

UNDT/2014/116, Kacan

UNAT Held or UNDT Pronouncements

He alleges that the decision was discriminatory, since based on his Kurdish ethnicity, and not based on reasons of force majeure, namely the earthquake that occurred in Van in October/November 2011 and which led to the temporary closure of the UNHCR office in Van. A hearing took place On 5 February 2013, during which the Applicant requested the Tribunal to call a witness to provide testimony concerning his claim that the decision was discriminatory. His request to have his witness heard was, however, not granted and Judge Cousin, in Judgment Kacan UNDT/2013/025 of 19 February 2013, rejected the application and found that the decision was lawful. The Applicant appealed the judgment and UNAT, by Judgment Kacan 2014-UNAT-426, remanded the case back to the Dispute Tribunal, before a different judge, “for a determination of the facts...after having heard the evidence of the [Applicant’s] witness.” The remanded case was assigned to Judge Laker who convoked the parties and the Applicant’s witness to a hearing on 2 September 2014. After hearing the witness’ evidence, the Tribunal found that it was not established that the decision was based on discriminatory grounds, but rather that it was based on the operational realities faced by the UNHCR Office in Van, and constituted a legitimate exercise of discretion on the part of the Administration.

Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member of the United Nations High Commissioner for Refugees (“UNHCR”) in Van, Turkey, contests the decision not to renew his fixed-term appointment (FTA) beyond 31 December 2011.

Legal Principle(s)

Reason for non-renewal/burden of proof of extraneous factors: The burden of proof of showing that the non-renewal decision was arbitrary or based on improper motives lies with the Applicant. Principles of equal treatment: an Applicant, who has a different status within the Organization than other staff members whose services were maintained, cannot claim that the decision not to renew his FTA constitutes a violation of the principles of equal treatment.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Kacan

Entity

UNHCR

Case Number(s)

UNDT/GVA/2012/053/R1

Tribunal

UNDT

Registry

Geneva

Date of Judgement

19 Sep 2014

Duty Judge

Judge Laker

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Discrimination and other improper motives

Race

Non-renewal

Reason(s)

Separation from service

Related Judgments and Orders

2013-UNAT-311

2011-UNAT-115

2011-UNAT-138

2011-UNAT-153

2014-UNAT-411

2011-UNAT-184

2014-UNAT-426