



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Giuseppe Belsito

(Appellant)

v.

Secretary -General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge Martha Halfeld Judge Jean-François Neven
Case No:	2020- 1348
Date:	26 June 2020
Registrar:	Weicheng Lin

7. On 12 May 2017, the selection panel recommended M. Belsito as primary candidate to the Senior Review Group (SRG) along with another (female) candidate.

8. By e-mail dated 18 May 2017, Mr. Belsito inter alia wrote to his supervisor:

I was just told that I should apply now for the post of Rep. in Palestine, which is in total violation of the Rotation Policy.

...I was proposed to go as Rep. to Albania, a country office which does not even qualify to remain as such in accordance with the country office typology and with such a dramatic financial situation bringing about the perspective that this would be just a one year assignment before it is downgraded to a programme presence with subsequent abolishment of my post.

I applied and successfully recommended as well as endorsed for the post of Regional Director for Europe and CIS but now I am under the threat that this will not be approved by the [Executive Director (ED)]

12. Mr. Belsito also proffered as evidence before the UNDT an overview of incoming calls according to which, on 11 June 2017, he had received a phone call from his supervisor. To this effect he stated in his application before the UNDT:

On 11 June 2017 [Mr. Belsito] received a call from Ms. [V.] while she was on mission with the ED in Ukraine/ Moldova. ... She informed [Mr. Belsito] that she had spoken to the ED who advised that she did not intend to select [Mr. Belsito] because she preferred a female in the role of Regional Director. Ms. [V.] added that she tried her best to convince the ED to reconsider her decision, which she said she viewed as discriminatory and unfair. She stated that as a consolation the ED was prepared to offer [Mr. Belsito] the position of Special Representative in Palestine.

13. On 12 June 2017, the ED of UN Women became aware that information regarding the recruitment process had been passed on to Mr. Belsito.

14. On 13 June, Mr. Belsito wrote to his supervisor requesting that the offer of UN Women Special Representative to Palestine be confirmed in writing, but he received no response.

15. On 14 June 2017, Mr. Belsito requested the UN Women Office of Human Resources to provide information on the status of his candidature for the D-1 position. On 15 June 2017, he was informed by the Office of Human Resources that they were not aware of any formal decision about the recruitment process.

16. On 19 June 2017, the ED decided to cancel the first selection exercise. On the same day, Mr. Belsito requested management evaluation of the cancellation decision. On 6 July 2017, the Human Resources Section informed all candidates, including Mr. Belsito, that the selection process for the D-1 Post had been cancelled and that the position would be re-advertised. 017 Tw [18d-ot.7 (d7 Tc2.7

20. On 19 December 2017, a vacancy for a temporary detail assignment for six months for the D-1 Post was issued. Mr. Belsito's request for prior clearance to apply for the temporary position was refused on the grounds that he had only been in his post as the UN Women Representative in Albania for a period of four months, and he was needed there in a managerial capacity.

21. On 12 April 2018, following the administration of a written test and interviews, the selection panel (w

Submissions

Mr. Belsito 's Appeal

31. Mr. Belsito alleges that any cancelation of vacancy announcements must occur before the assessment exercise is completed and at least one candidate is placed in the recommended list. In the present case, the evaluation process had been fully concluded, the SRG had affirmed the integrity of the process and Mr. Belsito had been recommended as the sole primary candidate. The Selection Guidelines of UN Women provide that the ED reviews the Appointment and Promotion Committee [in this case the SRG] report and endorses the recommended candidate or records specific reasons for not endorsing their selection and shares them with the panels. There has never been any explanation for the ED's excessive delay in making a decision other than that provided in the exchanges between Mr. Belsito and his supervisor.

32. Mr. Belsito further contends that the second selection exercise, which resulted in the promotion of another candidate, was void *ab initio* because the cancellation of the first selection process was unlawful. He alleges, that although he had requested full documentation of the second selection exercise noting the discrepancy between being recommended with reservations only a few months after being fully recommended for the same post, the results of the written exam and the final report of the CRB were never disclosed. At the Tribunal's request the Secretary-General merely submitted the subjective comments in the second interview report which is not sufficient.

33. The UNDT erred in rejecting Mr. Belsito 's request for witness testimony opining that he had failed to adequately identify how oral evidence would assist in clarifying or rebutting the narrow issue in contention, but without specifying what that narrow issue entailed. In his request for a hearing he had gone into some detail on the evidence to be adduced and how it was relevant to the issues in the case. There were relevant questions as to the reasons for the initial cancellation which could only be addressed by calling the ED and Ms. V. to the witness stand.

discrimination because no final decision had been made at this stage. But this is precisely what oral testimony would have clarified.

38. Mr. Belsito requests the Appeals Tribunal to sustain his appeal, to order a summary finding on the evidence in his favor or, alternatively, to remand the case to a different judge for a hearing on the merits.

The Secretary-General's Answer

39. The Secretary-General contends that the UNDT correctly held that the first selection exercise had been lawfully cancelled as the parties had all acknowledged that confidential information had been leaked to Mr. Belsito, and, consequently, it was within the authority of the ED of UN Women to determine that such leak of confidential information had constituted an irregularity in the selection process which justified its cancellation and re-advertisement of the position.

40. The Appeals Tribunal has held in *Kinyanjui*¹ that the Administration is not under an obligation to pursue a recruitment procedure once begun, by filling the position which has become vacant. The rule is nonetheless that, in filling the post, the Administration must proceed with the appointment of successful candidates in accordance with the recruitment results. However, it can deviate from that rule for sound reasons, justifying its decision clearly and fully, i.e. on account of irregularities occurred in the recruitment process or for reasons connected with the interests of the service, which are subject to judicial review.

41. Mr. Belsito's conclusion from the UNDT judgment in *Verschuur*² (that "the evaluation process had been fully concluded" and that "any cancellation of vacancy announcements must occur before the assessment exercise is completed and at least one candidate is placed in the recommended list") is in error. The situation in *Verschuur* was different as the selection process in that case had been cancelled because 180 days had lapsed from the announcement of the vacancy and the selection of a candidate. The UNDT ruled that the cancellation of the selection process had been made to cover up for the hiring manager's lack of compliance with the relevant administrative instruction and that his attempt to cover up this failure by cancelling the selection exercise was unlawful. Nowhere in the *Verschuur* judgment did the UNDT hold that it was

¹ *Kinyanjui v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-932, para. 21.

² *Verschuur v. Secretary-General of the United Nations*, Judgment No. UNDT/2010/153.

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motivated by gender discrimination and, consequently, was not tainted by extraneous factors. However, the UNDT ignored that Mr. Belsi

Judgment

52. The case is remanded to a different judge of the UNDT.

Original and Authoritative Version: English

Dated this 26th day of June 2020.

(Signed)

Judge Knierim , Presiding
Hamburg, Germany

(Signed)

Judge Halfeld
Bournemouth, United Kingdom

(Signed)

Judge Neven
Brussels, Belgium

Entered in the Register on this 9th day of July 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar