



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

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Judgment No. 2022-UNAT-1236

**Marius Mihail Russo-Got  
(Respondent)**

**v.**

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

**JUDGMENT  
ON APPLICATION FOR REVISION**

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Before:	Judge Dimitrios Raikos, Presiding Judge Graeme Colgan Judge Kanwaldeep Sandhu
Case No.:	2021-1585
Date of Decision:	1 July 2022
Date of Publication:	5 July 2022
Registrar:	Weicheng Lin

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Counsel for Applicant: André Luiz Pereira de Oliveira

Counsel for Respondent: Self-represented

**JUDGE DIMITRIOS RAIKOS, PRESIDING.**

1. The Secretary-General has filed an application for revision of Judgment No. 2021-UNAT-1095 rendered by the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) on 19 March 2021. In Judgment No. 2021-UNAT-1095, the Appeals Tribunal had affirmed Judgment No. UNDT/2020/077, by which the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) granted Mr. Russo-Got's application in part, finding that the contested non-selection decision by the United Nations Office of Project Services (UNOPS or the Administration) unlawful, and ordered that Mr. Russo-Got be paid 20 per cent of the net base salary that he would have obtained had he been selected for the relevant post. The Secretary-General now requests the UNAT to revise its Judgment and uphold the decision by UNOPS not to select him for the position and revise the findings of compensation. The Secretary-General seeks costs against Mr. Russo-Got for abuse of the appeal process. The Secretary-General further requests interim measures in which the UNAT will suspend the execution of the Judgment pending this Application for Revision. Should the UNAT affirm its judgment, the Secretary-General requests a renewal of the deadline of 60 days to furnish compensation.

2. For the reasons set out below, we dismiss the application.

**Facts and Procedure**

3. Mr. Russo-Got, a former Project Manager on a fixed term appointment (FTA) at UNOPS, filed an application with the UNDT challenging the decision of the Administration not to select him for the position of ERP/SAP Project Manager (VA/2018/B5011/16266).

4. On 28 May 2020, the UNDT issued Judgment No. UNDT/2020/077 (the "UNDT Judgment") in the matter of *Mr. Marius Mihail Russo-Go v. the Secretary-General of the United Nations*. The UNDT granted his application in part. It held that UNOPS had not minimally shown the staff member had been given a full and fair consideration for the post and awarded 20 per cent of the net-base salary he would have obtained had he been selected, but refused to award moral damages.

5. Mr. Russo-Got and the Secretary-General both filed appeals against the UNDT Judgment with the Appeals Tribunal.

6. On 19 March 2021, this Tribunal issued Judgment No. 2021-UNAT-1095 (the “UNAT Judgment”), which dismissed the appeals of both parties and affirmed the UNDT Judgment. The UNDT found the Administration’s failure to keep a written record of the reasons it did not short-list Mr. Russo-Got as a procedural irregularity and the UNDT rejected *ex post facto* furnishing of evidence of a decision not to short-list him. This Tribunal found that the UNDT’s rejection of this *ex post facto* evidence was within its discretion and was not exercised erroneously. The UNDT correctly found that the *ex post facto* evidence on the short-listed candidate did not explain why Mr. Russo-Got had not been short-listed compared to those who had been short-listed. This Tribunal further found that the UNDT correctly determined there was relevant evidence supporting that Mr. Russo-Got had a foreseeable chance of being selected as it had the qualifications and experience of Mr. Russo-Got and the other short-listed candidates thus the UNDT’s determination that Mr. Russo-Got has a foreseeable and significant chance of selection was not erroneous. Ultimately, this Tribunal upheld the UNDT’s finding that the Administration failed to minimally show that Mr. Russo-Got’s candidacy had been given full and fair consideration in the selection process. This Tribunal found no error in the reasoning in the award of compensation the UNDT awarded, which was 20 per cent of the net base salary of the position as his chances of being selected was 1 in 5 as four candidates had been short-listed and he would have been the fifth. It also correctly rejected moral damages for lack of evidence on causation.

7. On 22 July 2021, the Secretary-General filed the instant Application for Revision of the UNAT Judgment.

8. On 13 August 2021, Mr. Russo-Got filed comments.

### **Submissions**

#### **The Secretary-General’s Application**

9. The Secretary-General seeks revision based on a decisive fact made formally known to UNOPS on 13 July 2021, demonstrating that Mr. Russo-Got inserted false information in his candidature regarding his alleged experience with the North Atlantic Treaty Organization (NATO). NATO provided a statement to UNOPS on 13 July 2021, indicating he had never performed the alleged managerial roles with NATO as indicated in his personal history profile application for the position and had an actual salary lower than that listed in his application. In his closing submissions before the UNDT he referred to his alleged managerial experience

with NATO as part of his background supporting that he was a strong candidate for the position.

