UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2016-UNAT-636

Cicek

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Deborah Thomas-Felix, Presiding Judge Sophia Adinyira Judge Luis María Simón
Case No.:	2015-845
Date:	24 March 2016
Registrar:	Weicheng Lin

Counsel for Mr. Cicek:	Self-represented
Counsel for Secretary-General:	Amy Wood

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2015/043, issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 27 May 2015, in the matter of *Cicek v. Secretary-General of the United Nations*. Mr. Cem Huseyin Cicek filed his appeal on 24 July 2015, and the Secretary-General filed his answer on 2 October 2015.

Facts and Procedure

2. The facts as found by the Dispute Tribunal read as follows:[1]

> ... The Applicant serves as Information Assistant/Liaison Assistant, Public Information Office ("PIO"), with [the United Nations Peacekeeping Force in Cyprus (UNFICYP)] (GL-5/5 level), in Nicosia, Cyprus, on a fixed-term appointment.
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> ... On 2 August 2013, two positions [Position] of National Professional Officer [(NPO), in the Civil Affairs Section (CAS)], UNFICYP, at the NO-B level, were advertised under [Job Opening (JO)] No. 8/2013; one position was reserved for the hiring of a Greek-Cypriot and the other one for that of a Turkish-Cypriot.
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> ...
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> ... The JO specified:
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> > Education: Advanced degree (Masters or equivalent) in public administration, political science, international relations or social sciences. A first university degree (Bachelor or equivalent) with a combination of exceptional professional experience may be accepted in lieu of the advanced degree.
> >
> > Experience: At least 3 years following the completion of a Bachelor's degree or 2 years following completion of a Master's degree, of progressively responsible experience in the field of public administration, governance, peace-building, and community relations.
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> ... The Applicant, a Turkish-Cypriot, applied for the Position, and his application included a Personal History Profile ("PHP").

[1] Impugned Judgment, paras. 8-9, 12-15, 17, 19-35.

... The Civilian Personnel Office conducted the initial screening, and on 30 August 2013 it produced a list of candidates who met the criteria for the Position and another list of candidates who did not. The Applicant was on the list of candidates not meeting the job criteria. On the same day, the then Chief Civilian Personnel Officer ("CCPO") wrote to the Hiring Manager [who was the Chief Civil Affairs Officer] and to [the Senior Political Adviser, UNFICYP], who was the latter's supervisor, explaining that his office had been very "liberal" in the screening to get as many eligible candidates as possible, but that all the local staff of the Mission who had applied to the Position were nonetheless screened out for not having the required professional level experience.

... [The Senior Political Adviser] testified that [...] he told the CCPO that in light of the great interest in the two posts among local staff, it would be a pity not to give any of them a chance to compete. He therefore asked the CCPO to have another look at the list to see if at least one Greek-Cypriot and one Turkish-Cypriot local staff member could be included [...]. [...]

...

... [After further exchanges], the CCPO added the Applicant and another local candidate to the list of eligible ones. On 11 September 2013, a third local UNFICYP staff member was [also] included in the list of eligible candidates.

...

... The [...] shortlisted candidates took a written test on 20 September 2013. [...]

... [On 6 October 2013, f]ollowing her predecessor's departure, [a new person] took up the post of CCPO [...], becoming responsible for [UNFICYP's] Human Resources Management Section [...]. She told the Tribunal that on her second day on duty, the Hiring Manager came to see her to express her concerns that [the Senior Political Adviser] had influenced the selection of eligible candidates for the JO. [The new CCPO] reassured the Hiring Manger that she would do everything possible to ensure integrity and compliance with the rules, but she took no immediate steps as she did not have all the relevant facts and information.

... Having passed the test, the Applicant and the other seven shortlisted candidates were invited to a competency-based interview on 17 October 2013. The interview panel consisted of the Hiring Manager, [the Senior Political Adviser] and another UNFICYP staff member. [The new CCPO] attended as an *ex officio* observer. In that role, her responsibility was to ensure that the correct procedure was followed at the interview and interfere only if the procedure was not followed correctly and consistently.

... In the course of the interviews, [the new CCPO] noticed that some candidates did not appear to have the required work experience since obtaining their university degrees to make them eligible for the Position.

... She raised her concerns with the interview panel during the round of interviews and again during its deliberations after all the interviews had been completed.

... Following the interviews, [the new CCPO] carried out a second review of the eligibility of all candidates—both internal and external—who had applied for the Position. Taking into account the declared verifiable work experience relevant to the JO, she concluded that the Applicant, as well as two other internal candidates, did not have the minimum length of professional work experience required for the Position. She calculated that the Applicant had relevant work experience totalling nine months and two weeks obtained after the completion of his Bachelor's degree.

... It also became apparent to [the new CCPO] that the JO had misstated the years of relevant experience required for the Position. The *Guidelines for Determination of Level and Step on Recruitment to the Professional Category and Above*, issued by the Office of Human Resources Management ("OHRM"), required four years' experience for such kind of positions. [...]

... While the interview panel was considering its decision on the Position, [the new CCPO] advised it that at least one of the candidates had been wrongly deemed eligible for the N[P]O post and should not be considered. [...]

... On 8 November 2013, [the new CCPO] met with the Applicant and another local candidate to explain why she needed to remove them from the selection process. She told them that the JO contained a mistake by specifying at least three years' experience following the completion of a Bachelor's degree, where an NPO position at the B level usually required four years' experience. [The new CCPO] testified that she also explained to the Applicant that he did not meet even a three-year work experience requirement. The Applicant was informed that only 50% of his experience as a consultant should be counted, and that his experience at the GS-5 level could not be counted towards the Position's requirements.

... On the same day, 8 November 2013, the Applicant was informed [...] that his name would be removed from the list of eligible candidates for the Position's recruitment process, on the grounds that, as a result of a mistake made by the Administration, he had been inadvertently ruled eligible for the Position although he did not meet the minimum experience required. It was further noted that the required experience was four years after the completion of the Bachelor's degree, instead of the three years that were erroneously indicated in the JO.

... After their meeting, [the new CCPO] spoke to the Applicant by phone and asked him for the copies of his consultancy contracts so that she could review his terms of reference, and check whether his experience could be validated as relevant experience. She said in evidence that the Applicant answered that he did not have such copies, although he denies that and claims that, in fact, he keeps copies of all of his contracts and these are available for examination upon request.

> ... The Applicant confirmed having been informed that only 50% of his experience as a consultant should be counted, and that his experience at the GS-5 level could not be counted towards the Position's experience requirement.
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> ... [... T]he Applicant did not provide copies of his contracts at the time and [the new CCPO] concluded, based on the information [...] supplied in his application, that the Applicant's experience as a consultant was not in any field relevant for Civil Affairs. [The new CCPO] told the Tribunal that the Applicant's work as reported in his PHP as a Media Relations consultant and Freelance Interpreter/Translator is not, on the face of it, relevant to the requirements of the JO, which specified experience in public administration, governance, peace-building, and community relations. She further stated that the Applicant's experience could not be considered as "exceptional" professional experience to be accepted in lieu of an advanced university degree.
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> ... [The new CCPO] said that some two days later, the Applicant phoned her and asked for the rule requiring an NPO position at the B level to have four rather than three years' minimum experience. She emailed him the ORHM *Guidelines for the Determination of Level and Step on Recruitment to the Professional Category and Above*.
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> ... At the end of 2013, two external candidates were selected for the Position.
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> ... On 13 December 2013, the Applicant requested management evaluation of the impugned decision, which was upheld in the management evaluation reply, dated 27 February 2014.
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> ... In May 2014, a fact-finding panel was set up to investigate alleged irregularities in the recruitment process for the Position. The corresponding investigation report has been concluded, but a final decision based on the recommendations has not yet been made.

3. On 27 May 2014, Mr. Cicek filed an application with the Dispute Tribunal contesting the decision of 8 November 2013 advising him that he was ineligible for the NPO post, and was thus excluded from the recruitment process for the post, because he allegedly lacked relevant experience vis-à-vis the job opening requirements.

4. On 27 May 2015, the Dispute Tribunal rendered the Judgment now under appeal, and dismissed Mr. Cicek's application. As a preliminary matter, the UNDT noted that it would not take into account the report of the investigation conducted with regard to the alleged irregularities.[2] In relation to the merits, the UNDT found that:

[2] Impugned Judgment, para. 5.

a) the new CCPO of UNFICYP was entitled to verify whether the candidates for the Position met the minimum requirements specified in the JO,[3] as the Organization is obliged to ensure that candidates fully meet the JO's requirements, and thus exclude those who do not fully meet those requirements, even if they are internal candidates and not far from meeting them;[4]

b) while experience at the GS-6 level could be counted as qualifying experience for the purpose of the Position,[5] it was proper for the Administration not to take into account Mr. Cicek's experience at the GS-5 level, even if that experience was acquired in a relevant field;[6]

c) since Mr. Cicek did not meet the stipulated education requirement as he did not hold a Master's degree, he would have to show "exceptional professional experience ... in lieu of the advanced degree";[7]

d) the Administration correctly assessed and calculated Mr. Cicek's "relevant" professional experience;[8]

e) while it was possible that different officials could come to different results in assessing the relevance of one's work experience to a role,[9] there was no evidence that the new CCPO's evaluation of Mr. Cicek's work experience was biased or that she intended to exclude him from the recruitment process.[10] The new CCPO's determination was reached after a proper process and an unbiased exercise of discretion;[11]

f) Mr. Cicek did not have any legal entitlement or legitimate expectation to be awarded the Position just because he had taken the written test and been interviewed.[12]

5. On 24 July 2015, Mr. Cicek appealed Judgment No. UNDT/2015/043, and the Secretary-General answered on 2 October 2015.

[3] *Ibid*., para. 51.
[4] *Ibid*., para. 55.
[5] *Ibid*., para. 57.
[6] *Ibid*., para. 59.
[7] *Ibid*., paras. 62-65.
[8] *Ibid*., para. 74.
[9] *Ibid*., para. 77.
[10] *Ibid*., paras. 80-81.
[11] *Ibid*., para. 82.
[12] *Ibid*., para. 91.

6. On 16 October 2015, Mr. Cicek filed a motion, seeking leave to respond to the Secretary-General's answer and make additional submissions. The Secretary-General filed his observations on 30 October 2015, requesting the Appeals Tribunal to deny the motion to file additional pleadings and exclude it from the case file.

7. On 27 October 2015, Mr. Cicek filed a second motion, seeking leave to provide the Appeals Tribunal with eight additional documents or materials as "new" evidence supporting his appeal. The Secretary-General filed his observations on 23 November 2015, requesting the Appeals Tribunal to deny the motion.

Submissions

Mr. Cicek's Appeal

8. Mr. Cicek submits that the UNDT Judgment is biased in favour of the Administration because it failed to discuss crucial points raised during the joint oral hearing.

9. Mr. Cicek contends that the UNDT failed to call the former CCPO or the Hiring Manager to give evidence about the events in question, although the Secretary-General argued that the Senior Political Adviser had improperly pressured the former CCPO. Such claims are baseless given that neither the Hiring Manager nor the former CCPO reported such interference to higher authorities within the Mission area, in accordance with proper procedures, and the recruitment process was not cancelled and re-advertised as the *Inspira* Manual requires.

10. The UNDT also erred in categorizing the former CCPO's actions as a mistake that was corrected, given that the Secretary-General's argument was that the Senior Political Adviser had improperly pressured Human Resources to include Mr. Cicek in its shortlist for the Position. Mr. Cicek proposed calling the Hiring Manager to give evidence about how many times she had expressed her desire to fill NPO posts with candidates from outside the Organization, and why she did not report the alleged interference to higher authorities within the Mission, such as the Mission Head, which would have shown that there was a deliberate plan to exclude Mr. Cicek and Mr. Neocleous from the process.

11. The UNDT erred and reached a contradictory conclusion in holding that the Administration enjoys a wide discretion in selection matters, yet upholding the new CCPO's determination that Mr. Cicek was ineligible, rather than the determination of the former CCPO or Hiring Manager that he was eligible. There were significant inconsistencies between the manner in which the Management Evaluation Unit and the new CCPO interpreted his work experience, demonstrating that the new CCPO took liberties in her position. The Administration's broad discretion is open to abuse.

12. The UNDT erred at paragraph 58 of the Judgment in claiming that Mr. Cicek had not substantiated his claim that he had performed duties at the G-6 level, given that Mr. Cicek's performance document detailed the responsibilities he had held.

13. The UNDT erred in dismissing Mr. Cicek's educational qualifications, since the essence of his studies is directly linked to the mandate of UNFICYP's Civil Affairs Section.

14. The UNDT erred in finding that Mr. Cicek did not hold a legitimate expectation though he had gone through the entire recruitment process, given that the Dispute Tribunal in *Korotina* held that it was improper for the Administration to reopen the question of a candidate's eligibility at a later stage of the recruitment process.[13] The Administration cannot claim an administrative error as pretence for restricting a field of candidates in a recruitment process in order to choose the candidate it prefers.

15. Mr. Cicek requests that the Appeals Tribunal correct the UNDT Judgment, rescind UNFICYP's decision to exclude him from the recruitment process, find him eligible for an equivalent post, and award him compensation in the amount of 12 months' salary for being subject to an unfair and unreasonable recruitment process.

The Secretary-General's Answer

16. The Secretary-General contends that Mr. Cicek failed to identify any errors of fact, law, jurisdiction, procedure or competence on the part of the UNDT justifying overturning or modifying the Judgment pursuant to Article 2(1) of the Appeals Tribunal Statute. The claims raised in the appeal are nearly verbatim reiterations of his claims before the UNDT. He essentially requests the Appeals Tribunal to reconsider his original arguments *de novo*

[13] *Korotina v. Secretary-General of the United Nations*, Judgment No. UNDT/2012/178.

and come to a different conclusion, which the Appeals Tribunal has repeatedly held is impermissible and is not the purpose of an appeal.

17. The UNDT correctly found that the required procedures were followed in respect of the decision to exclude Mr. Cicek from further consideration for the Position. Having regard to the Organization's staff selection system, the UNDT properly found that the new CCPO was competent to review and assess Mr. Cicek's eligibility and, further, to find him ineligible during the selection process.

18. The UNDT also correctly determined that Mr. Cicek had failed to substantiate his claim that the contested decision had been tainted by bias or that he had been purposefully excluded. While Mr. Cicek continues to assert this on appeal, he does not offer any justification or evidence beyond bare assertion.

19. The UNDT correctly determined that Mr. Cicek had not established a legitimate expectation to further consideration just because he had already been invited to undertake the written and oral assessments. To accept Mr. Cicek's argument that he could not be excluded from the recruitment process after the assessment stage implies that the Administration is not entitled to correct a mistaken decision, which is contrary to the Appeals Tribunal's jurisprudence. Further, Mr. Cicek's reliance on *Korotina* is misplaced since the facts of that case are clearly distinguishable from those at hand. Last, Mr. Cicek has not asserted, much less demonstrated, that the Administration made an express promise concerning his eligibility for further consideration as may be required to comply with the Appeals Tribunal's jurisprudence regarding legitimate expectation.

20. The UNDT correctly determined that the Administration properly assessed Mr. Cicek's eligibility for the Position, and found no error in the manner in which the Administration calculated Mr. Cicek's professional experience and educational qualifications, which it found complied with the established legal and regulatory framework. These findings and conclusions are fully consistent with the United Nations Charter and Staff Regulations, under which the Secretary-General is granted broad discretion in matters of staff selection and promotion. Mr. Cicek has failed to prove any error which would warrant reversing the UNDT's findings and conclusions. Rather, Mr. Cicek merely seeks to substitute his own opinion for that of the Administration and the UNDT.

21. Mr. Cicek has also failed to establish that the UNDT committed any error in procedure, such as to affect the decision of the case warranting reversal of the Judgment, insofar as it chose not to call the Hiring Manager or former CCPO to testify before it. Mr. Cicek has not demonstrated how such testimony would have affected the decision of the case, but only makes general and vague assertions in his appeal about matters that were not even before the UNDT for its consideration.

22. In view of the foregoing, Mr. Cicek has also failed to demonstrate that the UNDT erred in declining to order compensation, or in establishing any legal basis for an award of compensation on appeal. The Secretary-General requests that the Appeals Tribunal affirm the Judgment and dismiss the appeal in its entirety.

Considerations

Preliminary matter – request for an oral hearing

23. Mr. Cicek requests an oral hearing, wherein he seeks that the Appeals Tribunal hear evidence from the Hiring Manager and the former CCPO. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute (Statute) and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules). The factual and legal issues arising from this appeal have already been clearly defined by the parties and there is no need for further clarification. We do not find that an oral hearing would "assist in the expeditious and fair disposal of the case", as required by Article 18(1) of the Rules. The request for an oral hearing is denied.

Preliminary matter – motions to file additional pleadings and evidence

24. Article 31(1) of our Rules, Section II.A.3 of Practice Direction No. 1, and our jurisprudence provide that the Appeals Tribunal may allow an appellant to file a pleading after the answer to the appeal when there are exceptional circumstances justifying the motion.[14]

[14] *Harrich v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-576, para. 19, citing *Nielsen v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-542, para. 51; *Utkina v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-524, para. 16; *Wu v. Secretary-General of the United Nations*, Order No. 225 (2015) of 1 July 2015; *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 36.

25. Article 10(1) of our Rules which provides for additional documentary evidence to be submitted to the Appeals Tribunal reads as follows:

> A party may seek to submit to the Appeals Tribunal, with an appeal or an answer, documentary evidence, including written testimony, in addition to that contained in the written record. In exceptional circumstances and where the Appeals Tribunal determines that the facts are likely to be established with such additional documentary evidence, it may receive the additional evidence from a party. On its own volition, the Tribunal may order the production of evidence if it is in the interest of justice and the efficient and expeditious resolution of the case, provided that the Appeals Tribunal shall not receive additional written evidence if it was known to the party seeking to submit the evidence and should have been presented to the Dispute Tribunal.

26. In the present case, Mr. Cicek has not demonstrated the existence of exceptional circumstances to justify the need to file additional pleadings or to submit additional evidence. His motion for additional pleadings presents factual and legal contentions that reiterate the arguments made in his appeal brief. There is nothing "new" about the the documents attached to his second motion as they are mostly from 2013 and one from 2014. In the circumstances, the motions are not granted.

Merits of Mr. Cicek's claims

27. Our Statute provides that the Appeals Tribunal is competent to hear and pass judgment on an appeal filed against a judgment rendered by the Dispute Tribunal in which it is asserted that the Dispute Tribunal has: (a) exceeded its jurisdiction or competence; (b) failed to exercise the jurisdiction vested in it; (c) erred on a question of law; (d) committed an error of procedure, such as to affect the decision of the case; or (e) erred on a question of fact, resulting in a manifestly unreasonable decision.

28. The Appeals Tribunal stated, *inter alia*, in *Ilic* that:[15]

> When the Appeals Tribunal hears an appeal, it does not simply re-try the case. The function of the Appeals Tribunal is to determine if the Dispute Tribunal has made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Statute. The appellant has the burden of satisfying the Appeals Tribunal that the judgment rendered by the Dispute Tribunal is defective. It follows that the appellant must identify the alleged defects in the judgment and state the grounds relied upon in asserting that the judgment is defective.

[15] *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

> It is not sufficient for an appellant to state that he or she disagrees with the outcome of the case or repeat the arguments submitted before the Dispute Tribunal.

29. On appeal, Mr. Cicek appears to be restating the claims which he made before the UNDT. He has not identified any of the above grounds in his appeal and has failed to demonstrate that the UNDT committed any error of fact or law in arriving at its decision.

30. Moreover, we have reviewed the UNDT's Judgment and find that Mr. Cicek's case was fully and fairly considered; we can find no error of law or fact in its decision.

31. We uphold the reasoning of the UNDT when it states in its Judgment that:[16]

> The fact that the Applicant took the written test and underwent the interview for the Position did not confer him any legal entitlement or legitimate expectation. The minimum requirements for the Position were unequivocally set out in the JO and, thus, any candidate was from the onset in a position to know that no one lacking those particular requirements could be considered for selection.

32. We wish to also emphasize that in instances where the eligibility criteria have been wrongly applied, the Administration has a duty and is entitled to rectify its own error. In *Cranfield*, *a* staff member's fixed-term contract was converted to an indefinite contract retroactively. The Administration claimed they made a mistake and notified the staff member. The Appeals Tribunal held that the Administration was entitled to correct erroneous decisions and stated *inter alia*:[17]

> In situations where the Administration finds that it has made an unlawful decision or an illegal commitment, it is entitled to remedy that situation. The interests of justice require that the Secretary-General should retain the discretion to correct erroneous decisions, as to deny such an entitlement would be contrary to both the interests of staff members and the Administration. How the Secretary-General's discretion should be exercised will necessarily depend on the circumstances of any given case. When responsibility lies with the Administration for the unlawful decision, it must take upon itself the responsibility therefor and act with due expedition once alerted to the unlawful act.

33. We find this appeal to be without merit.

[16] Impugned Judgment, para. 91.
[17] *Cranfield v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-367, para. 36.

Judgment

34. The appeal is dismissed and the Judgment of the UNDT is affirmed.

Original and Authoritative Version: English

Dated this 24th day of March 2016 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Thomas-Felix, Presiding	Judge Adinyira	Judge Simón

Entered in the Register on this 13th day of May 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar