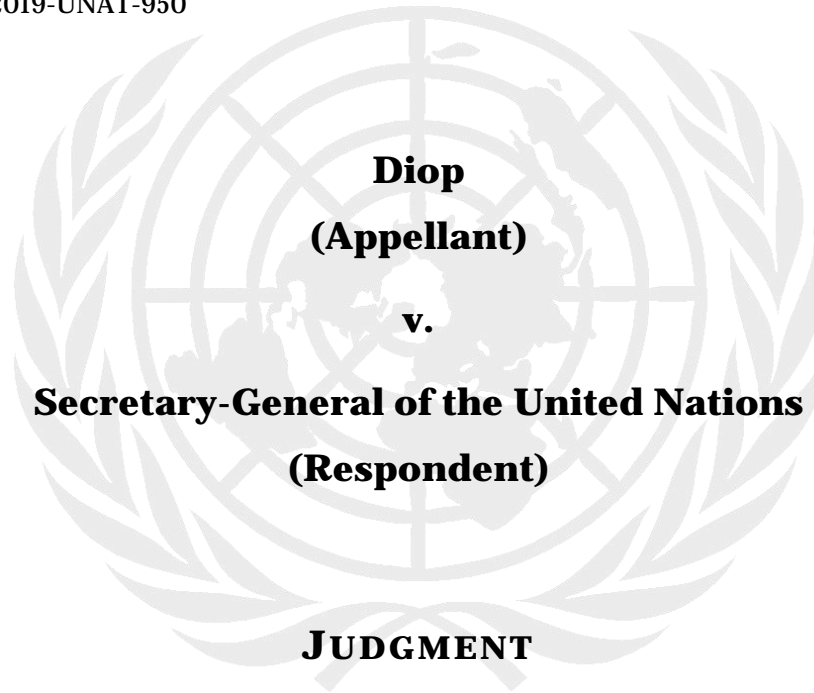




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2019-UNAT-950



Before:	Judge Dimitrios Raikos, Presiding Judge John Raymond Murphy Judge Kanwaldeep Sandhu
Case No.:	2019-1247
Date:	25 October 2019
Registrar:	Weicheng Lin

Counsel for Ms. Diop:	Sètondji Roland Adjovi
Counsel for Secretary-General:	Patricia C. Aragonés

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Ms. Diamilatou Diop appeals against Judgment No. UNDT/2019/018, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 5 February 2019, which dismissed her application contesting the decision not to renew her appointment upon its expiry on the ground that she did not meet the minimum educational requirements for her position. We affirm the UNDT Judgment.

Facts and Procedure

2. The following facts are uncontested:¹

... The Applicant was initially appointed on 15 January 2012 on a one[-]year fixed-term appointment with the United Nations Mission in Liberia (UNMIL). Effective 31 August 2013, the Applicant was reassigned to [the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA)] as an Associate IT Officer. The position required an advanced university degree (Master's degree or equivalent), or a first-level university degree with qualifying experience in lieu of the advanced degree.

... On 16 December 2014, the United Nations Reference Verification Unit (RVU) initiated the verification of the Applicant's work and academic qualifications in accordance with [the] Standard Operating Procedure (SOP) on Staff Selection System for Peacekeeping Operations and Special Political Missions.

... In her Personal History Profile (PHP), the Applicant had indicated, under the section titled "Education", that she had obtained a *Maîtrise* degree from the Institute Pascal in 1995 and a *Brevet d'études Supérieures Spécialisées* from the institution Group IPG/ISTI in 1992, which she indicated as equivalent of a *Licence* degree. On 28 April 2015, the Director General of the Institute Pascal informed the RVU that although the Applicant had been a student at the Institute, it had not awarded her a *Maîtrise* degree. The Director General also informed the RVU that the Institute is not accredited to award the *Maîtrise* degree.

... On 4 May 2015, the RVU wrote to the Applicant requesting her to update her PHP and asked whether she had obtained any other degrees not listed in her PHP. On 5 May 2015, the Applicant responded that all the "completed degrees are listed."

... The RVU turned to the other educational institution listed in the Applicant's ... PHP, that is, Group IPG/ISTI with a query from the RVU to clarify whether the *Brevet d'études Supérieures Spécialisées* awarded in 1992 could be aligned with a Bachelor's degree. In response, on 9 June 2015, the Director of

¹ Impugned Judgment, paras. 6-15 (internal citations omitted).

Communication and Information Technology of the Group IPG/ISTI stated, *inter alia*, that the diploma obtained by the Applicant after two years was the equivalent of a “BTS” (*Brevet de Technicien Supérieur*) whereas a Bachelor’s degree required three years of study to complete, which would result in awarding a *Licence*.

... Between November 2017 and May 2018, the Office of Internal Oversight Services (OIOS) conducted an audit of the recruitment and selection of international staff in MINUSMA. It discovered three staff members, including the Applicant, whose reference checks had not been positively verified. On 10 April 2018, the OIOS Resident Auditor provided MINUSMA with a list of staff members with negative reference checks, which included the Applicant.

... On 8 June 2018, the RVU informed the Applicant that the educational titles listed in her PHP are not at University degree level and are not accepted as fulfilling the minimum requirement for, or in lieu of, a first-level post-secondary degree (Bachelor’s degree) for the purposes of recruitment to the Professional level. The RVU stated that the Applicant did not meet the minimum educational requirements for the position she encumbered. On 27 June 2018, the Applicant wrote to the RVU disputing its findings. On 29 June 2018, the RVU reiterated that her case had been closed as negative.

... On 6 July 2018, MINUSMA’s Director of Mission Support (DMS) issued the impugned decision whereby the Applicant was notified that her appointment would not be renewed because she did not meet the minimum educational requirements for the position. The decision stated that the educational title listed in her PHP was not at a university degree level and that the institution from which it was obtained is not accredited to confer degrees.

... On 10 July 2018, the Ministry of Higher Education, Research and Innovation, Republic of Senegal, transmitted to MINUSMA a certificate of authenticity of the “Brevet d’études Supérieures Spécialisées Option: Analyste Programmeur” conferred on the Applicant by Group IPG/ISTI.

... On 16 July 2018, the Applicant sought management evaluation of the decision not to renew her fixed-term appointment beyond 14 January 2019. The Management Evaluation Unit (MEU) upheld the contested decision in its letter dated 10 September 2018.

3. On 30 August 2018, Ms. Diop filed an application before the UNDT contesting the decision not to renew her appointment beyond 14 January 2019.

4. On 1 October 2018, MINUSMA informed Ms. Diop that her case had been referred to the appropriate bodies for determination of whether she had made a misrepresentation in her PHP and, if not, whether she would be allowed exceptionally to remain in the position. On 8 October 2018, Ms. Diop engaged in exchanges of correspondence with the Special Investigations Unit and the MINUSMA Conduct and Discipline Team in relation to allegations of misconduct against her, namely, the false declaration of degrees listed in her PHP.

5. On 15 January 2019, MINUSMA extended Ms. Diop's appointment through 14 July 2019 pending resolution of her case. At the time of the filing of her appeal, she was on assignment to the United Nations Economic and Social Commission for Asia and the Pacific.

6. On 5 February 2019, the UNDT issued Judgment No. UNDT/2019/018, dismissing the application. In reaching its decision, the UNDT found that, in light of the certification received by the Government of Senegal, it was undisputed that the Group IPG/ISTI was an accredited institution within the meaning of Administrative Issuance ST/AI/2018/5 (Listing and recognition of academic degrees) and that it had conferred upon Ms. Diop a *Brevet de Technicien Supérieur en Informatique de Gestion* after two years of studies. It found that while the non-renewal decision had been "misguided" in so far as it had stated that the institution was not accredited to confer degrees, the Administration had otherwise correctly established that Ms. Diop did not meet the minimum educational requirements. The UNDT found that the clarification obtained by the accrediting institution that the *Brevet* was not conterminous with a Bachelor's degree was dispositive of the issue. The UNDT also held that there was nothing inappropriate about the minimal educational requirement and that it had no discriminatory effect against the Senegalese educational system given its availability of studying for a License. The UNDT further found that Ms. Diop was not eligible to be considered for the one-time amnesty under Section 6 of ST/AI/2018/5 and that she had failed to show unfairness, unjustness, lack of transparency or inappropriate motive in the non-renewal of her fixed-term appointment. The UNDT concluded that the decision not to renew her appointment was lawful.

7. On 5 April 2019, Ms. Diamilatou Diop filed an appeal with the United Nations Appeals Tribunal (Appeals Tribunal) and the Secretary-General filed his answer on 7 June 2019.

Submissions

Ms. Diop's Appeal

8. Ms. Diop challenges the UNDT Judgment on the ground that the UNDT erred in fact resulting in a manifestly unreasonable decision. The contested administrative decision only referred to a single educational title and only addressed the recognition criterion. Ms. Diop has successfully argued before the UNDT that she had graduated from the Group IPG/ISTI in Senegal with a *Brevet de Technicien Supérieur en Informatique de Gestion* and that the University was duly accredited. The argument fully addresses the reason put forward by the decision-maker who was the Director of Mission Support and not the RVU or the MEU. It is not fair to her to correct the decision *post facto* in the Judgment.

9. Ms. Diop requests that the Appeals Tribunal vacate the UNDT Judgment and rescind the decision not to extend her appointment or, in the alternative, grant the one-time amnesty provided for in Section 6.4 of ST/AI/2018/5. Ms. Diop reiterates that she has been working with the United Nations with that same academic credential, starting in 2000 with UNMIL and with MINUSMA in her current position since 2012. The length of her service would support such exceptional measure which the Administrative Instruction envisages for that very reason. Finally, Ms. Diop requests compensation for the material and moral damages she suffered throughout her case.

The Secretary-General's Answer

10. The UNDT correctly dismissed the application having concluded that the decision not to renew Ms. Diop's fixed-term appointment was lawful. This conclusion is in accordance with the applicable jurisprudence and the facts of the present case. The non-renewal decision resulted from the Organization's legitimate internal verification and audit exercises undertaken by the RVU and OIOS pursuant to the SOP and in accordance with the applicable legal framework.

11. The UNDT correctly determined that the *Brevet* conferred by the Group IPG/ISTI was not equivalent to a first level university degree according to the Group IPG/ISTI's own criteria and in accordance with Sections 2.1 and 2.2 of ST/AI/2018/5. Once the irregularity of Ms. Diop's non-fulfilment of the position's minimum requirements had been established and brought to MINUSMA's attention, MINUSMA was not in a position to renew Ms. Diop's fixed-term appointment due to her failure to meet the minimum educational requirements for the position.

12. Ms. Diop was given notice of her non-renewal on 6 July 2018, more than six months prior to the expiry of her fixed-term appointment on 14 January 2019. She did not present any evidence before the UNDT to support a finding of a legitimate expectation of renewal beyond that date. The Appeals Tribunal has previously held that in instances where eligibility criteria have been wrongly applied, the Administration has a duty, and is entitled to, rectify its own error. The UNDT therefore correctly found that Ms. Diop did not show unfairness, unjustness, lack of transparency or inappropriate motive on the part of the Administration.

13. Finally, since there is no illegality, there is no basis for her request for remedies. Ms. Diop is also not eligible for a one-time amnesty under Section 6.4 of ST/AI/2018/5, as correctly found by the UNDT, since Section 6 only applies to staff members who requested a review of their degrees under Section 4 of ST/AI/2018/5, with respect to which Ms. Diop presented no evidence of having done so.

14. The Secretary-General requests that the Appeals Tribunal dismiss the appeal and affirm the UNDT Judgment.

Considerations

15. The UNDT rejected Ms. Diop's application contesting the decision not to renew her contract, and she appeals that decision on the grounds that the UNDT committed substantive errors that led it to reach a manifestly unreasonable decision. For the reasons that follow, this Tribunal determines that the Dispute Tribunal's conclusions are correct.

16. Section 3.3.4 of the United Nations 2015 Applicant's Manual, Instructional Manual on the Staff Selection System (Inspira) states that the "educational requirements indicated in job openings reflect the minimum organizational standard requirements for a given level and job title" and that an applicant for the Professional and higher level positions is normally required to have an advanced university degree (Master's degree or equivalent). Applicants with a first level university degree combined with additional qualifying years of experience (earned after receipt of degree) are also considered to have met the educational requirements equivalent to a Master's. A first level university degree may not be substituted by relevant experience.

17. Section 2.2 of ST/AI/2018/5 stipulates that a "recognized degree" is one that was accredited, at the time of its issuance, by the competent authority in the country in which the issuing institution is based.

18. Sections 3.2 and 3.3 stipulate that:²

3.2 To confirm whether an institution or a degree is accredited, staff members may refer to the World Higher Education Database compiled by the International Association of Universities (“IAU list”). Since the list reflects institution and degree accreditation at the time of publication, a degree and/or institution may not be listed in the most recent publication of the IAU list. In this case, staff members may also refer to prior publications of the IAU list.

3.3 Listing a degree as defined in section 3.1 (a) to (d) or misrepresentation of receipt of a degree may result in administrative and/or disciplinary measures, including dismissal, pursuant to staff rule 10.1.

