



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2022-UNAT-1300

Marius Mihail Russo-Got
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before: Judge John Raymond Murphy, Presiding
Judge Dimitrios Raikos
Judge Martha Halfeld

Case No.: 2021-1638

Date of Decision: 28 October 2022

Date of Publication: 23 December 2022

Registrar: Juliet Johnson

Counsel for Appellant: Self-represented

Counsel for Respondent: Amanda Stoltz

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Mr. Marius Mihail Russo-Got is a former staff member of the United Nations Office for Project Services (UNOPS). In an application to the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), he challenged a decision of UNOPS to blacklist him based on findings in an investigation report of the Internal Audit Investigation Group (IAIG), which alleged he had altered certain documents in an improper manner (contested decision). The UNDT by Judgment No. UNDT/2021/128 (impugned Judgment) dismissed the application in its entirety as not receivable. Mr. Russo-Got appeals against the UNDT Judgment. For the following reasons we dismiss the appeal.

Facts and Procedure

2. Mr. Russo-Got separated from the Organization on 31 January 2019.
3. Two years later, on 19 January 2021, UNOPS notified Mr. Russo-Got of the completion of an investigation into allegations of forgery against him and requested his comments on the report. Mr. Russo-Got provided the requested comments on 1 February 2021.
4. On 11 February 2021, Mr. Russo-Got requested management evaluation. In his extensive submissions, he defined the issue as follows:

The Applicant, Mr. Marius Russo-Got contests the report of the UNOPS Internal Audit and Investigations Group (“IAIG”) and the Administration decision for which from the outset, it is no doubt that I provided credible and certificated evidence and it is clear enough that report is a way under any reasonable standard, it is based on wrong facts and prejudgments, and definitely, there can be no defense of discretion to blatantly violate the rules, nor can there be any presumption of regularity when the outcomes of investigation have been predetermined with manipulation and favoritism. The IAIG investigation is out of its invested mandate, out of the jurisdiction, and an unacceptable violation of my civil/human rights. The IAIG's investigation was to intimidate me and damage my credibility and professional image. The IAIG's investigation is below any acceptable standard in the domain and is clear enough that the UNOPS Internal Audit and Investigations Group (“IAIG”) did not know or ignores, at minimum, basic information such as my last name which is Russo-Got instead of Russo, or my first name which is Marius Mihail instead of Marius (or maybe I am not the subject of this investigation??). The IAIG investigation started from the wrong premises. The IAIG violated my civil/human rights.

5. Later in the document he continued:

The IAIG's allegations are suppositions based on uncredible rationales giving theories or personal interpretations, which, without relevant evidence and factual determinations, cannot be made. Definitely, the IAIG investigation and report are abusive, and there can be no defense of discretion to blatantly violate the rules, nor can there be any presumption of regularity when the outcomes of investigation have been predetermined with manipulation and favoritism. During this investigation, my civil/human rights were violated. By the United Nations Charter, the UN system is in charge "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained", how can the UN achieve its mandate if in the UN system the basic human rights and laws are broken? The member states are showing a constant interest in this topic and are ready to apply any budgetary reconsideration. Moreover, this is against to the United Nations Staff Regulation 1.2(b): "Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.

6. He concluded by asking for pecuniary and non-pecuniary damages for violation of his human rights and reputation, discrimination and procedural unfairness.

7. In his application to the UNDT, Mr. Russo-Got defined the contested decision as follows:

I am challenging the UNOPS administrative decision to blacklisted (sic) me for any opportunity with the United Nations common system and slander my reputation and professional image in a formal or informal mode (UNOPS shared with others ...an erroneous IAIG report and/or conclusions); I contest contents, procedures and outcome of the ...(IAIG) investigation....and violation of my human rights.

8. The UNDT held that the application was not receivable on various grounds. Firstly, the request for management evaluation did not challenge any blacklisting decision. Secondly, Mr. Russo-Got did not identify any selection decision in respect of any position for which he applied and had been rejected. And thirdly, the challenge to the IAIG report itself was not receivable on the ground that the report, being preliminary in nature, was not an administrative decision.

Submissions

Mr. Russo-Got's Appeal

9. Mr. Russo-Got submits that the IAIG investigation has harmed his reputation and violated his human rights and that it did not meet appropriate standards of procedural fairness.
10. He repeats that he is essentially challenging the administrative decision to blacklist him but does not address the issue of his failure to refer the blacklisting decision for management evaluation besides saying he was disoriented at the time.
11. Although Mr. Russo-Got states that he was prejudiced in selection decisions, his appeal does not identify any specific administrative non-selection decision.
12. He requests that the Judgment of the UNDT on receivability be set aside.

