



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

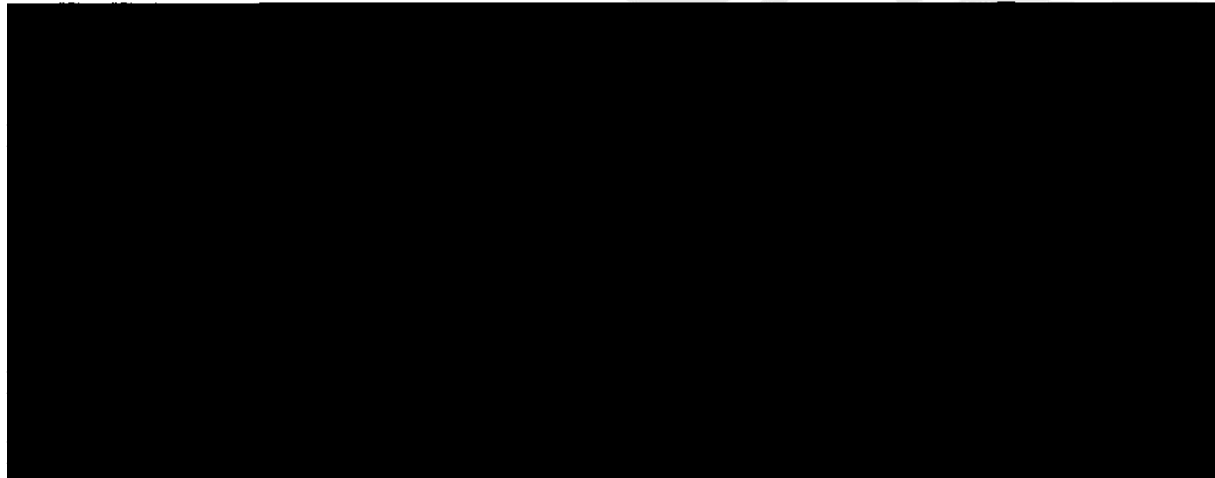
Judgment No. 2015-UNAT-582

**Kacan
(Appellant)**

v.

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

JUDGMENT



Counsel for Mr. Kacan:

Self-represented

Counsel for Secretary-General:

Stéphanie Cartier

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... Only three staff members from the Field Office, Van, were maintained and stationed in Ankara pending the determination of the reopening of the UNHCR Field Office, Van, namely one international staff member (P-3), plus one GL-4 and one GL-3 staff member with indefinite appointments. All the other UNHCR staff members of the Field Office, Van, including the Applicant, were placed on SLWFP until their appointments were not renewed beyond 31 December 2011.

... By email of 28 November 2011, the IGO Report Standard Inspection Turkey, dated “October 2011”, was sent to all UNHCR staff in Turkey. In the email, it was noted that the IGO mission had not yet taken into account the crisis in Van and that this might be considered when the Office reports back to the IGO on the implementation of the report.

... In its report, the IGO stated that “[r]esolving the Kurdish problem, which has blocked economic development in the south-east of the country, is arguably the most pressing political issue”. In several parts, the report stresses that the constructive relationship and confidence the UNHCR Representation enjoys with the Turkish authorities shall be fostered, since it might contribute to speed up the progress in the relevant national legislation and national capacity building. With respect to the Field Office, Van, the report notes that “[t]here appeared to be ... a need for the adoption of measures to avoid the politicization of the largely-Kurdish local staff—or the perception thereof, by the local authorities and the population of concern” and recommends, inter alia, that:

9. The representation should review the functions and staffing of the Office in Van, in line with the reassessment of the role and responsibilities of the [Field Office (“FO”)]. The more sensitive protection functions such as registration and [refugee status

Field Office, Van, after the earthquake and lack of budget, UNHCR Headquarters was not willing to extend the Applicant's and his colleagues' contracts.

3. Not having received a response to his request for management evaluation, on

a comparable international staff member or suffer any other disadvantage as a result of the acts or omissions of the Administration.

7. The Dispute Tribunal committed an error in procedure. It failed to consider his written and oral evidence. It also failed to give sufficient value to his witness' statements.

8. Mr. Kacan requests that this Tribunal find that the non-renewal of his fixed-term appointment was unlawful and vacate the UNDT Judgment. Furthermore, he requests that the Appeals Tribunal award him one year's net base salary for material damages and order a review

12. The Respondent requests that this Tribunal dismiss the appeal in its entirety and affirm the impugned Judgment.

Considerations

13. Mr. Kacan maintains that the non-renewal of his fixed-term appointment “is prima faci[e] unlawful” and that the UNDT erred in finding: (i) that there was no express promise to renew his appointment; and (ii) that the decision not to renew was not improperly motivated or discriminatory.

Was there an express promise to renew Mr. Kacan’s appointment?

14. Mr. Kacan submits that “[m]y total work experience with the UNHCR and the previous renewal of my fixed-term contract demonstrates that I had a reasonable and legitimate expectation because there had been a practice in the workplace of renewal”.² “The other factors which create reasonable expectations are the nature of my duties and responsibilities as a protection staff who have law background [sic] and of course functions of my duty station as field office to give me reasonable notice that the contract will be renew

may be legal (*Islam*, 2011-UNAT-115). To determine the lawfulness of a non-renewal decision, the Dispute Tribunal must assess whether the Administration abused its discretion, whether the decision was based on discriminatory or other improper considerations, or whether the Administration made an express promise creating an expectancy that an Applicant's appointment be renewed (*Abdalla* 2011-UNAT-138; *Ahmed* 2011-UNAT-153). In a recent judgement, the Appeals Tribunal further stressed that to create an expectancy of renewal such express promise by the Administration has to be "at least ... in writing" (*Igbinedion* 2014-UNAT-411). The Tribunal has consistently held that the burden of proof of showing that the non-renewal decision was arbitrary or tainted by improper motives lies with the Applicant (*Jennings* 2011-UNAT-184).

With respect to the Applicant's argument that in view of his years of service and since after the earthquake, UNHCR kept him in service for 20 days, he had an expectancy of renewal, the Tribunal did not find anything on file amounting to an express promise to the Applicant that his FTA would be renewed, under the standards reiterated by the Appeals Tribunal in *Igbinedion* 2014-UNAT-411. This argument of the Applicant must therefore fail.

17. Mr. Kacan submits that the UNDT's decision was flawed in that the UNDT "failed to exercise its jurisdiction; that it erred on fundamental questions of law (interpretation of law) and/or fact (related to evidentiary issues) resulting in a manifestly unreasonable decision; and that it erred in procedure such as to affect the decision of the case".⁷

18. In support of his argument that the UNDT erred in law, Mr. Kacan mentions several decisions of the Appeals Tribunal. However, he does not demonstrate how these decisions in any way contradict the UNDT's application of the pertinent law. We find that the UNDT's interpretation of the relevant jurisprudence was correct and that it did not commit any error in law. We reject Mr. Kacan's submission to the contrary.

19. Mr. Kacan also alleges that the UNDT committed a factual error in not examining his written evidence. However, it is clear from the UNDT's decision that it took care to examine the evidence before it in order to ascertain if in fact an express promise of renewal had been

considerations are grounds for an expectancy of renewal. Nor are past renewals of an appointment a basis for expectancy of renewal.⁸

20. We are satisfied that the UNDT's decision was correctly based on the applicable law and the available evidence. Mr. Kacan has failed to establish that the Dispute Tribunal committed any error, whether of law, fact or procedure, in concluding that he had not produced any evidence capable of amounting to a promise of renewal.

Was the decision not to renew Mr. Kacan's appointment improperly motivated or discriminatory?

21. Mr. Kacan complained to the Dispute Tribunal that the real reason for the non-renewal of his contract was his Kurdish ethnicity, as could be deduced from the IGO Report which contained discriminatory recommendations on staff members of Kurdish origin. Mr. Kacan further complained that after the earthquake, other staff members of the

communication had been received from the Head. Further, the UNDT held that even if such a communication had existed, th

based on the operational realities faced by the Field Office, Van, and was justified in view of the temporary closure of the Office, which, *de facto*, rendered Mr. Kacan's services unnecessary.¹⁴

28. For the foregoing reasons, the appeal fails.

Judgment

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

¹⁴ Impugned Judgment, para. 32.

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United StB