

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

*Registry's translation,  
the French text alone  
being authoritative.*

**V.**

**v.**

**UNESCO**

**122nd Session**

**Judgment No. 3641**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms I. V. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 17 December 2013 and corrected on 21 January 2014, UNESCO's reply of 21 May, the complainant's rejoinder of 9 October 2014 and UNESCO's surrejoinder of 13 January 2015;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant disputes the lawfulness and the outcome of the competition procedure in which she participated.

On 17 February 2009 UNESCO published a vacancy notice advertising an internal competition to fill the grade P-5 post of Chief of the Section of Museums and Cultural Objects in the Culture Sector. The complainant, who was a P-4 grade official who had been assigned to that sector for several years, applied for the post. She was pre-selected and, following an evaluation interview, was ranked second on the shortlist recommended by the Evaluation Panel. Meanwhile, on 25 March, the Assistant Director-General responsible for the Culture Sector had decided that the advertised post should be entrusted to an official on an

*ad interim* basis appending the final appointment that would be made at the end of the competition. The official in question, as it happened, was the person who had been ranked first on the shortlist of candidates for the post.

The complainant was informed by a letter dated 30 June 2009 that the Director-General had decided not to appoint her to the advertised post. The successful candidate was the person who had been ranked first on the shortlist.

On 28 July 2009 the complainant lodged an “informal” protest against the decision of 30 June, asking the Director-General to “reconsider the recruitment” to the disputed post. On 31 July she submitted a corrigendum to her protest seeking the cancellation of the appointment of the successful candidate, her own appointment to the disputed post and redress for the professional injury suffered. Having received no reply within the time limit specified in the Staff Regulations, she referred her case to the Appeals Board on 27 September 2009.

In its report, which it issued on 12 July 2013 after hearing the parties, the Appeals Board made three general recommendations regarding recruitment procedures at UNESCO. It also recommended that the Director-General should examine the possibility of reclassifying the complainant’s post, or of appointing her to a post at a higher grade in the Culture Sector or to another suitable position elsewhere in the Organization, having regard in particular to the posts for which she had applied. The complainant was informed by a memorandum of 20 September 2013, which constitutes the impugned decision, that the Director-General had decided not to follow these two recommendations, since she considered that there had been no flaw in the recruitment procedure.

On 17 December 2013 the complainant filed a complaint with the Tribunal. She seeks retroactive appointment to the disputed post and an award of damages equal to the difference between her salary and the sums she would have received had she been appointed to the post in question, as well as “the granting [...] of all the pension rights and other benefits to which she is entitled as a member of the Professional staff”.

UNESCO submits that the complainant’s claim regarding her retroactive appointment is irreceivable, since the Tribunal is not competent

to order such an appointment. On the merits, it asks the Tribunal to dismiss the complaint as unfounded.

The successful candidate, who was invited by UNESCO, at the Tribunal's request, to comment on the complaint, has asked the Administration to take the necessary measures to shield him from injury.

In her rejoinder the complainant withdraws her claim for retroactive appointment to the disputed post but presses her other claims.

In its surrejoinder UNESCO maintains its position.

#### CONSIDERATIONS

1. The complainant contends that UNESCO did not carry out a full and fair examination of her candidature and gave undue preference to the candidate ranked first on the shortlist, despite the fact he did not have the profile required in the vacancy notice for the post, namely a sound knowledge of museology and the requisite university education. Moreover, she alleges that the Organization added a criterion *a posteriori* which was not specified in the vacancy notice by taking into consideration the other candidate's experience in fund-raising. She adds that he was placed at an advantage by being asked to fill the vacant post *ad interim* during the competition procedure.

The complainant submits that no comparative evaluation was made of her merits and those of the other candidate. She says that the choice was influenced by an evaluation sheet which she was unable to challenge in a timely manner. This sheet contradicted the findings of her periodic performance reports and ignored the experience she had acquired during her assignment to the UNESCO's Venice office.

2. Article VI(4) of the Constitution of UNESCO requires Secretariat staff to meet the highest standards of integrity, efficiency and technical competence. In order to achieve this objective, UNESCO Staff Regulation 4.2 stipulates that when appointing staff members the Director General shall use a competitive process, except in the case of appointments resulting from post reclassifications.

At the material time, the competition procedure was governed by Administrative Circular No. 2191 on the integrated policy on recruitment, rotation and promotion. This circular emphasised that all applications for the type of post advertised in this case must be thoroughly reviewed and that the reasons for not retaining an internal candidate must be documented in the individual evaluation sheet (paragraph 30). A panel (the “Evaluation Panel”) was responsible for assessing the candidates according to agreed criteria and for recommending a shortlist which, for appointments to managerial posts, took account of job-required skills, language skills and professional experience, including managerial competencies (paragraph 33). The shortlist was then forwarded to the Director of the Bureau of Human Resources Management, who had to ensure that the recommendation made was fully documented and that all steps in the recruitment process had been completed (paragraph 37) before submitting it to the Senior Personnel Advisory Board. This Board examined the shortlist for compliance with organisational policies, principles and procedures and assessed the consistency of the recommendations with the job requirements (paragraph 70). It was then for the Director-General to make the appointment.

3. The vacancy notice of 17 February 2009 defined the profile of the advertised post as follows:

- Advanced university degree [*diplôme universitaire supérieur*] in a field related to archaeology, museology or history of art.
- Between 10 and 15 years of work-related experience, of which preferably 5-7 acquired at the international level in one of the above fields.
- Good managerial skills and great ability to coordinate and motivate a team.
- Sound knowledge of fund-raising, museology and international conventions on the protection of the cultural heritage, in particular the movable cultural heritage.
- Ability to represent the Organization externally and to promote it in the media.
- Excellent knowledge of English or French and a good knowledge of the other language.”\*

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\* Registry’s translation.

The criteria for the university education required for posts at the level of that which was filled in the instant case were clarified as follows on 16 December 2009:

“Candidates for posts in the Professional and higher categories [as is the case here] should normally possess at the minimum a completed, advanced university degree: Masters or equivalent, e.g. from four to six years of university studies sanctioned by a degree inclusive of professional certifications [...] in a field of study relevant to the functions as reflected in the vacancy notice.” (Paragraph 2 of item 5.3 of the UNESCO Human Resources Manual entitled “Recruitment for international Professional posts and above”.)

4. The complainant first submits that she was excluded although, of the two candidates at the top of the shortlist, she alone fulfilled the criteria of the vacancy notice. She says that UNESCO deliberately raised the level of knowledge required under the heading “profile” in this notice by requiring candidates to have proven experience in fund-raising, which was a qualification that she, unlike the other candidate, did not possess.

(a) According to the Tribunal’s case law, an international organisation which decides to hold a competition in order to fill a post cannot select a candidate who does not satisfy one of the required qualifications specified in the vacancy notice. Such conduct, which is tantamount to modifying the criteria for appointment to the post during the selection process, incurs the Tribunal’s censure on two counts. Firstly, it violates the principle of *tu patere legem quam ipse fecisti*, which forbids the Administration to ignore the rules it has itself defined. In this respect, a modification of the applicable criteria during the selection procedure more generally undermines the requirements of mutual trust and fairness which international organisations have a duty to observe in their relations with their staff. Secondly, the appointment body’s alteration, after the procedure has begun, of the qualifications which were initially required in order to obtain the post, introduces a serious flaw into the selection process with respect to the principle of equal opportunity among candidates. Irrespective of the reasons for such action, it inevitably erodes the safeguards of objectivity and transparency which must be provided in order to comply with this

essential principle, a breach of which vitiates any appointment based on a competition. (See Judgment 3073, under 4, and the case law cited therein.)

(b) It is ascertained that the complainant had a more extensive academic education than the successful candidate and that her university qualifications are of a higher level than his. He does, however, hold a Master's degree in art and archaeology from a university in Paris, which he obtained after four years' study there. Without it being necessary, in this case, to consider the clarifications which UNESCO added, after the opening of the disputed competition, to the definition of the expression "advanced university degree" (*diplôme universitaire supérieur*) which appeared in the profile of the advertised post, it must be found that the successful candidate did hold "an advanced university degree in a field related to archaeology" and that he therefore satisfied that requirement for the post advertised on 17 February 2009. The complainant's opinion to the contrary, which she tries to base on a definition drawn from the domestic law of the host State, is immaterial, since it is clear from the aforementioned provisions of paragraph 2 of item 5.3 of the Human Resources Manual that an "advanced university degree" (*diplôme universitaire de haut niveau*, which must be regarded as synonymous with the *diplôme universitaire supérieur* required in the French version of the vacancy notice), is defined as meaning a "Masters or equivalent" degree.

(c) The submissions in the file also show that, for several years, the successful candidate had worked as a Senior Programme Specialist in the Section of Museums and Cultural Objects of UNESCO. The Tribunal, whose power of review on this point is necessarily limited, will not depart from the conclusion reached by the Evaluation Panel that, for this reason, this candidate had the most suitable profile.

(d) It follows from the foregoing that the plea that the educational requirements set forth in the vacancy notice for the post in question were deliberately ignored is groundless.

(e) The same applies to the complainant's objection to the requirement of fund-raising experience. The complainant does not

dispute the fact that the other candidate had greater experience in this field than she had. Since the vacancy notice stated that the post required a “sound knowledge of fund-raising”, there was nothing to prevent the Evaluation Panel taking account of the fact that one of the candidates had more experience in this area than the others.

5. In the complainant’s view, the official who was appointed had an unfair advantage in that, “one week after the publication of the vacancy notice” he had been called upon to fill the advertised post on an *ad interim* basis. She considers that this jeopardised her chances of appointment, especially as the person concerned had, in the past, regularly replaced the former post holder when he was absent.

UNESCO replies that by temporarily appointing the official who was ultimately successful to the advertised post, it was doing no more than ensuring the smooth functioning of the service and complying with Staff Rule 103.17 which provides that, in the event of a vacancy, it may entrust to a staff member, for periods not exceeding three months, all or part of the duties and responsibilities of a higher-grade post in that person’s customary field of work. In the Organization’s opinion, the official who was appointed was a particularly suitable temporary replacement, because he had worked in the section concerned as a Senior Programme Specialist and, like the complainant, had done similar replacement stints, as she says.

The mere fact that one of the candidates in a competition fills the advertised post *ad interim* does not render the procedure unlawful, unless the particular circumstances surrounding the competition suggest that it was no more than a paper exercise (see Judgment 2978, under 6). This may be the case where the *ad interim* appointment is made before the opening of the competition, provided there is also some objective indication that permanent appointment was a foregone conclusion when the competition was opened. In the instant case the complainant, who bears the burden of proof, provides no evidence that this was so.

Contrary to the complainant’s submissions, UNESCO cannot be accused of having failed to provide adequate reasons for its decision in this respect. Indeed, this issue, which was discussed extensively during

the internal appeal proceedings, was addressed in paragraph 7 of the impugned decision.

6. The UNESCO authorities which had to make an appointment to a senior post entailing substantial, complex responsibilities, rightly took into consideration the complainant's high-level qualifications, the professional skills she had acquired or developed over the 20 years she had spent in the Organization's service and her ability to shoulder senior managerial responsibilities. Contrary to the complainant's submissions, they did not put aside her periodic performance reports – which reflect indubitable merits – in favour of an individual evaluation sheet which, she alleges, had been drawn up in a manner which disregarded her right to due process.

It is clear from the file that, after objectively comparing the two candidates at the top of the shortlist recommended by the Evaluation Panel, the Director General selected the one who, in her view, had greater managerial skills. It is not the role of the Tribunal to substitute its own assessment for that of the bodies responsible for evaluation and decision-making within UNESCO, since there is nothing in the file to indicate that the procedure leading to this selection was flawed, or that the selection breached the principles governing appointments in international organisations or involved an obvious error of judgement.

7. The complaint must therefore be dismissed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 27 April 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 July 2016.

*(Signed)*

CLAUDE ROUILLER      PATRICK FRYDMAN      FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