

# UNDT/2022/118, Turk

## UNAT Held or UNDT Pronouncements

Once approved by the General Assembly, the decision to downgrade a post is placed outside the Tribunal's jurisdiction. There can be no issue of restoring this position and the Applicant as its incumbent. The only question that could be entertained by the Tribunal is whether, in proposing the budget, the administration acted lawfully, or, as it is alleged, engaged in a conspiracy against the Applicant to mislead the General Assembly. The Tribunal found that the Secretary-General's recommendation to downgrade one of the P-4 posts was lawful. The Tribunal was satisfied that the downgrading of post No. 30048407 was a genuine reorganization exercise. As a comparative review process, just as it is the case with recruitment processes, is not an exact science. The criteria for appraisal are devised conventionally in order for them to be objectively measurable. The Tribunal found that the criteria employed for the exercise in question were rational and mirrored what is routinely applied in similar comparative processes in the Organization. Regarding the sweeping averment of improper purpose, i.e., that there was a preconceived plan to eliminate the Applicant, the Tribunal recalled that, in accordance with the presumption of regularity, the staff member had the burden of proving that improper factors played a role in the administrative decision. In this regard, the Tribunal found that the events cited by the Applicant, even if taken as true, were incapable of proving discriminatory or otherwise improper intent on the part of the author of the impugned decision. The mere fact that there were workplace disagreements did not amount to proof of improper motives, neither did the alleged facts suffice to establish a causal link of motives with the issuance of the challenged administrative decision.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to not renew his fixed-term appointment ("FTA") beyond its expiration date of 31 December 2021.

## Legal Principle(s)

The Tribunal recalled that concerning the restructuring of a mission, even when it results in loss of employment for staff, the Secretary-General has a wide, albeit not unfettered, discretion. Cutting expenses is a legitimate goal, especially considering the difficult financial situation of the Organization. Where the outputs required by the General Assembly are attainable through staffing on a lower level, it is legitimate to pursue downgrading of posts. Where the retrenchment does not entail termination, but, as in this case, was coordinated with the expiration of the appointments at the end of their terms, the interests, at least prima facie, were properly balanced. That there could have been alternative ways of saving, did not render the chosen solution “absurd or perverse”, in violation of the limits of the Secretary-General’s discretion.

## Outcome

Appeal dismissed on merits

## Outcome Extra Text

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Turk

## Entity

UNAMI

## Case Number(s)

UNDT/NBI/2022/006

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

2 Nov 2022

## Duty Judge

Judge Milart

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Classification (post)

Reason(s)

Non-renewal

## Applicable Law

Administrative Instructions

- ST/AI/1998/9

## Related Judgments and Orders

2012-UNAT-236

UNDT/2012/118

UNDT/2011/045  
2021-UNAT-1082  
2022-UNAT-1204  
UNDT/2021/080  
2016-UNAT-659  
2015-UNAT-534  
2015-UNAT-500  
2013-UNAT-311