



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2014/030  
Judgment No.: UNDT/2015/043  
Date: 27 May 2015  
Original: English

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**Before:** Judge Coral Shaw

**Registry:** Geneva

**Registrar:** René M. Vargas M.

CICEK

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**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. Rescission of the contested decision;
  - b. Granting him eligibility for consideration for an equivalent post;
  - c. Compensation of 12 months’ salary for being victim of unfair and unreasonable process.

## **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/2014/026 (Neocleous). 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 other party was given access to them and the opportunity to comment on their contents.

### 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. The Applicant serves as Information Assistant/Liaison Assistant, Public Information Office ("PIO"), with UNFICYP (GL-5/5 level), in Nicosia, Cyprus, on a fixed-term appointment.

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 one 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 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 Turkish-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. He 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 said that the Applicant was one of the only 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 ones. On 11 September 2013, a third local UNFICYP staff member was 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 comprised 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 to observe the procedure followed at the interview and interfere only if the procedure was not followed correctly and consistently.

22. In the course of the interviews, Ms. Kaddoura noticed that some candidates did not appear to have the required work experience since obtaining their university degrees to make them eligible for the Position.

23. She raised her concerns with the interview panel during the round of interviews and again during its deliberations after all the interviews had been completed.

24. Following the interviews, Ms. Kaddoura, carried out a second review of the eligibility of all candidates—both internal and external—who had applied for the Position. Taking into account the declared verifiable work experience relevant to the JO, she concluded that the Applicant, as well as two other internal candidates, did not have the minimum length of professional work experience required for the Position. She calculated that the Applicant had relevant work experience totalling nine months and two weeks obtained after the completion of his Bachelor's degree.

25. It also became apparent to Ms. Kaddoura that the JO had misstated the years of relevant 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 at least one of the candidates had been wrongly deemed eligible for the NBO post and should not be considered. At that point, Mr. Cibor raised his objections to the CMS, but did not challenge the decision and a Turkish-Cypriot candidate who in his view had come second was recommended.

27. On 8 November 2013, Ms. Kaddoura met with the Applicant and another local candidate to explain why she needed to remove them from the selection process. She told them that the JO contained a mistake by specifying at least three years' experience following the completion of a Bachelor's degree, where an NPO position at the B level usually required four years' experience. Ms. Kaddoura testified that she also explained to the Applicant that he did not meet even a three-year work experience requirement. The Applicant was informed that only 50% of his experience as a consultant should be counted, and that his experience at the GS-5 level could not be counted towards the Position's requirements.

28. On the same day, 8 November 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, on the grounds that, as a result of a mistake made by the Administration, he had been inadvertently ruled eligible although he did not meet the minimum experience required. It was further noted that the required experience was four years after the completion of the Bachelor's degree, instead of the three years that were erroneously indicated in the JO.

29. After their meeting, Ms. Kaddoura spoke to the Applicant by phone and asked him for the copies of his consultancy contracts so that she could review his terms of reference, and check whether his experience could be validated as relevant experience. She said in evidence that the Applicant answered that he did not have such copies, although he denies that and claims that, in fact, he keeps copies of all of his contracts and these are available for examination upon request.

30. The Applicant confirmed having been informed that only 50% of his experience as a consultant should be counted, and that his experience at the GS-5 level could not be counted towards the Position's experience requirement.

31. In any event, the Applicant did not provide copies of his contracts at the time and Ms. Kaddoura concluded, based on the information the Applicant supplied in his application, that the Applicant's experience as a consultant was not in any field relevant for Civil Affairs. Ms. Kaddoura told the Tribunal that the Applicant's work as reported in his PHP as a Media Relations consultant and Freelance Interpreter/Translator is not, on the face of it, relevant to the requirements of the JO, which specified experience in public administration, governance, peace-building, and community relations. She further stated that the Applicant's experience could not be considered as "exceptional" professional experience to be accepted in lieu of an advanced university degree.

32. Ms. Kaddoura said that some two days later, the Applicant phoned her and asked for the rule requiring an NPO position at the B level to have four rather than three years' minimum experience. She emailed him the ORHM *Guidelines for the Determination of Level and Step on Recruitment to the Professional Category and Above*.

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

34. On 13 December 2013, the Applicant requested management evaluation of the impugned decision, which was upheld in the management evaluation reply, 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 not yet been made.

36. The Applicant believes that he was eligible for the Position, having three years of post-qualification relevant experience. Details of the Applicant's specific calculation of his relevant experience are given in the contentions section (see para. 39.f below).

37. Ms. Kaddoura gave evidence that she assessed the Applicant's experience in accordance with the rules of the Organization. She found that he had a total of

nine months and two weeks relevant work experience acquired after his Bachelor's degree and, hence, he fell short of meeting the minimum of three years' experience required for the Position. Details of this specific calculation are given in the contentions section (see para. 40.d below).

38. The Applicant told the Tribunal that he has been caused harm because of the actions of the Administration in relation to this matter. He said that he has been demotivated to the point of being almost depressed, and that that he was demoralised and his confidence in the United Nations system was shattered.

### **The Issues**

- a. Were the rules followed correctly to assess the 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**

39. The Applicant's principal contentions are:

- a. The Administration failed to follow proper procedures with regard to vacancy announcements publication, cancellation and modification. The Administration cannot publish the job opening and later claim that there was a bar to prior experience at the G-5 level, without any specific reference to this prohibition in the announcement itself. Under the *Inspira Manual for the Hiring Manager* ("Inspira Manual"), the Administration was not allowed to modify or change the experience requirements once it had published the Vacancy Announcement, even if an error had occurred;
- b. According to sec. 5.4.1.8 of the Inspira Manual, the required minimum years of experience for level NOB is two to three years;

- c. Although HRMS has the responsibility to screen applications to any vacancy, the responsibility for specifying the job requirements, assessing candidates and determining which education and/or professional attributes would be counted towards fulfilling the requirements is with the Hiring Manager, who has more expertise to determine whether a candidate meets the requirements. The Hiring Manager never raised any concerns about the Applicant's eligibility;
- d. The practices and procedures of the human resources services to screen candidates are subjective and subject to interpretation. The previous CCPO at no point reported any improper interference in the process;
- e. Ms. Kaddoura applied "subjective processes" without supporting her findings with laws or regulations in place;
- f. The Applicant possesses exceptional work experience for the Position and fulfils the required number of years of experience. The total work experience amounts to 18 months at the United Nations Development Programme-Action for Cooperation and Trust project ("UNDP-ACT") and four years and ten months with Deutsche Gesellschaft Für Technische Zusammenarbeit ("GTZ"); that is, six years three months and two weeks, in addition to his experience in UNFICYP. Even if his consultancy work period is reduced by 50% as being part-time and his GS-5 level experience is disregarded, he still has three years, one month and two weeks of experience;
- g. At UNDP-ACT, he was responsible for the project's partners capacity development, which included establishing and maintaining relationships with media, stakeholders, representatives of local and central authorities, as well as providing know-how on civil administration processes, local governance, legal obligations. Additionally, during his employment at GTZ, he was directly involved in the EU Harmonization process of the Turkish Republic of Northern Cyprus and worked specifically in the agriculture, tourism, economy, environment, transport, finance, labour and health sectors; all of this was pointed out in his PHP;

- h. The Applicant's experience accrued at his current position should have been counted towards the experience requirement for the Position, as there is no basis on which to discount it. Nowhere in the JO is there a specification regarding what type or grade of relevant experience is required, nor an express prohibition to counting GS-5 level experience;
- i. His duties in his current position in PIO, UNFICYP, correspond to the "progressively responsible experience in the field of public administration, governance, peace-building, and community relations" stated in the JO. They are not merely administrative, but involve political analysis based on political evaluations of various developments in the field. In addition, he spent four months on loan to CAS;
- j. The Applicant's academic qualifications in peacebuilding and conflict resolution, his experience in the judicial field in the European Union harmonization process, his skills as Project Manager, his experience in Marketing, Business Development, Public Relations, his experience as trainer, instructor, capacity-building expert and public information and communications officer were all discounted without any fair or legitimate reason;
- k. The field of his studies, i.e., Communication, does fall within the definition of "social sciences". The very essence of the Applicant's studies is directly linked with the responsibilities of the Civil Affairs Section at UNDICYP. As clearly stated in his PHP, the Applicant focuses on areas such as "conflict resolution, peace journalism, and media analysis. His "Performance Based Project Management Certificate" was also disregarded;
- l. The decision that the Applicant does not meet the minimum years of work experience in lieu of post-graduate degree was subjective and ill-motivated. It is for the Hiring Manager to ask for clarification on a candidate's work experience, if need be;
- m. The Applicant had a legitimate expectation of eligibility, based on his invitation to the written test and the competency-based interview.

