

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF

ADMINISTRATIVE TRIBUNAL

Appeal No. 461/2009 (Elnara RAMAZANOVA v. Secretary General)

The Administrative Tribunal, composed of:

Mr Luzius WILDHABER, Chair,
Mr Angelo CLARIZIA,
Mr Hans G. KNITEL, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar,

has delivered the following decision after due deliberation.

PROCEDURE

1. The appellant, Ms Elnara Ramazanova, lodged her appeal on 23 July 2009. On 24 July, the appeal was registered under No. 461/2009.
2. The Chair granted the appellant a time-limit which, after extension, expired on 15 September 2009, for the submission of her supplementary memorial. On 15 October 2009 Mr M. Elmiri, counsel for the appellant, finally stated that he would not submit such a document.
3. On 9 November 2009, the Secretary General submitted his observations on the appeal. On that occasion the Secretary General supplied the Tribunal with documents relating to the Appointments Board and requested that the confidentiality of these documents be preserved, basing himself on Article 9 paragraph 1 of the Regulations on Appointments. He expressed the hope that, as with other cases in the past, the Tribunal would take all necessary steps to protect that confidentiality. The appellant submitted observations in reply on 23 December 2009.
4. The parties having stated their willingness to forgo oral proceedings, the Tribunal decided that there was no need to call a hearing.
5. On 31 January 2010, the appellant stated that “by reason of confidential elements and whatever the decision of the Administrative Tribunal might be, [she] very much wished that the content of [her] appeal should not be published on the Tribunal’s website”. Having received clarification on the implications of that request, the Chair of the Tribunal decided that the judgment would not mention the names of the other candidates.

THE FACTS

6. The appellant is a former temporary Council of Europe official, of Azerbaijani nationality. She was assigned to the Mail Office (Central Office) of the European Court of Human Rights as a mail office assistant (grade C1).
7. The appellant took part in the external competitive examination to recruit mail office support staff with specific language knowledge to be responsible for distributing mail in the Registry of the European Court of Human Rights (grade C1/C2), open to nationals of all Council of Europe member states (vacancy notice no. e94/2008).
8. The written test took place on 12 January 2009.
9. In the light of the results she obtained in that test, on 11 February 2009 the appellant was invited to an interview which took place on 13 March 2009.
10. On 16 April 2009 the appellant was informed that, following that interview, and on the basis of the recommendation of the Appointments Board, the Secretary General had decided not to include her name on the reserve list drawn up following the competitive examination.
11. In a letter dated 6 May 2009 and received on 13 May, the appellant lodged an administrative complaint (Article 59, paragraph 1 of the Staff Regulations) against the decision not to include her candidature. She wrote:

“In November 2008 I submitted an application for the external competitive examination to recruit mail office support staff with specific language knowledge to be responsible for distributing mail in the Registry of the European Court of Human Rights - vacancy notice no. 94/2008 (grade C1/C2). I was authorised, in an email of 17 December 2008 from the Directorate of Human Resources of the Council of Europe signed by Ms P., to take part in the competitive examination. I took part in the written tests on 12 January 2009.

Following the satisfactory results I obtained in the written tests (marks appended hereto), I was invited, in an email of 11 February 2009, to an oral interview with the Appointments Board of the Council of Europe. On that same day I confirmed that I would attend the oral interview, which took place on 13 March 2009.

I was informed by email on 16 April 2009 sent by Ms H. and signed by Ms P. of the Directorate of Human Resources that, following the interview and on the basis of the recommendation of the Appointments Board, the Secretary General had decided not to include my name on the reserve list drawn up following that competitive examination.

In the light of this result, I contacted the Directorate of Human Resources to ask about challenging the result that had been communicated to me. I was scandalised by this unfair result, which hugely undermines my expectation of obtaining employment, and subsequently decided to challenge the result of the competitive examination in accordance with Article 59, paragraph 1 *in fine* of the Staff Regulations, by submitting an administrative complaint to the Secretary General of the Council of Europe via the Director of Human Resources.

Certain aspects of the competitive examination adversely affect me. The vacancy notice for the above-mentioned competitive examination required candidates to have a minimum of one year's relevant professional experience acquired in an intergovernmental international organisation and specific language knowledge. However, in the light of the reserve list drawn up in order of “merit”, these requirements of the competitive examination were ignored, whereas Appendix II to the Staff Regulations concerning the Regulations on Appointments stipulates that applications are admissible only if they comply with the conditions set out in the vacancy notice (Article 8). I find it hard to understand this situation, which strikes me as illogical because the real assessment and selection criteria cannot be deduced from the substance and form of the competitive examination. Having sound professional experience in this field, and possessing the language skills required in the vacancy notice, I am the only candidate whose name was not included on the reserve list, among the can-

didates selected and who have worked alongside me in Central Office. It is simply scandalous and wholly unfair to me, bearing in mind that the European Court of Human Rights is the key institution for the protection of human rights in Europe. I wish to stress that when I started working in Central Office, I was told that my specific language knowledge in Azerbaijani, Russian, French and Turkish (plus elementary Italian and Spanish and the Greek alphabet) would enable me to deal with a large amount of mail.

Furthermore, my previous experience acquired in the Council (Directorate General of Social Cohesion and Central Office of the European Court of Human Rights), as well as my university acquired knowledge and language and computer skills have given me a detailed knowledge of the functioning of the Organisation and the ability to perform my tasks in the best possible way. When my contract in Central Office expired, I received a good appraisal, with a positive professional assessment in terms of skills, professional results and working relations (appraisal attached).

In view of the foregoing, I hereby submit this administrative complaint in accordance with Article 59, paragraph 1 *in fine* of the Staff Regulations, challenging the procedure in the above-mentioned competitive examination (and consequently the result thereof), requesting that all ambiguity such as to discredit the fairness required of competitive examinations be dispelled and that my application be examined afresh.

Mr Secretary General,

I appeal to you, as Secretary General of the Council of Europe, the watchdog and guardian of respect for human rights, to kindly give sympathetic attention to my case in order to end this injustice towards me as a result of the decision taken following the competitive examination in question.

I remain at your disposal if any further information is required.

I thank you in advance for the sympathetic attention you are kind enough to give to respect for my rights and for human rights. Please accept, Mr Secretary General, the assurance of my highest consideration.”

On 9 June 2009, the Secretary General considered that the administrative complaint was ill-founded and dismissed it.

13. On 23 July 2009, the appellant lodged the present appeal.

THE LAW

14. The appellant contests the result of the competitive examination at issue. She requests the Administrative Tribunal to dispel “all ambiguity such as to discredit the fairness required of competitive examinations and to establish the actual facts relating to [her] candidature” (*translation*).

15. For his part, the Secretary General requests the Tribunal to declare the appeal ill-founded and dismiss it.

I. THE ARGUMENTS OF THE PARTIES

16. The appellant complains that the requirements of the competitive examination were ignored in view of the manner in which it was held and the reserve list drawn up in order of “merit”.

According to her, the procedure applied to the holding of the competitive examination did not conform to the requirements of the Staff Regulations with regard to recruitment and the terms of the vacancy notice, while certain aspects of the application of the competitive examination procedure had been ignored.

The appellant points out that the vacancy notice for the contested competitive examination required candidates to have a minimum of one year’s relevant professional experience acquired in

an intergovernmental international organisation, and also to have specific language knowledge. She maintains that these requirements of the competitive examination were ignored in the light of the reserve list drawn up in order of “merit”, whereas the Regulations on Appointments (Appendix II to the Staff Regulations) stipulate that applications are admissible only if they comply with the conditions set out in the vacancy notice (Article 8). The appellant states that she is unable to understand this situation, which strikes her as illogical because the real selection criteria cannot be deduced from the manner in which the competitive examination took place.

The appellant stresses that she has sound professional experience in this field, and possesses the language knowledge required by the vacancy notice, and that she is the only candidate whose name was not included on the reserve list, among the candidates selected and who, like herself, had worked in Central Office of the European Court of Human Rights. She considers this result to be simply scandalous and wholly unfair to her, bearing in mind that the European Court of Human Rights is the key institution for the protection of human rights in Europe. The appellant stresses that when she started working in Central Office, she was told that her language knowledge (Azerbaijani, Russian, French and Turkish, plus elementary Italian and Spanish and the Greek alphabet) would enable her to deal with a large amount of mail.

The appellant adds that her previous experience acquired in the Council of Europe (Directorate General of Social Cohesion and Central Office of the European Court of Human Rights), as well as her university-acquired knowledge and language and computer skills have given her a detailed knowledge of the functioning of the Organisation and the ability to perform her tasks in the best possible way. She emphasises that, when her temporary contract in Central Office expired, she received a good appraisal, with a positive professional assessment in terms of skills, professional results and working relations.

The appellant considers that the discretionary power of the Appointments Board must not have the effect of infringing the rights of a competitive examination candidate.

Finally, in her observations in reply the appellant makes a series of comments about certain candidates who were interviewed and who, like herself, had experience of working in the Registry of the European Court of Human Rights. In her comments the appellant seeks to show that these persons ought not to have been placed on the reserve list in so far as they did not have the minimum experience required by the vacancy notice.

17. In conclusion, the appellant requests “that all ambiguity such as to discredit the fairness required of competitive examinations be dispelled and that the real facts surrounding her application be examined.”

18. The Secretary General, for his part, begins by pointing out that, according to international administrative case-law, the appellant has a duty to provide evidence of her allegations. He adds that the procedure which was applied to the competitive examination in question was in conformity with the rules laid down in the Staff Regulations with regard to recruitment and with the wording of the vacancy notice.

The Secretary General goes on to point out the established case-law according to which, when the arrangements and manner of holding written tests in a competitive examination are decided, but also when they are assessed, the competent authorities enjoy a broad power of discretion. The Secretary General adds that this power, which must be exercised on the basis of objective criteria, does not however escape judicial control whereby it can be seen whether the exercise of the power of discretion is not vitiated by manifest error or misuse of authority, or whether the limits on

the power of discretion have not been manifestly exceeded (see ATCE no. 172/93, *Feriozzi-Kleijssen v. Secretary General*, decision of 25 March 1994, paragraph 31; see also CJEC case no. 40/86, *George Kolivas v. Commission* [1987], paragraph 11).

19. The Secretary General emphasises that the examination of candidatures entails a margin of discretion which varies according to the criteria set down in the vacancy notice. In this case, as he sees it, there can be no doubt that, with regard to assessment of the relevant professional experience and the specific language skills of candidates required for admission to the competitive examination, that decision was a matter for the discretion of the Appointments Board.

20. The Secretary General asserts that the Appointments Board gave careful consideration to all the candidates' files and, exercising its discretionary powers, only allowed those candidates who satisfied the criteria required by the vacancy notice to sit the written tests.

In this connection, the Secretary General submits to the Tribunal a copy of the minutes drawn up by the Appointments Board following the interviews (paragraph 3 above), showing that the selection procedure was conducted quite transparently and that the Board examined each candidature conscientiously before deciding whether or not to recommend a candidate. The Secretary General also submits a document recapitulating the relevant professional experience of each candidate placed on the reserve list, and of the appellant.

In the opinion of the Secretary General, these documents show that the language knowledge and professional experience of each candidate were duly taken into account by the Appointments Board throughout the course of the selection procedure.

21. In reply to the appellant's argument that it was unfair for her candidature not to be retained following the oral test, despite her opinion that she had "sound experience in the matter" and the "requisite language skills", the Secretary General maintains that the minutes drawn up by the Appointments Board following the interviews shows that the latter examined in depth the respective qualifications and aptitudes of the candidates in relation to the requirements of the duties to be performed. He adds that after the candidatures had been assessed, the Appointments Board did not recommend the appellant's candidature and considered her performance insufficiently convincing. The Secretary General argues that the said minutes show that the Appointments Board gave full reasons for its decision not to recommend the appellant's candidature, and that its decision was based on objective factors while taking account of both her experience and her language skills.

22. With regard to the arguments that, in her opinion, she satisfied the criteria of experience and competence for the kind of post in question and ought to have been placed on the reserve list, the Secretary General points out that the appellant, a candidate subject to the same rules as the other candidates, cannot substitute her own assessment for that of an authority invested with powers and competence to assess tests in the framework of a competitive examination.

The Secretary General adds that the persons competent in this matter clearly believed this not to be the case in not recommending her candidature. In his view, the appellant should endeavour to accept that her performance in the oral test was not good enough.

23. In the light of all these factors, the Secretary General concludes by requesting the Tribunal to declare appeal no. 461/2009 ill-founded and to dismiss it.

II. THE TRIBUNAL'S ASSESSMENT

24. The Tribunal must examine separately the grounds of appeal put forward by the appellant.

25. With regard to the appellant's complaint about irregularities in the holding of the competitive examination, the Tribunal observes that the appellant has not adduced any factual element demonstrating that irregularities were committed; both at the stage of the administrative complaint and at that of the examination of the appeal, the appellant merely stated that there had been irregularities, without adducing evidence of her assertions. For example, in her administrative complaint (paragraph 11 above), she confines herself to criticising facts which do not in themselves constitute irregularities. At the stage of examination of the appeal, the appellant asserts that "the requirements of the competitive examination were ignored in the light of the reserve list drawn up in order of merit", but here again adduces nothing which might support her claim to the existence of irregularities.

In her observations in reply, the appellant makes a series of comments on the other candidates. Without going into their merits, the Tribunal notes that, in accordance with Article 59 of the Staff Regulations, an appellant may lodge an administrative complaint – and subsequently an appeal in accordance with Article 60 of those same Regulations – against an administrative act "adversely affecting" him or her. In the instant case, decisions taken by the Appointments Board in respect of other candidates are not such as to adversely affect the appellant in so far as she was not placed on the reserve list (paragraph 10 above) by reason of the result of her interview; the assessment of the said interview, since it was not a comparative examination, was not linked to the assessment which the Appointments Board made of the other candidates.

Consequently, this ground of appeal must be dismissed.

26. With regard to the second ground, the Tribunal observes that the appellant bases her complaints on the finding that the result of the competitive examination was not in line with her experience and knowledge. She alleges the scandalous character of the result of the interview; however, she adduces nothing which might enable the Tribunal to establish that the interview was not conducted correctly or was discriminatory in comparison with the other candidates. The interview in which the appellant took part was an interview in the context of a recruitment procedure, and consequently the Appointments Board had to base itself solely on the result of that interview. It is true that the Secretary General stated in his observations that "the Appointments Board gave full reasons for its decision not to recommend the appellant's candidature, and that its decision was based on objective factors while taking account of both her experience and her language skills" (paragraph 21 above). However, the fact remains that, as the Tribunal stated, the assessment of the interview must relate to what took place in the course of it.

27. It is true that the appellant did not know the content of the minutes of the Appointments Board and therefore cannot challenge the assessment made of her interview; however, on the basis of that document, of which it had full cognisance, the Tribunal finds nothing to suggest any irregularity in relation to the appellant.

Consequently, this ground of appeal must be dismissed.

28. Lastly, the Tribunal points out first of all that it has already had occasion to examine the question of the discretionary power enjoyed by the Secretary General in matters of recruitment (see ATCE no. 250/1999, decision in *Schmitt v. Secretary General*, cited above, paragraphs 25-27). The Tribunal found that the Secretary General, who holds authority to make appoint-

ments (Article 36 c of the Statute of the Council of Europe and Article 11 of the Staff Regulations), has wide- ranging discretionary powers. When those powers are extended to recruitment, he is qualified to ascertain and assess operational needs and the professional abilities of applicants for a vacant post.

29. However, the Tribunal points out that those discretionary powers must always be lawfully exercised. Where a decision is challenged, an international court naturally cannot substitute its judgment for that of the Administration. However, it must ascertain whether the decision challenged was taken in compliance with the Organisation's regulations and the general principles of law, to which the legal systems of international organisations are subject. The Tribunal went on to say (*ibid*, paragraph 25):

“It [the Tribunal] must consider not only whether the decision was taken by a competent authority and whether it is legal in form, but also whether the correct procedure was followed and whether, from the standpoint of the Organisation's own rules, the administrative authority's decision took account of all the relevant facts, any conclusions were wrongly drawn from the evidence in the file, and there was any misuse of power.”

30. The Tribunal has also stated that when it comes to assessing subjective qualifications, the exercise of discretionary powers by the authority responsible for their assessment is of course more extensive than when assessing objective qualifications (see, *a contrario*, ATCE, appeals no. 216/1996, 218/1996 and 221/1996, Palmieri (III, IV and V), decision of 27 January 1997, paragraph 43).

Among the facts available to the Tribunal, there is nothing to show that the Appointments Board did not respect the requirements of the vacancy notice and the principles laid down by the Tribunal or that its assessment was arbitrary. Nor is there anything permitting of the conclusion that the Appointments Board drew manifestly erroneous conclusions or made an arbitrary assessment of the appellant's qualifications.

31. In her complaints the appellant challenges both the manner in which her test was marked and the information given to her on the matter. However, neither at the stage of the administrative complaint nor at that of the appeal did the appellant adduce any argument permitting of the conclusion that the competitive examination was illegal.

32. By taking the decision not to place the appellant's name on the reserve list drawn up at the end of the competitive examination, the Secretary General did not infringe the regulations or principles by which he was bound, and did not draw manifestly erroneous conclusions in relation to the vacancy notice or to the Organisation's regulations such as to incur the censure of the Tribunal.

33. Finally, the Tribunal notes that despite the appellant's rather obscure way of presenting the facts, and especially her complaints, it is clear that the crux of her appeal is and remains the assessment which the Appointments Board made of her interview. Since it cannot be envisaged that a candidate be declared recruitable by reason of his/her qualifications and professional experience – even if they are good or even excellent – the fact remains that recruitment must take place on the basis of the outcome of the recruitment procedure. As there was nothing which vitiated the assessment of the interview by the Appointments Board, the appellant cannot lay claim to being placed on the reserve list by reason of her qualifications and skills alone.

34. Furthermore, such recruitment would not be justified on the basis of the alleged irregularities in examining the other candidatures to which the appellant refers. Even if it is true that the Tribunal

is not required to consider this question for the reasons given above (paragraph 25, second subparagraph), and that the only conclusion to which the Tribunal could have come would have been to cancel the decisions on those candidatures without, however, being able to decide that the appellant should be recruited, nevertheless the Tribunal finds itself obliged to point out that real doubts may exist as to whether all the candidates admitted really did satisfy the admission conditions stipulated in the vacancy notice. It is for the Secretary General to issue a notice setting out the admission conditions in a clear, non-arbitrary manner, and above all to ensure that they are fully met. That obligation is all the more important as under the present rules it is difficult, or almost impossible, for a candidate in a recruitment procedure to challenge admission decisions concerning other candidates before the Tribunal.

35. In conclusion, the appeal is unfounded.

For these reasons,

The Administrative Tribunal:

Declares the appeal unfounded;

Orders that each party bear its own costs.

Delivered at Strasbourg on 18 June 2010, the French text being authentic.

The Registrar of the
Administrative Tribunal

S. SANSOTTA

The Chair of the
Administrative Tribunal

L. WILDHABER