

CONSEIL DE L'EUROPE—— ——COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

Appeal No. 675/2021
(M. R. (II) v. Secretary General of the Council of Europe)

The Administrative Tribunal, composed of:

Ms Nina VAJIĆ, Chair,
Ms Lenia SAMUEL,
Mr Thomas LAKER, Judges,

assisted by:

Ms Christina OLSEN, Registrar,
Mr Dmytro TRETYAKOV, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant, M. R., lodged his appeal on 23 September 2021. The appeal was registered on the same day under no. 675/2021.
2. The appellant submitted further pleadings on 26 October 2021.
3. The Secretary General submitted her observations on the appeal on 24 November 2021.
4. The Secretary General waived her right to a hearing. Because the appellant did not confirm that he wished to proceed with a hearing, the Tribunal decided that there was no need to hold one.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

5. The appellant has been a permanent staff member of the Organisation since 2004. He holds a grade C2 post in the Registry of the European Court of Human Rights.
6. Following the publication of vacancy notice no. e48/2020, the appellant submitted an application for the external recruitment competition for the grade B3 post of System Support Assistant in the Directorate of Information Technology (hereinafter “DIT”). Prior to that, this post had not been

filled internally through vacancy notice no. 069/2019 in response to which the appellant had submitted an application. The rejection of the appellant's application for this internal competition was challenged in appeal no. 669/2020, on which this Tribunal ruled in its [decision of 24 June 2021](#).

7. On 27 May 2021, the Directorate of Human Resources (hereinafter "DHR") informed the appellant by email that his application was not among those regarded as best meeting the eligibility criteria set out in the vacancy notice.

8. On 1 June 2021, DHR replied to the appellant's request for feedback on the reasons for the rejection of his application. The relevant part of the email reads as follows:

"In procedure e48/2020 – System Support Assistant, the shortlisting criteria were as follows:

(...)

2. Have at least two years of recent and relevant professional experience in a system support or system administrator role.

(...)

Your application mentions the following professional experience:

- Administrative officer (at the Court) since 17/07/2004.

You do not mention two years of recent and relevant professional experience in a system support or system administrator role. Your duties as a logistical support officer in the Registry of the Court do not meet the experience requirement at all, and the experience that you mention in the "motivation" section does not show that you have the experience required in procedure e48/2020."

9. On 24 June 2021, the appellant lodged an administrative complaint with the Secretary General contesting the rejection of his application in external recruitment procedure no. e48/2020.

10. On 26 July 2021, the Secretary General dismissed the appellant's administrative complaint as unfounded.

11. On 23 September 2021, the appellant lodged the present appeal against the dismissal of his administrative complaint.

II. RELEVANT LAW

12. The relevant provisions of the Staff Regulations read as follows:

Article 12

"1. Recruitment should be aimed at ensuring the employment of staff of the highest ability, efficiency and integrity, with due regard to a fair geographical distribution of posts and positions, in accordance with relevant decisions of the Committee of Ministers..."

Article 59

"...

2. Staff members who have a direct and existing interest in so doing may submit to the Secretary General a complaint against an administrative act adversely affecting them, other than a matter relating to an external recruitment procedure. The expression 'administrative act' shall mean any individual or general decision or measure taken by the Secretary General or any official acting by delegation from the Secretary General..."

Article 60

"1. In the event of either explicit rejection, in whole or part, or implicit rejection of a complaint lodged under Article 59, the complainant may appeal to the Administrative Tribunal set up by the Committee of Ministers.

2. The Administrative Tribunal, after establishing the facts, shall decide as to the law. In disputes of a pecuniary nature, it shall have unlimited jurisdiction. In other disputes, it may annul the act complained of. It may also order the Council to pay to the appellant compensation for damage resulting from the act complained of.”

13. The relevant part of Appendix II to the Staff Regulations, entitled “Regulations on appointments”, provides that:

Article 8

“Applications shall be admissible only if they comply with the conditions set out in the vacancy notice and all required information is provided.”

