



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

**Kacan
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Richard Lussick, Presiding Judge Mary Faherty Judge Luis María Simón
Case No.:	2013-480
Date:	2 April 2014
Registrar:	Weicheng Lin

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Mahmut Kacan against Judgment No. UNDT/2013/025, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 19 February 2013 in the case of Kacan v. Secretary-General of the United Nations . Mr. Kacan appealed on 20 May 2013 and the Secretary-General answered on 22 July 2013.

Facts and Procedure

2. Mr. Kacan entered into the service of the Office of the United Nations High Commissioner for Refugees (UNHCR) on 18 September 2007 as a Protection Associate at the G-6 level in the UNHCR field office in Van, Turkey (Van Field Office). His fixed-term contract, which had previously been renewed on an annual basis by UNHCR, expired on 31 December 2011.

3. From 1 through 10 May 2011, the Office of the Inspector General of UNHCR conducted a “standard inspection of the UNHCR operation in Turkey”. As a result of the standard inspection, the Inspector General’s Office produced a “Final Report to the High Commissioner from the Inspector General” (the Final Report), dated October 2011. The Final Report made a number of recommendations related to “office structure and management”. One such recommendation was that a review be undertaken of the staffing structure as well as the level of presence in Turkey, and consideration be given to the removal of “sensitive protection functions” from the Van Field

who had been serving in the Van Field Office, including Mr. Kacan, were placed on special leave with full pay and subsequently informed on 30 November 2011 that their appointments would not be extended beyond 31 December 2011.

6. On 27 January 2012, Mr. Kacan requested management evaluation of the decision not to renew his fixed-term appointment beyond 31 December 2011 and, on 8 June 2012, he filed an application with the UNDT. His principal argument for contesting the non-renewal decision was that, as suggested in the Final Report, it was taken because of his Kurdish origin.

7. On 19 February 2013, the UNDT issued Judgment No. UNDT/2013/025, dismissing Mr. Kacan's application. The UNDT found that Mr. Kacan had failed to satisfy the burden of proof required to demonstrate that the decision not to renew his fixed-term appointment was tainted by improper considerations or was otherwise unlawful. It found that the recommendations of the Final Report were rendered irrelevant as they were never implemented

10. Mr. Kacan argues that the UNDT committed a procedural error in finding that he had not provided evidence that the contested decision was discriminatory when he had submitted a witness to give evidence. The UNDT did not call that witness and did not give him any explanation as to why it had failed to do so.

11. Mr. Kacan submits that he had a reasonable expectation of renewal for the following reasons: the nature of his duties; the renewal of his contract on five successive fixed-term contracts; after completing five years without a break in service, he was going to be eligible for an indefinite contract “as recognition of good performance, integrity and competency after prolonged years of dedicated service”; and because he remained dedicated to his work, putting himself at risk after the earthquake.

12. Mr. Kacan contends that the UNDT erred in fact in concluding that he was not treated in a discriminatory manner vis-à-vis other UNHCR staff members in Turkey. He contends that the relocation of international staff holding fixed-term appointments and local staff holding indefinite appointments is an arbitrary distinction which has negatively affected the rights of certain staff members or categories of them, such as himself, due to unlawful reasons and has thus become discriminatory. He has the right not to be treated less favourably than a comparable international category employee who holds a fixed-term contract and the UNDT thus erred on a question of law.

13. Mr. Kacan requests that the Appeals Tribunal vacate the UNDT Judgment; order compensation equal to one year’s net base salary for material damages suffered and a review of his pension entitlement at the United Nations Joint Staff Pension Fund. He further requests compensation in the amount of USD 100,000 for moral damages and a written apology from UNHCR.

The Secretary-General’s Answer

14. The Secretary-General submits that the UNDT properly dismissed Mr. Kacan’s application because Mr. Kacan failed to demonstrate that the non-renewal decision was unlawful. The burden to demonstrate that the Administration abused its discretion in deciding not to renew a staff member’s appointment lies with the staff member contesting the decision. Since Mr. Kacan failed to offer sufficient evidence to support his claims that the non-renewal decision was unlawful, the UNDT was required to dismiss his application.

15. Mr. Kacan has failed to establish that the UNDT erred in finding that he had not produced sufficient evidence to support his claim that the non-renewal decision resulted from discriminatory motives relating to his Kurdish ethnicity. The alleged evidence of discriminatory intent is limited to bare assertions and speculation. The alleged evidence of discrimination cited by Mr. Kacan in his appeal was part of the record before the UNDT. Mr. Kacan merely reiterates his disagreement with the UNDT's assessment of the evidence.

16. Mr. Kacan has further failed to establish that the UNDT erred in dismissing his claim that the decision taken by UNHCR to relocate three Van-based staff members to the UNHCR Office in Ankara demonstrated improper bias against him. The UNDT found that the Secretary-General did not err in exercising his discretion in this respect and Mr. Kacan again only reiterates his arguments made at trial.

17. Mr. Kacan has failed to establish that the UNDT erred in law by not considering that an expectancy of renewal had been created. Unless the Administration has made an express promise that gives the staff member an expectancy that his or her appointment will be renewed or unless it abused its discretion or was motivated by discriminatory or improper grounds in not extending the appointment, the non-renewal of a staff member's fixed-term appointment is not unlawful. In the present case, there is no evidence to substantiate Mr. Kacan's allegation that the decision not to renew his appointment was tainted by improper motives. The UNDT properly determined that the sole reason for Mr. Kacan's non-renewal was the indefinite closure of the Van Field Office. Furthermore, Mr. Kacan has not alleged, or presented any evidence, that an express promise of renewal was made by UNHCR. The UNDT therefore did not err in finding that no legitimate expectancy of renewal had been created.

18. Finally, the Secretary-General submits that Mr. Kacan's allegation that the UNDT erred on a question of procedure by failing to call a specific witness is unsustainable. The Secretary-General contends that the UNDT may decline to examine a witness if it does not deem it necessary and has discretionary authority in matters relating to case management and the production of evidence.

19. The Secretary-General requests that the Appeals Tribunal affirm the UNDT Judgment and dismiss the appeal in its entirety.

Considerations

20.

Original and Authoritative Version: English

Dated this 2nd day of April 2014 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Faherty

(Signed)

Judge Simón

Entered in the Register on this 13th day of May 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar