



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

Judgment No. 2021-UNAT-1168

**Vladislav Krioutchkov
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Jean-François Neven, Presiding Judge Martha Halfeld Judge Graeme Colgan
Case No.:	2020-1482
Date:	29 October 2021
Registrar:	Weicheng Lin

Counsel for Appellant:	Dorota Banaszewska, OSLA
Counsel for Respondent:	André Luiz Pereira de Oliveira

JUDGE JEAN-FRANÇOIS NEVEN, PRESIDING.

1. Vadislav Krioutchkov (Mr. Krioutchkov), a current staff member serving at the P-3 level as a Russian Translator, contested the decision of the Administration not to select him for a P-4 post. On 1 September 2020, the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) issued Judgment No. UNDT/2020/160,¹ dismissing his application and finding *inter alia* that his candidacy for the P-4 post was given full and fair consideration. For the reasons set out below, we dismiss the appeal and affirm the UNDT Judgment.

Facts and Procedure

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

3. On 17 August 2017, Mr. Krioutchkov applied to the post of Reviser, Russian, at the P-4 level (P-4 Post) with the Conference Management Service (CMS) at the United Nations Office at Vienna (UNOV).

4. The Hiring Manager for the P-4 Post invited three pre-approved roster candidates, including Mr. Krioutchkov, for an informal interview, which took place on 16 or 17 October 2017. Following the interview, the Hiring Manager proposed the selection of one of the pre-approved roster candidates, and Mr. Krioutchkov was informed of his non-selection on 17 January 2018.

5. On 15 March 2018, Mr. Krioutchkov requested management evaluation of the decision not to select him for the P-4 Post (Contested Decision). Following management evaluation, the Administration on 1 May 2018 upheld the Contested Decision finding that Mr. Krioutchkov's candidacy received full and fair consideration.

6. On 26 July 2018, Mr. Krioutchkov filed an application with the UNDT challenging the Contested Decision on the premise that he was not treated fairly and that the Administration committed several errors in the recruitment process.

¹ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/160 dated 1 September 2020 (Impugned Judgment).

The UNDT Judgment

7. On 1 September 2020, the UNDT issued the Impugned Judgment, finding that Mr. Krioutchkov's application was given full and fair consideration and that he did not show by clear and convincing evidence any ulterior motive in his non-selection.²

8. In rejecting Mr. Krioutchkov's application, the tribunal noted that the Hiring Manager acted in accordance with Section 9.4 of Administrative Instruction ST/AI/2010/3 (Staff selection system) when he selected pre-approved candidates from the roster, without conducting any further assessment or without referral to a central review body.³ The UNDT also explained there is nothing in the current Staff Rules that prevents a Hiring Manager from conducting informal interviews in the Russian language.⁴

9. Regarding Mr. Krioutchkov's claim that he did not receive timely notification following the completion of the recruitment exercise, the UNDT did not find that such delay had an impact on his employment rights.⁵

10. The tribunal also dismissed Mr. Krioutchkov's claims that he was allegedly discriminated because he served at a regional commission in Bangkok and not in the principal organ of the Department for General Assembly and Conference Management (DGACM).⁶ The UNDT reasoned that Mr. Krioutchkov did not provide any evidence to back these claims. Importantly, the Dispute Tribunal highlighted that: "According to the evidence on record, the selected candidate appears to have been selected for her competencies and not her duty station or the origin of her service department."⁷

11. Finally, regarding the appellant's complaint about the loss of concrete chances for career development and mobility, the UNDT concluded that the appellant is only entitled to challenge a specific administrative decision, not an alleged general administrative practice. In

² Impugned Judgment, para. 18.

³ *Ibid.*, para. 10.

⁴ *Ibid.*, para. 12.

⁵ *Ibid.*, para. 13.

⁶ *Ibid.*, para. 15.

⁷ *Ibid.*

any case, the Dispute Tribunal recalled that there is no expectancy or entitlement to receive a promotion.⁸

Procedure before the Appeals Tribunal

12. On 30 October 2020, Mr. Krioutchkov filed an appeal against Judgment No. UNDT/2020/160, and the appeal was registered with the Appeals Tribunal as Case No. 2020-1482. On 6 January 2021, the Secretary-General filed a timely answer.

Submissions

Mr. Krioutchkov's Appeal

13. The appellant alleges there is a practice at UNOV where priority is given in selection procedures to candidates already working at the same duty station. In his application to the UNDT, Mr. Krioutchkov submitted:

The hiring manager again used a long-established practice of non-selection of outside candidates: over the past 28 years all P3 to P4 promotions for Russian translators (approximately 100 vacancies) (...) were done strictly within the same services/units at all duty stations where Russian translation and language services/units exist, i.e. in Geneva, Nairobi, New York, Bangkok and Vienna (and considering the same practice for P4 to P5 promotions, that is more than 150 vacancies).

14. Mr. Krioutchkov included four affidavits or statements from other Russian Translators or Revisers serving at the United Nations, alleging the existence of such practice. He further claims that the Respondent did not deny this allegation.

15. Hence, Mr. Krioutchkov submits the Dispute Tribunal erred when it failed to establish the existence of this discriminatory practice even if this fact was relevant to the question of whether he had been given full and fair consideration.

16. Second, and relatedly, the appellant submits that the UNDT also erred when it failed to adjudicate on his motion for disclosure regarding the Administration's practice of selecting for and promoting to P-4 and P-5 posts of Russian Translators exclusively candidates from within the same duty station. However, the appellant submits his motion is possibly not phrased as it

⁸ *Ibid.*, para. 17.

would have been by an attorney, but he claims that the UNDT should have nevertheless granted his request, in the interest of justice and in light of the fact that he was self-represented.

17. Third, Mr. Krioutchkov submits the UNDT erred on a question of fact, resulting in a manifestly unreasonable decision, when it concluded that the appellant was not discriminated as a non-UNOV candidate. Such conclusion was improper, alleges Mr. Krioutchkov, because it is based on facts, which should have been but were not established by the tribunal.

18. Finally, the appellant submits the UNDT erred when it failed to assess that the Chief of Human Resources Management Service who was present at the interview did not speak Russian. This, the appellant argues, impacted the fairness of the interview as the person in charge of overseeing the regularity of the process did not understand any of the exchanges during the interview.

The Secretary-General's Answer

19. The Secretary-General first submits the UNDT was correct to find that the appellant was given full and fair consideration and that there was no evidence of discrimination or improper motives in his non-selection.

20. Recalling the broad discretion that the Secretary-General has in matters of staff selection, the Respondent highlighted that following the presumption of regularity, the burden of proving improper motives, such as bias or discrimination, rests with the staff member making such allegation.⁹

21. The Respondent further explains the Administration followed all applicable procedures in accordance with the legal framework and that the candidate who was ultimately selected for the P-4 Post was preferred over Mr. Krioutchkov because of her specific experience with eLuna, an electronic translation tool for the United Nations. This was noted by the Hiring Manager, and it was also directly relevant to the requirements specified in the job opening. Therefore, the Respondent submits there was no bias or any other improper motive relating to the fact that Mr. Krioutchkov has been serving at a regional commission, which is not part of DGACM.

⁹ See *Rolland v. Secretary-General of the United Nations*, 2011-UNAT-122, para. 26.

22. Second, the Secretary-General submits Mr. Krioutchkov's submission does not establish an error warranting reversal of the Impugned Judgment. Regarding the appellant's purported motion for disclosure, the Secretary-General argues the circumstances surrounding other selection processes conducted by UNOV are entirely outside the scope of the present case and, importantly, the evidence attached to the case records is sufficient to fully demonstrate that Mr. Krioutchkov was given full and fair consideration. As such, the appellant has failed to demonstrate how the UNDT erred by failing to adjudicate upon his motion.

23. Third, the Secretary-General argues the allegations about the selection of Russian Translators from within the same unit and service are merely speculative. Regardless of the fact that other recruitment processes are outside the scope of this case, the Respondent notes that the candidate who was ultimately selected for the P-4 Post, she herself was recruited to UNOV as an external candidate back in 2010.

24. Finally, regarding the allegation that the UNDT erred in law when it determined that the Administration had acted reasonably when it conducted the interview in Russian even though the Chief of Human Resources Management Service himself did not speak Russian, the Secretary-General argues that this claim is misleading. This is because the Chief of Human Resources Management Service was never part of the panel responsible for conducting the informal interview. Additionally, the Secretary-General also notes that neither the Staff Regulations and Staff Rules nor the Staff selection system require interviews to be conducted in English. In fact, argues the Respondent, it was reasonable to conduct the informal exercise in Russian given the P-4 Post required a "perfect command" of the Russian language.

25. Hence, the Secretary-General submits that Mr. Krioutchkov has failed to identify any error by the UNDT that warrants reversal of the Impugned Judgment.

Considerations

26. In reviewing administrative decisions regarding appointments and promotions, the factors to be considered are:¹⁰

(1) [W]hether the procedure as laid down in the Staff Regulations and Rules was followed; (2) whether the staff member was given fair and adequate consideration,[] and (3) 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.[]

27. As the Appeals Tribunal has explained, the starting point for judicial review is a presumption that official acts have been regularly performed:¹¹

... But this presumption is a rebuttable one. If the management is able to even minimally show that the [staff member's] candidature was given a full and fair consideration, then the presumption of law stands satisfied. Thereafter, the burden of proof shifts to the [staff member] who must show through clear and convincing evidence that []he was denied a fair chance of promotion.

28. In this case, the case record indicates that the Hiring Manager identified three candidates, who were informally interviewed by a panel of three senior language professionals, and that on 2 November 2017, he proposed one candidate to be selected for the reasons stated in an e-mail dated 23 October 2017. In light of this, the presumption of regularity applies, shifting the burden of proof on Mr. Krioutchkov who must demonstrate that his application was not given fair and adequate consideration.

¹⁰ *Savadogo v. Registrar of the International Tribunal for the Law of the Sea*, Judgment No. 2016-UNAT-642, para. 40, citing *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110, para. 23; *Ljungdell v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-265, para. 30.

¹¹ *Lemonnier v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-762, para. 32, citing *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122, para. 5.

Did Mr. Krioutchkov establish that the UNDT erred by not adjudicating on his motion for disclosure of information regarding an Administration practice?

29. The Dispute Tribunal Rules of Procedure (UNDT Rules) state that “[a] party wishing to submit evidence that is in the possession of the opposing party or of any other entity may, in the initial application or at any stage of the proceedings, request the Dispute Tribunal to order the production of the evidence” and “[t]he Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties”.¹²

30. Mr. Kriouchkov alleges that there is an administrative practice of selecting and promoting only UNOV candidates for P-4 and P-5 Russian Translator posts and that the UNDT erred by not adjudicating upon his motion for disclosure of information and comments regarding this alleged administrative practice.

31. The appellant fails to demonstrate that establishing the existence of a general administrative practice is necessary to decide on this case and that adjudicating on his motion was “appropriate for the fair and expeditious disposal of the case and to do justice to the parties”. The UNDT correctly stated that alleging a general administrative practice is not relevant for the present case, where the appellant is entitled to only challenge a specific administrative decision and not a general administrative practice. In any case, the facts recalled by the appellant do not create any expectancy or entitlement to promotion. In addition, the alleged administrative practice appears not to be constant also as the selected candidate in this case was apparently recruited to UNOV as an external candidate back in 2010.

32. Even if it was established that over the past 15 years only UNOV candidates have been selected for the P-4 and P-5 posts of Russian Translator, this would not mean that the final selection in the present case was also based on the alleged practice and not based on the selected candidate’s merits.

¹² Articles 18 and 19 of UNDT Rules.

33. The case record establishes that, unlike the appellant, the selected candidate was able to concretely demonstrate her ability to perform all responsibilities related to the post and that she possessed all the necessary technical skills and professional qualities. Furthermore, the record shows that she previously served as a Terminology assistant, which involved linguistic research and developing new terminology, and she also contributed to glossaries and other reference tools. This, the Hiring Manager claimed would be an advantage for the Section.

34. In light of the above, the UNDT therefore did not err in rejecting the motion.

Did Mr. Krioutchkov establish that the UNDT erred by finding that the decision was not discriminatory and had not been tainted by bias and improper motive?

35. Mr. Krioutchov alleges discrimination based on the duty station of the candidates, so that only UNOV candidates have a chance to be selected or promoted.

36. Staff Regulation 4.2 states: “The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.” Accordingly, the Staff Regulation urges the Organization to recruit staff from unrepresented or underrepresented Member States but not on the basis of duty station.

37. For the reasons stated above, the UNDT correctly found that according to the evidence on record, the selected candidate was chosen for her competencies and not because of her duty station or the origin of her service department.

38. Therefore, Mr. Krioutchkov did not establish that the UNDT erred by finding that the decision was not tainted by bias and improper motive.

Did Mr. Krioutchkov establish that the UNDT erred in law by finding that the Administration had acted reasonably when conducting the interview in Russian?

39. The appellant contends that the UNDT erred in law when it concluded that the Administration had acted reasonably when it conducted the interview in Russian, disregarding that the Chief of Human Resources Management Service, purportedly present in the panel, did not speak Russian.

40. The tribunal, however, found that the panel consisted of three senior language professionals, and the evidence establishes that the Chief of Human Resources Management Service was not actually a member of the panel.

41. Fundamentally in the discussion herein, the UNDT correctly found that according to Section 9.4 of Administrative Instruction ST/AI/2010/3 (Staff selection system), the Hiring Manager may legally select a candidate from a pool of pre-screened candidates without further assessment or referral to a central review body, and further, if an informal panel is established, there is no provision in the relevant rules that prevents interviews from being conducted in Russian or any other language. In addition, conducting an informal interview in Russian was reasonable considering the requirement for the job included a “perfect command” of the Russian language.

Consequence

42. The UNDT did not err in deciding that, in light of the entirety of the evidence and considering the parties’ arguments, it was satisfied that the appellant’s candidacy had been given full and fair consideration and that the appellant had not proven any ulterior motive in his non-selection.

Judgment

43. Mr. Krioutchkov's appeal is dismissed, and the UNDT Judgment is upheld.

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Neven, Presiding
Brussels, Belgium

(Signed)

Judge Halfeld
Juiz de Fora, Brazil

(Signed)

Judge Colgan
Auckland, New Zealand

Entered in the Register on this 29th day of December 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar