



Before: Judge Coral Shaw

Registry: Geneva

Registrar: René M. Vargas M.

NEOCLEOUS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Irene Loizidou Nicolaidou

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant contests the decision to declare him ineligible for the National Professional Officer (“NPO”) position at the NO-B level in the Civil Affairs Section (“CAS”) of the United Nations Peacekeeping Force in Cyprus (“UNFICYP”), advertised through Job Opening (“JO”) 8/2013 (“the Position”), and, therefore, to exclude him from the recruitment process.

2. By way of remedies, he requests:

a. His reassignment to a position in a United Nations office of his choice (in a family duty station), in the Professional category and in the occupational groups of Civil Affairs, Political Affairs or Information Analyst;

b. Financial compensation for moral damages, reputation and integrity damages, as well as for the “deliberate attempt to prevent [his] career development”;

c. Disciplinary action against those responsible for actions constituting “misconduct, abuse of authority and mismanagement”.

Preliminary Matters

3. The Respondent advised that a hearing on the merits was not necessary, whereas the Applicant requested a hearing. The parties were unable to agree on a joint statement of facts and issues. In light of the disputed facts in this case, the Tribunal decided that an oral hearing was required.

4. Another case was also filed with the Tribunal against a similar decision, made in the same context and raising the same issues as the present application; it was registered under Case No. UNDT/GVA/2014/030 (Cicek). With the consent of all parties, the Tribunal held a joint hearing for the two cases, without prejudice to each case being considered individually and adjudicated by separate judgments.

5. At the Tribunal's request, the Respondent produced, *ex parte*, the report of an investigation conducted on alleged irregularities in the recruitment process for the Position. After reviewing it, the Tribunal concluded that it contained no additional information relevant to the matters under examination in the present case. In addition, the investigation report records a confidential investigation, and no managerial decision has yet been taken based on its findings. For these reasons, the report was not shared with the Applicant and the Tribunal will not take it into account.

6. Each party produced additional documents at various stages of the pleadings; the non-filing party was given access and the opportunity to comment their contents. In his closing submissions, the Applicant produced three letters from managers in UNFICYP which, he alleges, tend to prove his involvement in a professional capacity with CAS. The Tribunal notes that these letters were not included in the Applicant's original application or disclosed in subsequent pleadings. Having reviewed them, the Tribunal holds that they are not substantive proof of verifiable work experience in the relevant field, and that there is no need to seek comments from the Respondent, as they do not affect the outcome of this case.

Facts

7. The following account of facts is based on facts and evidence adduced at the oral hearing and on documentary evidence submitted by the parties.

8. In 2013, the Applicant was serving as Information Technology ("IT") Technician, Information and Communication Technology Service, UNFICYP, (GS-6/10 level), in Nicosia, Cyprus, on a fixed-term appointment against a locally-recruited post.

9. On 2 August 2013, two positions of National Professional Officer, CAS, UNFICYP, at the NO-B level, were advertised under JO No. 8/2013; one position was reserved for the hiring of a Greek-Cypriot and the other for that of a Turkish-Cypriot.

10. Mr. Cibor, Senior Political Adviser, UNFICYP, at the relevant time, with approximately 13 years of service in the Mission, testified about his efforts over several years to have two NPO posts established in the CAS, UNFICYP, and, once authorised, the high expectations among local staff of the opportunity to apply for the Position.

11. On 2 August 2013, the then Acting Chief of Mission Support (“CMS”), UNFICYP, circulated the relevant JO to all the Mission’s civilian locally-recruited General Service staff, inviting those interested to apply no later than 23 August 2013.

12. The JO specified:

Education: Advanced degree (Masters or equivalent) in public administration, political science, international relations or social sciences. A first university degree (Bachelor or equivalent) with a combination of exceptional professional experience may be accepted in lieu of the advanced degree.

Experience: At least 3 years following the completion of a Bachelor’s degree or 2 years following completion of a Master’s degree, of progressively responsible experience in the field of public administration, governance, peace-building, and community relations.

13. The Applicant, a Greek-Cypriot, applied for the Position, and his application included a Personal History Profile (“PHP”).

14. The Civilian Personnel Office conducted the initial screening, and on 30 August 2013 it produced a list of candidates who met the criteria for the Position and another list of candidates who did not. The Applicant was on the list of candidates not meeting the job criteria. On the same day, the then Chief Civilian Personnel Officer (“CCPO”) wrote to the Hiring Manager and to Mr. Cibor, who was the latter’s supervisor, explaining that his office had been very “liberal” in the screening to get as many eligible candidates as possible, but that all the local staff of the Mission who had applied to the Position were nonetheless screened out for not having the required professional level experience.

15. Mr. Cibor testified that in response to the above, he told the CCPO that in light of the great interest in the two posts among local staff, it would be a pity not to give any of them a chance to compete. He therefore asked the CCPO to have another look at the list to see if at least one Greek-Cypriot and one Turkish-Cypriot local staff member could be included, and mentioned the Applicant as one of two good internal candidates. He further told the Tribunal that he had worked with the Applicant a great deal, knew he had a university degree and thought he could perform well in the Position. Finally, he confirmed not to have checked the Applicant's PHP or analyse his work experience against the JO, and denied having applied pressure on the CCPO.

16. By email dated 2 September 2013 to Mr. Cibor, the CCPO reiterated his view that no local staff members were eligible for the Position. He stated that the Applicant was the only one who came close to the required experience with three months as a P-2 and two years as a part-time researcher during his Master's degree studies, although for the last 12 years, he had worked solely in IT. He said the Applicant was only one of two local candidates who could reach the interview stage, but warned that, should this be the case, his future assessment must take into consideration [his] "borderline eligibility".

17. Mr. Cibor responded on the same day asking the CCPO to at least consider the two local candidates identified as being closer to meeting the requirements, to offer them a chance to compete as borderline cases. Following this message, the CCPO added the Applicant and another local candidate to the list of eligible candidates. On 11 September 2013, a third local UNFICYP staff member was also included in the list of eligible candidates.

18. Mr. Cibor had no further discussions with the CCPO about the list of eligible candidates. He told the Tribunal that he explained his motivation for including these two national staff members to the Hiring Manager, who raised no objections.

19. The eight shortlisted candidates took a written test on 20 September 2013. All candidates, including the Applicant, passed the test.

20. Following her predecessor's departure, Ms. Kaddoura took up the post of CCPO on 6 October 2013, becoming responsible for the Human Resources Management Section in the Mission. She told the Tribunal that on her second day on duty, the Hiring Manager came to see her to express her concerns that Mr. Cibor had influenced the selection of eligible candidates for the JO. Ms. Kaddoura reassured the Hiring Manager that she would do everything possible to ensure integrity and compliance with the rules, but she took no immediate steps as she did not have all the relevant facts and information.

21. Having passed the test, the Applicant and the other seven shortlisted candidates were invited to a competency-based interview on 17 October 2013. The interview panel consisted of the Hiring Manager, Mr. Cibor and another UNFICYP staff member. Ms. Kaddoura, who was responsible for the integrity of the selection processes undertaken within UNFICYP, attended as an *ex officio* observer. In that role, her responsibility was to ensure that the correct procedure was followed at the interview and interfere only if the procedure was not followed correctly and consistently.

22. In the course of the interview, Ms. Kaddoura checked the Applicant's PHP and observed that he did not appear to have the required work experience since obtaining his degrees to make him eligible for the Position. She raised her concerns with the interview panel at the end of the Applicant's interview, and again during the panel's deliberations after completion of all the interviews.

23. After the round of interviews, the interview panel members could not agree on the suitability of the Applicant for the Position and, moreover, did not reach consensus on recommending him for the Position.

24. Following the interviews, Ms. Kaddoura carried out a second review of the Applicant's PHP. Taking into account his declared verifiable work experience relevant to the JO, she concluded that he did not have the minimum length of professional work experience required for the Position. She calculated that he had relevant work experience totalling 14.5 months obtained after the completion of his Bachelor's degree, and three months relevant experience since completion of his Master's degree.

25. It also became apparent to Ms. Kaddoura that the JO had misstated the years of relevant work experience required for the Position. The *Guidelines for Determination of Level and Step on Recruitment to the Professional Category and Above*, issued by the Office of Human Resources Management (“OHRM”), required four years’ experience for such kind of positions. In Ms. Kaddoura’s view, this error had no impact on the Applicant’s eligibility as he did not reach either the three or the four years threshold.

26. While the interview panel was considering its decision on the Position, Ms. Kaddoura advised it that the Applicant had been wrongly deemed eligible for the NBO post and should not be considered. Mr. Cibor told the Tribunal that he was amazed to hear this. He believed that on the pretext of meeting strict rules and regulations the best person for the job had not been selected. He raised his objections to the CMS, but did not challenge the decision and a Greek-Cypriot candidate who in his view had come second was recommended.

27. On 23 October 2013, the Applicant was informed via email that his name would be removed from the list of eligible candidates for the Position’s recruitment process because, as a result of a mistake made by the Administration, he had been inadvertently ruled as eligible for the Position although he did not meet the minimum work experience requirement as stipulated in the JO.

28. On 24 and 25 October 2013, the Applicant and Ms. Kaddoura exchanged emails about the reasons for the decision. On 28 October 2013, at Mr. Cibor’s request, Ms. Kaddoura met with the Applicant in the presence of the CMS, UNFICYP. At that meeting she reiterated that her predecessor was in error to find the Applicant eligible.

29. Ms. Kaddoura noted that the Applicant’s work experience was mostly as an IT Assistant, whereas the Position was in Civil Affairs. The Applicant claimed that he had been technically cleared for posts in the Professional category on several occasions, but Ms. Kaddoura stated that the technical clearance system no longer applied and that his previous clearance(s) had no bearing on the determination of his eligibility, which was screened strictly against the requirements in the JO—a determination that did fall within her remit as CCPO.

The Applicant said at the meeting that while working as an IT Assistant with the United Nations Mission in Liberia (“UNMIL”), between November 2003 and September 2005, he carried out tasks related to Civil Affairs. Ms. Kaddoura explained that since such tasks were not formalized, notably in his terms of reference or in the workplan of his e-Performance document, the discharge of these tasks by the Applicant could not be proven and could not count towards experience. Further, as the Applicant stressed that the work he had done prior to obtaining his Bachelor’s had not been taken into account, it was recalled that the JO made it clear that only post-qualification experience would be counted. Finally, Ms. Kaddoura strongly denied having any “personal reasons” for declaring the Applicant ineligible.

30. At the meeting, Ms. Kaddoura offered, as a sign of good will from the Administration, a temporary lateral transfer to CAS to allow the Applicant to gain experience for future eligibility purposes.

31. On 29 October 2013, the Applicant requested management evaluation of the impugned decision.

32. The Applicant initially declined to be reassigned to CAS, but later accepted the offer by email dated 30 October 2013. A meeting that should have taken place on 8 November 2013 to discuss his new terms of reference was cancelled, and the Applicant’s reassignment never materialised.

33. At the end of 2013, two external candidates were selected for the Position.

34. The contested decision was upheld in management evaluation, dated 27 February 2014.

35. In May 2014, a fact-finding panel was set up to investigate alleged irregularities in the recruitment process for the Position. The corresponding investigation report has been concluded, but a final decision based on the recommendations has not yet been made.

36. The Applicant gave evidence concerning his specific professional experience that he believes should have been taken into account in calculating his relevant work experience for the Position.

37. He said that his experience as a Research Assistant and as a Press Attaché should have been treated as full-time work, and his tasks related to Civil Affairs in parallel to his IT work should also have been fully considered. Moreover, even if he were found to be slightly short of the required length of qualifying experience, the fact that he has a long service in the Organization and in UNFICYP in particular should have played in his favour. Details of the Applicant's specific calculation of his relevant experience are given in para. 41.b below.

38. The Applicant believes that the Administration's calculation of his professional experience has been inconsistent. Whereas he was found eligible for Professional category posts, he has been deemed ineligible for comparable positions.

39. Ms. Kaddoura gave evidence that she assessed the Applicant's experience in accordance with the rules of the Organization. She found that he fell short of meeting the minimum required experience for the Position. Details of this specific calculation are given in para. 42.d below.

40. The Applicant told the Tribunal that because of the actions of the Administration in relation to this matter he has been harmed. He was on sick leave twice after the contested decision. He gave evidence that he was devastated when he received the notification of the decision. He visited a psychologist, who prescribed him medication to calm him.

The Issues

- a. Were the rules followed correctly to assess relevant professional experience of the Applicant for the advertised JO?
- b. Did the Applicant meet the eligibility requirements of the JO?

- c. Did the Applicant have a legitimate expectation to participate in the competitive selection exercise?

Parties' submissions

41. The Applicant's principal contentions are:

- a. He was initially found by both the former CCPO and the Hiring Manager to meet the eligibility requirements;
- b. He holds both a Bachelor's and a Master's degree, and over five years of relevant experience, which is more than required by the JO. The following experience should have been counted towards the JO requirements:
 - i. September 1996 to May 1998: full-time employment as a Programme Associate for a Non-Governmental Organization;
 - ii. June 1998 to June 1999: full-time employment as a Research Associate;
 - iii. July to December 1999: full-time employment as a Press Attaché Associate, Cyprus Embassy in Washington D.C.;
 - iv. January to June 2000: full-time employment as a Research Associate;
 - v. August to November 2010: full-time employment as a P-2 Associate Civil Affairs Officer, United Nations Interim Force in Lebanon ("UNIFIL");
 - vi. During his assignments with UNFICYP from June 2000 until November 2003, and with UNMIL from November 2003 until September 2005, the Applicant carried out Civil Affairs related tasks, while performing his regular duties;

c. According to the *Manual for the Applicant on the Staff Selection System (Inspira)*, since August 2011, experience acquired at the GS-6 level and above is considered as professional experience. In 2008, he received technical clearance for several P-2 posts and served in UNIFIL as a Civil Affairs Officer at the P-2 level. The African Union-United Nations Mission in Darfur and UNMIL found that he met the eligibility criteria for Civil Affairs posts and similar occupational groups in the Professional category;

d. The Administration never provided any explanations or rules governing the eligibility for National Professional Officers posts. The candidates' eligibility screening is a process subject to interpretation and allowing a certain flexibility. Over the years, he has, successively and contradictorily, been found eligible and ineligible for different posts requiring essentially the same experience, which cannot but seriously undermine his trust in the fairness and consistency of the Administration's assessment;

e. The memorandum of the Assistant Secretary-General for Human Resources Management entitled *Recent changes in the staffing procedures* indicates that experience at the G-6 level should have been counted as relevant professional experience. The experience he acquired prior to completion of his academic degrees should also have been counted as professional experience. Only 50% of the Applicant's working experience as a Research Associate was counted—despite being clearly stated as a full-time employment—without giving a reason or a legal basis for it;

