

# UNDT/2016/052, Krioutchkov

## UNAT Held or UNDT Pronouncements

The Tribunal noted that: (a) there was no female member in the assessment panel, (b) the panel's evaluation of the candidates was substantially modified between its adoption by all three panel members and its scrutiny by the competent Central Review Committee ("CRC"), (c) the Hiring Manager failed to transmit his final recommendation to the decision-maker; instead the CRC Secretariat forwarded the selection record (with only one recommended candidate) to the decision-maker, and (d) the Applicant was not notified of his non-selection within the prescribed 14 days of the decision; rather, he came to be informed of the decision 28 months later, and only because he repeatedly and specifically asked for it.

**Hiring Manager: Sec. 1(m) of ST/AI/2010/3** implies that the Hiring Manager must belong to the department/office where the post to be filled is located. Insofar as an officer in temporary assignment to a different office keeps a lien to his post, it is acceptable that said officer still be regarded as belonging to the sending office and permitted to act as Hiring Manager for vacancies within it. While ST/AI/2010/3 does not cater for a shared exercise of the Hiring Manager's authority, it does not forbid it and the Manual provides for the existence of a multiple Hiring Team, with a primary Hiring Manager as the main officer responsible for the procedure.

**Subject matter experts in the panel:** In connection with the requirement that an assessment panel include at least two subject matter experts, the Administration enjoys discretion to determine the domain(s) of expertise that may be relevant for a certain post.

**Female member in a panel:** The presence of a female member in an assessment panel is a mandatory requirement under sec. 1(c) of ST/AI/2010/3. A plain reading of said provision indicates that the adverb "normally" does not nuance or relativize this requirement, as it attaches only to a different condition provided for in the same provision (i.e., the number of members composing the panel).

**Modification of the panel's conclusions:** the fact that the selection at issue was based on ratings that did not emanate from the panel members amounts to a serious violation of the legal framework governing staff selection. The clearance of the procedure by the CRC does not cure this flaw.

**Separation of roles in the selection process:** The selection

system was designed to assign specific roles and responsibilities among the different actors throughout the procedure; this distribution of duties is not to be taken lightly as it constitutes one of the main checks and balances put in place against arbitrary selections. Failure to respect the strict separation of mandates is a procedural error. Mandatory notification of non-selection: Sec 10.1 of ST/AI/201/3 creates a clear obligation to inform unsuccessful shortlisted candidates about their non-selection within a precise timeframe. The fact that the Inspira system was not fully operational at the material time and, in particular, that the notification function was unavailable is no justification to disregard this legal obligation. The Administration had the responsibility to ensure its good functioning or palliate to its shortcomings by complying with its notification duty through other means. No one can be allowed to invoke his own turpitude—*nemo auditur propriam turpitudinem allegans*. Calculation of compensation in lieu: There is no set way to calculate the quantum of such compensation, but it must be based on the circumstances of each particular case. The chances of being selected (based on factors such as the number of shortlisted and interviewed candidates and the panel's recommendation) and the difference between the salary at the current grade and step and potential income after promotion, *inter alia*, are relevant considerations. In view of Hastings 2011-UNAT-109 (para. 19), the Tribunal is compelled to limit the projection of the difference in salary to two years.

## Decision Contested or Judgment/Order Appealed

The Applicant challenges on different grounds his non-selection for the post of Chief, Russian Translation Unit, UNON.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

Both financial compensation and specific performance.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Krioutchkov

## Entity

ESCAP

## Case Number(s)

UNDT/GVA/2014/64

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

4 May 2016

## Duty Judge

Judge Laker

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

In-lieu compensation

Non-pecuniary (moral) damages

Staff selection (non-selection/non-promotion)

Interview

## Applicable Law

Administrative Instructions

- ST/AI/2010/3

Other UN issuances (guidelines, policies etc.)

- Manual for the Hiring Manager

Staff Rules

- Rule 11.2(c)

UNDT Statute

- Article 10.5(b)
- Article 8

UNAT Statute

- Article 2.1(a)

## Related Judgments and Orders

UNDT/2014/040

UNDT/2012/146

2011-UNAT-109

2011-UNAT-122

UNDT/2009/091

UNDT/2015/021

UNDT/2014/036

UNDT/2015/116

UNDT/2015/117

UNDT/2016/026

2011-UNAT-110

2012-UNAT-219

2012-UNAT-242

2014-UNAT-434

2014-UNAT-396

2014-UNAT-444

2015-UNAT-540

2015-UNAT-603