

UNDT/2024/094, Litviniuk

UNAT Held or UNDT Pronouncements

The Tribunal recalled that the regulatory framework on termination for facts anterior does not limit it to cases where there has been a proven prior factual finding of misconduct or a conviction of crime. What is required is that there must be a fact anterior that detracts from the suitability of the prospective recruit due to concerns of efficiency, competence, and integrity. The fact must be of so serious a nature that it would have precluded the staff member's appointment if it had been disclosed to the Organization during the recruitment process.

In the instant case, the Tribunal concluded that, in all the circumstances, the Respondent had sufficient evidence of facts anterior, to have decided against the suitability of the Applicant as a staff member. The decision to terminate the Applicant's employment was, therefore, justified because had the information been known beforehand, the Applicant would have been precluded from appointment.

Accordingly, the Tribunal decided to deny the application in its entirety.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to terminate her fixed-term appointment in accordance with staff regulation 9.3(a)(v) on grounds of facts anterior.

Legal Principle(s)

Pursuant to settled jurisprudence of the Tribunal, the facts anterior and their non-disclosure prior to appointment do warrant the termination of a staff member's fixed-term appointment in accordance with staff regulation 9.3 (a)(v).

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Litviniuk

Entity

UNHCR

Case Number(s)

UNDT/GVA/2024/016

Tribunal

UNDT

Registry

Geneva

Date of Judgement

7 Nov 2024

Duty Judge

Judge Honeywell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Separation from service

Applicable Law

Staff Regulations

- Regulation 9.3

Staff Rules

- Rule 1.5

UN Charter

- Article 101.3

Related Judgments and Orders

2010-UNAT-084

2018-UNAT-858

2015-UNAT-541

2018-UNAT-882

UNDT/2017/021