f. At the meeting of 28 October 2013, Ms. Kaddoura suggested the Applicant's lateral move to CAS. According to the rules, the minimum working experience requirements for G-6 posts is seven years. Ms. Kaddoura considered the Applicant to be eligible, whereas she disqualified him for the NO-B post because, according to her, he did not possess the minimum working requirement of two years;

g. There is no such thing as borderline eligibility. From the moment the Applicant was found eligible and participated in the entire process, disqualifying him after the completion of the process is unlawful;

h. Despite the discrepancies and errors purportedly found in the recruitment process by Ms. Kaddoura, she did not cancel the recruitment process for fairness, transparency and integrity. Instead, she expedited the process and hired two external candidates;

i. There was a gap of over two weeks between the decision to disqualify the Applicant and similar decisions concerning two other candidates (i.e., 23 October to 8 November 2013). This gap raises concerns and no explanation has been provided. Further, unlike the 23 October 2013 memorandum sent to the Applicant, the memoranda sent to said two other candidates mentioned that the relevant JO was written wrong (the minimum working requirements should have been different), which indicates that the reasoning for disqualification was tailored;

j. Two staff members serving at CAS assert that the Hiring Manager announced her intention to hire external candidates for both NPO posts during a meeting with her staff before the process of assessment of candidates had started;

k. Evidence shows that the Applicant was the best performing candidate both in the written test and at the interview. During the two meetings held by the panel after the interviews to finalize the selection, two panel members were clearly minded to recommend the Applicant, while the Hiring Manager, strongly opposed it without giving any reasoning related to the candidates' performance. Two days after the panel's second meeting, the Applicant was disqualified. After the Hiring Manager was unable to convince the two other panel members, Ms. Kaddoura adopted the position that the Applicant was ineligible in order to serve the Hiring Manager;

l. The Administration should demonstrate good faith and act in a constructive manner to support staff members' career development. When compared with other fellow UNFICYP staff members, the Applicant has been treated unfairly. The use of double standards only generates mistrust and lack of transparency;

m. Ms. Kaddoura did not have the authority to send a memorandum disqualifying the Applicant. Such communication should have emanated from the Head of Mission or the CMS, the only ones possessing the delegated authority for that;

n. Ms. Kaddoura has engaged in a series of retaliatory actions and has made unsubstantiated allegations of misconduct against the Applicant. She cancelled the Applicant's lateral move to CAS when she became aware that he had contested her decision;

o. As a result of his exclusion from the recruitment process, the Applicant suffered moral damages, and a vast loss of career opportunity. As the best performing candidate, he should have occupied the post and moved from the General Service to the Professional category, which would have allowed him to apply to any post in the Professional category.

42. The Respondent's principal contentions are:

a. Pursuant to the *Delegation of Recruitment Authority and Responsibility for National Professional Officers* by the Under-Secretary-General Department of Field Support of 13 October 2008, the authority to recruit NPOs is delegated to the Chief of Administrative Services and CCPO of each mission, and the principles of recruitment and selection of staff to NPO positions in missions are the same as those that apply to international staff, as established in ST/AI/2010/3. Postulants to NPO positions must meet the minimum requirements of the position, including academic qualifications and years of relevant experience;

- b. The work experience is an objective quantifiable criterion to assess. It is not for the Tribunal to substitute its assessment to that of the Organization and the Tribunal does not have the power to assess whether a candidate has sufficient experience to meet the requirement;
- c. The Applicant did not meet the minimum work experience requirement for the position. The relevant JO required at least three years of relevant work experience following completion of his Bachelor's degree, or two years of relevant work experience following the completion of his Master's degree. The Applicant did not have such experience. The fulfilment of this requirement was assessed by reference to the Applicant's description of his work experience, as set out in his PHP;
- d. The Applicant's qualifying experience after completion of his Bachelor's degree was as follows:
- i. 1 June 1998 to 30 June 1999: Research Associate. This experience was reduced by half; therefore, he was credited six months;
 - ii. 1 July to 31 December 1999: Intern Press Attaché. This experience was reduced by half; therefore, he was credited three months;
 - iii. 1 January to 1 June 2000: Research Associate. This experience was reduced by half; therefore, he was credited two and a half months;
 - iv. 15 August to 15 November 2010: Associate Civil Affairs Officer, UNFIL. This experience was credited full-time, hence, three months. This was his only relevant experience qualifying for professional posts after completion of his Master's degree;
- e. This calculation, made by Ms. Kaddoura, was rational and reasonable;

f. The Applicant was given credit for half of his experience as an intern with the Embassy of the Republic of Cyprus in Washington D.C. As an internship is considered to be a learning experience, this experience is counted only at 50%. This approach of proportionate crediting is also used in the calculation of level and step upon recruitment. The Applicant's experience as Research Assistant was credited half, as his work was of academic nature (research for the purpose of a book to be written by his university professor) and was acquired while he was studying full-time;

g. The experience in the Organization in the field of IT after completing his Master's degree was not counted, as it was not relevant for Civil Affairs. While experience acquired in positions in the GS category at the GS-6 level and above may be counted as professional experience, it must be in the fields identified in the JO;

h. The Applicant's total relevant work experience acquired after his Bachelor's degree was 14 and a half months, and that acquired after his Master's degree was three months. Even if his experience as an Intern and Research Associate were counted in full, he would still not meet the minimum required;

i. The Applicant was erroneously deemed to meet the minimum requirements of the JO. Upon discovery of this, it was incumbent on the Organization to remove him from further consideration. The Organization has a duty to correct any mistakes made in a selection process, and a legitimate interest in ensuring that only applicants meeting the minimum requirements compete for vacant positions. It is obliged to set aside from a recruitment process candidates who do not meet the minimum criteria. The fact that the error was discovered at a late stage of the procedure does not preclude the Organization from taking steps to rectify the error;

j. The CCPO of the Mission was responsible for the screening process to determine if candidates met the minimum education and experience requirements;

k. The circumstances of the Applicant's interview are irrelevant for the purpose of this case. He can have no expectation of being considered when he did not meet one of the required criteria;

l. Having made a minimal showing that the Applicant's candidature was given full and fair consideration, the presumption of regularity applies. The Applicant has not discharged his burden of proving through clear and convincing evidence that the contested decision is unlawful. The Applicant did not discharge his burden of demonstrating that the calculation of his professional experience was flawed.

m. His technical clearance of P-2 Civil Affairs Officer positions in 2008 does not establish that he meets the experience requirements for the Position. Technical clearance was a preliminary step; the Administration is not bound by it. In 2012, the Applicant had been found ineligible, for lack of the required experience, for a post similar to the Position;

n. Under the Policy adopted by the Organization in 2012, experience at the GS-6 level and above may be counted, but not regardless of when or in which field such experience was acquired;

o. The JO clearly stated that only experience gained following completion of a Bachelor's or Master's degree would count towards the minimum professional experience required;

p. The Applicant's claim at the hearing that he had a further six months of experience in Civil Affairs, acquired in his position as an IT Assistant in UNMIL is not established;

q. The allegations of other flaws in the selection process in UNFICYP are unsupported by evidence and therefore speculative. The Applicant's claim that Ms. Kaddoura engaged in retaliation is vexatious. In addition, her review of the Applicant's candidature was completed well before the allegedly retaliatory events.

Consideration

Issue 1. Were the rules followed correctly to assess relevant professional experience of the Applicant for the advertised JO?

43. The legal framework for the selection of NPO posts is primarily contained in the Memorandum of the then Under-Secretary-General, Department of Field Support, entitled *Delegation of Recruitment Authority and Responsibility for National Professional Officers*, dated 13 October 2008 (“2008 Memorandum”).

44. Although Administrative Instruction ST/AI/2010/3 (Staff Selection System), which applies to international staff recruitment, expressly excludes (in sec. 3.2(i)) the recruitment procedures for NPO posts in peacekeeping operations and special political missions from its scope, the 2008 Memorandum *inter alia* provides that:

3. ... NPOs are recruited under the same standards of recruitment qualifications and performance as applicable to international Professional staff.

...

16. The mission should follow the same principles of recruitment, selection and on-boarding that apply to international staff members as follows: [for Recruitment] ... [i]nitially screen for eligibility (educations, skills, family relationship etc.) ... [and] technically screen (directly relevant work experience).

45. In summary, the standards and principles in ST/AI/2010/3 governing the selection of international staff, to some extent, apply by reference to the recruitment for NPO posts.

46. The Director, Strategic Planning and Staffing Division, OHRM, gave guidance in an email of 21 May 2012 on the *Recognition of senior level GF/FS experience as qualifying experience for Professional level positions*. Relevantly, it provides that experience acquired at the GS-6 level and above should be counted as qualifying experience. This guidance is applicable to NPO recruitment processes.

47. On 27 February 2014, the Assistant Secretary-General for Human Resources Management circulated, by email entitled *Recent changes in the staffing procedures*, further guidance on various aspects of recruitment procedures. These instructions are however not applicable to the instant case as they were issued after the JO at stake was advertised and the selection process finalised.

48. Finally, it is well settled law that the Administration has a wide discretion in selection/promotion matters. It is not for the Tribunal to conduct anew the assessment of candidates substituting its own judgment to that of the Organization (e.g., *Ljundell* 2012-UNAT-265, *Bofill* 2013-UNAT-383). The judicial review of decisions such as the one contested in this case is limited to ascertaining whether the contested decision was vitiated by a procedural flaw or an error, was arbitrary, capricious or tainted with improper motives or was manifestly unreasonable.

49. Further to the Applicant's allegations, the Tribunal must examine if the above set of rules and principles were interpreted and applied properly.

Authority to assess candidates' eligibility

50. The Applicant claims that Ms. Kaddoura lacked authority to re-assess his eligibility. However, pursuant to sec. 7 of ST/AI/2010/3, the task of pre-screening candidates on the basis of the information provided in their application to determine whether they meet the minimum requirements of the job opening is carried out by "OHRM, the local human resources office or the Field Personnel Division of the Department of Field Support", as applicable (see *Gusarova* UNDT/2013/072). Pursuant to para. 1 of the 2008 Memorandum, the "authority and responsibility ... for the recruitment of National Professional Officers" is delegated to the Mission. Accordingly, the office competent to determine the eligibility for the Position was the Civil Personnel Office of UNFICYP.

51. As the head of the office, Ms. Kaddoura was vested with the authority to assess the eligibility of candidates for the Position. As the official responsible for ensuring the integrity of any recruitment process in the Mission, she had not only the power but also the duty to verify that the candidates' eligibility had been correctly determined.

52. The fact that the pre-screening phase of the procedure was conducted before Ms. Kaddoura took over the CCPO functions did not prevent her from further checking as she deemed necessary. As held in *Gusarova*:

The *Manual for the Recruiter on the Staff Selection System* (Inspira), 2012 ... highlights the responsibility of the Recruiter to ensure that individual applicants are eligible or not for a particular job opening, under each eligibility rule. As such, the Recruiter has the authority to find candidates ineligible when compliance issues are found, *at any stage of the process*. (emphasis added)

53. The Tribunal finds that, in her capacity as CCPO of UNFICYP, Ms. Kaddoura was entitled to verify whether the candidates for the Position met the minimum requirements specified in the JO. She was also bound to correct any errors discovered in the process.

Application of the JO requirements

54. It is mandatory that minimum requirements specified in the JO be met by local GS staff, as provided in para. 15 of the 2008 Memorandum:

Locally-recruited General Service staff being considered for appointment to an NPO post must meet the minimum requirements of the post, including academic qualifications and years of relevant professional experience.

55. Failure to enforce these minimum requirements in an even handed manner would breach the principle of equal treatment of candidates (see United Nations Administrative Tribunal Judgment No. 1122 *Lopes Braga* (2003)). It would also be inconsistent with art. 101.3 of the Charter and staff rules 104.12(b)(iii) and 104.13, which require that the paramount consideration in selecting the Organization's staff be the highest standards of efficiency, competence and integrity.

56. It follows that, the Applicant's stance that his long service with the Organization should have played in his favour, even if he was slightly below the required length of qualifying experience, cannot prevail.

Experience acquired in the GS category

57. Para. 15 of the 2008 Memorandum states that "experience in the General Service category does not count as professional experience". Nevertheless, this approach was reversed by the 2012 OHRM Guidance which, "in recognition of the progressive experience and the skills of staff serving in the General Service and related categories and Field Service category in advancing the mandates and goals of the Organization", stipulates:

In additional [sic] to experience acquired at the Professional level and above category, progressive experience acquired at the GS-6 and above [levels] (and the equivalent levels within the related categories) and experience at the FS-4 and above levels shall be counted as qualifying experience.

58. This instruction was applicable prospectively to JOs published as of the Guidance's issuance on 21 March 2012. The JO in the case at hand was advertised in August 2013. Thus, as accepted by the Respondent, experience at the GS-6 level could be counted as qualifying experience for the purpose of the Position.

Relevant field(s) of experience

59. The Applicant relies on the email entitled *Recent changes in the staffing procedures* of 27 February 2014 from the Assistant Secretary-General for Human Resources Management, Department of Management, UNHQ, to contend that all experience at the GS-6 level should have been counted towards the experience requirement in the JO. In particular, he cites the following passage:

Recruitment Officers will continue to determine the eligibility of applicants to apply for a particular job opening, in order to ensure that they have (1) the required academy qualification which is minimum of Bachelor's degree ... as provided by a job description; and (2) the required length of work experience specified in the job opening *regardless of when or in which field the experience was acquired.* (emphasis added)

60. However as previously mentioned, this email was issued on 27 February 2014 and was not applicable at the time of the contested decision. Even assuming it was, the Tribunal is not convinced that it should be read as prescribing that the area in which a certain experience was acquired is completely irrelevant, as long as it was at the GS-6 level. This interpretation would contradict another passage in the same email, which provides that the “hiring manager is still required to evaluate the applications to determine whether or not such work experience was (1) at the *substantive* and professional level; and (2) obtained *in the fields specified in the job opening*” (emphasis added).

61. More importantly, this would render meaningless the clear indication in the relevant JO that experience should be “in the field of public administration, governance, peace-building, and community relations”.

62. The Tribunal finds that it was proper for the Administration to take into account only the experience in the areas identified in the JO.

Post-qualification experience

63. The Applicant maintains that his work experience gained prior to his Bachelor’s degree should have been taken into account. This contention contradicts the requirement in the JO that candidates possess at least three years “following the completion of a Bachelor’s degree” or two years “following completion of a Master’s degree”.

64. The stipulation in the JO that only post-qualification experience would count towards the requirements for the Position constitutes a legitimate exercise of the Organization’s broad discretion to determine the necessary requirements for a given post (see *Zhao, Zhuang, Xie* UNDT/2014/036). In addition, it is in line with the guidance given on 21 March 2012 by OHRM, that “[q]ualifying years of work experience are calculated only after receipt of the first accredited university degree”. As such, it was not improper for the Administration to only consider experience gained after the Bachelor’s degree was obtained.

65. In view of all the above, the Tribunal concludes that the rules were correctly interpreted and followed in assessing whether the Applicant met the eligibility criteria for the Position.

Issue 2. Did the Applicant meet the eligibility requirements of the Job Opening?

Calculation of the Applicant's relevant professional experience

66. The Applicant asserts that he met the minimum requirements for the Position and, particularly, the minimum years of qualifying experience required by the JO. He avers that the Administration failed to take into account relevant professional experience, despite it being listed in his PHP.

67. When specifically asked about what experience, in his opinion, should have been regarded as relevant, the Applicant listed the following:

- a. September 1996 until May 1998: full-time employment as a Programme Associate for a Non-Governmental Organization (“NGO”);
- b. June 1998 until June 1999: full-time employment as a Research Associate;
- c. July until December 1999: full-time employment as a Press Attaché Associate, Cyprus Embassy in Washington D.C.;
- d. January until June 2000: full-time employment as a Research Associate;
- e. August until November 2010: full-time employment as a P-2 Associate Civil Affairs Officer, UNIFIL;
- f. During his assignments with UNFICYP from June 2000 until November 2003 and with UNMIL from November 2003 until September 2005, the Applicant carried out Civil Affairs related tasks, while performing his regular duties.

68. On the basis of this list, the Applicant claims more than five years of relevant professional experience, while Ms. Kaddoura's calculation resulted in a total of 14.5 months after his Bachelor's and three months after his Master's degree. The difference between the two calculations arise because the Administration:

- a. Did not count experience previous to the completion of the Applicant's Bachelor (i.e., work as Programme Associate for an NGO between September 1996 and May 1998);
- b. Credited the Applicant with 50% of his work as Research Associate and as Intern Press Attaché;
- c. Did not count any experience for the Applicant's performance of Civil Affairs-related tasks in parallel to his official duties as IT Assistant in UNMIL and UNFICYP.

69. The first of these differences in calculation was in line with the plain wording of the JO and with the OHRM guidelines applicable at the relevant time, as discussed in paras. 63 to 65 above.

70. As to the second reason, Ms. Kaddoura explained in her testimony that she reduced by half the time the Applicant worked as a Research Associate because this experience was of an academic nature and, according to the Applicant's own PHP, he was at the same time studying full-time.

71. The Tribunal agrees that it is sensible to consider that one person cannot carry out two full-time activities simultaneously and, on these grounds, counting this professional experience as a part time job was logically justified. Similarly, the Applicant was credited 50% of the time spent as an intern Press Attaché in the Cyprus Embassy in the United States, on the grounds that internships, by definition, are a learning experience. As the *Manual for the Hiring Manager on the Staff Selection System (Inspira)* recommends that experience as an intern be counted half, it cannot be said that crediting 50% for this was groundless or obviously arbitrary.

72. Lastly, as concerns the third reason, it is not self-evident that the duties of an IT Assistant include Civil Affairs-related tasks and, as the Applicant admitted, his collaboration with CAS in UNMIL and UNFICYP is not recorded in his terms of reference or his relevant workplans. At the time of the contested decision, Ms. Kaddoura did not have at her disposal any evidence that the Applicant worked in CAS.

73. At a late stage of the present proceedings, the Applicant produced three letters in which several UNFICYP officers expressed appreciation for the Applicant's assistance in some non-IT-related tasks. There were no similar letters from UNMIL. In any event, these letters are not sufficient to demonstrate that the Applicant conducted significant Civil Affairs work throughout the relevant post-degree periods. In the absence of objectively verifiable evidence of the level of this work experience, the Administration rightfully did not include it in the calculations at the time the decision was made, and the Tribunal sees no justification for including it after the event.

74. In sum, the Tribunal is of the view that the Administration's assessment of the Applicant's relevant professional experience which led to the contested decision was in accordance with the applicable rules and guidelines, and was based on a reasonable and plausible approach. As such, this assessment, was not irrational or arbitrary.

Improper motives

75. The Applicant submits that the eligibility assessment is a subjective exercise, and that Ms. Kaddoura used it to exclude him from further consideration for "personal reasons". The burden of proof that a decision was ill-motivated rests with the Applicant who alleges it (e.g., *Asaad* 2010-UNAT-021, *Beqai* 2014-UNAT-434).

76. The Administration has a very wide discretion in assessing the experience to be taken into account as relevant, and there are few rules containing detailed instructions on the process or criteria to be used in appraising what constitutes relevant experience for a given post. Also, it is possible that different officials

could come to different results in an assessment. Ms. Kaddoura conceded in evidence that there is a degree of nuance in evaluating the eligibility of candidates who apply for advertised posts.

77. The Tribunal is very much aware that the Applicant's sense of uncertainty and unfairness was compounded by the regrettable that he had been successively declared eligible and ineligible for junior professional positions with similar requirements. Additionally, having been initially deemed eligible, he took the written examination and underwent an interview, which could only increase his sense of injustice.

78. However in this selection exercise, even if the Applicant's experience which was weighed by the Administration at 50% had been counted in full, the Applicant would still not have reached three years of relevant experience after his Bachelor or two after his Master's degree.

79. There was no evidence to suggest that Ms. Kaddoura's evaluation of the Applicant's work experience was biased. Ms. Kaddoura arrived in Cyprus and UNFICYP only weeks before she notified the Applicant of the contested decision.

80. The Tribunal finds that the contested decision was not inconsistent with Ms. Kaddoura's determination that he had the required experience to be laterally moved to a GS post in CAS. Unlike for the Position, non-professional experience could be counted for the purposes of holding a GS post.

81. The fact that the recruitment process was not cancelled and the Position re-advertised does not prove that Ms. Kaddoura's decision was motivated by any animosity against the Applicant. Once the error had been detected and rectified, there was no reason for the selection not to proceed. Moreover, had the Position been re-advertised at the end of 2013, this would not have improved the Applicant's chances of selection, as at that point he had not acquired further qualifying experience that could have rendered him eligible.

82. The time gap between the notification to the Applicant of his removal from the process and the notification of analogous decisions to other candidates does not suggest any manipulation or “tailoring” of the rationale behind the decision, nor does the additional explanation given to the other candidates in the letter on the purported mistake in the JO. The Applicant, like all the candidates, was evaluated against the requirements set in the JO, regardless of whether these requirements were erroneous or not. As to the two-week gap, it suggests no more than the fact that the verifications of the eligibility requirements took a few days and the concerned candidates were informed as they were completed.

83. The Applicant’s allegation that Ms. Kaddoura engaged in retaliation and brought false reports of misconduct against the Applicant is not substantiated.

84. In view of these considerations, the Tribunal finds no deliberate intention to exclude the Applicant. Ms. Kaddoura had the obligation to correct errors, and she would have acted unlawfully if she had let the error stand.

85. In conclusion, the Tribunal finds that the determination that the Applicant did not meet the minimum professional relevant experience for the Position was reached after a proper process and an unbiased exercise of discretion.

Issue 3. Did the Applicant have a legitimate expectation to be found eligible to participate in the competitive selection exercise?

86. In *Nwuke* UNDT/2013/157, the Tribunal applied the following definition of legitimate expectation:

The doctrine of legitimate expectation applies to administrative decisions. A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise from a representation or promise made by the authority including an implied representation or from consistent past practice.

87. In *Leboeuf et al.* 2011-UNAT-185, Judge Courtial stated in his concurring opinion:

4. ... I believe that a staff member could rely on the principle of legitimate expectancy to uphold the fact that the continuous application of a practice results in a legitimate expectation from which one can reach certain conclusions.

...

6. The Administration's theory that it can at any moment, and without any formal proceedings, revert to the correct interpretation of a rule that was misinterpreted appears to me to be generally appropriate, except when the provisions for the protection of legitimate expectation can be advanced against it by the staff members.

88. To establish if a legitimate expectation could arise, Judge Courtial referred to the application of the rules in a continuous, uniform and general manner during an extended period of time to conclude that there was no longer any claim of right to the *status quo ante*.

89. On the basis of this case-law, it is for the Applicant to show that his expectation that he would have been found eligible for the advertised JO was justified by a continuous, uniform and general practice.

90. The Applicant has failed to meet this test. There is no evidence that the Administration has systematically and over a continuous period of time applied eligibility criteria for vacant posts other than in accordance with the applicable guidelines. There is no basis for any expectation that in the circumstances of the Applicant the eligibility criteria would be applied otherwise.

91. Certainly, as this case demonstrates, there may be situations where the eligibility criteria have been mistakenly or wrongly applied. In such a case, the Administration is obliged to rectify the error.

92. *Cranfield* 2013-UNAT-367 concerned a case where a staff member was incorrectly found to be eligible for an indefinite appointment and relied on that assessment for approximately three months. The Appeals Tribunal held:

In situations where the Administration finds that it has made an unlawful decision or an illegal commitment, it is entitled to remedy that situation. The interests of justice require that the Secretary-General should retain the discretion to correct erroneous decisions, as to deny such an entitlement would be contrary to both the interests of staff members and the Administration. How the Secretary-General's discretion should be exercised will necessarily depend on the circumstances of any given case. When responsibility lies with the Administration for the unlawful decision, it must take upon itself the responsibility therefor and act with due expedition once alerted to the unlawful act.

93. The only reservation to this principle is that any rights acquired by the affected staff member as a result of the error are preserved (*Boutruche* UNDT/2009/085).

94. The fact that the Applicant took the written test and underwent the interview for the Position did not confer him any legal entitlement or legitimate expectation, nor did the fact that he had been cleared for similar posts in the past. The minimum requirements for the Position were unequivocally set out in the JO and, thus, any candidate was from the onset in a position to know that no one lacking those particular requirements could be considered for selection.

95. The Tribunal understands why the Applicant was genuinely disappointed at the reversal of his eligibility, and accepts that this had a severe impact on him. Nevertheless, such reversal was lawful and justified in the circumstances of this case, and no acquired rights of the Applicant were breached as a result of that decision.

Conclusion

96. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Coral Shaw

Dated this 27th day of May 2015

Entered in the Register on this 27th day of May 2015

(Signed)

René M. Vargas M., Registrar, Geneva