19. Further, ST/AI/2018/5 stipulates in Section 4:

4.1 Staff members have the obligation to ensure that degrees listed in their job application or referred to in their official record are recognized degrees in accordance with section 2.2 and that the listing of each degree is in compliance with section 3.1.

4.2 Staff members serving on the date of issuance of the present administrative instruction who are unsure as to whether their degree meets the requirements of a recognized degree shall, as soon as possible and no later than six months from the date of issuance of the present instruction, contact the institution that issued their degree or the accreditation authority in the country in which the institution is based, in order to request confirmation that the degree was accredited at the time of its issuance. Before receiving confirmation of the accreditation of the degree, staff members may list the degree but should indicate that the review of the confirmation of the accreditation is pending. Staff members may not submit degrees as defined in section 2.3 for confirmation or accreditation. If they do so and it is later determined that the degrees fall under the definition of section 2.3, staff members will not be covered by the provisions of section 6.4 and will be subject to administrative and/or disciplinary measures.

4.3 If no reply is received from the institution or accreditation authority within three months of the date of enquiry, such staff members shall contact their Executive Office or local human resources office and request official review to have the accreditation of the degree confirmed by the Office of Human Resources Management.

4.4 Such request for review must include the reasons why the degree should be recognized by the accreditation authority, and its equivalent, as well as a copy of the degree and the official transcript; documentation of the attempt(s) to contact the institution or the accreditation authority; and any other relevant documentation that may facilitate the review. Staff members may be required to provide the documentation in one of the six official languages of the United Nations.

² Internal footnote omitted.

4.5 The Executive Office or local human resources office will contact the relevant accreditation authority and submit the response to the Assistant Secretary-General for Human Resources Management for determination whether the degree is a recognized degree. While the review is pending, the staff member may continue to list the degree(s) in job applications but should indicate that the review of confirmation of the accreditation is pending. This caveat can be removed only when the review by the Executive Office or local human resources office and the Office of Human Resources Management has been completed.

20. Finally, in Section 6 under the title “Outcome of the review”, ST/AI/2018/5 prescribes:

6.1 Upon completion of the review specified in section 4.5, staff members will be notified in writing of the outcome of the review. The notification will be included in their official status file.

6.2 If the degree is recognized, staff members may list their degree and its equivalent as indicated in the notification and are no longer required to include the caveat that it is pending review.

6.3 If the degree is not recognized following the review specified in section 4.5, the staff member must remove the degree from the official record and may not list the degree in job applications. Failure to comply with this instruction may result in administrative and/or disciplinary measures, including dismissal, pursuant to staff rule 10.1.

6.4 As a one-time amnesty for staff members who have requested a review in accordance with sections 4.4 and 4.5, if the degree is not recognized and the staff member has no other recognized degree required to meet the minimum academic qualifications for the encumbered position, the staff member may remain in that current position and level. The Office of Human Resources Management will also consider the staff member as having the minimum academic qualification to apply and be considered and selected for other positions at that current level if the staff member satisfies all other minimum requirements. However, the staff member shall not be eligible to apply for job openings at a higher level until the staff member meets the minimum required academic qualifications with a recognized degree.

6.5 For all staff members, listing a degree that is not recognized may result in administrative and/or disciplinary measures, including dismissal, pursuant to staff rule 10.1. However, a degree that is not recognized may be listed in specific circumstances when the Office of Human Resources Management has considered that the staff member possesses the minimum academic qualification as set out in section 6.4.

21. We recall the well-established principle that fixed-term appointments or appointments of limited duration carry no expectation of renewal or conversion to another type of appointment.³ Even the renewal of the appointment of a staff member on successive contracts does not, in and of itself, give grounds for an expectancy of renewal, unless the Administration has made an express promise that gives the staff member an expectancy that his or her appointment will be extended. The jurisprudence requires this promise at least to be in writing.⁴

22. We have reviewed the UNDT's Judgment and find that Ms. Diop's case was fully and fairly considered. We can find no error of law or fact in its decision.

23. Specifically, the UNDT properly reviewed the contested decision in accordance with the applicable law. In the first place, it noted that the job for which Ms. Diop applied and was selected required, *inter alia*, a first level university degree with qualifying experience accepted in lieu of an advanced university degree.

24. Following that, the UNDT thoroughly considered the material facts of the case at issue. In this regard, it found that the certification provided by the Minister of Education of the Government of Senegal as submitted by Ms. Diop, while evidencing that the Group IPG/ISTI was an accredited institute, did not evidence that the *Brevet*, which she had attained there, was the equivalent of a first level university degree; and that the RVU in determining that Ms. Diop's *Brevet* qualification was not the equivalent of a first level university degree, in accordance with Section 3.2 of ST/AI/2018/5, relied moreover on information supplied by the Director of Communication and Information Technology of the Group IPG/ISTI who stated that the qualification attained by Ms. Diop was a diploma which was not conterminous with a Bachelor's degree, the latter requiring three years of study at the Institute to complete and resulting in a *Licence*.⁵

³ *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 25, citing *Muwambi v. Secretary General of the United Nations*, Judgment No. 2017-UNAT-780, para. 25; *Ncube v. Secretary General of the United Nations*, Judgment No. 2017-UNAT-721, para. 15; *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 32; *Badawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2012-UNAT-261, para. 33.

⁴ *Igbinedion v. Secretary General of the United Nations*, Judgment No. 2014-UNAT-411, para. 26.

⁵ Impugned Judgment, para. 49.

25. Finally, the UNDT, having regard to these factual findings, the general knowledge that a *Brevet* denotes vocational studies and not a university degree, and the fact that the information that the qualification attained by Ms. Diop was not conterminous with a Bachelor's degree was obtained at the source--it was primarily the national regulation which determined that Ms. Diop did not possess a degree, and not the Administration--came to the conclusion that Ms. Diop did not meet the minimum educational requirements for positions at the P-2 level.⁶

26. We find no reason to differ from these conclusions. The Dispute Tribunal has broad discretion under Article 18(1) of its Rules of Procedure to determine the admissibility of any evidence and the weight to be attached to such evidence. The findings of fact made by the UNDT can only be disturbed under Article 2(1) (e) of the Appeals Tribunal Statute when there is an error of fact resulting in a manifestly unreasonable decision, which is not the case here. This Tribunal is mindful that the Judge hearing the case has an appreciation of all the issues for determination and the evidence before him or her.⁷ We are satisfied that the UNDT conclusions are consistent with the evidence. Ms. Diop has not put forward any persuasive grounds to warrant interference by this Tribunal.

27. We also find that Ms. Diop has not established any error in the UNDT determination, in terms of her argument that she was eligible to be considered for the one-time amnesty for staff members under Section 6 of ST/AI/2018/5, since this provision applies to staff members who requested a review of their degrees under Section 4 of ST/AI/2018/5. Ms. Diop did not present any evidence of having made such a request at all. Moreover, she did not possess a degree for the Administration to review but a *Brevet*, which, as already held, is not a university degree. Therefore, we reject the arguments advanced by Ms. Diop to the contrary.

28. Finally, the Appeals Tribunal finds no error in the UNDT finding that Ms. Diop failed to establish that the decision not to renew her contract was tainted by improper motives, unfairness or lack of transparency. Rather, such a decision, as correctly determined by the UNDT, was a legitimate exercise of the Administration's discretion, based on Ms. Diop not meeting the minimum educational requirement for her position, and was justified in view of the Administration's obligation and right to correct such an erroneous situation where the eligibility

⁶ *Ibid.*, para. 51.

⁷ *He v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-825, para. 59, citing *Kacan v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-582, para. 25, *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-546, para. 35.

criteria have been wrongly applied.⁸ Therefore, contrary to Ms. Diop's assertions, we hold that the lack of the minimum educational requirement on her part constituted a valid reason proffered by the Administration for not renewing her contract.

29. Our conclusion that the UNDT did not make any errors of law or fact in dismissing Ms. Diop's challenge of the decision not to renew her contract precludes the Appeals Tribunal from awarding compensation. Since no illegality was found, there is no justification for the award of any compensation. As this Tribunal has stated before, "compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member's rights or administrative wrongdoing in need of repair".⁹

30. Accordingly, the appeal fails.

⁸ *Kauf v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-934, para. 22, citing *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 30; *Neocleous v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-635, para. 32; *Cicek v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-636, para. 32, in turn citing *Cranfield v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-367, para. 36.

⁹ *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 34, citing *Kucherov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-669, para. 33, in turn citing *Wishah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-537, para. 40 and citations therein; see also *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-508, para. 27; *Oummih v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-420, para. 20; and *Antaki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-095, para. 23.

Judgment

31. The appeal is dismissed and Judgment No. UNDT/2019/018 is hereby affirmed.

Original and Authoritative Version: English

Dated this 25th day of October 2019 in New York, United States.

(Signed)

Judge Raikos, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Sandhu

Entered in the Register on this 20th day of December 2019 in New York, United States.

(Signed)

Weicheng Lin, Registrar