10. It was unknown to the UNAT and the Secretary-General at the time of this Tribunal's judgment that Mr. Russo-Got had never performed the alleged managerial roles with NATO. UNOPS had requested information from NATO on 5 July 2021 and NATO's memo was supplied to UNOPS on 13 July 2021. The UNAT judgment in issue here was rendered on 19 March 2021. Accordingly, the temporal requirements of Article 11.1 of the UNAT's Statute were met. Ignorance of this new fact was not due to the Secretary-General's negligence and UNOPS was entitled to rely upon information supplied by Mr. Russo-Got as accurate as he is obliged per Staff Rule 1.5 to provide accurate information in his application. This newly discovered fact should be considered decisive to warrant a revision as it indicates that Mr. Russo-Got did not have a foreseeable chance of being selected for the position.

**Mr. Russo-Got's Answer**

11. The Secretary-General and UNOPS are misleading the Tribunal when it says his regarding managerial responsibility with NATO were unknown. In August 2016 when Mr. Russo-got was hired by UNOPS for a position similar to the position in issue, that post included the same managerial responsibilities. His experience with NATO was then checked again in 2017 when he was short-listed for a Senior Programme Manager position. UNOPS conducted reference checks twice. UNOPS was aware that Mr. Russo-Got was appointed to two positions: contractor Principal Project Manager (A4) and staff member Principal Assistance NNHQ (B5). There was also a memorandum of understanding and non-disclosure agreement in place. The Secretary-General and UNOPS was well aware of his functions and performance at NATO back in 2016 and again 2017 well before the Appeals Tribunal's judgment rendered on 19 March 2021, thus the temporal requirements of the UNAT's Statute, Article 11.1 are not met.

12. The Secretary-General is abusing the appeals process and the UNAT should award Mr. Russo-Got costs. The Administration had the obligation to request clarifications from Mr. Russo-Got about his credentials as per Staff Rule 1.5(e). The Secretary-General did not ask for such clarifications and instead filed an application for revision thereby abusing the appeals process.

13. The Secretary-General is gravely confusing job “requirements” with job responsibilities and achievements. The NATO statement refers only to job requirements for the B5 Staff Member position and does not refer to his business-to-business contract for professional services. NATO’s business-to-business contracts are confidentially managed by Procurement, so NATO human resources can only see staff members’ work contracts, not business-to-business contracts. The Deputy Secretary General for NATO is available for testimony. UNOPS is aware of this and is misleading the Tribunal. Furthermore, the Secretary-General is misleading the Tribunal in stating that the job description for the position requested “managerial responsibility”. The job description clearly stated the position is under the supervision of the UNOPS Project and Change Management Coordinator and the Project Manager would have varying responsibilities and duties (see Annex 4). The UNDT and the UNAT were presented with facts that the selected candidate did not meet the minimal requirements for the job. All of Mr. Russo-Got’s positions with NATO however did have managerial responsibilities. Mr. Russo-Got accurately stated that he worked for NATO as a Principal Project Manager from September 2015 to July 2016. The NATO statement is not proof to the contrary. Mr. Russo-Got managed a minimum of five direct reports and in turn provided only true information to UNOPS and to the Tribunals. He accurately referred to his managerial role with NATO to support his experience in his candidacy for the position and in his submissions before the Tribunals that he was a strong candidate with good chance of selection had he been fully and fairly considered.

14. UNOPS letter requesting information about Mr. Russo-Got was not filed with the Tribunal and it is important to see this request as it does not appear that NATO was aware their reply would be submitted to the Tribunals. NATO was given a one-day deadline and it does not appear to be from a person with appropriate authority. The NATO statement appears to be a chat between friends.

15. Based on the above, Mr. Russo-Got requests the UNAT to affirm its Judgment and dismiss the application for revision and the Secretary-General’s requested relief therein. He also seeks costs against the Secretary-General for abuse of appeals process. Mr. Russo-Got also specifically requests pecuniary and non-pecuniary damage.

### Considerations

16. We do not propose to reiterate the conclusions of, and reasoning in, the Judgment sought to be revised. It is recent, comprehensive and self-explanatory.

17. Applications for revision of judgment are governed by Article 11 of the Statute and Article 24 of the Rules of Procedure of the Appeals Tribunal. By these provisions, an applicant must show or identify the decisive facts that at the time of the Appeals Tribunal Judgment were unknown to both the Appeals Tribunal and the party applying for revision; that such ignorance was not due to the negligence of the applicant; that the facts identified would have been decisive in reaching the decision<sup>1</sup>; and that the decisive facts existed at the time when the judgment was given and discovered subsequently. Facts which occur after a judgment has been given are not such facts within the meaning of Article 11 of the Statute and Article 24 of the Rules of Procedure of the Appeals Tribunal, this remains the case irrespective of the legal consequences that such facts may have.<sup>2</sup>

18. The Appeals Tribunal has consistently held that “any application which, in fact, seeks a review of a final judgment rendered by the Appeals Tribunal can, irrespective of its title, only succeed if it fulfils the strict and exceptional criteria established by Article 11 of the Statute of the Appeals Tribunal”.<sup>3</sup>

19. Thus, in order to succeed in his quest for revision, the Secretary-General must therefore prove that he has discovered a decisive fact that was unknown to both him and this Tribunal at the time of judgment and existed at the time when the judgment was given and discovered subsequently. The decisive fact relied on by the Secretary-General is said to be that Mr. Russo-Got inserted false information in his candidature regarding his alleged experience with NATO. The Secretary-General submits that he first became aware of this fact formally when it was made known to UNOPS on 13 July 2021 by an email from the Deputy Head of

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<sup>1</sup> *Sirhan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1131, para. 31; *Mbaigolmem v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-890, para. 12; *Walden v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees*, Judgment No. 2015-UNAT-573, para. 16.

<sup>2</sup> *Larriera v. United Nations Joint Staff Pension Board*, Judgment No. 2022-UNAT-1193, para. 24.

<sup>3</sup> *Sirhan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1131, para. 32; *Mbaigolmem v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-890, para. 12; *Walden v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees*, Judgment No. 2015-UNAT-573, para. 17.

NATO Human Resources Office to the Deputy Director UNOPS Human Resources Officer on 13 July 2021, in response to a UNOPS request of 5 July 2021.

20. The Secretary-General asserts that in his candidature, Mr. Russo-Got stated that he had served at NATO as a staff member from September 2015 to July 2016 performing the role of Principal Project Manager with starting salary of USD 100,000.00, supervising five other NATO employees. In this capacity, he indicated that he had “[s]uccessfully migrated 3000 IT services from legacy to a new cloud/virtualized IT infrastructure, on four separate high-security networks. [He] [r]edefined NATO IT delivery processes. [He] [c]ontributed to NATO reform.” However, according to the NATO Statement, Mr. Russo-Got has never performed the role of Principal Project Manager (which usually corresponds to a position at the A4 level within the NATO organigramme). Instead, he served NATO as a staff member from 18 January 2016 to 28 July 2016. Furthermore, he held an appointment at the B5 level with NATO, which is equivalent to a General-Service-level position within the UN Common System. Moreover, he had no supervisory duties. Finally, his net salary was much lower than he had represented to the Tribunals. At the B5 level, his monthly salary corresponded to Euros 3,298.00, or Euros 39,576 per annum. In these circumstances, the Secretary-General advances the argument that the fact that Mr. Russo-Got asserted false information in his candidature warrants revision of the UNAT Judgment because it reinforces that Mr. Russo-Got had no foreseeable chance of being selected for the position.

21. In order for us to determine whether these facts fall within the parameters set in Article 11(1) of the Statute and Article 24 of the Rules of Procedure of the Appeals Tribunal, we start with this Tribunal’s Judgment of 19 March 2021 and the reasons for it.

22. At paragraphs 33 and following we concluded that the UNDT had correctly found that there have been procedural errors and irregularities that tainted the selection process and the reasons proffered by the Secretary-General in not shortlisting Mr. Russo-Got for the position in question. As we held, “The lack of a contemporaneous written record of the decision to shortlist and the lack of reasons for the shortlisting decision undermine the ability of a staff member to challenge that decision. Without this record, the staff member is unable to challenge the decision and the tribunal conducting a judicial review is unable to adequately review the decision and its reasons”.

23. We further took note of other procedural errors identified by the Dispute Tribunal such as the lack of the identification of the maker of the contested administrative decision and the flawed reasons and justification for the decision. Coupled with the other relevant evidence before the UNDT of the qualifications and experience of Mr. Russo-Got and of the short-listed candidates, this satisfied us that the UNDT's Judgment had not been shown to have been erroneous in fact or in law when it ruled that the Administration had failed to minimally show that Mr. Russo-Got's candidacy had been given full and fair consideration in the selection process.

24. Considered against that background context, we are satisfied that the facts advanced by the Secretary-General, namely the allegedly false information Mr. Russo-Got had inserted in his candidature, could not be decisive of the Secretary-General's case and enable him to now succeed on his original appeal. These "new facts" and their implications cannot overcome the conclusions reached by the UNDT and the Appeals Tribunal on the earlier appeal. As already noted, the illegality of the challenged decision of the Administration not to select Mr. Russo-Got for the position of ERP/SAP Project Manager was primarily founded on the multiple procedural irregularities established on evidence before the UNDT, which tainted the selection procedure and supported the Appeals Tribunal's pronouncement, affirming the UNDT Judgment, that Mr. Russo-Got's candidacy had not been considered appropriately.

25. Having ruled so, the Appeals Tribunal also takes note that the advanced "new facts" came to the knowledge of the Secretary-General when NATO provided the NATO Statement to UNOPS on 13 July 2021, subsequent to a UNOPS request on 5 July 2021. However, the Secretary-General has had every opportunity, had he showed due diligence in this regard, to collect such evidentiary material and furnish it to the first instance Tribunal, when his decision not to select Mr. Russo-Got came under attack in the first place. He does not offer to this Tribunal any kind of plausible, sufficient and persuasive explanation for his presenting this piece of evidence belatedly. The defense the Secretary-General mounts in this respect, by putting forward that ignorance of this newly discovered fact was not due to his negligence because, in accordance with Staff Rule 1.5 and the UNAT jurisprudence, it was for Mr. Russo-Got to provide UNOPS with accurate information in his candidature for the position, and accordingly, UNOPS was allowed to rely on the accuracy and truthfulness of the information provided by Mr. Russo-Got in his candidature, does not satisfy this Tribunal. We are not persuaded on the evidence on file that the Secretary-General's failure to access such



evidence on time and furnish them to the UDNT within the prescribed time limits of the UNDT Statute and Rules of Procedure, is not due to his negligence.

26. In the circumstances, the request filed by the Secretary-General does not fulfil the statutory requirements and constitutes, in fact, a disguised attempt to re-open the case by introducing new additional evidence in circumvention of the existing procedural norms that govern the litigation in the internal justice system. His application is not receivable. The Appeals Tribunal is the final appellate body on such matters. An application for revision of a judgment which does not meet the statutory prerequisites cannot be a collateral means of attack on the judgment or allowed to be a second right of final appeal.

27. In view of the foregoing, the Secretary-General has failed to establish an unknown decisive fact that warrants revision of the Judgment and thus the application for revision falls to be dismissed.

28. As to the Secretary-General's requests for suspension of the execution of the impugned Judgment pending the application for revision and for renewal of the deadline of 60 days to furnish compensation, they are likewise to be dismissed, the first one because of its mootness following our holding above, and the second because it does not fall within the ambit of the present application.

### **Costs and damages**

29. Article 9(2) of the UNAT Statute provides that “[w]here the Appeals Tribunal determines that a party has manifestly abused the appeals process, it may award costs against that party”.

30. Although the Secretary-General has not been successful in his application for revision, we do not find that he has “manifestly abused the appeal process”. He has not filed multiple “appeals” or motions while it is clear he genuinely disagrees with the decision under attack. The appeal process is not normally subject to an award of costs that follow the event or litigation where costs are routinely awarded against the unsuccessful party. As a result, we find these circumstances are not a “manifest abuse of process”.

31. Therefore, we deny Mr. Russo-Got's request for an award of costs. We also deny his request for an award of damages as Article 9(2) of the UNAT Statute does not provide for such, nor does Article 31 of the same Rules of Procedure, which, contrary to Mr. Russo-Got's assertion, plainly contemplates only procedural matters not covered in the rules of procedure and not an award of damage.

**Judgment**

32. The application for revision is dismissed.

Original and Authoritative Version: English

Decision dated this 1<sup>st</sup> day of July 2022.

*(Signed)*

Judge Raikos, Presiding

*(Signed)*

Judge Colgan

*(Signed)*

Judge Sandhu

Judgment published and entered into the Register on this 5<sup>th</sup> day of July 2022 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar