

# **UNDT/2021/074, Izurieta Canova**

## **UNAT Held or UNDT Pronouncements**

UNDT held that it was satisfied that there were sound reasons supporting the Secretary-General of UNCTAD's decision to cancel the job opening, but noted that it would have been desirable to undertake and complete a gender/geographical balance assessment at an early stage of the recruitment process. UNDT disagreed with the Applicant that the impugned decision was an act of discrimination against him. UNDT held that the decision constituted permissible and lawful affirmative action on the part of the Organization to reach gender and geographical goals set by the UN General Assembly. UNDT also held that ST/AI/1999/9 was not retroactively applied since it was in place at the time of the recruitment process. UNDT held that the principle of estoppel was not applicable in this case because there was no right being asserted that contradicted a previous agreement by law, the "gender-parity" policy was already in place at the time the post was opened for recruitment, and the recruitment process was not finalized since none of the two recommended candidates were appointed. UNDT held that the cancellation of the job opening was not an abusive exercise of administrative discretion by the Secretary-General of UNCTAD and, consequently, the contested decision was lawful. UNDT rejected the application.

## **Decision Contested or Judgment/Order Appealed**

The Applicant contested the cancellation of a job opening for a post with the United Nations Conference on Trade and Development (UNCTAD) to which he had applied.

## **Legal Principle(s)**

Official acts are presumed to have been regularly performed, and the presumption stands satisfied if the Administration is able to minimally show that full and fair consideration was given to the candidate. Thereafter, the burden of proof shifts to

the Applicant who must minimally show through clear and convincing evidence that he or she was denied a fair chance of selection/promotion.

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Izurieta Canova

## Entity

UNCTAD

## Case Number(s)

UNDT/GVA/2019/072

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

28 Jun 2021

## Duty Judge

Judge Bravo

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Staff selection (non-selection/non-promotion)

Full and fair consideration

## Applicable Law

Administrative Instructions

- ST/AI/1999/9

Secretary-General's bulletins

- ST/SGB/2008/5

UN Charter

- Article 101