Article 12

“The Director of Human Resources shall be responsible for managing recruitment and internal competition procedures, for ensuring that the selection process is appropriate and consistent with the needs of the Organisation and for taking the necessary decisions in this regard. In the case of a procedure to fill a vacancy in a specific Major Administrative Entity, the Director of Human Resources shall work in close co-operation with the Major Administrative Entity concerned.”

14. Furthermore, Article 8 of Rule No. 1355 of 12 March 2014 laying down procedures for the implementation of the Regulations on appointments provides that:

“... 2. The shortlist of candidates to be invited to take part in a recruitment procedure shall be drawn up by the Director of Human Resources, on the basis of the criteria set out in the vacancy notice. In the case of recruitment to fill a vacancy in a specific Major Administrative Entity, the shortlisting shall be carried out in consultation with this Entity. Applicants who best meet the above-mentioned criteria shall be shortlisted and invited to the following stage(s) of the procedure.”

THE LAW

15. The appellant asks that the Secretary General’s decision to reject his application in external recruitment competition no. e48/2020 be set aside so that he can take the written tests.

16. The respondent, meanwhile, asks the Tribunal to declare Appeal No. 675/2021 ill-founded and to dismiss it in its entirety.

I. SUBMISSIONS OF THE PARTIES

17. The appellant believes that his application in competition no. e48/2020 for the post of System Support Assistant meets the eligibility requirements set out in the vacancy notice and that the decision to reject his application on the ground of ineligibility is unlawful.

18. In support of his appeal, the appellant cites his qualifications and “several years’ experience in both the private sector and the public sector, such as at the Bas-Rhin prefect’s office and the European Court of Human Rights”. In relation to the latter, the appellant mentions “assignments as a microcomputing technician lasting several months”. He also mentions that his application was considered eligible in an internal competition for the same post.

19. The appellant asserts that the reasons cited by DHR as to why his application was deemed ineligible lack an objective basis.

20. The Secretary General points out that the Administration has broad discretionary power in relation to competitions and the assessment of applications. She also makes reference to the relevant rules applicable to recruitment procedures at the Council of Europe (paragraphs 12 to 14 above).

21. According to the Secretary General, the requirements set out in vacancy notice no. e48/2020 were clear and specific. One of these requirements was that applicants had to have at least “two years of recent and relevant professional experience in a system support or system administrator role”. In the case at hand, it was concluded that the appellant’s application did not satisfy the professional experience criterion in the vacancy notice.

22. The reasons why the professional experience mentioned in the appellant’s application was not sufficient to demonstrate that he had the required professional experience were explained to the appellant in DHR’s response to his request for feedback (paragraph 8 above).

23. As for the professional experience mentioned by the appellant in the proceedings before this Tribunal which he gained before being recruited by the Council of Europe in 2004 (paragraph 18), the Secretary General underlines that this experience cannot be taken into account, as it was not mentioned in the appellant’s application. Moreover, it is neither substantiated nor recent.

24. With regard to the experience gained by the appellant from his “assignments as a microcomputing technician lasting several months” at the Court, the Secretary General points out that these were tasks of a logistical nature that do not match the work experience requirements in the vacancy notice in terms of either duration or complexity.

25. The Secretary General adds that even if the appellant’s application had satisfied the relevant professional experience criterion, this would not necessarily have led to the shortlisting of his application. This is because, as had been envisaged in the vacancy notice, only those applicants who were regarded as best meeting the criteria were shortlisted. Only 13 of the 43 applicants in procedure no. e48/2020 were invited to participate in the next stage of the competition.

26. In addition, the Secretary General notes that the appellant cannot draw any argument from the fact that he was invited to attend an interview in internal competition no. 069/2019. That procedure was separate from external recruitment procedure no. e48/2020, which forms the subject of the instant case, and the selection criteria for the two procedures were different, as the selection criteria for external competition no. e48/2020 were, in particular, more demanding, as is usual in situations where an unsuccessful internal competition subsequently leads to an external recruitment competition.

27. In conclusion, the Secretary General believes that the appellant’s application in competition no. e48/2020 was assessed in accordance with the regulatory provisions applicable to recruitment and the terms of the vacancy notice, and that DHR was thus justified in deciding not to allow the appellant to take the tests in competition no. e48/2020. As the appellant has not produced any evidence to the contrary, the Secretary General considers that this appeal is ill-founded and must be dismissed.

II. THE TRIBUNAL’S ASSESSMENT

28. The appellant contests the decision not to shortlist his application in external recruitment procedure no. e48/2020 on the ground that this decision, which is based on the fact that he does not satisfy the professional experience criterion laid down in the vacancy notice (two years of recent and relevant professional experience in a system support or system administrator role), disregards his professional experience and results from an erroneous assessment of it.

29. The Tribunal considers that with regard to competitions, international case-law is consistent in saying that competent authorities have wide discretion in determining how competitive examinations are conducted and managed, as well as how applications are assessed. This discretion must, however, be counterbalanced by scrupulous observance of the applicable rules and principles and is not exempt from judicial review, the purpose of which is to ascertain whether the challenged decision was taken without authority or in breach of a rule of form or of procedure, or if it rested on an error of fact or of law, or if some essential fact was overlooked, or if there was abuse of authority, or if clearly mistaken conclusions were drawn from the evidence (ATCE, Appeal No. 172/93, *Feriozzi-Kleijssen v. Secretary General*, [decision of 25 March 1994](#), paragraph 31; see also Court of Justice of the European Communities (CJEC), case 40/86, *Georges Kolivas v. Commission of the European Communities*, [judgment of 16 June 1987](#), paragraph 11). In cases like the present one, therefore, the Tribunal will exercise its power of review with special caution, its function being not to judge the candidates on merit but to allow the authority responsible for selection full responsibility for their choice (see, for example, [judgment 1077 of 29 January 1991](#) of the Administrative Tribunal of the International Labour Organisation (ILOAT) in *Barahona v. Pan American Health Organisation (PAHO)*, paragraph 4).

30. With regard to the Administration's discretion in assessing applications, this Tribunal has also ruled that "in assessing objective qualifications, the competent authority naturally makes less use of discretionary power than in assessing subjective qualifications" (ATCE, Appeals Nos. 216/1996, 218/1996 and 221/1996, *Palmieri (III, IV and V) v. Secretary General*, [decision of 27 January 1997](#), paragraph 43).

31. The Tribunal notes that in the reasoning supporting the impugned decision, the Administration explained the reasons for its view that the professional experience mentioned by the appellant is neither relevant nor sufficient to meet the requirements of the vacancy notice. These reasons were repeated and elaborated upon in the explanations given to the appellant both in the feedback from DHR and in the course of the proceedings. It appears that in so doing, the Administration considered all of the work that the appellant mentioned in seeking to demonstrate the requisite professional experience and it relied on proven facts and objective considerations when it concluded, at the end of this analysis, that the appellant had failed to show that he had the experience required by the vacancy notice.

32. The Tribunal also notes that during his discussions with the Administration, the appellant was promptly informed of the reasons for the rejection of his application and had every opportunity to provide evidence that these reasons were wrong. It must be pointed out that at no time when raising his objections to the rejection of his application did the appellant demonstrate that the assessment of his application during the selection process had been incomplete or erroneous. Furthermore, the contents of the case file do not indicate that the Administration made an arbitrary assessment of the appellant's qualifications.

33. The Tribunal concludes from this that the Administration's assessment of the appellant's application in competition no. e48/2020 is compliant with the regulatory provisions, the requirements of the vacancy notice and the general principles of law as interpreted by international administrative tribunals. Furthermore, there was no erroneous assessment of the relevant information, no drawing of wrong conclusions and no abuse of power.

III. CONCLUSION

34. The Tribunal therefore concludes that the appeal is unfounded.

For these reasons,

The Administrative Tribunal:

Declares the appeal unfounded;

Orders that each party shall bear its own costs.

Adopted by the Tribunal by videoconference on 24 January 2022 and delivered in writing pursuant to Rule 35, paragraph 1, of the Tribunal's Rules of Procedure on 31 March 2022, the French text being authentic.

The Registrar of the Administrative
Tribunal

Christina OLSEN

The Chair of the Administrative
Tribunal

Nina VAJIĆ