CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeal No. 719/2022
(Dmitry GURIN v. Secretary General of the Council of Europe)

The Administrative Tribunal, composed of:

Nina VAJIĆ, Chair,
Lenia SAMUEL,
Thomas LAKER, Judges**,**

assisted by:

Christina OLSEN, Registrar,
Dmytro TRETYAKOV, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant, Dmitry Gurin, lodged his appeal on 31 May 2022. The appeal was registered the same day under No. 719/2022.

2. On 4 July 2022, the Secretary General forwarded her observations on the appeal.

3. On 29 July 2022, the appellant filed his submissions in reply.

4. The public hearing of this appeal was held in the Administrative Tribunal's hearing room in Strasbourg on 27 October 2022. The appellant conducted his own defence. The Secretary General was represented by Benno Kilian, Head of the Legal Advice and Litigation Department, assisted by Sania Ivedi and Nina Grange, both legal advisors for this Department.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

5. The appellant is a Russian national who applied on 27 June 2021 to take part in the external competition No. e22/2021 for the recruitment of Legal Analysts/Legal Advisors (Grade A1/A2).

6. On 23 November 2021, the Directorate of Human Resources (hereinafter 'DHR') notified the appellant that he had been shortlisted to participate on 7 December 2021 in the first stage of the recruitment procedure, consisting of two online job-related tests.

7. On 13 January 2022, the appellant was informed by the DHR that further to the examination held on 7 December 2021, he had been admitted to the next stage of the recruitment procedure, also consisting of two online tests, on 20 January 2022.

8. By letter dated 21 February 2022, the DHR informed the appellant that as a result of his performance in the written examinations, he was invited for an interview with the Appointments Board of the Council of Europe which was to take place online between 7 March and 7 April 2022. The letter specified that approximately one week before the scheduled interview, the appellant would receive an e-mail with the exact interview date and time, the composition of the Appointments Board and technical details regarding his connection to the videoconference system.

9. On 16 March 2022, at the 1428ter meeting of the Deputies, the Committee of Ministers of the Council of Europe, acting under Article 8 of the Statute of the Council of Europe, adopted Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe. As a consequence thereof, the Russian Federation ceased to be a member State of the Council of Europe on 16 March 2022. This decision was followed by the adoption on 23 March 2022, at the 1429bis meeting of the Ministers' Deputies, of Resolution CM/Res(2022)3 on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe.

10. By e-mail dated 22 March 2022, the Head of the Recruitment and Employment Management Division of the DHR informed the appellant that further to the cessation of the membership of the Russian Federation to the Council of Europe, his application was no longer eligible and would thus be terminated. The relevant part of the e-mail reads as follows:

> "On the 16th March 2022 the Russian Federation ceased to be a member State of the Council of Europe. According to the Staff Regulations of the Council of Europe, staff members must be nationals of a state which is a member of the Council of Europe and have the civic rights enabling them to be appointed to the civil service of that state. We note that your application declares that you hold only Russian citizenship."

11. On 28 March 2022, the appellant lodged an administrative complaint with the Secretary General contesting the termination of his application to the external recruitment procedure No. e22/2021.

12. By e-mail dated 29 March 2022, the appellant asked the DHR to reconsider the decision to terminate his application in light of the fact that as a person legally continuously residing in France since 2 January 2016, he was eligible to apply for French citizenship. In his e-mail, the appellant added:

> "I'm also aware that some of the candidates whose applications were terminated on the same grounds as [mine], and whose situation in terms of citizenship is identical to mine, were reinstated in their status as candidates. I, therefore, believe that [the] same approach should be applied to the consideration of our candidatures and to the decision on our status."

13. On 30 March 2022, the Head of the Recruitment and Employment Management Division of the DHR replied to the appellant that the information provided in his e-mail of 29 March 2022 did not allow reversal of the decision to terminate his candidature and not to allow him to take part in the interview. The relevant part of the reply reads as follows:

> "With regard to the candidates whose participation in the competition was reassessed, I would like to stress that these decisions were made taking into account that the citizenship of another member State would be granted to them automatically, by operation of law.
>
> Your situation differs from theirs since the acquisition of French nationality through a naturalisation procedure is not a right, it is not automatic, and it is subject to the assessment of your application by the French authorities. The decision is taken at the discretion of the French administration, which can refuse naturalisation even if the conditions are met. Furthermore, the naturalisation procedure in France takes on average several years from the time the application is submitted.
>
> While we fully understand your disappointment that your application was terminated, you will appreciate that in accordance with the Council of Europe's internal regulations only applications meeting the eligibility criteria during all stages of the recruitment procedure may be considered."

