



**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Morten Michelsen, Officer-in-Charge

NOUR

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**JUDGMENT**

---

**Counsel for Applicant:**

Endah Ayuningsih Indini, OSLA

**Counsel for Respondent:**

Cynthia J. Cline, UNECA

## **Introduction**

1. On 14 December 2021, the Applicant filed an application contesting a decision not to select him for the post of Director of Regional Commissions, (D-2 Level), New York Office, Job Opening 136579.
2. On 10 February 2022, the Respondent filed his reply contending that the application is without merit as the selection decision was lawful.
3. For the reasons set out below, the application is rejected.

## **Background**

4. The Applicant was Acting Director of the Regional Commissions' New York Office from January 2008 through August 2009 at the D-1 Level and the Director of the Regional Commissions from 1 September 2009 to 31 December 2019.
5. On 27 December 2019, the United Nations General Assembly approved the reclassification of the position of Director of Regional Commissions' New York Office to the D-2 level. The Applicant was then appointed as Acting Director of Regional Commissions New York Office (D-2) from 1 January 2020 up to 21 June 2021.
6. A recruitment process was started when the post was advertised beginning on 18 June 2020. The Applicant applied for the D-2 position on 16 July 2020. A total of 97 applicants were screened by the hiring manager, including 28 females and 69 male applicants. A consultant was retained to conduct preliminary reviews of the applications.
7. The Executive Secretary of Economic Commission for Africa ("ES/ECA"), as coordinator of the Regional Commissions, reviewed the initial shortlist prepared by the consultant, made some edits to the consultant's shortlist, then shared the consultant's

analysis of all candidates with the proposed shortlist with the four other Executive Secretaries.

8. ES/ECA, as coordinator and hiring manager, prepared a shortlist of six candidates which was agreed to by the other four executive secretaries. The Panel agreed to proceed directly to interviews without conducting a written/technical assessment. The six candidates, including the Applicant, were subjects of competency-based interviews.

9. Following the interviews, two candidates, including the Applicant, were assessed as having passed the interview and were submitted to the Senior Review Group (“SRG”) on 12 December 2020.

10. In January 2021, the role of Coordinator of the Regional Commissions passed from ES/ECA to the United Nations Economic and Social Commission for Western Asia (“ES/ESCWA”). At the same time, the primary responsibility for the recruitment passed from ES/ECA to ES/ESCWA.

11. Due to Secretariat-wide hiring freeze in December 2020, the candidates were not presented to the SRG until the spring of 2021, after a partial lifting of the freeze.

12. On 21 May 2021, an appointment notification was sent from the Office of Human Resources (“OHR”) to ES/ESCWA, including a note from the SRG recommendation and that the Secretary-General had selected the other candidate than the Applicant for the position.

13. The Applicant was personally informed of his non-selection the week of 21 May 2021 by the ES/ESCWA.

14. On 16 June 2021, the Applicant received an assignment memorandum reassigning him from the post as Director of the Regional Commissions’ New York Office to a post at D-1 level of Chief in the Statistics Division of Department of Economic and Social Affairs.

15. On 12 August 2021, the Applicant requested a management evaluation contesting his non-selection for the D-2 post. The Management Evaluation Unit recommended upholding the decision not to select the Applicant.

16. On 14 December 2021, the Applicant filed the present application.

### **Consideration**

17. The basic principle on staff selection is set out in art. 101.3 of the United Nations Charter and reflected in staff regulation 4.2 that, “The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible”.

18. It is well established that the Secretary-General has broad discretion in matters of staff selection. When reviewing such decisions, the Tribunal shall examine “(1) whether the procedure as laid down in the Staff Regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration” (*Abbassi* 2011-UNAT-110). The Appeals Tribunal has further held that the role of the Tribunals is “to assess whether the applicable regulations and rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunals’ role is not to substitute their decision for that of the Administration” (see, for instance, *Kinyanjui* 2019-UNAT-932).

19. As the Appeals Tribunal reiterated in *Lemonnier* 2017-UNAT-762, citing *Rolland* 2011-UNAT-122, “the starting point for judicial review is a presumption that official acts have been regularly performed”. The Appeals Tribunal held in *Rolland* that if the management is able to minimally show that the applicant’s candidature was given a full and fair consideration, the burden of proof shifts to the applicant who then must show through clear and convincing evidence that he or she was denied a fair chance of selection.

20. In *Verma* 2018-UNAT-829, the Appeals Tribunal further held that, “Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the Dispute Tribunal shall uphold the selection/promotion”.

*Did the Applicant receive full and fair consideration?*

21. In the present case, the Applicant claims that his application did not receive fair and adequate consideration. The Applicant states that he met both the required and desirable criteria for the D-2 level position and, in fact had held the post either in an acting capacity or as a regular assignment for 13 years. The Applicant states that he had superior credentials to the selected candidate. The Applicant further claims that the selection process was tainted with bias and procedural irregularity.

22. The Respondent replies that the Applicant was afforded full and fair consideration, noting that the Applicant was one of two candidates recommended to the Secretary-General for selection. The Respondent submits that the Secretary-General lawfully selected the female candidate from an underrepresented state, noting that the Applicant is Egyptian, a country listed as overrepresented while the selected candidate is from Equatorial Guinea, an underrepresented state. The Applicant has not challenged this submission.

23. Having reviewed the record, the Tribunal notes that following the Applicant’s application for the D-2 position, his candidacy was evaluated by a hiring panel, which consisted of five Executive Secretaries at the Under-Secretary-Generals level. The hiring panel determined that the Applicant met criteria for the position and shortlisted him for an interview. The Applicant was one of two candidates who passed the interview process and was recommended for the position by the hiring managers to the SRG. The SRG reviewed the hiring panel’s recommendations and endorsed both candidates to the Secretary-General for a final determination. It follows that the Applicant’s candidacy was considered by several senior United Nations staff, including five Under-Secretary-Generals in the interview process and the SRG. All included the

Applicant as a recommended candidate to go forward to the next level in the selection process.

24. The final decision was made by the Secretary-General who decided to select a female candidate from an underrepresented state for the D-2 level position. The Applicant does not contest this fact. The Tribunal notes that the applicable legal framework allows the consideration of geographical and gender diversity in the recruitment process. As noted above, art. 101.3 of the United Nations Charter and staff regulation 4.2 provides that, “Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible”. The administrative instruction on gender parity , ST/AI/1999/9 (Special Measures for the Achievement of Gender Equality), stresses *inter alia* the Organization’s objective to achieve gender parity and provides priority for female job candidates in certain circumstances, which the Applicant has not challenged existed in the present case.

25. The Applicant essential argument is that the selection decision was unlawful as he exceeded the required selection criteria, and that the selected female candidate did not meet the criteria. The Applicant adds that other female candidates on the shortlist were better than the selected candidate. The Tribunal finds no merit to these claims. This Tribunal has stated “[t]he assertion by an applicant that, in fact, he or she satisfied the relevant criteria at an adequate level justifying selection does not suffice to prove that the [...] panel was mistaken. This is a matter upon which reasonable minds could reasonably differ and such a difference does not lead to the conclusion that one or other is an error.” *Rolland*, UNDT/2010/095, [affirmed in, 2011-UNAT-122].

26. It is true that the Applicant meets and exceeds all the educational, language and work experience requirements for the position. The hiring managers took into consideration all the Applicant’s credentials in recommending him for the position. The selected candidate also has the requisite educational, language and work experience qualifications for the post, like the Applicant. The fact that the Applicant mastered one additional language is not relevant (“knowledge of another official UN language is an advantage”). The selected candidate met the required language as well

as one desirable language. The consideration of knowledge of an additional language as an advantage remains within the scope of the administration's discretion.

27. Accordingly, both candidates were recommended for the position. As discussed above, the Secretary-General made the final selection decision, lawfully taking into account the unchallenged considerations of geographical diversity and gender.

