



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2009/60

Judgement No.: UNDT/2011/098

Date: 10 June 2011

Original: French

**Before:** Judge Jean-François Cousin

**Registry:** Geneva

**Registrar:** Víctor Rodríguez

**MEZOUÏ**

v.

**SECRETARY-GENERAL  
OF THE UNITED NATIONS**

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**JUDGEMENT**

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**Counsel for Applicant:**

François Lorient

**Counsel for Respondent:**

Stephen Margetts, ALS/OHRM, United Nations Secretariat

## Application

1. On 14 July 2009, the Applicant filed with the United Nations Dispute Tribunal an incomplete application, in French, disputing the decision not to promote her to the position of Director (D-2) of the Office for ECOSOC Support and Coordination at the Economic and Social Council (“ECOSOC”) within the Department of Economic and Social Affairs (“DESA”).
2. In the final version of her application, regularized on 15 October 2010 and submitted in English, the Applicant asks the Tribunal:
  - (a) To grant her an indemnity equivalent to two years’ net base salary as compensation for moral damages;
  - (b) To grant the payment of losses related to pension benefits resulting from her non-appointment to the D-2 position;
  - (c) To order the Respondent to pay an amount of US\$ 20,000 in costs for abusing the procedure since 2006 before the Joint Appeals Board (“JAB”), this Tribunal and the Appeals Tribunal;
  - (d) Under Rule 112.3 of the former Staff Rules, to impose financial accountability on the officials involved in the selection process.

## Facts

3. In bulletin ST/SGB/2005/4 of 28 February 2005 setting out the mandate of the Senior Review Group, the Secretary-General increased the Group’s membership from four to five, not including the Chairperson. That bulletin superseded Secretary-General’s bulletin ST/SGB/2001/9.
4. In bulletin ST/IC/2005/33 of 1 July 2005, the Secretary-General decided that the membership of the Senior Review Group would be as follows:
  - Chairperson:* Under-Secretary-General for General Assembly and Conference Management
  - Members:* Under-Secretary-General for Management
    - Under-Secretary-General for Communications and Public Information
    - Under-Secretary-General for Humanitarian Affairs
    - Assistant Secretary-General and Special Adviser on Gender Issues and Advancement of Women
    - Assistant Secretary-General for Policy Coordination and Inter-Agency Affairs
  - Secretary:* Officer-in-Charge, Office of Human Resources Management
5. On 27 July 2005, a notice of vacancy appeared for the post of Director (D-2), Office for ECOSOC Support and Coordination, DESA. The Applicant, who was then a Section Chief D-1 at DESA, applied, along with three other internal candidates and 96 external candidates.
6. An ad hoc panel was formed comprising four senior officials, namely the Assistant Secretary-General for Policy Coordination and Inter-Agency Affairs, The Assistant Secretary-General for Economic Development, the Director of the Division for the Advancement of Women, DESA, and the Director of the Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States. The panel short-listed for an interview four internal candidates, the Applicant being the only woman, and four external candidates, including two women. The interviews focused on the skills required for the position, namely professionalism, vision, good judgement/decision-making, communication skills, performance management, and leadership qualities.
7. On 7 March 2006, the Applicant was interviewed by the ad hoc panel. Her scorecard indicates that as regards skills, she only partly meets the requirements of the position. During the interview the ad hoc panel identified a number of shortcomings and deficiencies in that respect, as

well as in terms of experience. With respect to education, too, it shows that the Applicant only partially fulfilled the requirements of the position, with degrees in linguistics, while the notice required at least one master's level university degree or the equivalent, preferably in economics, social sciences or a related discipline.

8. Of the eight candidates interviewed, the ad hoc panel identified two male internal candidates (hereinafter candidates X and Y) as meeting the requirements of the position in terms of skills and experience, and one female external candidate as meeting most of the criteria of the position as regards skills and, partially, experience. The other five candidates were rated as only partially fulfilling the requirements of the position in terms of skills and partially or not at all in terms of experience.

9. In a memorandum dated 27 April 2006 addressed to the Assistant Secretary-General for Human Resources Management and setting out the procedure to be followed by the ad hoc panel, the Under-Secretary-General for Economic and Social Affairs recommended the appointment of candidate X. He explained that it appeared, from discussions with the ad hoc panel, that only candidates X and Y had all the qualifications and that he had therefore met with each of them to discuss their experience and their approach to the challenges of the position. He concluded, from those discussions, that candidate X was the best qualified for the position.

10. On 9 May 2006, the Senior Review Group met to consider recommendations for a number of D-2 positions, including the one in dispute. In attendance were four of the five members and the secretary, namely: (a) the Under-Secretary-General for Management; (b) the Under-Secretary-General for Communications and Public Information; (c) the Assistant Secretary-General and Special Adviser on Gender Issues and Advancement of Women; (d) the Assistant Secretary-General for Policy Coordination and Inter-Agency Affairs, who had also participated in the ad hoc panel charged with evaluating the applications for the position in question; and finally, as secretary, (e) the Officer-in-Charge, Office of Human Resources Management. Absent: two Group members, the Chairperson and the Under-Secretary-General for Humanitarian Affairs.

11. In a memorandum dated 11 May 2006, the Under-Secretary-General for Management and Acting Chairperson of the Senior Review Group sent the Group's recommendations from its 132nd meeting, 9 May 2006, to the Secretary-General. As regards the position in dispute, Director (D-2), Office for ECOSOC Support and Coordination, DESA, the Group approved the recommendation of the Under-Secretary-General for Economic and Social Affairs that candidate X be appointed and submitted it to the Secretary-General for approval.

#### *Internal appeal*

12. On 31 October 2006, the Applicant sent the Secretary-General a request for reconsideration of the decision not to appoint her to the post of Director (D-2), Office for ECOSOC Support and Coordination, DESA.

13. On 28 December 2006, as the Secretary-General had not replied in a timely manner, the Applicant appealed to the Joint Appeals Board (JAB) of the United Nations Secretariat in New York. That appeal, as well as the Applicant's comments on the Respondent's Answer and additional comments and requests, were written in French, and it was at her request that a French-speaking board was empanelled to review her case.

14. In memoranda dated 15 April and 21 May 2008, and after repeated requests by the Applicant, JAB asked the Senior Review Group to produce: (a) evidence that the Group had discussed the case; (b) the rules and procedures in force at the material time; (c) the minutes of the Group's meeting, redacted as appropriate; (d) the Group's report as submitted for the Secretary-General's approval; (e) the documents submitted to the Group by DESA, e.g. scorecards, the department chief's recommendation, etc.; (f) any other documents relevant to the evaluation of the Applicant's qualifications for the position in question.

15. In a memorandum dated 27 May 2008, the Senior Review Group authorized the disclosure of the documents relating to the selection process to JAB, on condition they not be disclosed to the Applicant.

16. In a memorandum dated 2 June 2008, the Assistant Secretary-General for Human Resources Management sent JAB: (a) the vacancy notice; (b) the Applicant's scorecard, reflecting the outcome of her interview with the ad hoc panel (see para. 7); (c) the memorandum of 27 April 2006 from the department chief to the Assistant Secretary-General for Human Resources Management recommending the appointment of candidate X (see para. 9); (d) the memorandum of 11 May 2006 from the Senior Review Group to the Secretary-General endorsing the recommendation of candidate X by the department chief (see para. 11); and (e) a memorandum dated 16 May 2006 from the Chief of Staff of the Secretary-General approving the appointment of candidate X. She noted that the Senior Review Group was under no obligation to produce minutes of its proceedings and reminded JAB that the documents produced should not be disclosed to the Applicant or anyone else.

17. On 10 November 2008, JAB adopted its report. It concluded, inter alia, that in the evaluation of the Applicant's qualifications, a material fact had been omitted, which had led the competent authorities to conclude that the Applicant did not fulfil all the requirements of the position in terms of university education and that her application had therefore not received full and fair consideration. JAB recommended that, given that omission, and as compensation, the Secretary-General pay the Applicant a sum equivalent to three (3) months of her net base salary.

18. In a letter dated 4 February 2009, the Deputy Secretary-General conveyed to the Applicant a copy of the JAB report and notified her of the Secretary-General's decision to accept its recommendation.

19. On 28 February 2009 the Applicant retired.

#### *Application to the Tribunal*

20. In a letter dated 17 April 2009, the Applicant asked the United Nations Administrative Tribunal for an extension until the end of July 2009 of the deadline for submitting her motion to institute proceedings. In a letter dated 28 April 2009, the Executive Secretary of the Administrative Tribunal notified the Applicant of the decision of the President of the Tribunal to extend the deadline for submission of her motion to 30 June 2009.

21. As of 1 July 2009, the Dispute Tribunal was established and the former Administrative Tribunal ceased to accept new cases.

22. In a letter dated 14 July 2009, the Applicant submitted to this Tribunal an incomplete application contesting the decision not to appoint her to the position of Director (D-2), Office for ECOSOC Support and Coordination. In her letter, addressed to the President of the Tribunal and the New York full-time judge, she asked, inter alia: (a) for the production of documents and minutes of the proceedings of the Senior Review Group ... concerning [her] candidacy for the position of Director (D-2) of the ECOSOC Division, noting that JAB had consulted and been influenced by those documents; and (b) for the disqualification of the Clerk of the Tribunal in New York on the grounds that she had represented the Administration in the Applicant's appeal to JAB.

23. In a letter of 20 August 2009, the Clerk of the Tribunal in New York informed the Applicant that a judge had reviewed her case and considered it should be tried in Geneva. Should the parties have any objections to the proposed change of venue, they were invited to submit them by 27 August 2009. As no objection was raised, Judge Coral Shaw gave an order for the transfer of the case from the New York registry to the Geneva registry (Order No. 98 dated 28 August 2009).

24. In its judgement UNDT/2009/026, *Mezoui*, 2 October 2009, this Tribunal declared the application inadmissible on account of lateness. The Applicant appealed to the United Nations Appeals Tribunal, which, in its judgement 2010-UNAT-043, referred the case to this Tribunal,

considering the lateness of the filing of the request to be due to the Tribunal's transition from the old to the new system of administration of justice.

25. By Order No. 71 (GVA/2010) of 31 August 2010, the Tribunal took several administrative steps consequent on the referral by the Appeals Tribunal. In particular, it ordered the Applicant to submit a corrected application no later than 1 October 2010 and, at her request (see para. 22), sent her a copy of the memorandum of the Senior Review Group dated 11 May 2006, as sent to JAB.

26. On 1 September 2010, the Applicant sent the President of this Tribunal a motion for recusal of the judge hearing the case and a request for a change a venue from Geneva to New York.

27. By Order No. 72 (GVA/2010) of 17 September 2010, the President of the Tribunal dismissed the motion for recusal as unfounded and noted that it was up to the presiding judge to rule on the request for a change of venue.

28. In an e-mail dated 19 September 2010, the Applicant reiterated her request for a change of venue. She further requested that Order No. 71 (GVA/2010) be suspended insofar as it directed her to submit her application no later than 1 October 2010 and that the 30-day deadline for submission of the application be extended until such time as the case could be referred to a judge in New York.

29. By Order No. 73 (GVA/2010) of 21 September 2010, the presiding judge rejected the Applicant's request for a change of venue. He also gave the Applicant an additional 15 days, until 15 October 2010, to submit a corrected application.

30. In an e-mail dated 15 October 2010, the Applicant's newly designated Counsel submitted to the New York Registry of the Tribunal — without informing the Geneva Registry where the case was registered and without quoting the case number attributed to the matter by the Geneva Registry — the full application “in order for the Respondent to prepare its Answer within the 30-day timeframe”. Counsel for the Applicant explained in his e-mail that he was submitting the application to the New York Registry “for reasons of geographical proximity and in accordance with UNDT's rules of procedure”.

31. Moreover, in an e-mail dated 17 October 2010, Counsel for the Applicant submitted to the Geneva Registry of the Tribunal — this time without informing the New York Registry — a motion for stay of proceedings and requested confirmation that “no action [would] be undertaken ... by UNDT in Geneva” pending a ruling by the Appeals Tribunal on several issues raised by Counsel for the Applicant, namely an appeal against this Tribunal's Orders Nos. 71 and 73 and a request for interpretation of the Appeals Tribunal's judgement 2010-UNAT-043 “on the determination of venue”.

32. By Order No. 80 (GVA/2010) of 21 October 2010, the Tribunal dismissed the application for a stay of proceedings submitted by the Applicant and ordered the Respondent to submit its Answer to the application by 22 November 2010, noting the following:

11. What is clear from the facts related above is that by addressing the above-mentioned e-mails of 15 and 17 October 2010 to two different Registries, in full knowledge of Order No. 73 (GVA/2010) of 21 September 2010 whereby the judge in charge of the case refused a change of venue, Counsel for the Applicant attempted to mislead the Tribunal and, by transparent artifices, to impede both the above judge's order and Order No. 72 (GVA/2010) dated 17 September 2010 issued by the President of the Tribunal rejecting the request for recusal of the judge hearing the case. The Tribunal is bound to remind Counsel for the Applicant that such manoeuvres are unacceptable; they are apt to impair the serenity indispensable to the administration of justice and hence the very case he has a duty to defend.

33. On 22 November 2010, the Respondent submitted its Answer to the application.

34. In a letter dated 23 November 2010, the Tribunal gave the Applicant two weeks to submit comments on the Respondent's Answer. In addition, it informed the parties that a hearing would be held on 12 January 2011.

35. In an e-mail dated 24 November 2010, Counsel for the Applicant submitted to the President of the Tribunal *ex parte*, that is, without informing the Respondent, a new request for recusal of the judge hearing the case, arguing in particular that the “critical and hostile” language used by the judge in Order No. 80 had placed the judge in a conflict of interest and calling for formation of a panel of three judges to rule on the motion for recusal.

36. By Order No. 86 (GVA/2010) of 30 November 2010, the President of the Tribunal dismissed the second motion for recusal filed by the Applicant, saying that she had failed to prove the existence of a conflict of interest. He also felt that through his e-mails of 15 and 17 October 2010, Counsel for the Applicant had not only deliberately ignored Order No. 73 (GVA/2010) refusing a change of venue for the case, but had attempted to mislead the Tribunal, and that such manoeuvres amply justified the reprimand that had in fact been issued by the Judge hearing the case. He also reminded Counsel for the Applicant that it was his duty to obey the orders of the Tribunal.

37. In a submission dated 1 December 2010, the Respondent asked the Tribunal to award costs against the Applicant inasmuch as she had clearly abused procedure through her various frivolous, vexatious and indeed misleading submissions, namely the first motion for recusal and the request for change of venue of 1 September 2010, the submission of her application to the New York registry on 15 October 2010, the submission of a request for stay of proceedings to the Geneva registry on 17 October 2010 and the second motion for recusal of 24 November 2010.

38. On 7 December 2010, the Applicant submitted comments on the Respondent’s Answer and asked for postponement of the hearing scheduled for 12 January 2011, as she and her Counsel would not be available on that date.

39. In a letter dated 8 December 2010, the Tribunal therefore informed the parties that the hearing of 12 January 2011 was postponed and that a new date would be set in due course.

40. In its ruling No. 2011-UNAT-101 of 1 March 2011, the Appeals Tribunal rejected the Applicant’s application for interpretation of ruling No. 2010-UNAT-043 (cf. para. 24), as well as her interlocutory appeals against Orders Nos. 71, 72 and 73 of this Tribunal, adding the following comments:

[The Appellant]’s application for “interpretation” is a ruse to try to have this Court interfere in UNDT’s assignment of venue. This we will not do; it is a matter for the trial court’s discretion. The determining venue must be left to UNDT ... This Court will generally not entertain interlocutory appeals. These appeals are the exact type of quibbles that would prevent cases from ever coming to judgement.

41. By Order No. 27 (GVA/2011) of 24 March 2011, the Tribunal ordered the Respondent to produce *ex parte* an unredacted copy of the memorandum of 11 May 2006 from the Senior Review Group, as well as the scorecard of the selected candidate. The Respondent produced the documents requested on 7 April 2011 and, by Order No. 46 (GVA/2011) of 14 April 2011, the Tribunal provided the Applicant with a version thereof redacted by the Tribunal. The Applicant and Respondent submitted their comments, respectively on 28 April and 12 May 2011.

42. On 13 May 2011 the Applicant, through her Counsel, filed a “request for production of substantive evidence”. That request was dismissed by the Tribunal by Order No. 75 (GVA/2011) of 18 May 2011.

43. A hearing was held on 27 May 2011, attended by the Applicant and her Counsel, in person, and Counsel for the Respondent, by video link. During the hearing, Counsel for the Applicant brought up another irregularity which, he claimed, had tainted the selection process, namely the fact that the evaluation criteria for the position had apparently not been approved in advance by the Senior Review Group.

44. By Order No. 88 (GVA/2011) of 30 May 2011, the Tribunal asked the parties to submit additional remarks on the alleged irregularity, which they did on 1 and 3 June 2011.

## Parties' contentions

45. The Applicant's contentions are:

(a) The Senior Review Group did not, prior to the meeting of the ad hoc panel, approve the evaluation criteria for the post in question, as required under Administrative Instruction ST/AI/2002/4;

(b) During the selection process, her application did not receive the full and fair consideration she was entitled to;

(c) Her curriculum vitae and scorecards were manipulated and falsified before the ad hoc panel conducting the interviews. The candidates' scorecards were not signed by the panel members. Her university education was misinterpreted. Her experience and qualifications were systematically undervalued, whereas those of candidate X were exaggerated. The ad hoc panel committed gross errors, particularly in assessing her "intergovernmental and diplomatic skills". The ad hoc panel did not ask the same questions of all candidates interviewed; further, it should have established a comparative evaluation grid for candidates. Her interview with the ad hoc panel took only 20 minutes;

(d) The evaluation report, wherein she had received the highest mark, was held back by DESA, which did not make it available to the Senior Review Group;

(e) The Senior Review Group's meeting was irregular and inquorate; the President was absent and there were no evaluation procedures. The minutes of the meeting of 9 May 2006 were not signed by an official authorized to do so, but by an interim president who had not been appointed by the Secretary-General. Under Secretary-General's bulletin ST/SGB/2005/4, the Senior Review Group is required to release its evaluation procedures, but has not done so. The majority of the eight members of the Group, including the President appointed by the Secretary-General, appear to have been absent. Though the Respondent contends that Administrative Instruction ST/AI/392 was respected in this case, it should be noted that that Instruction was no longer in effect at the relevant time but had been replaced by Secretary-General's bulletin ST/SGB/2005/4. The alleged meeting may in fact never have taken place. The procedural irregularities are substantial and sufficient to invalidate the entire selection process;

(f) Moreover, that process was conducted without regard for Administrative Instruction ST/AI/1999/9 (Special measures for the achievement of gender equality). Under that Instruction, she ought to have been classified at the same level or higher than the male candidates and received priority consideration for promotion to the D-2 level. The Office of Human Resources Management did not analyse the women's applications as required by Administrative Instruction ST/AI/1999/9;

(g) She is the victim of a conspiracy in that her candidacy was particularly threatening to all other internal candidates and in particular the selected candidate;

(h) The compensation of US\$ 23,400 granted her by the Secretary-General is not commensurate with the financial and moral damages she suffered;

(i) The Respondent intimidated and manipulated JAB by concealing evidence, such as the minutes of the 9 May 2006 meeting of the Senior Review Group.

46. The Applicant asks the Tribunal to order the Administration to produce several documents:

(a) The full minutes of the 9 May 2006 meeting of the Senior Review Group, including the names of those in attendance, the venue, the time it was convened, and all documents relating to the application;

(b) All other documents of DESA, the Office of Human Resources Management and the ad hoc panel that relate to her application.

47. The Applicant also requests that seven persons be called as witnesses, including two members of the ad hoc panel, one of her former superiors, a member of the Senior Review Group that reviewed her case and the Group's secretary, and Counsel for the Respondent before JAB.

48. The Respondent's contentions are:

(a) The ad hoc panel erred in failing to take into account the Applicant's business administration certificate and concluding that she only partially fulfilled the post's education criteria. However, it is very unlikely that that omission had an impact on the overall assessment of her application and hence her chances of promotion, for as appears from her scorecard, the ad hoc panel determined during the interview that the Applicant had a number of shortcomings and deficiencies not shown by the three candidates it found to meet all or most of the skills criteria;

(b) According to the Appeals Tribunal case law (*Solanki*, 2010-UNAT-044), in determining compensation in the area of promotion, this Tribunal must be guided by two considerations: the nature of the irregularities that led to the cancellation of the disputed administrative decision, and an assessment of the realistic chance of promotion the staff member would have had if the procedure had been legal. In this case, the Applicant had little or no chance of being promoted and is therefore entitled only to minimum compensation. The Secretary-General has adequately compensated her by paying her three months' net base salary;

(c) Administrative Instruction ST/AI/1999/9 stipulates that when a woman applies for a vacant post in the Professional category and above, she shall be appointed on condition her qualifications meet the requirements for the vacant post and are substantially equal or superior to those of competing male candidates. As the Applicant does not meet those conditions, she could not expect to be appointed under the special measures for the achievement of gender equality;

(d) The Senior Review Group's meetings were consistent with established procedures. Contrary to the Applicant's claim, the Group's membership in 2006 was not eight persons but five and a chairperson, in accordance with bulletin ST/SGB/2005/4. At the meeting of 9 May 2006, the Acting President, three of the five members of the Group and the Secretary were present, in accordance with normal operating procedures of the Group, which state that: "The [Group] shall consist of one chairperson, four members and one secretary. A quorum shall be three members plus a secretary. In the Chairperson's absence, the three members shall select an acting chairperson." Although those rules of procedure were published before the publication of bulletin ST/SGB/2005/4 in March 2005, which provided that the Group consists of a chairman, five members and a secretary, they nevertheless continued to be applied by the Group, which ensured that in the Chairperson's absence he was replaced by an interim chairperson and that at least a majority of the members were present at meetings. The continuity of the above procedures is reflected in the rules of procedure of the current Group, adopted in July 2008, which state that in the Chairperson's absence an interim chairperson is appointed and that a quorum is reached when four of the eight members, including the Chairperson, are present. The fact that the Group's rules of procedure were not updated after the date of bulletin ST/SGB/2005/4 had no impact on the work of the Group, whose role is to ensure that candidates' rights have been respected;

(e) The ad hoc panel evaluated the Applicant's application in the light of the skills listed in the vacancy notice. In so doing it has broad discretion, as acknowledged by the former Administrative Tribunal and this Tribunal. The Tribunal cannot substitute its judgement for that of the Secretary-General regarding a candidate's evaluation but must ensure that the candidate has received the full and fair consideration to which he or she was entitled. In this case, the Applicant has not demonstrated that the ad hoc panel abused its discretion.

## Judgement

49. The Applicant challenges the decision not to promote her to the post of Director (D-2), Office for ECOSOC Support and Coordination, DESA. In the final version of her application, she no longer asks for the decision to be set aside, but merely seeks compensation for damages.



50. Although the Applicant requested that witnesses be summoned to the hearing, the Tribunal considers that in reviewing appointments to a post, and given the type of control exercised by the Tribunal over negative decisions, it is generally unnecessary to hear witnesses. Given the discretionary nature of selection decisions, a judge's control over the legality of such decisions is limited to a review of the regularity of the procedure followed in making the decision and an effort to ensure that no factual error or manifest error of assessment was committed by the persons involved in the procedure. In this case, given the evidence on file, it does not appear that any witness would be helpful to the Tribunal.

51. Furthermore, the Tribunal considers that the Applicant has received all documents relevant to her appeal from the Administration and that there is therefore no reason to grant her request for the disclosure of additional documents.

*Legality of the impugned decision*

52. In criticizing the selection procedure, the Applicant first argues that the evaluation criteria used therein had not been previously approved by the Senior Review Group, in violation of Administrative Instruction ST/AI/2002/4 of 23 April 2002 which deals with the personnel selection system.

53. The said Administrative Instruction states, in section 4.4:

At the same time as he or she prepares the vacancy announcement, the programme manager shall prepare for subsequent review by the appropriate central review body the criteria to be used in evaluating candidates unless a central review body has previously approved the evaluation criteria for a position with similar functions at the same level. The evaluation criteria must be objective and related to the functions of the post and must reflect the relevant competencies.

54. Section 3.1 of the same Instruction provides that:

... The process leading to appointment or promotion to the D-2 level shall be governed by the provisions of the present instruction, except that the functions normally discharged by a central review body shall be discharged by the Senior Review Group, prior to selection by the Secretary-General.

55. Finally, Sections 1 and 8 of the same Instruction define the role of the central review bodies, and hence of the Senior Review Group, in the following terms:

[Section 1] [J]oint bodies established by ST/SGB/2002/6 under staff rule 104.14 to approve evaluation criteria and to ensure that candidates have been evaluated on the basis of such pre-approved evaluation criteria and/or that the applicable procedures have been followed.

[Section 8] The central review bodies shall review the proposal for filling a vacancy made by the department/office concerned to ensure that candidates were evaluated on the basis of the pre-approved evaluation criteria and/or that the applicable procedures were followed, in accordance with sections 5.1 to 5.6 of ST/SGB/2002/6.

56. It is very clear from the above provisions that the criteria for evaluation of candidates, as developed by the programme manager at the same time as the vacancy notice, must be submitted for approval by the central review body, in this case the Senior Review Group, before the selection procedure begins. But it is not disputed by the Respondent that in this case, the evaluation criteria were not submitted for prior approval to the Senior Review Group. Thus, the irregularity in candidate evaluation relates to so important a step that it taints the selection process entirely, in that the Senior Review Group was required, after the selection board had met, to verify that applications had been evaluated according to the criteria previously approved.

57. Second, the Applicant contends submits that many irregularities were committed by the ad hoc panel during her interview on 7 March 2006. In particular, she argues that her scorecard was

falsified and that she was discriminated against, but she fails to adduce any shred of evidence for her allegations, whereas the Administration placed the candidates' scorecards on file after their interview before the panel; the documents are in no way unusual, nor was there any legal requirement for them to be signed by panel members. Neither is use of an evaluation grid, such as the Applicant contends ought to have been used, a regulatory requirement.

58. However, the Applicant is right in asserting, as JAB and subsequently the Secretary-General have recognized, that the ad hoc panel made a material error regarding her university education qualifications. What the Applicant has not established is that the ad hoc panel committed any factual error or manifest error of assessment in evaluating her "intergovernmental and diplomatic skills", and the Tribunal recalls that assessment of the Applicant with respect to that criterion falls within the panel's discretionary power. Similarly, while the Applicant contends that the ad hoc panel did not ask the same questions of all candidates at the interview, her allegation is unsupported by any shred of evidence; and in any event, no such requirement is imposed by any regulation.

59. Third, and as already noted above, given the Tribunal's limited oversight capacity in terms of the ad hoc panel's assessment of candidates' qualifications, the Tribunal cannot usurp the panel's function and rule, as the Applicant requested in writing and at the hearing, that she was the best qualified candidate for the post in question, whereas the panel noted on her scorecard that in terms of skills she only partially met the criteria of the post and that it had found a number of shortcomings and deficiencies in that respect as well as in her experience.

60. Fourth, it is not clear from the evidence on file that in his memorandum of 27 April 2006 addressed to the Assistant Secretary-General for Human Resources Management and recommending the appointment of candidate X, the Under-Secretary-General for Economic and Social Affairs complied with the following provisions of Administrative Instruction ST/AI/1999/9, which require him to explain the choice of a man when a woman is also a candidate:

**Selection/appointment**

1.8 (a) Vacancies in the Professional category and above shall be filled, when there are one or more women candidates, by one of those candidates provided that:

- (i) Her qualifications meet the requirements for the vacant post;
- (ii) Her qualifications are substantially equal or superior to those of competing male candidates;

(b) In accordance with staff regulation 4.4, the fullest regard shall be given to the qualifications and experience of women already in the service of the United Nations;

(c) In evaluating women candidates, particular emphasis shall be given to potential to perform at the higher level, although women may not have been offered such an opportunity in their prior service;

(d) When the qualifications of one or more women candidates match the requirements for the vacant post and the department or office recommends a male candidate, the department or office shall submit to the appointment and promotion bodies a written analysis, with appropriate supporting documentation, indicating how the qualifications and experience of the recommended candidate, when compared to the core requirements of the post, are clearly superior to those of the female candidates who were not recommended ...

61. Fifth, the Applicant contends that many irregularities were committed during the meeting on 9 May 2006, during which the Senior Review Group verified that the ad hoc panel had applied the evaluation criteria, approved the recommendation of candidate X by the Under-Secretary-General for Economic and Social Affairs and recommended that the Secretary-General also give his approval. The Applicant claims that the Group could not legally meet since it had not developed and published its own procedures.

62. It is undisputed that the Senior Review Group met without having developed and published its own procedures, as it was required to do under section 3.2 of Secretary-General's bulletin ST/SGB/2005/4 of 28 February 2005. Although the Respondent contends that the Senior Review Group was lawfully entitled to apply the rules of procedure prepared by the forerunner Group (ST/SGB/2001/9), that argument cannot be upheld by the Tribunal inasmuch as the Group membership was changed from four persons to five, excluding the Chairperson in each case; that necessarily altered the quorum and called for the adoption of new internal procedures.

63. Finally, it is not disputed by the Respondent that the Assistant Secretary-General for Policy Coordination and Inter-Agency Affairs, who sat on the ad hoc panel appointed to evaluate applications for the post in question, also participated as a member of the Senior Review Group, legally responsible for verifying application by the ad hoc panel of the candidate evaluation criteria. It seems clear to the Tribunal that the mere fact of the presence of the said Assistant Secretary-General at the meeting constitutes an irregularity in that there was a conflict of interest between the position of verifier and verified, all the more in that none of the available evidence suggests that he recused himself from the deliberations of the Group for the post in question.

64. Hence, in addition to the error acknowledged by the Secretary-General regarding the Applicant's academic background, the selection procedure for candidates for the post of Director of the Office for ECOSOC Support and Coordination was flawed by numerous irregularities that appear quite significant since they relate to the establishment of evaluation criteria and the monitoring of compliance with those criteria by the Senior Review Group.

65. The Tribunal finds, therefore, that it must declare the selection operations illegal in their entirety and that the Applicant is entitled to compensation for damages resulting from that illegality.

#### *Compensation for damages*

66. The Appeals Tribunal stated, in its judgements Nos. 2010-TANU-044, *Solanki* and 2010-TANU-052, *Ardisson*:

We believe that in determining compensation, the United Nations Dispute Tribunal should be guided by two considerations. The first is the nature of the irregularities that led to the cancellation of the disputed administrative decision. The second is the assessment of what realistic chance of promotion the staff member would have had if the procedure had been legal.

67. Therefore the Tribunal must first assess the likelihood that the Applicant would have been appointed to the post in question if the procedure had been followed and no error had been committed. To do so, the Tribunal need only take into account the impact of the irregularities on the candidate's chances.

68. In this case, the Tribunal considers that the selection procedure was flawed from the start because the evaluation criteria had not been previously approved by the Senior Review Group. As a result, there is doubt as to the appropriateness of the criteria employed by the programme manager, but the Tribunal must also consider that interviews did take place with the shortlisted candidates, namely four internal candidates, of whom the Applicant was the only woman, and four external candidates, including two women.

69. To assess the Applicant's chance of ultimately being chosen for the post, the Tribunal must weigh the number of candidates interviewed, the advantage the Applicant had as a woman, although not the only one, in the light of Administrative Instruction ST/AI/1999/9 on special measures for the achievement of gender equality, the error committed regarding her academic qualifications, but also the poor rating the panel gave her following the interview, whereas three other candidates were rated higher.

70. Given all the evidence on file and the discussions at the hearing, the Tribunal considers that if no irregularity had been committed the Applicant's chances of appointment could fairly be put at one in four.

71. Regarding compensation for the damages suffered by the Applicant, the Appeals Tribunal, in its judgement No. 2010-UNAT-095, *Antaki*, stated:

Not every violation will necessarily lead to an award of compensation. Compensation may only be awarded if it has been established that the staff member actually suffered damages.

72. Thus, the Tribunal can award compensation only if the Applicant substantiates the damages suffered.

73. As regards the pecuniary loss suffered by the Applicant, it is only the difference between the net take-home pay at the D-1 level and that she would have received at the D-2 level, from June 2006, when her promotion might have become effective, and her retirement in February 2009. Given the pay scales and other variables, such as the post allowance, applicable at the time, that amount is set at US\$ 17,000 with accrued interest. To that sum must be added a lump sum of US\$ 5,000 to reflect the lower pension received. Given the foregoing assessment of the Applicant's chances of obtaining the post in question, she is entitled to compensation for pecuniary loss of one fourth of the total amount, or US\$ 5,500.

74. As regards the non-pecuniary damages the Applicant suffered, these consist of the trouble caused her by the irregularities the Tribunal found, and not, as she claimed at the hearing, the frustration she felt at not being chosen for the post in question when she felt she was the best candidate. When 100 candidates apply for a post, and 8 are screened in, it cannot be seriously argued by the Applicant that she was virtually certain to get the job. Hence, it is appropriate to set the compensation for non-pecuniary damages at US\$ 2,000.

75. Given the amount the Secretary-General has already paid the Applicant on account of the irregularities in the selection procedure, namely US\$ 23,400, the Respondent need not be ordered to pay any money to the Applicant, who ought to consider that she has had more than her deserts.

76. Moreover, the Respondent, in a brief dated 1 December 2010, asked the Tribunal to award costs against the Applicant because she had manifestly abused the process.

77. Article 10.6 of the Statute of this Tribunal provides that:

Where the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party.

78. The facts set out above show that by many and various manoeuvres the Applicant threw up exaggerated complications that served no real purpose in defending her rights; that behaviour, in the Tribunal's judgement, constitutes an abuse of process. That abuse caused the Respondent additional personnel costs, so that the Tribunal rules that the Applicant shall pay the Respondent the sum of US\$ 2,000 and rejects her motion to award costs against the latter.

79. Finally, in this case there is no need for the Tribunal to apply the provisions of article 10.8 of its Statute, whereby it may refer a case to the Secretary-General for possible action to enforce accountability. Indeed, regardless of the number and seriousness of the irregularities found to have been committed by several high-ranking officials, the Tribunal considers that collective negligence in applying the regulations was involved, rather than individual error.

## Decision

80. In view of the foregoing, the Tribunal DECIDES:

(a) The application is dismissed insofar as it seeks to obtain a larger sum than has already been paid to the Applicant by the Secretary-General;

- (b) All of the Applicant's other claims are dismissed;
- (c) She is ordered to pay the Respondent the sum of US\$ 2,000 as costs.

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Judge Jean-François Cousin

So ruled this 10th day of June 2011

Entered in the Register on 10 June 2011

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Víctor Rodríguez, Registrar, Geneva

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