

2022-UNAT-1252, Alejandro Izurieta Canova

UNAT Held or UNDT Pronouncements

Oral hearing: Mr. Izurieta Canova applied in terms of Article 18(1) of the Rules of Procedure of the UNAT for an oral hearing to be held in this case. As this is a straightforward matter, not attended by any factual or legal complexity, UNAT did not consider that a hearing would assist in the expeditious and fair disposal of the case. For that reason, the application for an oral hearing was refused.

The question on appeal was whether the impugned recruitment cancellation decision by the Secretary-General of UNCTAD was a lawful and reasonable exercise of discretion?

The motive for the cancellation decision was to advance the affirmative action policy and the requirements of geographical representation. The Organization is the custodian of human rights internationally and is obligated to advance the cause of gender equity; and, given its structural character, it is also required to ensure that its staff complement reflects and represents the different regions of the world. The evidence indisputably reveals that the first recruitment exercise did not yield a satisfactory result in achieving those imperatives. The legitimate purposes of the gender and regional policies were not realized. Thus, in his discretion, the Secretary-General of UNCTAD opted to start the process again in the hope that a second round would cast the net wider and produce a more representative pool of candidates to be considered for selection. Hence, the cancellation decision aimed at achieving a legitimate policy and was rationally connected to that purpose. Mr. Izurieta Canova's claim of discrimination is formalistic and is premised on a misunderstanding of the precepts of substantive equality. The differentiation in this instance was aimed at redressing past patterns of disadvantage (where males from certain geographical regions were previously favored). To achieve the objectives of gender fairness and regional representation, and to harmonize the interests of the people of the Member States for the common good, it is essential to regulate and it is impossible to do so without differentiation and without classifications that treat people differently. As said, differential treatment which pursues a legitimate policy is not unfair discrimination if there is a rational connection between the differentiation and the purpose it is designed to achieve. If it is justified in that way, it does not amount to discrimination. Fair and reasonable differentiation is acceptable in most modern societies.

Likewise, the UNDT did not err in rejecting Mr. Izurieta Canova's arguments regarding estoppel. The Administration did not misrepresent the legal position by not expressly stipulating the requirements of affirmative action and regional representation in JO 75470. These internal policies are well known, and Mr. Izurieta Canova cannot contend that he was prejudiced by reliance on any misrepresentation of them. These requirements also do not equate to ordinary eligibility criteria aimed more specifically at functional competence or occupational suitability. Hence, the failure to disclose these requirements in a job opening or vacancy announcement does not preclude the Administration from relying on them in making any selection. All appointments are subject to the internal policies of the Organization.

The UNDT moreover did not err in concluding that the memorandum of 11 February 2019 did not constitute a new issuance that was applied retroactively. The applicable legal instrument was ST/AI/1999/9. The cancellation decision was squarely in accordance with its provisions.

In the premises, the UNDT did not err in its determination that the cancellation decision was lawful and reasonable. The appeal must accordingly be dismissed.

Decision Contested or Judgment/Order Appealed

Mr. Canova appealed Judgment No. UNDT/2021/074, in which the Dispute Tribunal dismissed his application contesting the decision of UNCTAD to cancel a recruitment exercise and re-advertise a post in order to reach UNCTAD's gender parity goals and improve its geographical representation.

Legal Principle(s)

This Tribunal has consistently held that the Administration is not obliged to pursue or complete a recruitment process once begun. The Administration has a wide discretion to cancel a procedure for sound reasons and in the interest of the Organization. Provided there is a reasonable and rational basis for the decision, the UNDT should defer to the Administration and not interfere with the exercise of discretion. The standard of review is the lower standard of rationality because the Administration is best placed to assess and implement polycentric human resource decisions that are allocative and distributive in nature. In assessing the reasonableness and rationality of the cancellation decision generally, regard must be had to the motive, purpose, basis and effect of the decision. If there is a rational connection between the purpose of the empowering provision, the information on which the decision is based and the purpose and reasons for it, the decision will be rational and thus reasonable and lawful.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Alejandro Izurieta Canova

Entity

UN Secretariat

Case Number(s)

2021-1584

Tribunal

UNAT

Registry

New York

Date of Judgement

12 Aug 2022

President Judge

Judge Knierim

Judge Murphy

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Discrimination and other improper motives

Gender

Applicable Law

Administrative Instructions

- ST/AI/1999/9

UNAT RoP

Related Judgments and Orders

2013-UNAT-292

2019-UNAT-932