



**Before:** Judge Alexander W. Hunter, Jr.

**Registry:** Geneva

**Registrar:** René M. Vargas M.

MURATORE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**JUDGMENT**

---

**Counsel for Applicant:**

Robbie Leighton, OSLA

**Counsel for Respondent:**

Kong Leong Toh, UNOPS

## **Introduction**

1. By application filed on 1 April 2021, the Applicant, a former staff member of the United Nations Office for Project Services (“UNOPS”), contests the decision not to renew his fixed-term appointment beyond 31 December 2020.

## **Facts and procedural history**

2. In 2017/18, the Water Supply and Sanitation Collaborative Council (“WSSCC”), a UNOPS hosted entity, went through a restructuring process. The Applicant was matched against the position of Technical Expert-Leave No One Behind/Equality and Non-Discrimination/Gender at the P-4 level. He was placed in the newly established Technical Support Unit (“TSU”), headed by Ms. C. V.

3. According to the Applicant, from the beginning of 2018, he was the victim of harassment, abuse of authority and discrimination, committed by his then supervisor, Ms. C. V. From May to July 2018, he requested the intervention of UNOPS Internal Grievances to address his reports on Ms. C. V.’s alleged misconduct. There was an attempt to resolve the issue, but it was unsuccessful. In October 2018, and again in November 2018, the Applicant wrote to UNOPS Internal Grievances reporting new incidents and requesting to protect him; he also filed a formal complaint.

4. On 17 January 2019, the Applicant requested the protection of the Ethics Office alleging that the former Executive Director (“ED”) and the Deputy Executive Director (“DED”), whom the Applicant had informed in writing since 24 July 2018 about the situation of harassment and discrimination, also allegedly adopted a repressive attitude towards the Applicant for having reported Ms. C. V. to UNOPS.

5. In March 2019, Ms. S. C. became the ED a.i. She initially requested the extension of every WSSCC staff member's contract for an additional 12 months, except for the Applicant's contract. Upon the intervention of the Office of the Ombudsman, the Applicant's contract was extended but the term was reduced to three months and his performance evaluation was, for the first time in 20 years, not satisfactory. According to the Applicant, the discrimination against him continued while Ms. S. C. remained ED a.i., and he was excluded from all internal strategic discussions leading to the strategy document relied upon when designing the Sanitation and Hygiene Fund ("SHF") organigram.

6. In September 2019, Ms. S. C. transferred the Applicant to the Global Policy and Innovation Unit, under the supervision of Mr. J. W.

7. On 5 February 2020, at a meeting of the Steering Committee, the decision to establish the SHF was announced.

8. On 7 July 2020, the Applicant, along with two other complainants, sent new reports of misconduct (e.g., issuance of illegal contracts, conflict of interest, mismanagement, corruption, procurement fraud) to UNOPS Internal Grievances, People and Change Group ("PCG"), and to UNOPS Internal Audit and Investigations Group ("IAIG"), against Ms. S. C. and others, providing evidence of the existence of an illegal monthly payment to the Executive Chair in return for the placement of the DED position on the SHF organigram despite the massive downsizing of staff.

9. On 10 July 2020, the Applicant requested again the protection of the Ethics Office following the new complaints.

10. On 21 July 2020, the Steering Committee approved the proposed functions, structure and position list related to the "start-up" organizational chart for the SHF Secretariat.

11. By letter dated 30 September 2020, the Administration informed the Applicant of the non-renewal of his fixed-term appointment due to abolition of post, stating that:

I refer to the staff meeting on 29 September 2020 with UNOPS-Geneva, UNOPS-PCG and WSSCC management, at which it was re-confirmed to WSSCC personnel that the WSSCC donors have decided to cease funding WSSCC with effect COB 31 December 2020, and that all WSSCC posts will accordingly be abolished with effect COB 31 December 2020.

Further to the above, I must, with regret, now give you formal notice that your appointment will not be renewed when it expires effective COB 31 December 2020 and you will be separated from UNOPS effective that date.

