



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

Judgment No. 2024-UNAT-1505

**Sara Delgado Castillo & Eva Fernandez
(Appellants)**

v.

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

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Nassib G. Ziadé Judge Abdelmohsen Sheha
Case Nos.:	2023-1868 & 2023-1869
Date of Decision:	25 October 2024
Date of Publication:	20 December 2024
Registrar:	Juliet E. Johnson

Counsel for Appellants: Cristián Gimenez Corte

Counsel for Respondent: Amanda Stoltz & Agnieszka Martin

JUDGE GRAEME COLGAN, PRESIDING.

1. Eva Fernandez and Sara Delgado Castillo, two former staff members of the United Nations Office for Project Services (UNOPS), contested before the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) the decisions not to renew their respective fixed-term appointments beyond 31 August 2022 due to the abolition of their posts.
2. By Judgment No. UNDT/2023/094¹ and Judgment No. UNDT/2023/106² (Impugned Judgments), the UNDT dismissed the applications.
3. In now consolidated proceedings,³ Ms. Delgado Castillo and Ms. Fernandez appeal the impugned Judgments. Their two appeals are materially identical (as were the separate impugned Judgments from which they come) and we will decide the cases together in this single Judgment addressing the cases of both Appellants.
4. For the reasons set out below, the Appeals Tribunal dismisses the appeals and affirms the impugned Judgments.

Facts and Procedure

5. In 2012, the United Nations Office of Information and Communications Technology (OICT) and UNOPS entered into “Financial Agreements” under which it was agreed that, in return for payments to it, UNOPS staff would perform certain services for OICT.⁴
6. On 15 December 2012, UNOPS appointed Ms. Delgado Castillo as ICT Project Assistant, GS-5, on a one-year fixed-term appointment to provide certain services to OICT.⁵ On 21 October 2013, UNOPS appointed Ms. Fernandez as ICT Rapid Deployment Unit Implementation Associate, GS-7, on a one-year fixed-term appointment to provide certain services

¹ *Delgado v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/094 dated 8 September 2023 (Impugned *Delgado* Judgment).

² *Fernandez v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/106 dated 20 September 2023 (Impugned *Fernandez* Judgment).

³ *Sara Delgado Castillo & Eva Fernandez v. Secretary-General of the United Nations*, UNAT Order No. 580 (2024).

⁴ Impugned *Delgado* Judgment, para. 3.

⁵ *Ibid.*, para. 4.

to OICT.⁶ Until 31 August 2022 both fixed-term appointments were renewed numerous times in reliance on the Financial Agreements between UNOPS and OICT.⁷

7. On 10 March 2022, in a townhall meeting, and in response to previously expressed rumours and fears among the staff that posts would be cut, the Chief Information Technology Officer (CITO), Assistant Secretary-General (ASG), Head of OICT, stated among other things: “[W]e are not in crisis, we are not in a financial crisis, so there is no risk of losing jobs for anyone” and “there is no risk of job cuts because we don’t have budgetary issues in that front”.⁸

8. Less than three months later, by a memorandum dated 5 June 2022, the Controller, Assistant Secretary-General for Programme Planning, Finance and Budget, United Nations, informed the CITO about the deteriorated financial situation of OICT. The memorandum states, in its relevant part, that:⁹

8. [...] OICT continues to spend above its approved budget/income, with structural cost problems, high dependency on contractual resources particularly from UNOPS with extraordinarily high rates for over 30 personnel in different grades, duplication of functions within OICT.

9. My suggestion on 16 April 2022 underscored one very important element: human resources (staff and contractors included) formed a very significant part of OICT’s budget, and a large part of the non-post expenses are non-discretionary. Inevitably, any serious cost reduction plan would have to address the costs, contractual modalities and, most importantly, the work that such personnel undertake....

10. As I had emphasized on 16 April, without a rational basis for the costs relating to personnel, all other analyses of OICT’s finances are bound to flounder.

9. By memorandum dated 8 June 2022, the CITO informed the Director, New York Service Cluster, UNOPS, that due to budgetary problems, OICT no longer required the services that were being provided by many of the UNOPS posts specified in the Financial Agreements, including the posts held by Ms. Delgado Castillo and Ms. Fernandez.¹⁰

⁶ Impugned *Fernandez* Judgment, para. 4.

⁷ *Ibid.* Impugned *Delgado* Judgment, para. 4.

⁸ Impugned *Delgado* Judgment, para. 5.

⁹ *Ibid.*, para. 6; original emphasis.

¹⁰ *Ibid.*, para. 7; Impugned *Fernandez* Judgment, para. 7.

10. In another townhall meeting, held on 9 June 2022, the CITO stated to staff, among other things, that:¹¹

(...) the budgetary situation, and the deficit that we have, some measures will need to be taken which might not go in line with what I said earlier in the year because at that point we did [inaudible] visibility of the cost plan and projected deficit. So all to say that my dream that I shared with you in-I think it was April or earlier in the year-was shattered by the budget deficit situation that we face in 2022, so therefore some measures need to be taken.

11. On 28 June 2022, Ms. Delgado Castillo and Ms. Fernandez both attended a meeting where they were informed of the abolition of their respective posts and the consequent non-renewals of their appointments.¹²

12. On 29 July 2022, Ms. Delgado Castillo received a letter which provided written confirmation that her appointment would not be renewed beyond 31 August 2022.¹³ The following day, Ms. Fernandez also received a materially identical letter.¹⁴

13. On 31 August 2022, the fixed-term appointments of Ms. Delgado Castillo and Ms. Fernandez expired, and they were separated from service.¹⁵

14. On 1 September 2022, Ms. Delgado Castillo and Ms. Fernandez both commenced a four-month period with a private company, Trigyn Technologies Inc. (Trigyn) which was providing contracted consulting services to OICT.¹⁶

15. On 26 September 2022, Ms. Delgado Castillo and Ms. Fernandez submitted separate requests for management evaluation of their non-renewal decisions. UNOPS did not respond to the requests for management evaluation apparently because, due to technical difficulties, it was not aware of them until their applications to the UNDT were served.¹⁷

¹¹ Impugned *Delgado* Judgment, para. 8.

¹² *Ibid.*, para. 9; Impugned *Fernandez* Judgment, para. 9.

¹³ Impugned *Delgado* Judgment, para. 10.

¹⁴ Impugned *Fernandez* Judgment, para. 10.

¹⁵ *Ibid.*, para. 11; Impugned *Delgado* Judgment, para. 11.

¹⁶ Impugned *Delgado* Judgment, para. 12; Impugned *Fernandez* Judgment, para. 12.

¹⁷ Impugned *Delgado* Judgment, paras. 13 and 14; Impugned *Fernandez* Judgment, paras. 13 and 14.

16. On 22 January 2023, Ms. Delgado Castillo and Ms. Fernandez submitted separate applications to the UNDT challenging the non-renewal decisions.¹⁸

17. On 8 September 2023, the UNDT issued Judgment No. UNDT/2023/094 in the case of *Delgado v. Secretary-General of the United Nations*, dismissing Ms. Delgado Castillo's application. The UNDT found that the decision not to renew her appointment was lawful. In particular, the UNDT found that Ms. Delgado Castillo had failed to demonstrate that she had been promised a renewal of her fixed-term appointment;¹⁹ and that the reason provided by UNOPS for the non-renewal decision was unlawful and unsupported by the facts.²⁰ The UNDT also held that Ms. Delgado Castillo failed to demonstrate that any alleged procedural irregularities rendered unlawful the abolition of her post and, consequently, also the non-renewal decision.²¹ Finally, the UNDT noted that Ms. Delgado Castillo did not present any evidence showing that the non-renewal decision resulted from discrimination against her.²²

18. On 20 September 2023, the UNDT issued Judgment No. UNDT/2023/106 in the case of *Fernandez v. Secretary-General of the United Nations*, dismissing Ms. Fernandez's application. The UNDT dismissed her application on exactly the same grounds on which it dismissed Ms. Delgado Castillo's application.

Submissions

The Appellants' Appeals²³

19. As a preliminary matter, Ms. Delgado Castillo and Ms. Fernandez ask that the Appeals Tribunal hold an oral hearing. The Appellants contend that they had presented by way of motion key pieces of evidence that were completely ignored by the Dispute Tribunal; and that had that evidence been considered, it would have led to a different decision. This case, they contend, is based on disputed facts, more than on disputed law, and it is therefore that a hearing is required to determine the actual facts of the case.

¹⁸ Impugned *Delgado* Judgment, para. 15; Impugned *Fernandez* Judgment, para. 15.

¹⁹ *Ibid.*, paras. 29 to 36.

²⁰ *Ibid.*, paras. 37 to 47.

²¹ *Ibid.*, paras. 48 to 58.

²² *Ibid.*, paras. 59 to 63.

²³ The Appellants' appeal briefs are materially identical.

20. Ms. Delgado Castillo and Ms Fernandez claim that the UNDT erred in law by disregarding the express promise made by the CITO that their fixed-term appointments would be extended which created legitimate expectations of renewal. In support of this claim, they assert that during a townhall meeting on 10 March 2022, the CITO had expressly promised that their contracts would be extended or renewed. The UNDT erred in finding that the CITO's promises did not constitute a "firm commitment" and "lacked the essential elements of a proper and concrete offer of renewal, such as the duration of the extension". The Appellants claim that the CITO's statement contained the essential elements of a promise because it was made in public, recorded, directly addressed to Ms. Delgado Castillo and Ms. Fernandez (as two of the staffers whose contracts were to expire), and included the specificities of the contractual types, and even specifying the duration of the contract. Later, on 9 June 2022, during another townhall meeting, the CITO confirmed his declarations. The CITO did not make a "general verbal statement". Rather, he made an express and concrete promise that created legitimate expectations of renewal.

21. The Appellants further claim that the UNDT erred in fact when it found that their "contracts" had been abolished. In support of this claim, they assert that their "contracts" had not been abolished but converted because they continued to work for UNOPS after the alleged abolition of their posts "under a Trigyn contractual framework". They claim that the UNDT ignored these facts. As demonstrated before the UNDT, after the alleged abolition of Ms. Delgado Castillo's and Ms. Fernandez's "contracts" on 31 August 2022, the following day, they continued to work for UNOPS, "in the same place, in the same office, using the same computer, managing the same UNOPS projects, working under the same supervisor, reporting for duty every day".

22. The Appellants further contend that the Dispute Tribunal erred in law in considering that UNOPS provided valid reasons for the abolition of their posts. They emphasise that they had signed their employment contracts with UNOPS, not with the United Nations Secretariat. However, the alleged reason to "abolish" their posts was a "reduction of OICT support requirements and funding" but not the reduction of funds from UNOPS. It follows that the alleged "reductions of funding" from OICT to UNOPS cannot harm the Appellants' rights under their Letters of Appointment and their fixed-term appointments, given that both documents make UNOPS - not OICT - "responsible" for "paying of salary". The UNDT therefore erred in disregarding that it was OICT that was undergoing an alleged restructuring process, not

UNOPS. If UNOPS wanted to abolish the Appellants' posts, UNOPS should have provided valid reasons related to UNOPS, but not invoking the financial problems of a third party. Accordingly, the alleged reasons given by UNOPS are not valid. The Appellants submit that the Dispute Tribunal thus erred on a matter of law in considering that UNOPS provided valid reasons to abolish their contracts: UNOPS did not provide any reason.

23. Ms. Delgado Castillo's and Ms. Fernandez's posts were not abolished, but "converted". OICT continued to pay for their services, but now not through UNOPS but through the private company Trigyn. That is contrary to the Dispute Tribunal's finding that "the budget cuts at OICT resulted in a reduction in the need for services that OICT obtained from UNOPS". The need for services was not reduced, just their "salaries and benefits were reduced through a legal fraud".

24. The Appellants claim, moreover, that even assuming hypothetically that their appointments had been legally conditioned to the availability of funds from OICT, which they had not, this alleged lack of funding was still not a valid reason to abolish their contracts. OICT was estopped from "denying a crisis but then to declaring a crisis" and therefore the Administration could not rely on a "financial crisis" as the reason to abolish the posts. The UNDT erred in law by disregarding the doctrine of estoppel. It is well established that when the Administration has made a representation, upon which a staff member has reasonably relied, the Administration is then "estopped from renegeing on its representation" to the detriment of the staff member. In this case, the UNDT identified the necessary elements pertaining to the estoppel doctrine as follows: "a representation made by one party, which the other party reasonably relied upon, to his or her detriment." It would be detrimental and inequitable to reverse the determination that there was no financial crisis, just to allege now that there was a financial crisis and a correlated lack of funding as the reason to abolish the Appellants' posts.

25. Finally, the Appellants submit that the UNDT erred in law in not addressing the causes of the alleged financial crisis of OICT and UNOPS. The OICT and UNOPS crises were "self-inflicted, due to mismanagement or corruption"; they did not originate from the "necessities of service requir[ing] abolition of the post". The decision to reduce costs, including their salaries, was not based on valid reasons, since the shortage of funds was generated by OICT's own incompetence. They contend that the leadership should be held responsible and accountable for this.

26. The Appellants ask that the Appeals Tribunal reverse the impugned Judgments and rescind the non-renewal decisions; order the restoration of all the corresponding entitlements established in the Staff Regulations and Rules; award compensation for harm suffered as a consequence of the unlawful termination of their appointments and the fraudulent misclassification of their employment contracts into private individual contractor contracts, in the equivalent of two years' net base salary; and refer the cases to the Secretary-General for possible action to enforce accountability of both OICT and UNOPS leadership.

The Secretary-General's Answers

27. The Secretary-General submits that the UNDT correctly confirmed that the non-renewal decisions were lawful. In the present case, UNOPS was no longer contracted, or paid, to provide the services that had until then been provided by, among others, the posts formerly encumbered by Ms. Fernandez and Ms. Delgado Castillo. There was therefore no longer any operational justification, or funding for, those posts. Accordingly, UNOPS abolished the posts and informed the Appellants of the non-renewal of their fixed-term appointments. This decision was not tainted by any improper motivation or abuse of discretion. In addition, no prior representation, let alone any express promise, regarding the renewal of the Appellants' fixed-term appointments had been made by any UNOPS official.

28. The Secretary-General submits that the Appellants' submissions fail to identify any errors in the UNDT's Judgments that would bring the appeals within the jurisdiction of the UNAT. Instead, the appeals comprise various overlapping arguments which, to a significant extent, repeat verbatim the arguments presented before, and rejected by, the UNDT. The Appellants evidently disagree with the conclusions reached by the UNDT. However, by simply expressing disagreement with the UNDT's Judgments and repeating the arguments presented before the UNDT, the Appellants fail to discharge the burden incumbent upon them to satisfy the UNAT that the UNDT's Judgments were defective.

29. The Secretary-General further contends that the Appellants have failed to demonstrate that the UNDT erred in law in disregarding the express promise of extension made by the CITO. As correctly determined by the UNDT, the posts were abolished as part of a genuine organizational restructuring which resulted from a reduction in the services that were required to be provided to, and paid for, by OICT. The reasons provided by UNOPS for the abolition of

the posts, and for the consequent non-renewal of the Appellants' appointments, were valid reasons clearly related to UNOPS and the Appellants fail to demonstrate otherwise.

30. The Secretary-General further submits that the Appellants' arguments also lack merit in relation to OICT's decision to engage a private company, Trigyn, to provide ICT services. Any decision by OICT to outsource certain functions to a private company, rather than buying the services from UNOPS, is entirely irrelevant to the case at hand. The fact remains that UNOPS no longer provided the services to OICT and that UNOPS therefore no longer required the functions of the posts previously encumbered by the Appellants. Similarly, the salary and benefits that the Appellants received from Trigyn is a matter that exclusively concerns the Appellants and their new employer, Trigyn. It is also entirely irrelevant to the case at hand and most certainly is not "a legal fraud".

31. The Secretary-General contends that the Appellants have also failed to demonstrate that the UNDT "erred on a question of law in disregarding the estoppel doctrine". UNOPS abolished the posts previously encumbered by the Appellants because of a reduction in service requirements and funding for the posts—UNOPS neither declared, nor denied, a "financial crisis" and the Appellants' submissions in this regard are therefore misplaced. In addition, the UNDT also correctly determined that the Appellants had failed to demonstrate that they had relied detrimentally on the statements made by the ASG/OICT regarding the financial situation in OICT. The Appellants merely maintain that they "believed" that OICT did not have budgetary issues. Therefore, and even assuming for the sake of argument that the doctrine of estoppel was at all relevant in this context, the Appellants nevertheless fail to demonstrate that the UNDT erred, or that UNOPS should have been estopped from relying on the reasons given by UNOPS in support of the contested decision.

32. Finally, the Secretary-General submits that the Appellants have not shown that the UNDT erred in law in not addressing causes of the alleged financial crisis of OICT and UNOPS. The Appellants have not only failed to provide any evidence of corruption or mismanagement, but they have made no effort to demonstrate any link between their allegations and the contested decisions subject to review before the Tribunal. Specifically with regards to the Appellants' allegations concerning OICT, the management of financial resources within a donor/beneficiary entity is irrelevant to the matter at hand and beyond the scope of judicial inquiry. In any event, the evidence on record suggested that OICT's financial situation resulted in part from spending too much money on services from UNOPS. In these circumstances, it is

clear that OICT's decision to reduce the scope of the services obtained from UNOPS was therefore neither negligent nor corrupt.

33. As to the Appellants' allegations concerning UNOPS, the abolition of the Appellants' posts and the consequent non-renewal of their appointments took place for reasons unrelated to the ongoing investigations within UNOPS or to the broader management of financial resources within UNOPS. Instead, the contested decisions resulted from the fact that because OICT decided not to continue to engage UNOPS's services, UNOPS experienced a reduction in OICT support requirements and funding. The posts that the Appellants were encumbering were therefore abolished and their appointments were not renewed because the functions of the posts were no longer required by UNOPS. The allegations regarding the ongoing investigations into potential wrongdoing within UNOPS are therefore irrelevant and have no bearing on these cases.

34. The Secretary-General requests that the Appeals Tribunal dismiss the appeals and affirm the impugned Judgments.

Considerations

35. We address first our reasons for declining the Appellants' requests for an oral hearing of their appeals. Their grounds for this include that documentary evidence adduced before the UNDT by leave had not been considered but which, had it been considered, would have led to the Appellants' cases being upheld in the Dispute Tribunal; and that the case is more one of disputed facts than disputed law and, accordingly, a hearing is necessary to determine those disputed facts.

36. The statutory test for whether to depart from the default position of appeals being dealt with on the papers is set out in Article 18(1) of the UNAT's Rules of Procedure. The test is whether holding an oral hearing of the appeal will be both expeditious and fair in all the circumstances. The Appellants' grounds for an oral hearing mistake the statutory provisions relating to these. The documents that the Appellants say should have been considered by the UNDT but were not, are before us as part of the case on appeal. We are able to determine whether they attain that significance without either proof of them by witnesses (which in any event would be a matter for the UNDT) or by hearing from counsel who has made comprehensive written submissions in support of the appeals.

37. We concluded that to have an oral hearing would not be expeditious, that is to conduct a hearing and then reserve our judgment(s) would not produce an earlier outcome. That is also because the appeal is in the nature of a review of the correctness of the UNDT's Judgment and we have such comprehensive written submissions on which to decide it that nothing would be gained from hearing the Appellants' counsel in person. We therefore declined these applications.

38. In addition to an initial Secretary-General's "catch-all" submission asserting that the appeals do not disclose proper statutory grounds but rather simply reiterate the arguments rejected by the UNDT, the Appellants advance five questions on their appeals, four alleging errors of law and one alleging an error of fact in the UNDT's Judgments. We deal with each ground as enunciated by their counsel in the submissions.

39. First, however, as to the Secretary-General's "catch-all" submission described in paragraph 28 above, and as we have noted previously in other cases, this is an argument that, while superficially attractive, ignores the reality that in cases where errors of fact and law are pleaded, it is appropriate and even necessary to re-advance cases or parts thereof that were put before the Dispute Tribunal. It is necessary for an appellant to establish error by the UNDT, but to do so it may be necessary to advance again the case made at first instance to illustrate where and how the Dispute Tribunal fell into error. We do not accept this broad "catch-all" submission made by the Secretary-General.

40. Addressing the Appellants' substantive grounds of appeal, they allege first that the UNDT erred in law by disregarding an express promise of extension of their fixed-term appointments by the CITO on 10 March 2022. As set out in paragraph 7 of this Judgment, this was not an express promise or other assurance that the Appellants' (or others') contracts would be renewed upon their expiry. At best for the Appellants, what was said at the townhall meeting ("there is no risk of losing jobs for anyone" and "there is no risk of job cuts") was an implied assurance of renewal delivered in the context of concerns that jobs might be lost among staff including the Appellants. It was a strong and reassuring, albeit implicit, message to staff and it is understandable that they may have assumed that their posts would not be disestablished and that contracts would be renewed as they had been repeatedly over previous years. Was it, however, sufficient to create an enforceable and legitimate expectation of renewal?

41. While it might be said that these remarks were not made by an official representing UNOPS with the authority to renew the Appellants' fixed-term appointments but by an OICT official who was thereby incapable of committing UNOPS to legal obligations, this is a fine distinction that may well have been lost on the anxious recipients of the message at the March townhall meeting. The OICT official was senior within that organization. The Appellants' day to day work was directed and controlled by OICT. The Appellants were not lawyers or human resources professionals who might have appreciated such nuances. Both organisations (UNOPS and OICT) are United Nations entities under the general direction of the Secretary-General. The message relayed to them was that OICT's finances were not in such a state that the work they were doing could not continue. In these circumstances the Appellants understandably assumed that the communication came from someone authorised to speak for their employer, even if this was technically not so. This is not a question of staff being expected to know and understand all applicable rules and practices governing their employment: rather it is a matter of realistic human nature in stressful situations.

42. Nevertheless, the words used by the CITO at the townhall meeting on 10 March 2022, while suggesting to the Appellants that not losing their jobs meant that their fixed-term appointments would be extended or renewed, were not unequivocal. Immediate abolition of their posts would have meant the immediate losses of their jobs, but this did not occur. Rather, the abolition of their posts some five months later on 31 August 2022 coincided with the expiration of their fixed-term appointments, so that in a sense their jobs were not "lost" but ceased to exist contemporaneously with the expiration of their terms. In hindsight, the CITO's choice of words and phrases was unfortunate and equivocal. Further, OICT and its CITO could not speak for UNOPS and, in particular, whether UNOPS staff including the Appellants might expect to have ongoing working relationship with UNOPS despite its loss of the contract with OICT. In that sense, the CITO purported to make a commitment (about job retention) that was not his to make. Ideally, he should have said that while OICT had no plans to change its contractual arrangements with UNOPS, questions of the ongoing employment of those staff employed by UNOPS was for UNOPS to speak to and if staff were concerned about their futures, they should raise this with UNOPS. Similarly, at the later meetings after OICT had received the negative financial news about its situation, its representative should only have spoken about the future of its contractual relationship with UNOPS and suggested the Appellants take up their ongoing employment concerns with UNOPS which was their employer.

43. There was not an express promise of renewal of the Appellants' fixed-term appointments as the law requires in order for an enforceable legitimate expectation of renewal to have been created.

44. Second, the Appellants say that the Dispute Tribunal erred on a question of fact, namely that their "contracts" (sic.) were abolished. We infer that rather than contracts, the UNDT meant their "posts". This semantic or grammatical error cannot itself invalidate what was otherwise a lawful course of action and the true intent of which is clear.

45. The UNDT's conclusion that the Appellants' contracts were abolished is, we conclude, a slip or misstatement. It is clear that what were abolished were their posts with UNOPS which in logical turn brought about the non-renewals of their contracts of employment when these expired. Their engagements by Trigyn as contractors to that company, but not as employees of it, did not amount in law to a conversion or continuation of their employment by UNOPS, even though they continued to do similar if not identical work for OICT.

46. Third, the Appellants allege a further error of law, namely that the UNDT wrongly considered that UNOPS provided valid reasons for the abolition of their posts. We conclude, however, that the UNDT was entitled to come to the conclusion on the evidence before it that, albeit belatedly, OICT was advised that it was in grave financial difficulties. To make the necessary savings, it was reasonable for it to terminate that arrangement with UNOPS and to seek another service provider at lower cost to it. This, in turn, meant that UNOPS's staff, including the Appellants whose roles had been solely to provide UNOPS's services to OICT, were surplus to UNOPS's requirements. It was logical and reasonable in these circumstances to continue the employment of the Appellants until the expiry dates of their fixed-term appointments, but not to extend or renew these. It was appropriate also to so advise the affected staff as soon as reasonably possible, as was done. This advice should, however, have been provided by UNOPS as their employer rather than by OICT. Despite those infelicities, this ground of their appeals does not avail the Appellants.

47. UNOPS, as the Appellants' employer, did have a valid and genuine reason to not renew their contracts. It was to lose its relevant contracted work for OICT. The Appellants had been taken on by UNOPS to do that work and its loss, together with the absence of replacement work for them with UNOPS, justified the non-renewals. There was not, as counsel described it, a "legal fraud" committed in these circumstances. The Appellants' posts were not "converted"

as opposed to having been abolished as they argue. While it is true that OICT had an ongoing need for the services that the Appellants had performed, it could not sustain the cost of doing so through the agency of UNOPS by which the Appellants were employed.

48. Penultimately, the Appellants allege a further error of law, being the UNDT's disregard of the doctrine of estoppel. We have reached the same conclusion rejecting this ground of appeal by largely the same reasoning as we have for our conclusion about the absence of legitimate expectation.

49. There was not an estoppel created in law, preventing UNOPS as the employer, via OICT which at first stated that it was not facing a financial crisis but subsequently changed its assessment and acknowledged that it was, from asserting its ability to not renew the Appellants' contracts upon their expiries. Nor is there evidence that the Appellants relied upon OICT's March 2022 assertion of an absence of a financial crisis, to alter their positions, which disadvantaged them when this situation changed in June 2022. Any assertion which may have supported an estoppel in law was made not by their employer (UNOPS) but rather by their employer's client (OICT), albeit another United Nations entity.

50. Fifth and finally, the Appellants say that the UNDT erred again on another question of law, namely that it did not address the causes of the alleged financial crisis of OICT and UNOPS. It was, however, OICT that had the financial crisis, rather than UNOPS, although the latter as the Appellants' employer then had a management and staffing issue as a result of OICT's financial crisis and the measures it took to alleviate it. The Secretary-General is correct in submitting it was not the role of the UNDT to investigate and rule on responsibility for OICT's financial crisis. That may be the subject of a separate process if the United Nations decides to investigate this situation as the Appellants appear from their submissions to wish, but it is not within the scope of their challenge to the justification in law of UNOPS's decision to not renew their appointments.

51. We do not agree that the UNDT erred by failing to "address the causes of the financial crises faced by OICT and UNOPS". First, it was not a UNOPS financial crisis that contributed to the loss of its contracts with OICT, but rather what was advanced as OICT's own financial crisis alone. Even in relation to OICT, however, it was not the UNDT's role to consider what the Appellants contend was OICT leadership's mismanagement, incompetence, or corruption that caused what the Appellants allege to have been a self-inflicted financial crisis.

52. In summary, the Appellants' cessation of employment came about from the non-renewal or non-extension of their fixed-term appointments which expressly carried no legitimate expectation of continuing employment. They must satisfy us that the UNDT erred in concluding that there was no written assurance of their continued employment upon which they had relied, but which was breached or not followed by the employing agency. They have not done so.

53. Although OICT's treatment of the financial considerations it faced and its decision-making based on these might be said to have been confusing and even completely contradictory, that does not mean that the Appellants succeed on their appeals. They were, and knew themselves to be, on employment contracts of fixed durations and they had no expectations of the renewal or other continuation of these upon their expiries. The placating assurances given to them and their colleagues in the March 2022 townhall meeting did not meet the criteria required to create a legitimate expectation of a renewal of their contracts when these expired in August 2022. Case law applying the Organization's relevant Regulations and Rules sets a very high threshold: assurances must be in writing to the affected staff and quite specific as to the duration of the promised renewal, neither of which conditions applied in this case. And, as we have noted, such assurances should be from someone having the authority to give them.

54. It seems probable that the Administration decided that the Appellants' services (and those of other similarly affected staff) could be curtailed by the abolition of their posts (which were solely to provide services to OICT) as at the end of August 2022. That OICT then immediately engaged a private services company to provide those same services for a period of several months thereafter, appears to show that the Organization's estimate of when this work would cease, was erroneously premature. That the Appellants were immediately engaged by that private company to continue to perform essentially the same work as they had until the day beforehand, for a period of the following four months, appears to confirm this explanation and, understandably, to have encouraged the Appellants to challenge what happened to them.

55. However erroneously or even ineptly OICT may have assessed its financial situation in March 2022, there is really no doubt that its subsequent advice of overspending, especially on the UNOPS services contract of which UNOPS staff remuneration was a significant element, was a genuine, if belated assessment. So too was OICT's decision that it had to reduce if not eliminate those costs if it was to survive financially. It therefore notified UNOPS that it could

not afford to continue their services contract and would terminate this. This, in turn, had the flow-on effect of UNOPS having to abolish the posts of staff who had been engaged specifically for the OICT contract work, including the Appellants. Their work was dependent directly on the contract services work performed for OICT by UNOPS.

56. In these circumstances of OICT's genuine need to immediately cut operating costs, it was reasonable that the Appellants' fixed-term appointments would be honoured to their expiry dates but not renewed by UNOPS.

57. It needs to be re-emphasised that the ending of their relatively long periods of stable employment was in no way attributable to any fault by the Appellants. Although, despite being urged by the Appellants to do so, we cannot and have not investigated and determined these issues of responsibility or liability for OICT's financial crisis.

58. We are not unsympathetic to the situation experienced by the Appellants, and it is understandable that they may have mistaken OICT's very different but proximate managerial statements of its financial position for illegal manipulation of them and their colleagues similarly placed. However, that does not cause the actions towards them by either OICT or certainly UNOPS, to have been unlawful.

Judgment

59. The appeals are dismissed, and Judgment No. UNDT/2023/094 and Judgment No. UNDT/2023/106 are hereby affirmed.

Original and Authoritative Version: English

Decision dated this 25th day of October 2024 in New York, United States.

(Signed)

Judge Colgan, Presiding

(Signed)

Judge Ziadé

(Signed)

Judge Sheha

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(Signed)

Juliet E. Johnson, Registrar