28. In regard to the evaluation of the shortlisted candidates, the Applicant cannot allege to have been prejudiced by the choice of the other shortlisted or recommended candidates. The Applicant was among the recommended candidates. In any event, the Applicant does not demonstrate that the selected female candidate had less credentials than the other female candidates. The Applicant has not convinced the Tribunal that he was a better candidate than the selected candidate or that any other criteria than the geographical representation and the gender parity policy of the Organization, had presided to the final decision of the Secretary-General.

*Was the selection process tainted with bias and procedural irregularity?*

29. The Applicant alleged the selection decision was tainted by bias. The Applicant suggests that his non-selection was due to a disagreement with the ES/ECA concerning the outcome of another selection process. The Applicant adds that the process of conducting the selection exercise by the ES/ECA may have been biased in favor of candidates from the African Region.

30. The Tribunal notes that an improper motive for the selection can be a ground for rescission. However, the burden of proving improper motives rests with the person making the allegation (*El Sadek*, 2019-UNAT-900, citing *Nwuke*, UNAT-2015-506).

31. The Tribunal finds no evidence that any alleged disagreement the Applicant may have had with the ES/ECA in any way impacted on the Applicant's candidature for the D-2 position. In any event, the Tribunal notes that the selection for the D-2 position was handled by the hiring panel with all the ESs, five Under-Secretary Generals, who evaluated, shortlisted and eventually recommended the Applicant for

the D-2 level position. In regard to the Applicant's claims of bias in favor of candidates from the African Region, even if this is maybe true, this alleged bias would have benefitted the Applicant as a candidate from the African Region. The Tribunal notes that ultimately the Applicant was recommended for the D-2 level position and that the non-selection decision was taken by the Secretary-General. The record provides no indication of bias in the selection exercise.

32. The Applicant complains about the delay in announcing and filling the D-2 level vacancy. In this respect, the Tribunal notes that ST/AI/2010/3 (Staff Selection System) does not mandate period of time for filling a vacant position. The Manual for the Hiring Manager on the Staff Selection System (Inspira) suggests a benchmark of 120 days in filling a vacant position as good practice. However, this is a benchmark as an "average selection time" and not an imperative deadline which would render a selection decision unlawful. In any case, the Tribunal notes that there were justifiable reasons for the delay, namely the recruitment process involved a high number of senior officials, and the Organization was subject to a hiring freeze during some of the recruitment period. In these circumstances, the Tribunal does not find the delay alleged by the Applicant to be excessive and also notes that the Applicant provides no evidence to show that he suffered prejudice by the delay. In fact, the records show that from 1 January 2020, when the post was reclassified to a D-2 level until mid-June 2021, the Applicant was appointed on a special post allowance, acting director of the Regional Commissions New York Office from January 2020.

33. Finally, the Applicant states that there was no substantive exam in relation to the selection process for the D-2 level position and considers that removal of this procedural step compromised the integrity and fairness of the process. The Tribunal notes that the legal framework does not require any specific type of assessment: sec. 7.5 of ST/AI/2010 requires that, "[s]hortlisted candidates shall be assessed to determine whether they meet the technical requirements and competencies of the job opening. The assessment may include a competency-based interview and/or other appropriate evaluation mechanisms, such as, for example, written tests, work sample tests or



assessment centres.” It follows that it is within the discretion of the Hiring Manager to determine the kind of assessment necessary in a selection exercise. Therefore, the absence of an exam does not constitute a procedural irregularity.

34. Having reviewed the evidence, the Tribunal is satisfied that the Administration has shown that the applicable procedure was followed and that, the Applicant’s candidacy was afforded full and fair consideration.

35. Accordingly, the decision not to select the Applicant for this position was lawful.

### **Conclusion**

36. The application is rejected.

*(Signed)*

Judge Joelle Adda

Dated this 21<sup>st</sup> day of September 2022

Entered in the Register on this 21<sup>st</sup> day of September 2022

*(Signed)*

Morten Michelsen, Officer-in-Charge, New York