As you are aware, a Sanitation and Hygiene Fund (SHF) is currently being established. Should SHF have with effect 1 January 2021 (or earlier) a funded fixed-term post that is substantially the same as the WSSCC post you are presently encumbering, and no other staff member is encumbering a similar WSSCC post, you will be offered that SHF post”.

12. On 27 November 2020, the Applicant requested management evaluation of the above-mentioned non-renewal decision.

13. By letter dated 4 January 2021, the Applicant was informed of the outcome of his request for management evaluation, which upheld the non-renewal decision.

14. By Memorandum dated 25 February 2021, the IAIG informed the Applicant, *inter alia*, that:

3. IAIG found the following allegations substantiated, although there was no evidence that the personnel obtained financial benefits:

- WSSCC personnel asked a WSSCC contractor to hire a former WSSCC intern and/or other individuals to do WSSCC work, with WSSCC increasing the contractor’s contract to cover the amount the contractor paid to these individuals; and
- Members of the UNOPS’ Portfolio Management Team and WSSCC misused contract modalities in multiple recruitment exercises.

...

5. IAIG found your other allegations to be unsubstantiated, i.e. your allegations that:

- WSSCC's Executive Chair, Ms. K.O., received a monthly payment of USD 16,500 in violation of WSSCC's governance rules;
- WSSCC's interim Executive Director, Ms. S.C., and Ms. K.O. improperly exchanged favors. Specifically, whether Ms. S.C. approved Ms. K. O.'s monthly compensation in exchange for Ms. K.O.'s support for Ms. C. to be selected as SHF DED;
- WSSCC management unduly influenced the Steering Committee members to vote for the new organigram during the restructuring;
- At least half of the 24 current Steering Committee members had conflicts of interest; and
- The office wasted resources by outsourcing a large amount of services even though in-house resources were available.

15. On 1 April 2021, the Applicant filed the application mentioned in para. 1 above and a motion seeking leave to exceed the page limit.

16. On 7 April 2021, the Tribunal notified the parties of its decision to grant the Applicant's motion and accept the application as filed. On the same day, the application was served on the Respondent.

17. On 7 May 2021, the Respondent filed his 27-page reply and provided reasons for the additional pages.

18. On 26 April 2022, the present case was assigned to the undersigned Judge.

19. By Order No. 57 (GVA/2022) of 6 May 2022, the Tribunal instructed the parties to file their respective closing submission, which they did on 25 May 2022.

20. On 2 June 2022, the Respondent filed a motion for the Tribunal's directions on grounds that the Applicant's closing submission referred to matters not contained in previous filings.

21. On 9 June 2022, the Applicant filed his comments on the Respondent's motion for the Tribunal's directions, requesting/advising the Tribunal to:

- a. Admit the new information submitted by him on grounds of compelling circumstances;
- b. Offer the Respondent an opportunity to respond to the new evidence;
- c. Stay the proceedings pending the outcome of the current investigations into UNOPS oversight shortcomings; and
- d. Order the Respondent to disclose documentation relevant to the recent revelations regarding UNOPS central oversight shortcomings.

22. By Order No. 64 (GVA/2022) of 10 June 2022, the Tribunal ordered that:

- a. The new arguments and evidence in the Applicant's closing submission be admitted into the record;
- b. The Respondent file his comment on the above-mentioned new arguments and evidence by 16 June 2022; and
- c. All other requests be denied.

23. On 16 June 2022, the Respondent filed his comments on the newly admitted arguments and evidence pursuant to Order No. 64 (GVA/2022).

#### **Parties' submissions**

24. The Applicant's principal contentions are:

- a. The manner in which the restructuring was conducted was so deficient as to render the non-renewal decision unlawful;
- b. The Executive Chair had a conflict of interest because she led the governance body reviewing a restructuring process that she was being paid to carry out;

- c. In the context of the Steering Committee, the Executive Chair was muscular in her attempts to ensure the new organigram was approved by the Steering Committee, inviting votes when no quorum was attained, and seeking to make the casting vote in favour when not all Steering Committee members were present;
- d. Decisions regarding the “top heavy” structure, i.e., the posts of the new ED and the DED, were made before even hiring the Consultant who came to develop the organigram that was adopted;
- e. Staff consultation did not take place during the process, as required;
- f. New consultants were irregularly recruited into the WSSCC to perform functions already allocated to existing staff members. These individuals were then instrumental in the development of the strategy used to justify the later organigram; and
- g. No reliance may be placed on the findings of UNOPS’ oversight to evidence that the payments and process were regular.

25. The Respondent’s principal contentions are:

- a. The evidence clearly shows that there was a genuine, large-scale restructuring, and thus the presumption of regularity stands satisfied;
- b. The burden of proof shifts to the Applicant who must show through clear and convincing evidence that the contested decision was improperly motivated. However, the information provided by the Applicant is far from constituting “clear and convincing evidence”;
- c. The Applicant’s allegations of bad faith are not only unsubstantiated, but contradicted by what the Applicant had written earlier; and
- d. In the absence of any evidence of bias or improper motives, the decision not to renew the Applicant’s appointment was lawful.

## Consideration

### *Scope of judicial review*

26. The present case concerns the non-renewal of the Applicant's fixed-term appointment.

27. The Tribunal recalls that a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal under staff regulation 4.5(c) and staff rule 4.13(c), and expires automatically, without prior notice, on the expiration date specified in the letter of appointment pursuant to staff rule 9.4.

28. The Administration is, nevertheless, required to state the reasons for a non-renewal to ensure that the Tribunal can judicially review the validity of the decision, and this reason must be lawful and supported by the facts (see, e.g., *Nouinou* 2019-UNAT-902, para. 50; *He* 2018-UNAT-825, para. 46; *Obdeijn* 2012-UNAT-201, paras. 33-39; *Islam* 2011-UNAT-115, paras. 29-32).

29. In this respect, the Tribunal notes that the Organization enjoys a broad discretion to reorganize its operations and departments to meet changing economic conditions, including by abolishing posts (see, e.g., *Russo-Got* 2021-UNAT-1090, para. 32; *Timothy* 2018-UNAT-847, para. 25; *Smith* 2017-UNAT-768, para. 26). Therefore, the abolition of a post as a result of a genuine organizational restructuring is a legitimate and valid reason for not extending a fixed-term appointment (see, e.g., *Russo-Got*, para. 32; *Islam*, para. 30).

30. While the Tribunal will not interfere in genuine organizational restructuring resulting in losses of employment by staff, "the Administration is obliged to act fairly, justly and transparently and without bias, prejudice, or improper motive in such exercises" (see, e.g., *Russo-Got*, para. 32; *Timothy*, para. 25; *Smith*, para. 26).



31. In light of the above, and having reviewed the parties' submissions and the evidence on record, the Tribunal defines the issues to be examined in the present case as follows:

- a. Whether there was a genuine restructuring process;
- b. Whether the alleged procedural irregularities rendered the non-renewal decision unlawful;
- c. Whether the non-renewal decision was tainted by improper motives; and
- d. Whether the Applicant is entitled to any remedies.

*Whether there was a genuine restructuring process*

32. In the present case, there is no evidence that the restructuring exercise was not genuine.

33. Instead, the evidence shows that there was a genuine, large-scale restructuring, and this resulted in numerous staff members and non-staff personnel being separated from service. Indeed, the letter dated 30 September 2020 notifying the Applicant of the contested decision clearly states that "the WSSCC donors have decided to cease funding WSSCC with effect 31 December 2020, and that all WSSCC posts will accordingly be abolished with effect COB 31 December 2020". The restructuring of WSSCC was in effect the shutting down of WSSCC and the establishment of the SHF.

34. Moreover, the strong donor support shows that it was a genuine restructuring. As the donors have a fundamental objective to ensure that the funds they provide are appropriately spent, their strong support is a good indication that the decisions that had been made about the restructuring are not due to personal agendas.

35. Also, while the Applicant alleges at some length that there were some irregularities in some Steering Committee meetings, the evidence on record shows that at the 21 July 2020 Steering Committee meeting, the Steering Committee approved the restructuring that had been extensively debated in the preceding days.

36. Therefore, the Tribunal finds that the abolition of the Applicant's post was part of a genuine large scale organizational restructuring that was endorsed by the WSSCC Steering Committee and the donors to WSSCC.

*Whether the alleged procedural irregularities rendered the non-renewal decision unlawful*

37. The Applicant submits that the manner in which the restructuring was conducted was so deficient as to render the non-renewal decision unlawful. Specifically, he claims that the process was marred with several procedural irregularities:

- a. The alleged conflict of interest on the part of the WSSCC Executive Chair;
- b. The alleged decisions made prior to the Consultant's work;
- c. The alleged failure to consult; and
- d. The alleged irregularities in the recruitment of new consultants.

38. In this respect, the Tribunal recalls that it is incumbent on the staff member to prove that such irregularities played a role in the non-renewal decision (see, e.g., *Porrás* 2020-UNAT-1068, para. 24; *Nouinou* 2019-UNAT-902, para. 47; *He*, para. 43; *Said* 2015-UNAT-500, para. 34).

39. Moreover, procedural irregularities in the decision-making process do not necessarily result in a subsequent finding of unlawfulness of the contested decision and the determination of whether a staff member was denied due process or procedural fairness must rest upon the nature of any procedural irregularity and its impact (see *Sarwar* 2017-UNAT-757, para. 87).

The alleged conflict of interest on the part of the Executive Chair

40. The Applicant submits that the Executive Chair had a conflict of interest because she led the governance body reviewing a restructuring process that she was being paid to carry out. He specifically argues that to have an individual employed by WSSCC to perform functions of a staff member (i.e., the ED) and also take a

leading role in the governance body, creates a conflict of interest. She also received USD16,500 per month for part-time work as the Executive Chair on a consultancy basis in violation of WSSCC's governance rules.

41. Moreover, the Applicant argues that an individual in a position of conflict of interest was instrumental in securing approval for an organigram that ensured his separation. According to him, in the context of the Steering Committee, the Executive Chair was muscular in her attempts to ensure the new organigram was approved by the Steering Committee.

42. The Tribunal finds no merit in the Applicant's submissions in this respect.

43. First, the Tribunal notes that after a 27-week investigation, IAIG found the allegations regarding the conflict of interest on the part of the Executive Chair to be unsubstantiated. In this respect, the Applicant argues that no reliance may be placed on the findings of UNOPS' oversight to evidence that the payments and process were regular. However, apart from pointing out IAIG's failure to identify issues in relation to Sustainable Investments in Infrastructure and Innovation ("S3i", and previously "We Are The Oceans" ("WATO")) projects, the Applicant did not provide direct evidence to support his assertion.

44. Second, there was no conflict of interest even when the key facts are considered. Contrary to the Applicant's suggestion, the functions of the Executive Chair are different from those of the ED. Indeed, the Terms of Reference ("TOR") of the Executive Chair and the Vacancy Announcement for the WSSCC ED post show that the Executive Chair is to provide overall leadership and direction for the development and approval of the next Strategic Plan, whereas the ED is to ensure the successful implementation of WSSCC's strategic plan. Furthermore, as per her TOR, the Executive Chair should also communicate on a regular basis with the Steering Committee members on emerging issues. Such communications function cannot give rise to any conflict of interest.

45. Moreover, the Applicant failed to establish that receiving of USD16,500 per month for part-time work as Executive Chair on a consultancy basis is in violation of WSSCC's governance rules. The UNOPS Director of Regional Portfolios

approved the amount that the Executive Chair received. Even assuming *arguendo* that there was a conflict of interest, the Tribunal notes that sec. 3.5.3 of the WSSCC Governance Guidelines provides in its relevant part that “[d]epending on the nature of the conflict of interest, the Steering Committee will decide whether that member may continue to hold office or should stand down”. In the present case, the Steering Committee agreed to their Chair becoming the Executive Chair at their 33<sup>rd</sup> meeting and agreed also that she “should be compensated for the time spent in the role of Executive Chair”.

46. Third, the Tribunal is not convinced by the Applicant’s claim that the Executive Chair improperly influenced the Steering Committee. As demonstrated in para. 35 above, the evidence on record shows that the Steering Committee approved the restructuring after extensive debate and that such approval was endorsed by the donors.

47. Accordingly, the Tribunal finds that the Applicant failed to establish that there was a conflict of interest on the part of the Executive Chair in the restructuring process. Even if it is assumed that there was a conflict of interest on the part of the Executive Chair, if arguably not cured, it had no impact on the decision to restructure and, thus, no impact on the non-renewable decision.

#### The alleged decisions made prior to Consultant’s work

48. The Applicant submits that decisions regarding the “top heavy” structure, i.e., the posts of the ED and the DED, were made before even hiring the Consultant who came to develop the organigram adopted. Specifically, he argues that prior to the recruitment of the Consultant, on 7 May 2020, the ED a.i. had already communicated to staff that the new structure would include a D-1 and a D-2 post. According to the Applicant, this shows that staff members are not being treated equally.

49. The Tribunal first notes that the staff table shared by the ED a.i. on 7 May 2020 shows that it sought to identify a “best case scenario” and a “realistic scenario” in terms of positions within SHF for the year 2021 considering the cost and, as such, it represents a series of projections about the number of posts. The

table not only includes two D-level posts but also 20 P-level posts. The ED a.i. eventually turned out to be overly optimistic.

50. Also, the Consultant was not bound by the above-mentioned staff table. Indeed, he had his own methodology and approach when developing the functional structure of the new SHF, which was documented and presented to the Steering Committee in a special background paper.

51. The Tribunal further recalls that it is within the Organization's discretion to restructure some or all of its departments or units, which may entail the abolition of posts, the creation of new posts and the redeployment of staff (see, e.g., *Smith*, para. 26; *Matadi et al.*, para. 16).

52. Second, the Tribunal finds no merit in the Applicant's consequential claim that staff members are not being treated equally. Instead, the evidence on record shows that all WSSCC staff members including the ED a.i., except for the Executive Director and a new staff member whose initial fixed-term appointment did not expire by the end of 2020, had been informed of the non-renewal of their contracts because the donors did not wish to continue funding the WSSCC project and it would be closed.

53. Accordingly, the Tribunal finds that the Applicant failed to prove any irregularities in relation to the alleged decisions made prior to the Consultant's work.

#### The alleged failure to consult

54. The Tribunal is not persuaded by the Applicant's submission that there was a lack of consultation in the restructuring process.

55. The evidence on record shows otherwise. Indeed, the minutes of the Staff Forum meetings and Townhall meetings clearly show that the WSSCC/SHF restructuring was discussed with staff members. An email on record shows that even if one staff member was not available for the Staff Forum meeting, she was able to send her list of questions concerning the restructuring process to the staff representative by email. Furthermore, there is no indication that any staff forum representative stated that the Administration did not consult him/her.

56. Moreover, the evidence on record shows that on 19 August 2020, the Applicant informed the staff representative that he did not wish to be represented by the staff forum representatives on any matters relating, *inter alia*, to the restructuring process. In the Tribunal's view, the fact that the Applicant did not want the staff forum representatives to represent him does not mean that there was no staff consultation.

57. In this respect, the Tribunal wishes to highlight that the internal affairs of staff representative bodies fall within "an area protected from [the Organization's] interference" (see, e.g., *Kebede* UNDT/2020/078, para. 17). As such, if staff members believed that their staff representatives were not performing up to the required standards, it is up to them to change their representatives.

58. Therefore, the Tribunal rejects the Applicant's claim that there was a lack of consultation in the restructuring process.

#### The alleged irregularities in the recruitment of new consultants

59. The Applicant submits that new consultants were irregularly recruited into the WSSCC to perform functions already allocated to existing staff members and that these individuals were then instrumental in the development of the strategy used to justify the later organigram. Specifically, he argues that the IAIG found that the recruitment of these individuals had been conducted irregularly.

60. The evidence on record shows that the IAIG found that WSSCC personnel asked a WSSCC contractor to hire a former WSSCC intern and/or other individuals to do WSSCC work, with WSSCC increasing the contractor's contract to cover the amount the contractor paid to these individuals, and that Members of the UNOPS' Portfolio Management Team and WSSCC misused contract modalities in multiple recruitment exercises.

61. However, the Tribunal notes that the Applicant did not request management evaluation of the alleged irregularities in the recruitment of new consultants. In this respect, the Tribunal recalls that art. 8.1(c) of its Statute provides that an application is receivable if an "applicant has previously submitted the contested administrative decision for management evaluation, where required". This obligation upon the Applicant is further prescribed in staff rule 11.2, which provides in its relevant part that:

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

(b) A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation.

62. Considering that the alleged irregularities at issue do not fall within the exceptions under staff rule 11.2(b), a request for management evaluation is a legal and jurisdictional requirement of a compulsory nature that cannot be waived, neither by the parties nor by the Tribunal (see, e.g., *Manoharan et al.* 2020-UNAT-992, para. 29; *Diallo* 2019-UNAT-936, para. 27). Accordingly, the Tribunal finds that this aspect of the application is not receivable.

63. Moreover, assuming *arguendo* that this aspect of the application concerning the alleged irregularities in recruitment of new consultants is receivable, since the Steering Committee approved the restructuring after extensive debate and the restructuring was endorsed by the donors, the Tribunal is of the view that any procedural irregularity resulting from the recruitment process, if arguably not cured, did not have any impact on the outcome of the restructuring and did not prejudice the Applicant's rights.

64. In light of the above, the Tribunal concludes that the Applicant failed to demonstrate that the alleged procedural irregularities rendered the restructuring process and, consequently, the non-renewal decision unlawful.

*Whether the non-renewal decision was tainted by improper motives*

65. The Applicant appears to suggest that the non-renewal decision was tainted by improper motives claiming that discrimination against him continued as long as Ms. S. C. remained as ED a.i.

66. The Tribunal recalls that it is for a party who alleges that ulterior motives tainted a decision to substantiate this claim by way of evidence (see, e.g., *Ross* 2019-UNAT-944, para. 25; *Morsy* 2013-UNAT-298, para. 23). When doing so, “[t]he mental state of the decision-maker usually will be placed in issue and will have to be proved on the basis of circumstantial evidence and inference drawn from that evidence” (see *He* 2016-UNAT-686, para. 39).

67. The Tribunal notes that the Applicant did not present any evidence showing that the non-renewal decision was a result of discrimination against him. The evidence on record further shows that not only is the alleged discrimination unsubstantiated but it is contradicted by what the Applicant had written himself. Indeed, the emails from the Applicant on record show that at that time he described Ms. S.C. in very positive terms.



68. Moreover, the Tribunal notes that the Applicant does not dispute that the post that he was encumbering has actually been abolished. He does not claim that a current post that was created during the restructuring exercise is substantially the same as the post that he was encumbering. Neither does he claim that the abolition of his post was unreasonable.

69. Therefore, the Tribunal finds no evidence that the non-renewal decision was tainted by improper motives.

*Whether the Applicant is entitled to any remedies*

70. In his application, the Applicant requests rescission of the decision and seeks reinstatement or in the alternative compensation for the loss of his employment.

71. Having found that the Applicant failed to demonstrate that the non-renewal decision was flawed by procedural irregularities or tainted by improper motives, the Tribunal finds no basis for the remedies pleaded for in the application. Therefore, the Tribunal rejects the Applicant's request for remedies.

**Conclusion**

72. In view of the foregoing, the Tribunal DECIDES to reject the application.

*(Signed)*

Judge Alexander W. Hunter, Jr.

Dated this 1<sup>st</sup> day of July 2022

Entered in the Register on this 1<sup>st</sup> day of July 2022

*(Signed)*

René M. Vargas M., Registrar, Geneva