



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

Judgment No. 2017-UNAT-744

**Krioutchkov
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge John Murphy, Presiding Judge Rosalyn Chapman Judge Sabine Knierim
Case No.:	2016-956
Date:	31 March 2017
Registrar:	Weicheng Lin

Counsel for Mr. Krioutchkov:	Self-represented
Counsel for Secretary-General:	Carla Hoe

JUDGE JOHN MURPHY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2016/066, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 2 June 2016, in the case of *Krioutchkov v. Secretary-General of the United Nations*. Mr. Vladislav Krioutchkov filed his appeal on 1 August 2016, and the Secretary-General filed his answer on 3 October 2016.

Factual Background

2. The Appellant is employed as a Russian Translator (P-3) at the Economic and Social Commission for Asia and the Pacific (ESCAP). He contests the decision not to select him for the post of Russian Reviser (P-4), Russian Translation Unit (RTU), with the United Nations Office at Nairobi (UNON), advertised under Job Opening (JO) 13-LAN-UNON-29492-R-NAIROBI (R). The JO in question was advertised in Inspira from 14 August to 13 October 2013. The Appellant applied for the position on 6 September 2013.

3. Four candidates, including the Appellant, were screened as being eligible and released to the Hiring Manager, Mr. Oganian, the Chief, Russian Translation Section (RTS), UNON. After further assessment by the Hiring Manager, the Appellant and the candidate who was subsequently selected were shortlisted to undergo a substantive written test and a competency-based interview. The written test was administered in November 2013. The test results were anonymised and transmitted to two revisers of the United Nations Office at Geneva for grading according to five different criteria. Out of a maximum score of five points, the Appellant obtained a rating of 3.8 and the other candidate 4.8.

4. The Appellant and the other shortlisted candidates were interviewed on 19 November 2013. The assessment panel comprised the Chief of the Printshop, Division of Conference Services (DCS), UNON (P-5), a Reviser, Arabic Language Unit, UNON (P-4) and the Chief, Spanish Language Unit, UNON (P-5). The panel concluded that the Appellant fully met the requirements of the post in the competencies of communication and teamwork, but only partially in those concerning professionalism, planning and organizing, whereas the other candidate was found to fully meet all competencies. The assessment panel nonetheless recommended both candidates for selection.

5. However, on reviewing the panel's report, the Central Review Committee (CRC) pointed out discrepancies between the panel's recorded assessment of the candidates' competencies and its recommendations. Specifically, it noted, by e-mail dated 5 February 2014, that the panel's comments on the Appellant's answers regarding two competencies were clearly negative and should not have led to the recommendation of the Appellant. Upon receipt of the CRC's feedback, the panel agreed to maintain its comments and to change its recommendation. Accordingly, the panel submitted an amended report dated 17 February 2014, in which only the candidate who was eventually selected was recommended for selection.

6. The assessment panel's final conclusions were also recorded in the standardised Inspira "Comparative Analysis Report". The ratings and the narrative of the Comparative Analysis Report are consistent with those of the assessment panel's report of 17 February 2014.

7. On 21 February 2014, the Secretary of the CRC transmitted its recommendation to the Director, DCS, UNON, for final selection, which took place in late March 2014. By automated e-mail of 2 April 2014, the Appellant was notified of his non-selection for the post.

8. After requesting management evaluation of the contested decision on 16 May 2014, the Appellant received an e-mail dated 10 July 2014 from a Legal Officer of the Management Evaluation Unit (MEU) suggesting that they discuss his case informally. The Appellant agreed to participate in efforts to reach an amicable alternative resolution to the dispute. On 23 August 2014 the Appellant was informed that the Legal Officer who had conducted his case within MEU had been replaced. After reviewing the file, the newly assigned Legal Officer advised the Appellant, on 9 September 2014, that the MEU would provide the Under-Secretary-General with its recommendation by the end of that week. At the Appellant's insistence the Legal Officer clarified on 11 September 2014, that the option of pursuing an informal resolution had been abandoned, and that the MEU would produce a management evaluation letter.

The Proceedings of the UNDT

9. The Appellant filed his application to the UNDT on 25 September 2014. In it, he made the following key allegations: i) improper delay in advertising the vacancy; ii) an improper lowering of the eligibility criteria to favour the successful candidate; iii) a failure to properly compose the panel with appropriate experts; iv) bias on the part of panel members;

v) the compromising of the impartiality of the panel by reason of the undue influence of the Hiring Manager; and, vi) procedural irregularity.

10. The MEU transmitted its management evaluation letter on 21 October 2014.

11. The Respondent filed his reply to the Dispute Tribunal on 31 October 2014.

12. In June 2015, this case, together with a number of other cases filed by the Appellant, was referred to mediation and the proceedings before the UNDT were suspended for that purpose. However, mediation efforts were unsuccessful and the proceedings before the UNDT resumed on 2 November 2015.

13. The UNDT initially considered that the case could be decided on the papers, and, by Order No. 53 (GVA/2016) of 17 March 2016, invited comments from the parties. On 22 March 2016, the Appellant requested a hearing so that the Hiring Manager could be called as a witness, and, on 4 April 2016, he filed additional comments. A hearing was convened on 24 May 2016. Three witnesses gave evidence, namely: Mr. Edmond Oganian, Chief, RTU, UNON, and Hiring Manager for the post; Ms. Laura Mahler, former Chief of the Spanish Language Unit, UNON, and a member of the assessment panel; and, Ms. So-Young Yang, Chief *ad interim*, Unit B, Headquarters Staffing Section, Strategic Planning and Staffing Division, Office of Human Resources Management (OHRM), as an expert in the staff selection system.

14. On 1 June 2016, the Appellant made an unsolicited additional filing. After reviewing it, the UNDT was of the view that this submission did not make any difference to the determination of the issues or factual findings in the case. The UNDT issued its Judgment dismissing the application on 2 June 2016.

15. The Appellant's allegation in relation to the delay in advertising the vacancy overlapped with his allegation of bias. The post became vacant in December 2011 and was only advertised more than 19 months later. The Appellant relied on General Assembly resolution 51/226 to contend that the vacancy should have been issued within three months. The failure to advertise the post timeously, the Appellant contended, had prejudiced him in that had it been done properly, the successful candidate would not have been qualified to apply. As the Appellant saw it, the reason for the delay was to unduly favour the selected candidate by giving him time to gain experience qualifying him for the position.

16. The UNDT accepted that there had been a delay in advertising and filling the vacancy, but held that the purpose of the delay was not contrived to favour the selected candidate, but was motivated by the Hiring Manager's desire to protect his own position in the event that he was not appointed to the P-5 post of Chief, RTU. He did not want his P-4 position filled until he was appointed to the P-5 post, which he was in late 2011. The UNDT held that the delay in advertising the vacancy, while falling short of the applicable standard, did not amount to a violation of the Appellant's terms of appointment.

17. With regard to the alleged reduced eligibility criteria, the Appellant complained that the wording of the JO in relation to experience was changed to request preferably "some" years of service within the Organization, instead of three years as per the generic job description for similar posts. Again, the Appellant contended that this was done to favour the successful candidate. The UNDT accepted that there had been a deviation from the standard criterion, but held that the modification of the JO wording and requirements fell within the discretion of the Organization and was approved and carried out in accordance with the established procedures of Section 4.6 of Administrative Instruction ST/AI/2010/3 (Staff selection system), which require *inter alia* that job openings should to the greatest extent possible be based on generic job profiles approved by the OHRM, but may be deviated from. The deviation in this case was not effected at the instance of the Hiring Manager, but was done by the OHRM which had reduced the requirement in question in relation to similar positions in the past. Furthermore, the selected candidate in all probability would have met the requirements of the generic job description. Accordingly, the UNDT held that the Appellant's submission that the Hiring Manager lowered the experience requirements to render the successful candidate eligible to compete for the post was without foundation.

18. The Appellant's complaint about the composition of the panel had a few dimensions. Firstly, he alleged that the panel was improperly constituted in that it did not include among its members a professional in Russian translation/self-revision, or even a native speaker of Russian. In the circumstances, the Appellant submitted, the panel members were not qualified to assess the essential skills of the vacancy, such as good writing skills, ability to maintain high standards of accuracy etc. The Appellant maintained that this was in contravention of Section 1(c) of ST/AI/2010/3 which defines an assessment panel as normally requiring at least three members, with "two being subject matter experts" at the same or higher level of the job opening. The

provision does not define the term “subject matter experts”. However, this Tribunal in *Aliko*¹ held that the Administration possesses considerable discretion in determining who is an expert for the purposes of staff selection.