40. The Respondent's principal contentions are:

- a. Applicants for a NBO position must meet the minimum requirements for the post, including education requirements and minimum years of experience in the relevant field, as specified in the job opening, which are objective quantifiable criteria. The Tribunal does not have the power to assess whether a candidate has the required education or sufficient experience and it is not for the Tribunal to substitute its assessment for that of the Organization, so long as the assessment was not based in obviously wrong facts;
- b. The Applicant did not meet the minimum requirements for the Position;
- c. First, he does not meet the minimum work experience requirements. Only experience after completion of the Bachelor's degree is considered. The JO clearly stated the minimum years of experience required and the fields of work in which experience was required. The assessment of whether the Applicant's work experience is in the required fields is a matter of discretion, subject to very limited review by the Tribunal. Not counting his experience acquired in the GS-5 was in line with the relevant guidelines;
- d. The Applicant's experience, as set out by him in his PHP comprises:
  - i. Five years and ten months as Freelance Interpreter/Translator, GTZ (from January 2005 to October 2010). This was not counted as it is not relevant;
  - ii. One year and seven months as Media Relations Consultant, UNDP (from April 2009 to October 2010). This was not counted as it is not relevant;
  - iii. Nine months and two weeks as Project Coordinator, Iskele-Bogaz Fishermen Solidarity and Development Association (from January 2010 to 17 October 2010). This was credited on a full-time basis;

iv. Two years and 11 months as Public Information Assistant (G-5) (from October 2010 to 23 August 2013). This was not counted as it is not relevant, and because experience at the G-5 level does not count toward experience for a professional position, as per OHRM policy.

e. Although the Applicant mentioned additional work experience post February 2001 in his PHP, he did not properly account for it in the employment record section, nor did he provide the necessary details to enable this experience to be taken into account (length of employment, salary, supervisor, etc.). In any event, this experience was not in any of the fields relevant for civil affairs, as it rather concerned:

i. Several positions in the lifestyle and fashion sectors in Malaysia between February 2001 and December 2004, in the business development, marketing, public relations and fashion editor roles;

ii. Various positions and consultancies in Cyprus, including as a trainer and consultant, part-time instructor, public awareness and capacity building expert, marketing director, business development manager and director, and public information and communications officer;

f. The Applicant's experience as Public Information Assistant is not relevant as it is not in a relevant field and it is not professional work experience, while the NPO category is a professional category. Although the Organization has adopted a policy whereby experience acquired as a GS staff may be counted, only progressive experience at the G-6 level and above may be considered for a position in the Professional category;

g. The Applicant's total work relevant experience after his Bachelor's degree being nine months and two weeks, he did not meet the minimum work experience requirement of three years as stipulated in the JO;

h. Second, the Applicant does not meet the education requirement for the NPO positions, as he did not have a Master's degree at the time he applied

for the Position. His PHP indicated that he expected to obtain his Master of Arts in December 2013. Moreover, his Bachelor's degree is in Modern Language Studies and Communication, which is not one of the academic fields specified in the JO;

- i. The Applicant was erroneously deemed to meet the minimum requirements for the Position. The Organization has a duty to correct any mistakes made during a selection process and a legitimate interest to ensure that only qualified candidates are selected. Accordingly, upon discovery of a possible error, the Chief, HRMS re-assessed whether all of the shortlisted candidates met the minimum requirements of the job opening, and upon determining that the Applicant did not meet the work experience requirement, it was incumbent on the Organization to exclude him from further consideration;
- j. The Applicant could have no expectation of consideration for a position for which he did not meet the minimum requirements. No rights are conferred on candidates who are selected for interviews or tests which preclude the Administration from rectifying an error;
- k. While the memorandum notifying the Applicant of the contested decision stated that the JO erroneously indicated a minimum of three years' experience and that it ought to have been four years, the Applicant did not meet the three-year minimum work experience requirement;
- l. The Applicant has not discharged his burden of proving through clear and convincing evidence that the Organization's assessment of his academic qualifications and work experience was unlawful.

## **Consideration**

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

41. 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”).

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

43. 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.

44. 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.

45. 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.

46. 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.

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

Authority to assess candidates' eligibility

48. 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 JO 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.

49. As the head of said 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.

50. The fact that the pre-screening phase of the procedure was conducted before Ms. Kaddoura took over the CCPD 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)

51. 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

52. The Applicant was informed, orally and in writing, that the minimum experience requirement for a NPO, level B, position should be four years, but he, as well as all other candidates to the Position, was evaluated against the JO requirements of three years' experience and not against the higher experience standard subsequently mentioned by Ms. Kaddoura. Candidates for a position must be assessed against the requirements set out in the JO; no additional requirements must be added that were not contained in the JO as published (*Neault* UNDT/2012/123). The Tribunal is satisfied that this is not a case of retroactive alteration of the eligibility requirements, and will conduct its examination on the assumption that the Applicant was required to have three years, and not four, of relevant professional experience.

53. That being said, it is mandatory that minimum requirements specified in the JO are 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.

54. 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.

55. It follows that the Organization is obliged to ensure that candidates fully meet a JO requirements. It is also obliged, as a matter of principle, to exclude those who do not fully meet those requirements, even if they are internal candidates and not far from meeting them.

Experience acquired in the GS category

56. Para. 15 of the 2008 Memorandum states that "experience in the General Service category does not count as professional experience". This approach was reversed by the 2012 OHRM Guidance that, "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.

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

58. The Applicant's service with the Organization was at the G-5 level which is below the minimum grade qualifying as professional experience, but he contends that, although his post is classified at the GS-5 level, he performs duties that correspond to the GS-6 level. This contention remains unsubstantiated. The Applicant adduced no evidence to support it.

59. Consequently, under the clear terms of the applicable guidelines, the Tribunal finds that it was proper not to count the Applicant's work experience at the GS-5 level towards the requirements for the Position, even if the GS-5 was

acquired in a relevant field, such as his four months of service with CAS, the section where the Position was. This work does not qualify as “professional” experience, as required by the JO, as it was not at the GS-6 or above level.

Relevant field(s) of experience

60. The JO clearly indicated public administration, governance, peace-building, and community relations as the fields in which candidates to the Position were expected to have acquired their experience.

61. The prerogative to limit through the JO the areas in which experience would be considered relevant is part of the Organization’s broad discretion to determine the necessary requirements for a given post (see *Zhao, Zhuang, Xie* UNDT/2014/036). Provided it is not done on arbitrary or capricious grounds, excluding experience gained in different areas is justified.

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

Educational requirements

62. At the time of his application, the Applicant was a few months from obtaining his Master’s degree. Even if he were near to obtaining his advanced university degree, by his own admission, he did not hold such degree at the relevant time.

63. An advanced university degree, however, was an explicit requirement. In the absence of a Master’s degree, the only alternative envisaged in the JO, was to consider “[a] first university degree (Bachelor or equivalent) with a combination of exceptional professional experience … in lieu of the advanced degree”.

64. The Applicant’s highest own estimation of his relevant experience is of six years, three months and two weeks, prior to his joining UNFICYP on a GS-5 post. This, however, can only be the case if all the work taken into account is considered relevant in terms of substance and degree of responsibilities discharged, which is at least questionable for the reasons that will be discussed

below. Even assuming that it were relevant, a little more of six years in relatively junior positions cannot be said to amount to “exceptional” experience.

65. On these bases, the Tribunal finds that the Applicant did not meet the education requirement stipulated in the JO.

Applicant's relevant professional experience

66. The Applicant asserts that the Administration failed to take into account his relevant professional experience.

67. Having been specifically asked by the Tribunal for details of that experience, the Applicant cited the following as relevant post-qualification work experience that should have been counted:

- a. Four years and ten months as Freelance Interpreter/Translator, GTZ;
- b. One year and six months as Media Relations Consultant, UNDP;
- c. Nine months and two weeks as Project Coordinator, Iskele-Bogaz Fishermen solidarity and Development; and
- d. Two years and 11 months as Public Information Assistant (G-5) (from October 2010 to 23 August 2013).

68. In total, the Applicant claims six years, three months and two weeks of relevant professional experience, plus his time at UNFICYP, while Ms. Kaddoura's calculation resulted in a total of nine months after his Bachelor's degree. It is noted that, in his closing submissions, the Applicant did not submit that the Administration should have counted:

- a. His experience in the lifestyle and fashion sectors in Malaysia between February 2001 and December 2004, and his various jobs in 2004, in the business development, marketing, public relations and fashion editor roles; and

b. Various jobs in Cyprus as a trainer and consultant, part-time instructor, public awareness and capacity building expert, marketing director, business development manager and director, and public information and communications officer.

69. The difference between the two calculations arises because the Administration did not count the Applicant's work as:

- a. A Public Information Assistant with UNFICYP;
- b. An Interpreter/Translator with GTZ; and
- c. A consultant with UNDP-ACT.

70. As already mentioned, the experience at the GS-5 level was not counted as it does not qualify as "professional" experience, in line with the relevant guidelines generally applied in the Organization since 2012.

71. The Applicant's experience as Interpreter/Translator was deemed not relevant for the Position. On the face of it, interpretation/translation work, by its nature, is not relevant to prepare a candidate for Civil Affairs and should not have been included. The Applicant claims that during this period, he was "directly involved" in the EU Harmonization process of the Turkish Republic of Northern Cyprus and worked specifically in the agriculture, tourism, economy, environment, transport, finance, labour and health sectors, which he pointed out in his PHP. However, there was no evidence presented to show, on the one hand, how long he was effectively involved in this process and, on the other hand, that it was in a more substantive capacity than that of an Interpreter/Translator. For this reason, the Tribunal cannot conclude that it was irrational or unfair for the Administration to consider this experience as irrelevant.

72. Lastly, his experience as a consultant in UNDP was also considered irrelevant as the field of work was not one of those specified in the JO. The Tribunal finds that it is reasonable to consider that "Media Relations" is not sufficiently related to "public administration, governance, peace-building, and community relations". The Applicant submits that some of the tasks in this

position were very much in line with CAS duties. However, it is unclear to what extent these functions constituted an essential part of his duties in UNDP-ACT.

73. Beyond that, it is worth noting that the Applicant's consultancy in UNDP overlapped for its entire duration with his freelance work as Interpreter/Translator, GTZ, and, in addition, it overlapped for some ten months with his work as Project Coordinator with Iskele-Bogaz Fishermen Solidarity and Development Association. In view of this, it is unlikely that the consultancy at UNDP, even if found materially relevant, could have been counted at 100%. And even if it had been, the Applicant would still have failed to reach the required three years of experience; indeed, one year and seven months (in UNDP), added to nine months and two weeks (in Iskele-Bogaz) fall short to the requisite three years.

74. In sum, the Tribunal is of the view that the Administration's assessment of the Applicant's relevant professional experience leading 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 suggests that Ms. Kaddoura purposefully used it to exclude him from further consideration.

76. 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).

77. 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.

78. The Tribunal is very much aware that the Applicant's sense of uncertainty and unfairness was compounded by the regrettable fact that, having been initially deemed eligible, he had passed the written examination and had undergone an interview.

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

80. 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.

81. The fact that the Applicant was re-assessed and declared ineligible at such a late stage of the procedure does not prove that the Administration was motivated by any animosity against him. Also, Ms. Kaddoura's view that the experience standard required by the JO was lower than the one usually applied does not show any ill-motivation because the criteria against which all candidates were actually assessed remained unchanged. 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.

82. 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?*

83. 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.

84. In *Leboeuf et al.* 2011-UNAT-185, Judge Courcial 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.

85. To establish if a legitimate expectation could arise, Judge Courcial 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*.

86. 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.

87. 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.

88. 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.

89. *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.

90. 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).

91. 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. 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.

92. The Tribunal understands why the Applicant was genuinely disappointed at the reversal of his eligibility determination, 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**

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

The application is rejected.

*(Signed)*

Judge Coral Shaw

Dated this 27<sup>th</sup> day of May 2015

Entered in the Register on this 27<sup>th</sup> day of May 2015

*(Signed)*

René M. Vargas M., Registrar, GenevaRené M. Vargas M., Registrar, Geneva