The Secretary-General's Answer

13. The Secretary-General submits that the UNDT did not err in any respect.
14. He submits that the UNDT correctly held that the claim in relation to the alleged blacklisting was not receivable *ratione materiae* because Mr. Russo-Got had failed to challenge any such decision in his request for management evaluation and no adverse non-selection decision was submitted for review. Likewise, the IAIG report in itself did not constitute a final administrative decision with direct legal effect as it was preliminary or intermediate in nature. In reaching these conclusions, the UNDT correctly identified and applied the requirements of the UNDT Statute and the United Nations Staff Rules, as well as the jurisprudence of the United Nations Appeals Tribunal, regarding the competence and jurisdiction of the UNDT and the receivability of applications.
15. The Secretary-General requests the appeal to be dismissed.

Considerations

16. Article 2 of the UNDT Statute defines the jurisdiction of the UNDT. To the extent relevant in this case, it provides that the UNDT shall be competent to hear and pass judgment on an application to appeal “an administrative decision that is alleged to be in non-compliance

with the terms of appointment or the contract of employment”. An appealable administrative decision under Article 2 is “a unilateral decision of an administrative nature taken by the administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another and produces direct legal consequences”.¹ It is incumbent upon the staff member to clearly identify the administrative decision that is contested.²

17. Article 8(1)(c) of the UNDT Statute provides that the UNDT has jurisdiction to receive applications appealing administrative decisions only when a staff member “has previously submitted the contested administrative decision for management evaluation”.³

18. Staff Rule 11.2(a) requires that a “staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or appointment ... shall, as a first step, submit to the Secretary-General in writing a request for management evaluation of the administrative decision”.

19. This Tribunal has consistently held that claims that have not been raised in a request for management evaluation are also not receivable *ratione materiae*.⁴

20. The evidence incontrovertibly establishes that Mr. Russo-Got failed to challenge any blacklisting decision in his request for management evaluation. Moreover, while the application contained references to several posts for which he had applied and had not been selected, Mr. Russo-Got did not request management evaluation of any selection decision nor did he appeal any particular selection decision in his application to the UNDT.

21. The UNDT accordingly did not err in finding that the claims in the application regarding the alleged blacklisting and his non-selection on that basis were not receivable *ratione materiae*. Mr. Russo-Got simply failed to specifically identify or challenge any such decision in his request for management evaluation and no selection decision was submitted for review.

¹ *Lloret Alcañiz et al. v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-840, para. 61.

² *Argyrou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-969, para. 32.

³ *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-293, para. 25.

⁴ *Luvai v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-417, para. 28.

22. The UNDT also did not err in dismissing the challenge to the IAIG report. The evidence shows that on 19 January 2021, the General Counsel of UNOPS requested Mr. Russo-Got to provide comments on the IAIG report and stated that after the deadline for submission of these comments had elapsed, he would “consider ... whether any action should be taken by UNOPS”. Mr. Russo-Got submitted his response on 1 February 2021, and his request for management evaluation on 11 February 2021. There is no evidence that he was notified of any adverse decision or that he challenged any subsequent decision by UNOPS that is based on the IAIG report.

23. Only final administrative decisions with direct legal effect are subject to review. The idea is to focus judicial review pragmatically on the more important and effective administrative decisions and not on preliminary or intermediate decisions prior to a final decision being reached. Steps, including investigative reports, that are preliminary in nature “may only be challenged in the context of an appeal against a final decision of the Administration that has direct legal consequences”.⁵

24. The IAIG report merely constituted a preliminary step in the decision process which in and by itself had no direct legal consequences for Mr. Russo-Got. It accordingly did not constitute an administrative decision as contemplated in Article 2 of the Statute of the UNDT, and the UNDT accordingly did not err in finding that the challenge to the report was not receivable *ratione materiae*.

⁵ *Nguyen-Kropp & Postica v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-509, para. 33.

Judgment

25. The Appellant's appeal is dismissed and Judgment No. UNDT/2021/128 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of October 2022 in New York, United States.

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Raikos

(Signed)

Judge Halfeld

Judgment published and entered into the Register on this 23rd day of December 2022 in New York, United States.

(Signed)

Juliet Johnson, Registrar