19. In the present case, the UNDT regarded the presence of two non-Russian professional linguists with experience in translation and revision as sufficient. Although linguists specialized in the language might be preferable, it is not essential; especially where, as in this case, two senior Russian translators in Geneva graded the written test, which was administered in order to assess, specifically, the technical knowledge and mastery of the Russian language, whereas the panel had the task of evaluating the competencies required for the post and not the technical language competence.

20. The Appellant’s second issue with the composition of the panel related to the role of the Hiring Manager. This complaint too has different elements. Paragraph 5 of Chapter 9.3 of the Inspira Hiring Manager’s Manual (the Manual) provides that the Hiring Manager is usually the chair of the assessment panel. The Hiring Manager did not sit on the panel in this case, leading the Appellant to infer that the selection decision had already been made in advance. Moreover, since the Hiring Manager was the Officer in Charge of the Translation and Editorial Services (TES), all panel members were his subordinates in the workplace and under his influence. The UNDT’s finding on this issue is cryptic. It merely stated that the Appellant’s submission that the impartiality of the panel members was compromised by being under the supervision of the Hiring Manager is without merit. One may assume that it accepted the submission of the Respondent that the claim of a lack of objectivity was not substantiated by the evidence and was based on the Appellant’s unsupported personal opinion. Moreover, there is no requirement that the Hiring Manager sit on the panel. The Manual is in any event a guide without any binding force.

21. The Appellant’s third ground of review in relation to the composition of the panel was that he was not informed of its composition. Had he been, he would have contested it on the grounds of not including a Russian speaking expert. The UNDT held that although the Manual provides that candidates should ordinarily be informed of the composition of the panel, there is no legal obligation to do so because of the non-binding nature of the Manual. Hence, the omission to inform the Appellant of the composition of the panel was not in breach of his rights.

¹ *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540.

22. The Appellant also had difficulty with the fact that the Secretary of the CRC transmitted the recommendation to appoint the selected candidate to the Director, DCS, UNON. The Hiring Manager failed to make the final recommendation to the decision-maker. This, the Appellant said, was in contravention of Section 9.2 of ST/AI/2010/3 which requires the selection decision for positions up to and including D-1 level to be made by the head of department/office on the basis of proposals made by the responsible hiring managers. The UNDT acknowledged that there may have been a procedural irregularity in this regard. However, it held that insofar as the selected candidate alone had been recommended, there is no doubt as to whom the Hiring Manager would have recommended. The Appellant could not have been legally recommended by the Hiring Manager because after the intervention of the CRC, the panel did not recommend him. In short, the procedural irregularity in the process of recommendation made no difference and had no impact on the Appellant's prospects. The UNDT essentially invoked the so-called "no difference principle" which holds that a lack of due process is no bar to fair or reasonable administrative action if it appears at a later stage that due process would have made no difference.

23. The UNDT held that the Appellant had received full and fair consideration and had failed on the evidence to establish any impropriety in the decision not to select him for the vacancy. The Appellant failed to discharge the onus to show that he had not received full and fair consideration.

The Appellant's Grounds of Appeal and Submissions

24. The Appellant appeals against the Judgment of the UNDT on the grounds that it erred on questions of law and questions of fact, resulting in a manifestly unreasonable decision.

25. In his brief, the Appellant raises eleven new grounds of appeal in relation to evidentiary and legal issues that were not raised in the proceedings before the UNDT. These are:

- i) The Hiring Manager, contrary to the provisions of the Manual, deleted an "eliminating screening question" from the Vacancy Announcement for the JO;
- ii) The Hiring Manager unlawfully delegated the task of creating the JO to his human resources office, in contravention of para 4.4 of ST/AI/2010/3, which makes the hiring manager or the occupational group manager responsible for creating the JO and its inclusion in the compendium of vacancies;

- iii) The written test for the post was based on a typing requirement, which was not a requirement of the JO, and had disadvantageded him in that he would have done better had he been allowed to handwrite the test;
- iv) The Hiring Manager failed to prepare a reasoned and documented record of the evaluation of the candidates against the applicable evaluation criteria to allow for review by the CRC and selection by the head of department as required by Section 7.6 of ST/AI/2010/3;
- v) The CRC's recommendation in its e-mail of 5 February 2014 to remove him from the list of recommended candidates was improper and contrary to policy;
- vi) The panel failed to have regard to his performance record (ePAS) prior to deciding whom to include in the list of recommended candidates to the CRC, which "amounted to ignoring relevant material, ... thereby committing [a] procedural error and failing to accord [him] full and fair consideration";
- vii) The competencies for the post were only partially evaluated by the panel, and the assessment of the technical skills of the candidates was only partial;
- viii) Contrary to what the invitation to the test announced, the results were evaluated by two revisers only, and that the assessment panel did not include two members whose presence was mandatory, namely an expert in Russian language and a non-voting *ex officio* member representing the Assistant Secretary-General, OHRM;
- ix) The chairperson of the panel was not elected by the other members and none of the panel members qualified as subject-matter expert;
- x) The Hiring Manager misled the CRC to believe that there was only one panel with the same membership when there were two panels with different membership compositions - both inadequate due to the absence of the subject matter experts during the interview and due to the absence of the third member during the evaluation of the written test; and,

- xi) The assessment panel did not evaluate him for the post of Russian Reviser and for the specific requirements of the JO, and he, therefore, did not receive full and fair consideration for the position.

26. It is important to emphasise that none of these grounds or issues were raised before the UNDT or considered by it.

27. Other than raising these grounds, the Appellant repeats most of the submissions and arguments he made before the UNDT, though with some variation. He also reiterates a point he made in the UNDT proceedings that was not explicitly dealt with in the Judgment. He has been included in the P-4 roster since 2008 and his repeated non-selection therefrom and continued subjection to evaluation tests, in his submission, shows that he has been subjected to discriminatory treatment, through *inter alia* the failure to consider his excellent performance record and the fact that the selected candidate should have been disqualified since he did not have two completed ePAS cycles.

28. The Appellant requests that the Appeals Tribunal hold an oral hearing in his case, and that it rescind the impugned decision and award appropriate relief.

The Secretary-General's Answer on Appeal

29. The Respondent submits that the Appellant identified no error by the UNDT and has not demonstrated any of the grounds for appeal listed in Article 2 of the Appeals Tribunal Statute.

30. Instead of discharging his burden of satisfying the Appeals Tribunal that the Judgment is defective, the Appellant merely reiterates the arguments he advanced before the UNDT, comments on the Secretary-General's reply before the UNDT and raises for the first time new claims and review grounds that are inadmissible on appeal.

31. The Respondent submits that the UNDT correctly held that the contested decision was not based on improper motives, and that the evidence adduced at the hearing did not support the allegations of bias or procedural impropriety. He aligns with the findings of the UNDT as follows:

- i) The delay in advertising the JO was not contrived to allow the selected candidate to gain more experience with the Organization and the Organization acted within

its discretion and in conformity with ST/AI/2010/3 when determining the experience requirements for the position.

- ii) The assessment panel had been properly constituted. The Administration is possessed of considerable discretion in determining who an expert is. The assessment panel included two professional linguists and the Administration validly exercised its discretion in determining that these professionals had the necessary expertise to assess the candidates' competencies for the position and fulfilled the obligation that two subject matter experts be part of the panel. Not informing the Appellant of the composition of the assessment panel prior to the interview was not in breach of the Appellant's rights as there is no rule that requires the Administration to inform candidates of the composition of the assessment panel prior to the interview. And, the fact that the CRC Secretary and not the Hiring Manager transmitted the record of the procedure to the Director, DCS, UNON, for the selection decision, while departing from the terms of ST/AI/2010/3, had no impact on the Appellant's chances of success since he had not been recommended by the panel.
- iii) The Appellant and the selected candidate were the only candidates shortlisted in the selection exercise. Both candidates were invited to take the same written test and were invited to a competency-based interview that tested them on the same four competencies required for the position. Both candidates were assessed by the same assessors. Accordingly, the Administration established that the Appellant's candidature was given full and fair consideration.

32. The Respondent accordingly requests that the appeal be dismissed.

Considerations

33. The Appellant has applied for an oral hearing. In view of the limited issues, and for reasons that will appear, the Tribunal does not consider it necessary to hold an oral hearing in this appeal. An oral hearing will not assist in the expeditious and fair disposal of the case. The Appellant's application for an oral hearing is accordingly refused.

