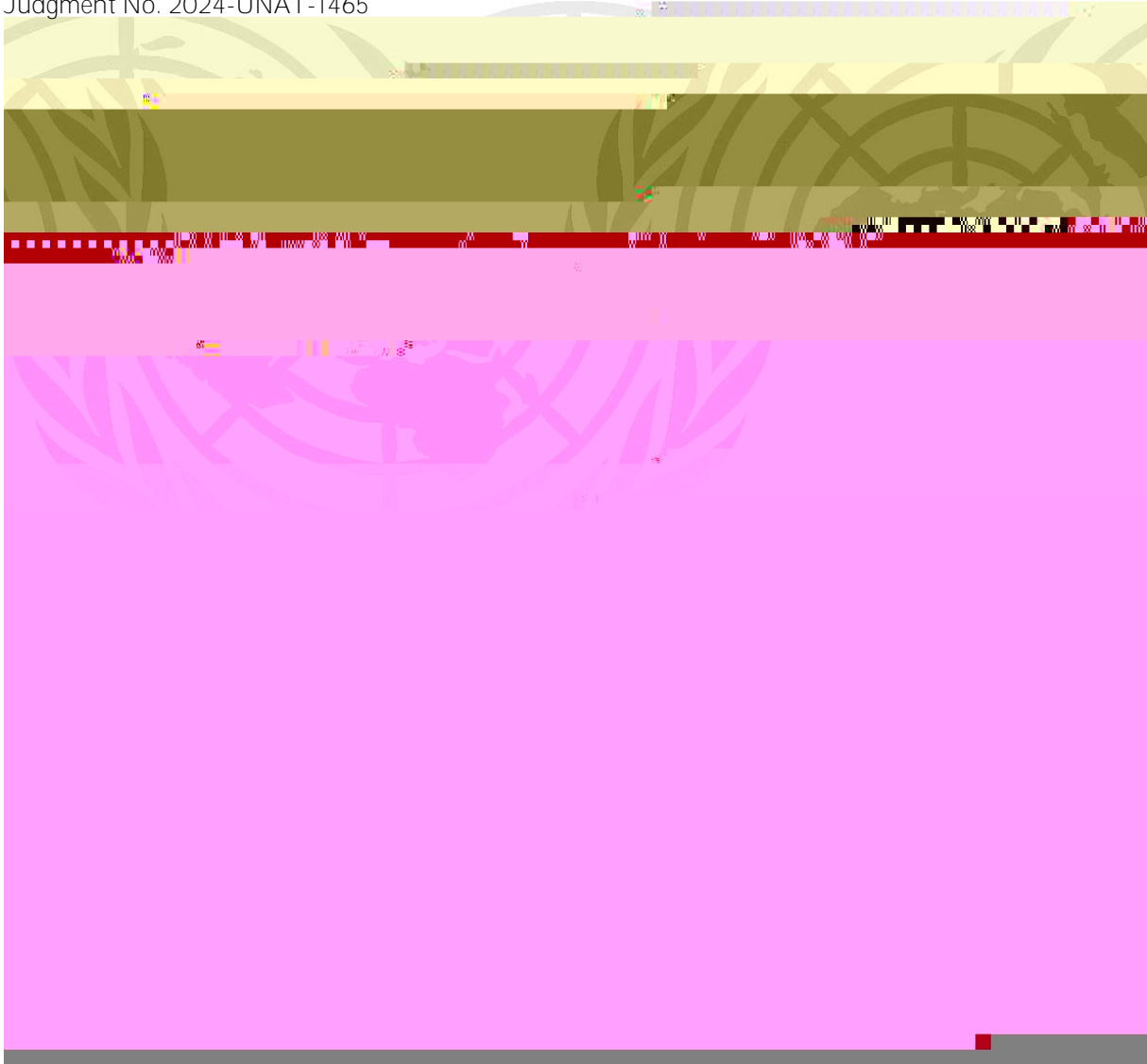


Judgment No. 2024-UNAT-1465



Counsel for Ms. Hoxha: Shubha Suresh Naik, OSLA

Counsel for Secretary-General: Patricia C. Aragonés

6. I would appreciate your support in reviewing the functions currently being performed by [the small number of remaining] FS4 posts with a view to determining what the appropriate post classification should be. I attach the approved terms of reference for the FS5 function for your reference in this exercise.

7. On 24 July 2019, the ~~Human Resources~~ **Human Resources** Section (HRS), UNIFIL, sent UNHQ a request for reclassification of

carrying out similar functions as those of Finance and Budget Assistants for the whole UNIFIL at the FS-5 level in the Finance and Budget Management Section (FBMS).

14. On 4 March 2022, the Management Evaluation Unit (MEU) held that the MER was premature as there was no final decision taken on the reclassification cZA g < cl \ Ud dcghlc h\Y FS-5 level.¹²

15. On 30 March 2022, HRS, UNIFIL, requested the Chief Security Officer to revise the original JD submitted with the reclassification request to add additional functions such as implementing International Public Sector Accounting Standards (IPSAS), which had been left out in

November 2018 until September 2022, including the equivalent of the loss in contributions to the United Nations Joint Staff Pension Fund (Pension Fund). The UNDT ordered that the delay be compensated by interest on the said difference at a rate equal to the rate of inflation. She should not have undergone a competitive selection process.

26. The UNDT declined to award damages with regard to loss of chance to participate in competitive selection processes for posts at the FS-6 level.²⁴

27. On 21 August 2023, the Secretary-General filed an appeal of the impugned Judgment with the Appeals Tribunal, to which Ms. Hoxha filed an answer on 20 October 2023.

Submissions

The Secretary-General's Appeal

28. The Secretary-General requests the Appeals Tribunal to reverse the impugned Judgment and dismiss the application or, if the Appeals Tribunal finds it warranted to award compensation, a cX]Zmh\Y Uk UfX cZWta dYbgU]cb UbX WUf]Zmh\Y ídYbg]cbUW`Y Wta dcbYbñf.

29. The Secretary-General argues that the UNDT erred in law and in fact when it held that the

reclassified. In contrast to [redacted],²⁵ the reclassification request in the present case was not submitted by the staff member, denied, or decided with unlawful motives. In addition, there were convincing reasons for the length of time for the reclassification review process in the present case,²⁶ with no timeline established.

31. The Secretary-General submits that the UNDT erred in law and in fact, resulting in a manifestly unreasonable decision, by failing to require Ms. Hoxha to discharge her burden to prove that she had performed all of the functions of the FS-5 level as of a particular date. The UNDT failed to support its finding that she had performed all the FS-5 functions from 2018 at the latest.

32. The Secretary-General argues that the UNDT erred in law and in fact, resulting in a manifestly unreasonable decision, and exceeded its competence when it awarded compensation. The UNDT overlooked the fact that there had been no prior request made by Ms. Hoxha for retroactive pay that had been considered and rejected by the Administration. The UNDT also failed to consider the applicability of Staff Rule 3.17 (Retroactivity of payments).

33. The Secretary-General argues that the UNDT erred in law and in fact, resulting in a manifestly unreasonable decision, by finding that the performance of the functions of the FS-5 level for a period of time does not mean that she was entitled to retroactively to a higher pensionable salary. Staff Rule 3.10(a) (Special post allowance) makes clear that staff members are expected to exercise higher-level functions for a period of time without extra compensation and, if granted, may only receive non-pensionable special post allowance and any applicable allowances. Accordingly, there was no delay with respect to her receipt of higher pay that needed to be compensated.

34. The Secretary-General submits that the UNDT erred when it determined November 2018 as the relevant start date for its calculation. It is misguided and contradicts its own correct finding that the 14 November 2018 facsimile did not create relevant rights. The UNDT failed to consider other factors and failed to explain why November 2018 was the appropriate start date. The UNDT

failed to consider that a reclassification review process had to be undertaken, first within UNIFIL and then by OHR.²⁷ Moreover, there is no compensation for delay.²⁸

35. The Secretary-General contends that the UNDT's decision is not binding on the Secretary-General. The UNDT exceeded its competence to the extent that this phrase means any contributions by the Org17(D218(e)16((i)21R())26(2)16(

2.3 The classification analysis shall be conducted independently by two classification or human resources officers on the basis of the classification standards set in section 3 below. The decision regarding the classification of the post will be taken by, or on behalf of, the Assistant Secretary-General for Human Resources Management, or the head of office. The head of office will make the decision in the case of posts in the General Service and related categories administered by ECA, ECLAC, ESCAP, ESCWA, the United Nations Office at Geneva, the United Nations Office at Nairobi and the United Nations Office at Vienna, up to and including the G-7 level, and in the case of any other posts for which classification authority has specifically been delegated.

2.4 A notice of the classification results, including the final ratings and/or comments on the basis of which the decision was taken, shall be sent to the requesting executive or administrative office, which will keep it in its records and provide a copy to the incumbent of the post.

Judgment

55. The Secretary-General's appeal is granted and Judgment No. UNDT/2023/058 is hereby reversed.

Original and Authoritative Version: English

Decision dated this 28th day of June 2024 in New York, United States.

Judge Savage, Presiding

Judge Colgan

Judge Forbang

Judgment published and entered into the Register on this 2nd day of August 2024 in New York, United States.

Juliet E. Johnson, Registrar