

2020-UNAT-988, Gueben

UNAT Held or UNDT Pronouncements

UNAT considered the legality and rationality of the Administration's conclusion that it was not in its interests to retain the Appellant because he did not possess the relevant language skills. UNAT held that it was necessary for the Administration to take into consideration the interests, needs, and operational realities of the Organisation when determining the suitability of staff members for a permanent appointment. UNAT held that there was undoubtedly a rational basis for the denial of a permanent appointment for the Appellant. UNAT noted that irrespective of whether the Appellant was proficient in a third language or had other skills, he did not possess the qualifications for a language staff in the Secretariat given that he had not passed the LCE, and UNAT held that this consideration alone was sufficient legal basis to support the lawfulness of the impugned decision. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to grant him a permanent appointment after the second reconsideration of his suitability. The Administration took into consideration that he had not passed the language competitive examination (LCE) and that he did not have excellent knowledge of two official languages of the UN (in addition to French), both prerequisites for the employment of language staff at the Secretariat. The Administration concluded that it was therefore unlikely that his services would be required by the Organisation and accordingly, he was not a suitable candidate for conversion to a permanent appointment. UNDT held that (1) the fact that the Applicant did not pass the LCE was a proper consideration in assessing his suitability for conversion, (2) the administrative practice of requiring a third language was a reliable ground on which to anchor an administrative decision, provided that said practice was neither manifestly illegal nor abusive, (3) neither a specialisation in law nor an intermediate/advanced level of Spanish provided a sufficient basis to warrant an exception to the requirement for a third language, and

(4) the Applicant was not being discriminated against in comparison with professional non-language staff, but rather professional non-language staff and professional language staff had justifiably different recruitment requirements. UNDT rejected his application.

Legal Principle(s)

The Administration must take into consideration the interests, needs, and operational realities of the Organisation when determining the suitability of staff members for a permanent appointment.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Gueben

Entity

ICTY

Case Number(s)

2019-1292

Tribunal

UNAT

Registry

New York

Date of Judgement

27 Mar 2020

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Permanent appointment

Applicable Law

Former Staff Rules

- Rule 104.12(b)
- Rule 104.13(a)

Secretary-General's bulletins

- ST/SGB/2009/10

Related Judgments and Orders

UNDT/2019/126

2010-UNAT-095

2014-UNAT-420

2015-UNAT-508

2015-UNAT-537

2016-UNAT-669