34. As regards the new claims raised on appeal for the first time, it is trite that an appeal to this Tribunal is an appeal on the record. It follows that ordinarily this Tribunal will not entertain novel grounds of review or claims that are raised for the first time on appeal. The reason for that is self-evident. Neither the Respondent nor the UNDT had an opportunity to address the claims in evidence or argument, but furthermore the issues have not been the subject of management evaluation.

35. The eleven new grounds of appeal raised by the Appellant for the first time on appeal go beyond legal points arguable on the record. All of them require further oral testimony, as they make and rest upon factual allegations likely to be contested by the Respondent. The Appellant has not furnished any reason as to why these issues were not addressed in evidence and argument at the UNDT. Nor has he requested the matters to be referred back to the UNDT for oral evidence. Nor are we inclined *mero motu* to remand the matter to the UNDT for that purpose. Resolution of the factual and procedural issues is in any event unlikely to be practically conclusive. They are for the most part alleged minor procedural defects that in all probability, if proven, will have minimal, if any, impact on the fair and full consideration received by the Appellant. They will not conclusively alter the facts that the panel appropriately resolved after full consideration that the selected candidate was the better candidate and that the Respondent properly exercised his broad discretion to give effect to the panel's recommendation. For those reasons, the new grounds for appeal are not receivable.²

36. For the most part, as the Respondent argues, the Appellant has simply regurgitated the arguments he made before the UNDT without pointing to any alleged error on the part of the UNDT. Article 2 of the Appeals Tribunal Statute limits the competence of this Tribunal. For a first instance decision to be vacated or overturned, an appellant must prove that the first instance tribunal, in rendering its judgment, exceeded its jurisdiction or competence, failed to exercise jurisdiction vested in it, erred on a question of law, committed an error in procedure such as to affect the decision of the case, or erred on a question of fact resulting in a manifestly unreasonable decision. It follows that it is not enough for an appellant to disagree with the findings of fact or the conclusions of law made by the trial court. Rather, for an appeal to

² See *Buff v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-639; *Khasan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-502.

succeed, an appellant must persuade this Tribunal that the contested decision fulfills the objective criteria of its competence.³

37. In the present case, however, this did not occur. The Appellant does not identify in his appeal how the Judgment of the UNDT was in any way defective. It is not sufficient for an appellant merely to state that he disagrees with the UNDT's decision and to repeat the arguments submitted before the UNDT.⁴ The appeals procedure is of a corrective nature and is not an opportunity for an unsuccessful party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed in the lower court. Rather, he or she must demonstrate that the court below has committed an error of fact or law warranting intervention by this Tribunal.⁵

38. The reasoning of the UNDT is sound and unassailable. It correctly determined the issues and dismissed the Appellant's grounds of review for sustainable reasons. We are unable to identify any error of law or fact justifying interference with the decision. Its findings in relation to the delay in advertising the vacancy, the reduced eligibility criteria, the composition of the panel, the application of the "no difference principle", the non-binding nature of the Manual and the applicable principles governing the broad discretion of the administration in staff selection matters, are all consistent with the prior jurisprudence of this Tribunal.⁶

39. As for the Appellant's complaint that he has been included in the P-4 roster since 2008 and his repeated non-selection therefrom and continued subjection to evaluation tests, in his submission, shows that he has been subjected to discriminatory treatment through *inter alia* the failure to consider his excellent performance record, this point has been adjudicated recently by

³ *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051; *Tsoneva v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-045.

⁴ *Mahfouz v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-414; *Dannan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-340.

⁵ *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035.

⁶ See *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-496, holding that the Manual, being an instruction manual, does not have binding legal force. Rules, policies or procedures intended for general application may only be established by duly promulgated Secretary-General's bulletins and administrative issuances, *Charles v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-286, para. 23. In *Nikolarakis v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-652, it was held that in matters of staff selection, the Secretary-General has broad discretion. In *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, it was held that the Administration disposes of considerable discretion in determining who is an "expert" for the purpose of staff selection.

this Tribunal in another appeal involving the Appellant.⁷ We need merely repeat what was stated there as follows:⁸

... As to Mr. Krioutchkov's contention that he has been repeatedly included in the P-4 roster since 2008, but has never been selected, in contrast to all other candidates who were normally selected within one to two years without any additional evaluation tests, we note that the Appeals Tribunal has previously held in *Charles*, that:

The roster is a pool of assessed candidates reviewed and endorsed by a central review body and approved by the head of department/office who are available for selection against a vacant position.

... The Appeals Tribunal understands that the Appellant may be frustrated by the fact that he has been on the roster for many years without obtaining a promotion, particularly because he has a wide experience in his professional area, having allegedly occupied different posts in Nairobi, New York and Bangkok for over 25 years. Nevertheless, having clearly and unconditionally accepted the invitation for the technical evaluation, he is now precluded from arguing bias against the examination itself. Moreover, being on the roster does not create an expectancy or entitlement to promotion. In the present case, actually, not all rostered candidates who submitted texts for evaluation were successful. Only three out of five who presented their texts managed to obtain the required minimum points. The mere fact of being on the roster does not guarantee a promotion.

... Moreover, and contrary to Mr. Krioutchkov's contention, when the Organization invites rostered candidates to a technical evaluation, it does not avoid the "best qualified candidates"; it rather creates conditions so that these candidates can compete on equal terms.

40. In the premises, the appeal falls to be dismissed.

Judgment

41. The appeal is dismissed and Judgment No. UNDT/2016/066 is upheld.

⁷ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-707, paras. 30-32.

⁸ *Ibid.*, paras. 28-30, citing *Charles v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-416, para. 28 (internal footnotes omitted).

Original and Authoritative Version: English

Dated this 31st day of March 2017 in Nairobi, Kenya.

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Knierim

Entered in the Register on this 22nd day of June 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar

Concurring Opinion by Judge Rosalyn Chapman

1. I agree with the Judgment, that is, the appeal is denied and Judgment No. UNDT/2016/066 is affirmed. However, I respectfully disagree with both the format of the Judgment and its reasoning.

2. The judgments of the Appeals Tribunal should be well-structured, clear and precise in order to enable the parties, including self-represented staff members and management personnel, to understand them. Among other things, this means that the format of the judgments should be consistent in all the judgments of the Appeals Tribunal. Over the years, the Appeals Tribunal has developed a format with separate sections which set forth the factual and procedural backgrounds, the parties' submissions, and the considerations. There is no reason to depart from the established format and it is unnecessarily confusing to mix together the parties' contentions with the background facts and legal analysis.

3. The Appeals Tribunal's jurisprudence on issues related to non-selection for appointment is well-settled, as we stated in *Aliko*:¹

... "[I]t is not the function of the Dispute Tribunal [...] to take on the substantive role with which the interview panel was charged."^[2] Rather, the Dispute Tribunal reviews the challenged selection process to determine whether a "candidate[] ha[s] received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration".^[3] The burden is on the candidate challenging the selection process to "prove through clear and convincing evidence" that he or she did not receive full and fair consideration of his or her candidacy, the applicable procedures were not followed, the members of the panel exhibited bias, or irrelevant material was considered or relevant material ignored.^[4]

4. The Dispute Tribunal carefully and correctly applied the foregoing principles in considering Mr. Krioutchkov's challenges to the selection process for the JO, and properly concluded that Mr. Krioutchkov's "allegations of bias and procedural flaws are not supported by the extensive examination of the documents and the assessment of the oral evidence".⁵

¹ *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, para. 30.

² *Fröhler v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-141, para. 32.

³ *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122, para. 20.

⁴ *Ibid.*, para. 21.

⁵ Impugned Judgment, para. 54.

Thus, I concur that there is no merit to Mr. Krioutchkov's claims that his candidacy did not receive full and fair consideration and that the selection process was unlawful.

5. Additionally, I concur that Mr. Krioutchkov cannot raise new claims on appeal which he did not raise before the UNDT. As the Appeals Tribunal has held: "Generally, a party who fails to raise an issue before the trial court cannot later raise that issue on appeal."⁶ There is no reason Mr. Krioutchkov could not have raised his new claims before the UNDT, provided he had exhausted them before the MEU.

6. Accordingly, the appeal is denied and Judgment No. UNDT/2016/066 is affirmed.

⁶ *Goodwin v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-467, para. 46; *Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-292, para. 31.

Original and Authoritative Version: English

Dated this 31st day of March 2017 in Nairobi, Kenya.

(Signed)

Judge Chapman

Entered in the Register on this 22nd day of June 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar