Krioutchkov was not invited for the interview as his score was below the passing threshold. The Secretary-General contends that Mr. Krioutchkov has failed to demonstrate any error of law or fact by the UNDT, warranting reversal of the Judgment.

22. According to the Secretary-General, Mr. Krioutchkov has failed to demonstrate that the examiners were able to identify which of the candidates submitted which test during the selection process and that his assertions are merely speculative. The Secretary-General thus submits that the UNDT Judgment is consistent with *Rehman* (as relied upon by Mr. Krioutchkov), because the Organization took adequate measures to anonymize test responses and said responses were not edited or altered in other ways.

23. The Secretary-General further contends that Mr. Krioutchkov has failed to demonstrate that the CRB had been precluded from adequately assessing the alleged irregularities regarding the assessment panel.

24. For the Secretary-General, the composition of the panel complied with ST/AI/2010/3, and the transmittal memorandum does not state that all members were involved in the written test and therefore it is not misleading, as asserted by Mr. Krioutchkov.

25. The Secretary-General requests the Appeals Tribunal to uphold the Judgment of the UNDT and to dismiss the appeal in its entirety.

⁴ *Savadogo v. Registrar of the International Tribunal for the Law of the Sea*, Judgment No. 2016-UNAT-642, para. 40; *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-506, para. 49; *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122, para. 26; *Azzouni v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-081, para. 35.

Considerations

26. The crux of this case relates to determining whether the Dispute Tribunal erred when it found that Mr. Krioutchkov was given full and fair consideration in the selection exercise.

27. The applicable legal framework is as follows:

ST/AI/2010/3 (Staff selection system) [as amended]

Section 1(c)

Assessment panel: a panel normally comprised of at least three members, with two being subject matter experts at the same or higher level of the job opening, at least one being female and one being from outside the work unit where the job opening is located, who will undertake the assessment of applicants for a job opening.

Section 7.5

Shortlisted candidates shall be assessed to determine whether they meet the technical requirements and competencies of the job opening. The assessment may include a competency-based interview and/or other appropriate evaluation mechanisms, such as, for example, written tests, work sample tests or assessment centres.

28. In reviewing administrative decisions regarding appointments and promotions, the Appeals Tribunal has established in *Savado* that the factors to be considered are: (a) Whether the procedure as laid down in the Staff Regulations and Rules was followed; (b) Whether the staff member was given fair and adequate consideration, and (c) Whether the applicable regulations and rules were applied in a fair, transparent and non-discriminatory manner. The Tribunal's role is not to substitute its decision for that of the Administration.⁵

29. The burden of proof rests with the person making the allegation of improper motive, such as bias, in light of the presumption of regularity of administrative acts, and the fact that while the ordinary normally applies, the extraordinary has to be proved. This reasoning is in keeping with the Appeals Tribunal's jurisprudence, as established in *Rolland*:⁶

There is always a presumption that official acts have been regularly performed. This is called a presumption of regularity. But this presumption is a rebuttable one. If the management is able to even minimally show that the Appellant's candidature was given a full and fair consideration, then the presumption of law stands satisfied.

⁵ *Savado*, *supra* note 4.

⁶ *Rolland*, *supra* note 4.

Thereafter the burden of proof shifts to the Appellant who must show through clear and convincing evidence that she was denied a fair chance of promotion.

30. Mr. Krioutchkov argues that the UNDT erred when it required him to establish evidence of collusion, for the selection process to be declared unlawful. He also maintains that the UNDT appeared to consider that the lack of anonymity did not *per se* constitute a reversible error and that collusion is required for the selection exercise to be rescinded. Mr. Krioutchkov further asserts that the UNDT finding that the candidates' responses were graded anonymously conflicts with its admission that anonymity could have been breached due to the use of different fonts by each candidate.

31. When dealing with the issue of anonymity, the UNDT held that Mr. Krioutchkov's allegations that the candidates' responses were not anonymized were not supported by the evidence. It went further to state that "no specific signs of recognition were present on the candidates' exercises submitted to the examiners and the only differences from the originals were made to grant the anonymisation process."⁷ The UNDT also held:⁸

As to the claim concerning the lack of specific prescription about the font to be used in the exercise, the Tribunal finds that the fact that candidates used different fonts, which could in abstract be relevant—especially in a contest of an internal selection with few candidates—allowing the identification of the candidates' exercises, is not enough to vitiate the procedure, unless a specific evidence of collusion with the examiners is given, which is not the case.

32. Mr. Krioutchkov's argument that the UNDT Judgment is contradictory does not stand. What the UNDT Judgment stated is that the difference in fonts used by candidates in an internal selection with few candidates could *in abstracto* have allowed the identification of the candidates' exercises. However, as found by the UNDT, the present case does not provide sufficient evidence to conclude that the identification of the candidates was available to the assessors. This evidence was necessary to override the presumption of regularity deriving from administrative acts, given that it is normally expected that the Administration will comply with the applicable legal framework. Indeed, the evidence showed that the candidates' responses written in different fonts seemed to have been converted into PDF files and sent anonymously for assessment. There is nothing in the record that would indicate otherwise.

⁷ Impugned Judgment, para. 7.

⁸ *Ibid.*

33. Mr. Krioutchkov states that he was never requested to adduce specific evidence of collusion. While it falls within the authority of the UNDT, as a general rule and depending on the circumstances of the case, to order a party to adduce evidence on a specific issue, this was not the case here. It is indeed not for the UNDT to substitute or help a party in his duty to provide sufficient evidence of his allegations, in light of the principle of party disposition (as opposed to the principle of inquisition), according to which, in principle, the parties delimit the subject-matter of the dispute and should provide evidence of their allegations.

34. Mr. Krioutchkov further states that the UNDT failed to address the misrepresentation in the transmittal memorandum to the CRB concerning the composition of the assessment panel, because only two of the panel members were involved in reviewing the written test. In this regard, the UNDT found as follows:⁹

The Tribunal acknowledges that the three-member composition of the assessment panel provided in ST/AI/2010/3 is not mandatory, as the administrative instruction uses the term “normally”, and moreover that no specific sanction is provided for the case the composition is not respected. Having so said, the Tribunal notes that the composition of the panel resulting from the records was formally in compliance with the mentioned provision. As to the fact that only two of the members of the panel graded the written exercises, given that the staff selection system does not require that all panel members grade a technical assessment, the Tribunal finds that it does not affect the lawfulness of the evaluation of the exercise, considering that the panel may decide to delegate some of its functions to part of its members and that it is not unreasonable that the ones who in the case graded the exercises (which consisted of a translation into Russian of an English test and a revision of a Russian text) were the most qualified experts of the panel in the subject matter of the written exercise and in the Russian language.

35. Within the contours of the appeal procedure, it bears reminding that a party cannot merely repeat arguments that did not succeed before the UNDT. More is required. The appellant must demonstrate that the UNDT has committed an error of fact or law warranting intervention by this Tribunal.¹⁰ Mr. Krioutchkov has not put forward in his appeal any argument against the UNDT finding regarding the legality of the CRB process. Simply put, Mr. Krioutchkov has failed to demonstrate that the CRB had been precluded from assessing the alleged irregularities

⁹ Impugned judgment, para. 9.

¹⁰ *Abdel Rahman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-610, para. 20; *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, para. 28; *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035, para. 30.

regarding the assessment panel. Specifically, he did not show how the composition of the panel failed to comply with the requirements of ST/AI/2010/3, and of critical import to the discussion herein, the transmittal memorandum itself never stated that *all* members were involved in the written test. Therefore, Mr. Krioutchkov has demonstrably failed to show that the transmittal memorandum was misleading to the CRB.

36. As already noted in *Krioutchkov* and *Aliko*,¹¹ the Appeals Tribunal is not an instance for a party to reargue the case without identifying the defects and demonstrating on which grounds an impugned UNDT Judgment is erroneous. This is because “[i]n the absence of a compelling argument that the UNDT erred on a question of law, or on a question of fact resulting in a manifestly unreasonable decision, we will not lightly interfere with the findings of the Dispute Tribunal”.¹²

37. The Appeals Tribunal has reviewed the UNDT Judgment and find that Mr. Krioutchkov’s case was fully and fairly considered; we can find no error of law or fact in its decision. The UNDT properly reviewed the contested decision in accordance with the applicable law. Furthermore, the UNDT Judgment is consistent with the Appeals Tribunal’s jurisprudence, according to which minor edits made to the test when it is coded, before it is sent to the assessors, are necessary to preserve the impartiality of the assessment.¹³ Notwithstanding the foregoing and similarly to what was stated in *Rehman*, the Appeals Tribunal suggests that specific instructions regarding the font and font size to be used in assessment exercises be provided to candidates, in order to avoid discussions and/or suspicions of this nature in future selection processes.¹⁴

¹¹ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-711, paras. 20-22; *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, paras. 28-30.

¹² *Goodwin v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-346, para. 23.

¹³ *Rehman*, *supra* note 3.

¹⁴ *Ibid.*

Judgment

38. The appeal is dismissed, and Judgment No. UNDT/2020/040 is affirmed.

Original and Authoritative Version: English

Dated this 19th day of March 2021.

(Signed)

Judge Halfeld, Presiding
Juiz de Fora, Brazil

(Signed)

Judge Raikos
Athens, Greece

(Signed)

Judge Knierim
Hamburg, Germany

Entered in the Register on this 3rd day of May 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar