



**Before:** Judge Francesco Buffa

**Registry:** Geneva

**Registrar:** Rene Vargas

TARR

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT  
ON RECEIVABILITY**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Alan Gutman, ALS/OHRM, UN Secretariat

## **Introduction**

1. On 18 November 2018, the Applicant, an Investigator with the Office of Internal Oversight Services (“OIOS”), filed an application contesting her “[e]xclusion ... from the recruitment exercise for Job ID 90873 based upon the hiring manager decision to rely upon an unrelated [Management Evaluation Unit] decision in an unrelated recruitment in which [she] challenged her non-selection for [J]ob ID 50231 on violation of ST/AI/1999/9, Special measures to achieve gender equality”.

## **Procedural background**

2. The case was initially assigned to Judge Nkemdilim Izuako at the Nairobi Registry and registered under Case No. UNDT/NBI/2018/113.

3. On 21 December 2018, the Respondent filed his reply in which he submits that the application is not receivable *ratione materiae* because the Applicant failed to identify a final administrative decision.

4. By Order No. 12 (NBI/2019) dated 14 February 2020, the Tribunal ordered the Applicant to “provide a concise response solely to the issue of receivability ... raised by the Respondent in his reply” (emphasis omitted) by 28 February 2019. The Applicant did not respond to this Order.

5. By email of 6 May 2019 to the parties, the Geneva Registry informed them that the Dispute Tribunal had decided to transfer the case thereto in an effort to ensure judicial efficiency and the expeditious disposal of cases and to rebalance its Registries’ case load. The case was registered under Case No. UNDT/GVA/2019/025.

6. By email of 24 August 2020 to the parties, the Geneva Registry indicated that “[a] recent examination of the case file shows that the Applicant did not respond to Order No. 12 (NBI/2019) of 14 February 2019”. As per instructions from the Duty Judge, the Applicant was therefore “granted until Monday, 31 August 2020 ... to comply with said Order”.

7. As the Applicant did not respond to the instruction included in the email of 24 August 2020, by email of 3 September 2020 to the Applicant (also copied to the Respondent), the Geneva Registry indicated that she was “hereby granted a final deadline to respond to [Order No. 12 (NBI/2019)] by Thursday, 10 September 2020”. It was further stated that “if no response [is] filed by then, the Tribunal will proceed to the adjudication of the case on the basis of the record as it stands today”. The Applicant did not respond to the email of 3 September 2020.

8. On 14 September 2020, the case was assigned to the undersigned Judge.

### **Facts**

9. The Applicant alleges that on 18 May 2018, she was informed by email from the Deputy Director, Investigations Division, OIOS (“ID/OIOS”), about the decision by the Director, ID/OIOS, to exclude her from the recruitment exercise mentioned above. No date for such decision was communicated to the Applicant.

10. In particular, the Deputy Director, ID/OIOS, wrote the following in her email concerning the Applicant’s request for clarification for not having yet been called for an interview although she had passed the written test: “I will have to ask [the Director, ID/OIOS,] about it. I understand it had something to do with a MEU review decision in another OIOS recruitment exercise, but does (sic) not know sufficient details. I will find out and let you know”.

11. The Applicant requested management evaluation of this decision and, on 16 August 2018, the Management Evaluation Unit (“MEU”) found that the request was premature and not receivable as the decision not to invite the Applicant for an interview did not produce direct legal effects on her right to a fair consideration prior to the final steps of the process having been taken (such as the review of the process by the central review body and the selection and appointment of a different candidate for the post).

12. In the reply, the Respondent, who affirmed that the Applicant was not short-listed for the relevant position because “[f]ollowing a review of her job application, the panel concluded that [she] had six approximately (6) years of experience in investigatory work, not the ten (10) years of investigatory experience required by the job opening”, further submits that “[t]here has been no selection decision for the contested position”.

### **Consideration**

13. The Applicant failed to indicate a specific date and content of the challenged administrative decision, as she only recalled an email from the Deputy Director, ID/OIOS, which would purportedly confirm an evaluation of insufficiency of the Applicant’s investigatory experience to be recruited for the advertised post.

14. The Tribunal, having considered the above quoted content of the email, finds it insufficient to substantiate an administrative decision of definitive exclusion of the Applicant from the selection process.

15. It remains, however, that the Applicant was not called for an interview and was not short-listed for the relevant post.

16. The Tribunal finds that these facts did not give rise to an appealable administrative decision under art. 2.1(a) of its Statute, and that such a step of the selection process may only be challenged in the context of an application against a specific decision with clear and direct legal consequences on the Applicant, such as the final selection decision. In line herewith, see, for instance, the Appeals Tribunal in *Applicant* 2020-UNAT-1030, para. 20, where it is held that:

[a]n administrative decision is by definition a decision of an administrative nature having a direct legal effect which adversely affects the rights, legitimate expectations or direct and substantial interests of a staff member. Deciding what is and what is not an administrative decision is at times not straightforward and has to be done on a case-by-case basis.

17. The Appeals Tribunal has also stated that certain intermediate decisions in a selection process could be challenged only in the context of an appeal against the final selection decision (see, for instance, *Abdellaoui* 2019-UNAT-928, para. 17).

18. In the case at hand, even assuming that a decision had been taken in evaluating the investigatory experience of the Applicant—although it has neither been demonstrated who took the decision, when it was taken, what was its specific content and what effects it produced, nor did the Applicant contest the Respondent’s reply or tried to clarify this crucial point)—an administrative decision can be challenged only if it has a definitive impact (even indirect) on the position of the candidate (for instance, a different decision resulting in the definitive exclusion of the candidate).

19. As it was mentioned in the MEU’s response, there was not a definitive exclusion of the Applicant’s candidacy from the selection process as, at the relevant time, the Administration could still reintroduce her to the selection process at a different moment as, for instance, the review by the Central Review Body was still pending.

20. The Tribunal also notes that the MEU, upon finding that the Applicant’s request for management evaluation was premature, clearly advised the Applicant of the requirement to challenge the specific outcome of the recruitment process once final.

### **Conclusion**

21. In view of the foregoing, the Tribunal finds the application not receivable and rejects it in its entirety.

*(Signed)*

Judge Francesco Buffa

Dated this 1<sup>st</sup> day of October 2020

Entered in the Register on this 1<sup>st</sup> day of October 2020

*(Signed)*

René M. Vargas M., Registrar, Geneva

