

2022-UNAT-1236, Marius Mihail Russo-Got

UNAT Held or UNDT Pronouncements

The decisive fact relied on by the Secretary-General to justify a revision of the UNAT judgment is said to be that Mr. Russo-Got inserted false information in his candidature regarding his alleged experience with NATO. The Secretary-General submits that he first became aware of this fact formally when it was made known to UNOPS after the issuance of the UNAT judgment.

UNAT held that the facts advanced by the Secretary-General, namely the allegedly false information Mr. Russo-Got had inserted in his candidature, could not be decisive of the Secretary-General's case and enable him to now succeed on his original appeal. These "new facts" and their implications cannot overcome the conclusions reached by the UNDT and the Appeals Tribunal on the earlier appeal. As already noted in the original UNAT judgment, the illegality of the challenged decision of the Administration not to select Mr. Russo-Got for the position of ERP/SAP Project Manager was primarily founded on the multiple procedural irregularities established on evidence before the UNDT, which tainted the selection procedure and supported the Appeals Tribunal's pronouncement, affirming the UNDT Judgment, that Mr. Russo-Got's candidacy had not been considered appropriately.

UNAT also held that the Secretary-General has had every opportunity, had he showed due diligence in this regard, to collect such evidentiary material and furnish it to the first instance Tribunal, when his decision not to select Mr. Russo-Got came under attack in the first place.

UNAT held that the request filed by the Secretary-General does not fulfil the statutory requirements and constitutes, in fact, a disguised attempt to re-open the case by introducing new additional evidence in circumvention of the existing procedural norms that govern the litigation in the internal justice system and therefore dismissed the application for failing to establish an unknown decisive fact

that warrants revision of the Judgment.

UNAT further denied Mr. Russo-Got's request for an award of costs as UNAT did not find that the Secretary-General has "manifestly abused the appeal process". UNAT also denied Mr. Russo-Got's request for an award of costs as Article 9(2) of the UNAT Statute does not provide for such, nor does Article 31 of the same Rules of Procedure, which, contrary to Mr. Russo-Got's assertion, plainly contemplates only procedural matters not covered in the rules of procedure and not an award of damage.

Decision Contested or Judgment/Order Appealed

Judgment No. 2021-UNAT-1095 which affirmed the UNDT Judgment No. UNDT/2020/077 in which UNDT held the contested non-selection decision unlawful.

Legal Principle(s)

Applications for revision of judgment are governed by Article 11 of the Statute and Article 24 of the Rules of Procedure of the Appeals Tribunal. By these provisions, an applicant must show or identify the decisive facts that at the time of the Appeals Tribunal Judgment were unknown to both the Appeals Tribunal and the party applying for revision; that such ignorance was not due to the negligence of the applicant; that the facts identified would have been decisive in reaching the decision; and that the decisive facts existed at the time when the judgment was given and discovered subsequently. Facts which occur after a judgment has been given are not such facts within the meaning of Article 11 of the Statute and Article 24 of the Rules of Procedure of the Appeals Tribunal, this remains the case irrespective of the legal consequences that such facts may have.

The Appeals Tribunal has consistently held that "any application which, in fact, seeks a review of a final judgment rendered by the Appeals Tribunal can, irrespective of its title, only succeed if it fulfils the strict and exceptional criteria established by Article 11 of the Statute of the Appeals Tribunal".

Article 9(2) of the UNAT Statute provides that "[w]here the Appeals Tribunal determines that a party has manifestly abused the appeals process, it may award costs against that party".

Outcome

Revision, correction, interpretation or execution

Outcome Extra Text

The application for revision was dismissed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Marius Mihail Russo-Got

Entity

UNOPS

Case Number(s)

2021-1585

Tribunal

UNAT

Registry

New York

Date of Judgement

5 Jul 2022

President Judge

Judge Raikos

Judge Colgan

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Revision of Judgment

Judgment-related matters

Applicable Law

UNAT RoP

- Article 24

UNAT Statute

- Article 9.2
- Article 11

Related Judgments and Orders

2021-UNAT-1131

2018-UNAT-890

2015-UNAT-573

2022-UNAT-1193