14. On 27 April 2022, the Secretary General dismissed the appellant's administrative complaint in its entirety as ill-founded.

15. On 31 May 2022, the appellant lodged the present appeal, against the dismissal of his administrative complaint, in accordance with Article 60 of the Staff Regulations in force at the time.

II. THE RELEVANT LAW

16. The relevant provisions which applied to the submission of an administrative complaint at the time of the facts of the present case are set out in Article 59 of the Staff Regulations[1]. The provisions read as follows:

> "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. (…)
>
> 8. The complaints procedure set up by this article shall be open on the same conditions mutatis mutandis: (…)
>
> d. (…) to staff members and candidates outside the Council of Europe, who have been allowed to sit a competitive recruitment examination, provided the complaint relates to an irregularity in the examination procedure."

17. At the time of the facts of the case, the rules governing the appeal procedure before the Administrative Tribunal were laid down in Article 60, paragraphs 1 and 2 of the Staff Regulations:

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[1]The Staff Regulations which applied at the time of the facts of the present case are those which were adopted by Resolution Res(81)20 of the Committee of Ministers of the Council of Europe on 25 September 1981. These 1981 Staff Regulations, with further amendments, were replaced on 1 January 2023 by the new Staff Regulations, adopted by Resolution CM/Res(2021)6 of the Committee of Ministers of the Council of Europe on 22 September 2021. All references in the present judgment to the Staff Regulations are therefore to be understood as references to the 1981 Staff Regulations.

"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."

18. At the time of the facts of the case, the rule setting forth the conditions that candidates must fulfil in order to be eligible for appointment as a staff member was Article 14 of the Staff Regulations. The first condition listed under this provision required that candidates must:

"a. be nationals of a state which is a member of the Council of Europe and have the civic rights enabling them to be appointed to the civil service of that state".

19. The rule prohibiting discrimination between candidates which applied at the time of the facts of the case was Article 13 of the Staff Regulations. Its relevant provisions were worded as follows:

"1. Subject to Article 14 of the Staff Regulations and Article 6 of the Regulations on Appointments (Appendix II to the Staff Regulations), recruitment shall be carried out without direct or indirect discrimination, in particular on grounds of racial, ethnic or social origin, colour, nationality, disability, age, marital or parental status, sex or sexual orientation, and political, philosophical or religious opinions.

(…)

4. Applications shall be considered in the first instance on the basis of qualifications, experience and competencies."

20. The relevant rules of the Regulations on Appointments (Appendix II to the Staff Regulations) which applied at the time of the facts of the case are the following:

- Article 8, on the admissibility of applications:

"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, on the role and responsibilities of the DHR in the context of external recruitment procedures:

"[t]he 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. (…)."

- Article 15, on the recruitment procedure:

"1. Recruitment procedures shall consist of shortlisting of applications, assessments, and interviews:

- shortlisting shall be based on the eligibility criteria detailed in the vacancy notice. Candidates who best match the requirements shall be invited to the next stage of the selection process;

- assessments can include written papers, ability tests, knowledge tests, simulation exercises, situational judgement exercises, assessment centres, questionnaires, or any other type of assessment deemed appropriate for the recruitment needs; at least one assessment must be eliminatory;

> - interviews shall be conducted by the Appointments Board. The Secretary General may invite up to two more persons, from outside the Council or from among serving staff, to take part in the interviews in an advisory capacity.
>
> 2. When the number of successful applicants in a recruitment procedure exceeds the number of vacant posts or positions open to competition, a reserve list placing applicants in order of merit may be drawn up. Successful applicants shall be notified that their name appears on the reserve list. A reserve list shall be valid for two years; its validity may be extended up to a maximum of four years."

21. Article 8, paragraph 2 of Rule No. 1355 of 12 March 2014 laying down procedures for the implementation of the Regulations on Appointments reiterated 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. (…)".

THE LAW

22. In his appeal, the appellant requests the Tribunal to annul the decision of 22 March 2022, endorsed by the decision of 27 April 2022 rejecting his administrative complaint, to terminate his application under vacancy notice e22/2021, for the recruitment of Legal Analysts/Legal Advisors (A1/A2). He asks further the Tribunal to reinstate his status as a candidate under this recruitment procedure and to allow him to take part in the interview.

23. For her part, the Secretary General asks the Tribunal to declare that the appeal is ill-founded and to dismiss it.

I. THE PARTIES' SUBMISSIONS

1. The appellant

24. Under the first ground of his appeal, the appellant adduces several arguments aimed at demonstrating that the Administration misinterpreted and/or violated the applicable rules.

25. Firstly, the appellant states that under the terms of Article 15 of the Regulations on Appointments, verification of an application's compliance with the recruitment requirements is "an instantaneous act, which leads to it [being] either shortlisted or not, and not a process continuing throughout the recruitment proceedings". Since his application was found to meet the eligibility criteria in the first place, the decision to terminate it runs counter to the applicable rules.

26. The appellant submits further that the challenged decision disregards Article 8 of the Regulations on Appointments, under which terms the vacancy notice is "the primary document setting out eligibility requirements for applications in a specific competition". He recalls in this respect that vacancy notice No. e22/2021 required that "all the criteria upon which the primary selection will be based (level of qualifications, length of professional experience) must have been reached by the closing date of the vacancy notice", which was the case for his candidature.

27. Moreover, in the appellant's view, the decision not to invite him to an interview cannot be grounded in Article 14 of the Staff Regulations. This provision, which concerns recruitment

[2] Rule No. 1355 of 12 March 2014 was repealed with the entry into force on 1 January 2023 of the new Staff Regulations mentioned in footnote 1 above.

conditions, was to be construed narrowly, and did not set criteria a candidate should comply with for taking part in an interview or written examination or for being included in a reserve list. He notes in this regard that in case he passed the interview stage, it would have been possible for him to meet the nationality criterion during the period of validity of the reserve list (four years maximum), since he is eligible to apply for French citizenship having legally and continuously resided in France since 2016.

28. According to the appellant, the nationality criterion is comparable to the age limit criterion, in cases where the latter acts as a recruitment condition, such as for instance for the recruitment of assistant lawyers at the Court. He considers that these criteria and any other criteria that may change in the course of time for reasons beyond the candidate's control should be verified at the closing day of the application, without subsequent changes in these criteria affecting the validity of the application.

29. The appellant adds that the challenged decision was taken hastily and without properly considering his interests. He claims that as a result of this decision, as well as the delay in finalising the shortlisting of candidates, the Administration unduly placed the burden of adverse unforeseen consequences on him, instead of providing him with the "additional guarantees and protection" which he should have benefited from "as the weaker party in the recruitment/employment relations" who "had acted in good faith".

30. Thus, under the first ground of his appeal, the appellant concludes that there was no legal basis in the existing rules justifying the decision to terminate his application on account of it no longer meeting the eligibility criteria. The appellant adds in this respect that in a situation of uncertainty which is not directly addressed by the relevant rules, the latter must be interpreted in the manner best suited to the interest of the weaker party. Moreover, the appellant considers that the DHR acted beyond its competence in deciding to terminate his candidature. Noting that on the date of the challenged decision, the Committee of Ministers had not yet adopted the resolution on the legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe, the appellant takes the view that the DHR was not vested with the power to determine the fate of ongoing competitions.

31. The second ground of the appeal relates to an alleged discrimination on the basis of nationality. Under this ground, the appellant claims that the decision complained of violates Article 13 of the Staff Regulations, which required that recruitments be carried out without any discrimination on the grounds of ethnic origin and nationality, and that applications be considered in the first instance on the basis of qualifications, experience and competencies. In support of this plea, the appellant alleges that two Russian candidates have received a preferential treatment owing to their status as acting staff members and have had their candidatures reinstated in view of the possibility of them obtaining the citizenship of other Council of Europe member States.

2. The Secretary General

32. The Secretary General for her part, replying to the appellant's first ground, considers that the cessation of the membership of the Russian Federation to the Council of Europe had immediate repercussions on the admissibility of the appellant's application in the ongoing external recruitment procedure No. e22/2021 since it appeared from his application that he holds only Russian citizenship.

33. The Secretary General reaffirms that the eligibility criterion of nationality set forth in vacancy notice No. e22/2021 stems from Article 14 a. of the Staff Regulations which determines the conditions which a candidate must fulfil in order to be recruited as a staff member of the Council of Europe. She maintains that they must be fulfilled throughout the entire recruitment procedure up until the moment of appointment.

34. The Secretary General considers that the appellant's interpretation of Article 8 of the Regulations on appointments, taken alone or in combination with Article 14 a. of the Staff Regulations, is too narrow. There is nothing in the texts which would limit the scope of application of Article 8 of the Regulations on appointments to the moment of shortlisting only and which would justify considering the shortlisting as an "instantaneous act". If an application no longer fulfils one or more of the eligibility criteria, there would be no legal basis to maintain the candidacy and the only possible conclusion is to terminate it.

35. The Secretary General considers that the nationality criterion cannot be compared with that of the age limit, contrary to the appellant's argument (see above paragraph 28). Since age is, by nature, a constantly evolving and changing condition, a cutoff date must be introduced explicitly in the vacancy notice. This does not apply to other eligibility criteria, such as the nationality requirement, which, in principle, are supposed to remain unchanged throughout the recruitment procedure.

36. Insofar as the appellant claims that he could have been included in a reserve list in case he passed the interview stage, the Secretary General states that the purpose of a reserve list is not to list candidates who might in future become eligible for appointment, but candidates who currently are eligible for appointment, as confirmed by the wording of Article 15, paragraph 2 of the Regulations on Appointments. She adds that including on a reserve list candidates who are no longer eligible would be contrary to both the interests of the Organisation and those of the candidates concerned, since it might generate ill-founded expectations.

37. Concerning the appellant's allegation that a decision to shortlist a candidate can only be reversed in case of submission of false information, the Secretary General considers that the appellant's situation – which involved a significant change in circumstances impacting his compliance with the eligibility criteria – cannot be assimilated to a case of misconduct. In taking the contested decision, the DHR did not revoke its decision, but rather it found that the appellant's candidature no longer fulfilled one of the eligibility criteria.

38. As to the appellant's claim that the Administration acted beyond its competence, the Secretary General emphasizes that how competitive examinations are conducted and managed, as well as how candidatures are assessed, falls within the wide discretion of the Administration. The Secretary General recalls that in pursuance of Article 12 of the Regulations on Appointments, the DRH – and not the Committee of Ministers – is the competent authority regarding the management of recruitment procedures.

39. As to the appellant's complaint about the time it took the DHR to complete the shortlisting, this time was not unreasonably long considering the prevailing circumstances, including the nature of the recruitment as a general office-wide competition which attracted more than 600 candidatures.

40. Concerning the second ground of the appeal, namely the alleged breach of the principle of non-discrimination on the basis of nationality, the Secretary General underlines that the provision invoked by the appellant to substantiate this claim, Article 13, paragraph 1 of the

Staff Regulations, was subject to Article 14 of these regulations. Since the latter provision required that candidates meet the nationality eligibility criterion for appointment, the decision to put an end to the appellant's candidature based on this criterion cannot be considered discriminatory.

41. The Secretary General adds that the appellant's situation differs from that of the other candidates who were reinstated in the competition procedure: whereas the appellant's acquisition of the citizenship of another Council of Europe member State through naturalisation is purely speculative, that of the other candidates was certain and would be automatic, by operation of law. Therefore, the decision of the DHR to treat his case differently from the case of these other candidates was perfectly justified.

42. The Secretary General concludes from all the above considerations that the termination of the appellant's application for the external recruitment procedure in question was justified and decided in full compliance with the applicable rules and principles governing recruitment.

II. THE TRIBUNAL'S ASSESSMENT

43. The Tribunal notes that the appellant challenges that the decision lacks a legal basis and is discriminatory. He claims that since at the time of applying for the competition he fulfilled the eligibility criteria, the Organisation should have upheld its previous decision to invite him to an interview and could have included him in a reserve list in case of a successful interview. The defendant party considers, on the contrary, that the challenged decision was necessary to conform to the applicable rules which foresee that only nationals of a member State are eligible for appointment at the Council of Europe.

44. The first question that the Tribunal must therefore examine in view of the appellant's challenges relates to the interpretation of the relevant rules regarding recruitment, i.e. the 1981 Staff Regulations and its Appendix II.

45. The Tribunal recalls that the principles of statutory interpretation are well settled in the case law of international administrative tribunals. Under this case law, it is a basic rule of interpretation that words which are clear and unambiguous are to be given their ordinary and natural meaning and that words must be construed objectively in their context and in keeping with their purport and purpose (see, for example, International Labour Organisation Administrative Tribunal, Judgment 4031, M. (No. 3) v. WHO, under 5, and Judgment 3744, S. v. FAO, under 8).

46. The Tribunal notes that under the applicable rules, namely Article 2, paragraph 1 of the Regulations on Appointments, recruitment is defined as "the appointment to a vacant post or position of a candidate following an external competitive selection procedure". This definition illustrates the notion that the recruitment procedure – and the different stages of which it is composed – are not an end in itself but a means aimed at enabling the Organisation to fill vacant posts and positions by appointing to them suitable external candidates.

47. This is further reflected in the regulatory provisions which condition the admission to the procedure on the fulfilment of certain criteria. Under the terms of Article 15 of the Regulations on Appointment "recruitment procedures shall consist of shortlisting of applications, assessments, and interviews" and "shortlisting [is] based on the eligibility criteria detailed in the vacancy notice". Article 7 of the Regulations on Appointments specifies in this respect that the eligibility criteria are to be stated in the vacancy notice and Article 8 of the said

Regulations specifies further that applications shall be admissible "only if they comply with the conditions set out in the vacancy notice (…)".

48. Consequently, in the Tribunal's opinion only candidates who satisfy the eligibility criteria throughout the whole recruitment procedure may ultimately be recruited. It would thus not be justified to distinguish between the various stages of the procedure and to consider that the recruitment conditions apply only to the first stage, namely preselection, and not to the subsequent stages of the procedure.

49. The Tribunal considers therefore that if a candidate who fulfilled the recruitment conditions in the first place and was thus admitted to take part in a selection procedure, subsequently ceases, for whatever motive, to possess one or more of these conditions, he or she is no longer eligible to continue to take part in the procedure, irrespective of his or her chances of successfully passing the remaining stages.

50. The eligibility criteria for appointment which provided the basis for shortlisting candidates to Council of Europe recruitment procedures were those set out in Article 14 of the Staff Regulations. They include the requirement that candidates be "nationals of a state which is a member of the Council of Europe and have the civic rights enabling them to be appointed to the civil service of that state". Thus, the nationality criterion has been systematically mentioned in the vacancy notices of external recruitment procedures of the Council of Europe in pursuance of Article 7 of the Regulations on Appointments.

51. As the appellant ceased to have the nationality of a member State of the Council of Europe as of 16 March 2022, he was no longer eligible for appointment.

52. In these highly exceptional circumstances, the latin maxim *tu patere legem quam ipse fecisti*, according to which the Organisation is bound by its own rules, in the present case those that limit participation to recruitment procedures only to those candidates who fulfill the recruitment conditions, applies. It is irrelevant that the rules did not explicitly foresee the possibility to remove the appellant from the recruitment procedure, since the normative basis for such a decision was provided by the Organisation's duty to ensure that only entitled candidates took part in recruitment. Thus, the Tribunal finds that the Administration did not exceed its powers in taking the challenged decision: not only was the Administration competent to adopt such a decision in pursuance of the responsibilities conferred upon it by Article 12 of the Regulations on appointments mentioned above (see paragraph 20 above) but the decision was necessary to preserve the regularity of the ongoing recruitment procedure.

53. The appellant nevertheless challenges this decision on the ground that he was eligible to apply for French citizenship and that it would have been therefore possible for him to meet the nationality criterion in time for a future appointment. On this basis, he contends that he should have been admitted to an interview with the Appointments Board and in case of a successful interview, he could have been included in a reserve list "normally valid for 2+2 years, a period during which [his] compliance with the nationality criteria could have been changed". In support of his argument, he cites the case of two other Russian candidates whose applications to the same competition had been terminated but who "had been later reinstated in their status of candidates, in view of the possibility of them obtaining citizenship of other countries of the Council of Europe".

54. In this respect, the Tribunal finds that the mere possibility of acquiring the nationality of a member State of the Council of Europe had no bearing on the situation of the appellant.

Once the loss of the nationality of a member State disqualified him to participate further in the recruitment procedure, he was no longer entitled to be interviewed.

55. The parallel drawn by the appellant between the nationality criterion and the age criterion (see paragraph 28 above) in order to argue that both criteria apply only at the closing date of the vacancy notice is not relevant. The difference in nature between these two criteria is apparent in the very rules that establish them as eligibility criteria for recruitment: Article 14.a of the Staff Regulations does not establish a cut-off date for the nationality criterion requiring that this criterion be met (only) at the closing date of the vacancy notice, contrary to the rules introducing an age criterion. As an example of the latter rules, mention can be made of Article 5 of Rule No. 1368 of 16 October 2014 on Junior Professional Programme and Turnover Profiles which stipulated that "[a]pplicants of the Junior Professional Programme must be under 35 years of age at the closing date of the vacancy notice"[3].

56. The Tribunal rejects further the appellant's argument that the time taken by the DRH to shortlist candidates exposed him to the risk of adverse unforeseen consequences so that it would be unfair to make him bear the burden of risks which were beyond his control. In the opinion of the Tribunal, there is no doubt that the unforeseen situation in which the appellant found himself can only be attributed to the cessation of Russia's membership to the Organisation, – events for which the DRH clearly had no responsibility.

57. For all the above considerations, the Tribunal finds that the first ground of the appeal under which the appellant claims that the contested decision is the result of a violation and/or misinterpretation of the relevant rules, is unfounded and must therefore be rejected.

58. The Tribunal shall now examine the second ground of the appeal, under which the appellant claims that the challenged decision discriminated him in violation of Article 13 of the Staff Regulations.

59. The Tribunal recalls that according to the relevant case law, "the principle of equality requires that persons in the same position in fact and in law must be treated equally" (see International Labour Organisation Administrative Tribunal, Judgment 4423, L. (No. 2) v. EPO, consideration 15). The rule of non-discrimination is one of the general principles of law which prevails in the legal system of the Council of Europe where it is enshrined in Article 14 of the European Convention on Human Rights. This rule protects individuals, placed in analogous situations, from discrimination and prohibits different treatment for which there is no objective and reasonable justification (Decision of the Council of Europe Appeals Board of 21 September 1989, in Appeal No. 155/1989 - ANDREI v. Secretary General, paragraph 39; Judgment of this Tribunal of 27 April 2021, in Appeals Nos. 661/2020 and 662/2020 -Ulrich BOHNER (VII) and Antonella CAGNOLATI v. Secretary General, paragraph 90). The Tribunal recalls further that "allegations of discrimination and unequal treatment can lead to redress on condition that they are based on precise and proven facts, that establish that discrimination has occurred in the subject case" (see International Labour Organisation Administrative Tribunal, Judgment 4238, G. v. WHO, consideration 5).

60. Under this ground of the appeal, the appellant contends that he was discriminated owing to his nationality and that he was treated differently from other candidates in a situation comparable to his own. He compares his situation with that of two other candidates in the

[3] Rule No. 1368 of 16 October 2014 was repealed with the entry into force on 1 January 2023 of the new Staff Regulations mentioned in footnote 1 above.

recruitment procedure holding Russian citizenship and whose participation in the competition was reassessed, taking into account that the citizenship of another member state would be granted to them.

61. The Tribunal notes firstly that the removal of the appellant from the selection procedure on the basis of his nationality cannot be considered discriminatory since it is the consequence of the necessary enforcement upon the appellant of the nationality eligibility criterion.

62. Secondly, the Tribunal notes that the appellant was not in the same situation in fact as the two other Russian candidates to whom he compares himself. Whereas these candidates were able to demonstrate already during the recruitment procedure that they had launched the procedure for having their second citizenship recognised and the candidate who successfully passed the interview stage ultimately obtained a second nationality before the end of the procedure, the appellant's defense before the Tribunal is merely based on the statement that he was eligible to apply for French citizenship. This factual situation remained unchanged at the time of the proceedings before this Tribunal: indeed, it was confirmed at the hearing that the appellant had never applied for a different nationality.

63. The appellant's situation differed from that of the other candidates in another respect as well. The candidates in question were able to demonstrate that the citizenship of another member state would be granted to them automatically by operation of law, without being subject to a discretionary decision by the competent national authorities. By contrast, the acquisition of French nationality by the appellant through a naturalisation procedure would be subject to a discretionary decision by the French authorities and was therefore purely speculative.

64. Thus, the appellant's situation cannot be compared to that of the other Russian candidates to whom he compares himself.

65. Thirdly, the Tribunal finds that the appellant's argument that these two other Russian candidates received a preferential treatment owing to their status as serving staff members of the Organisation is a mere allegation and remains entirely unsubstantiated.

66. In the light of the foregoing, the Tribunal concludes that the Administration did not violate the principle of non-discrimination in deciding to treat the appellant differently and to exclude him from the recruitment procedure. The appellant's ground of appeal alleging such a violation must therefore be dismissed as unfounded, as must the claims for annulment of the challenged decision.

For these reasons, the Administrative Tribunal:

Declares the appeal ill-founded and rejects it;

Decides that each party will bear its own costs.

Adopted by the Tribunal in Strasbourg on 26 January 2023 and delivered in writing in accordance with Rule 35, paragraph 1, of the Tribunal's Rules of Procedure on 31 January 2023, the English text being authentic.

Registrar	Chair
Christina OLSEN	Nina VAJIĆ