CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeal No. 729/2022
(Emiliya RAMAZANOVA 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, Emiliya Ramazanova, lodged her appeal on 23 September 2022. The appeal was registered on 26 September 2022 under No. 729/2022.

2. On 2 November 2022 the Secretary General forwarded her observations on the appeal.

3. On 7 December 2022 the appellant filed her submissions in reply.

4. The public hearing of this appeal was held in the Administrative Tribunal's hearing room in Strasbourg on 28 March 2023. The appellant conducted her own defence. The Secretary General was represented by Benno Kilian, Head of the Legal Advice and Litigation Department, assisted by Sania Ivedi, legal advisor in the Department.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

5. At the time of lodging her appeal, the appellant was employed as an assistant lawyer (grade B3) at the Registry of the European Court of Human Rights.

6. In June 2021 the appellant applied to take part in the external competition No. e22/2021 for the recruitment of Legal Analysts/Legal Advisors (Grade A1/A2). At the time of the application, she held only Russian citizenship.

7. After successfully passing the written examination, the appellant was invited on 21 February 2022 by the Directorate of Human Resources (DHR) for an interview with the Appointments Board of the Council of Europe. The letter specified that the interview was to take place online between 7 March and 7 April 2022 and that approximately one week before the scheduled interview, the appellant would receive an e-mail with the exact interview date and time.

8. By email dated 15 March 2022, the appellant informed the DHR that she wished to update her application form by indicating that she had "started a legal procedure to obtain Azerbaijani nationality". The DHR replied by email dated 16 March 2022 that the appellant's application could not be updated at that stage of the procedure, but that it had taken good note of this information and would add it to her file.

9. On 16 March 2022, at the 1428ter meeting of the Ministers' 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 DHR informed the appellant that further to the cessation of the membership of the Russian Federation to the Council of Europe, her application to external competition No. e22/2021 was no longer eligible and would thus be terminated. The relevant part of the e-mail read 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 the same day, the appellant sent an email to the DHR which read:

> "I realise that Russian nationals are no longer eligible to take part in the current competition. However, as I informed [the DHR] on 15 March 2022 I am in the process of obtaining Azerbaijani nationality. In reply [the DHR] informed me that this information was added to my profile.
> I hope this fact is relevant in these circumstances and I retain my right to participate in the interview. Please advise me if my understanding of the situation is correct."

12. On 24 March 2022 the appellant sent a further email to the DHR providing additional details regarding her application for Azerbaijani nationality. The email, which was co-signed by another Russian candidate, K., who was also applying for the nationality of another member State, requested the review of their cases. The email asserted that the decision on K.'s application for nationality was expected within six months. As to the appellant, regarding the grounds on which she was applying for the recognition of her second nationality and the time frame within which she expected the decision, the email specified:

> "The procedure is short and its positive outcome is guaranteed, unlike in the case of application for citizenship by naturalisation. (…) To lodge the request for recognition, I must be in Baku. I will provide the relevant documents before the end of April 2022."

13. On 28 March 2022 the DHR informed the appellant that in the light of the information she had provided, she would receive an invitation for an interview with the Appointments Board. The message read:

> "We understand from your submissions that according to the applicable domestic laws you are not only a national of the Russian Federation but also of the Republic of Azerbaijan by operation of law and that you are in a position to provide documentary evidence of your citizenship of the Republic of Azerbaijan before the end of April 2022.
> (…).
> Please note that you will nevertheless only be eligible for a possible recruitment with the Council of Europe or placement on a reserve list if you have provided evidence that you hold the nationality of a member State before the final recommendation of the Appointments Board."

14. On 29 March 2022 the appellant received the invitation to the interview to be held on 4 April 2022.

15. On 31 March 2022 the appellant travelled to Baku to apply for a national passport from Azerbaijan. She returned to Strasbourg on 3 April 2022.

16. The appellant was interviewed by the Appointments Board on 4 April 2022.

17. On 7 April 2022 the appellant informed the DHR that she had been recognised as an Azerbaijani national and provided them with a copy of the relevant decision of the Azerbaijani State Migration Agency. She also explained that she would receive the national passport later. The next day, on 8 April 2022, the DHR informed the appellant that the document provided was sufficient proof of her nationality of a member State of the Council of Europe.

18. On 25 May 2022 the appellant was informed that on the basis of the recommendation made by the Appointments Board further to her interview, the Secretary General had decided not to place her name on the reserve list that had been established at the end of the competition.

19. On 29 May 2022 the appellant requested feedback on her interview. She inquired, in particular, whether her Russian nationality influenced the recommendation of the Appointments Board and the decision of the Secretary General.

20. On 7 June 2022 the appellant had a feedback meeting with a representative of the DHR. The correctors' comments on her written papers and the Appointments Board's assessment of her performance during the interview were brought to her knowledge. The DHR assured the appellant that her Russian citizenship had played no role in the decision not to put her on the reserve list.

21. On 24 June 2022 the appellant lodged an administrative complaint with the Secretary General against the decision not to place her on the reserve list drawn up for the purposes of the competition No. e22/2021.

22. On 25 July 2022 the Secretary General dismissed the appellant's administrative complaint in its entirety as ill-founded.

23. On 23 September 2022 the appellant lodged the present appeal.

II. THE RELEVANT LAW

24. The relevant provisions which applied to the submission of an administrative complaint at the time of the facts of the present case were set out in Article 59 of the Staff Regulations[1] and 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."

25. 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:

> "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."

26. 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."

27. 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.
>
> (…)

[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.

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

28. 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."

THE LAW

29. In her appeal, the appellant requests the Tribunal to annul the decision of 25 July 2022 of the Secretary General not to place her name on the reserve list that was established following the competition No e22/2021 and to order the Secretary General to integrate her name into the said reserve list.

30. For her part, the Secretary General asks the Tribunal to declare the appeal ill-founded and to dismiss it in its entirety.

I. THE PARTIES' SUBMISSIONS

A. The appellant

31. The appellant adduces several arguments aimed at demonstrating that she was discriminated against since the Administration placed her in a situation unequal to other

candidates during the recruitment procedure. Unlike other candidates, she was asked to meet two additional requirements only a couple of weeks prior to the interview.

32. Firstly, the appellant notes that she had to convince the DHR that she was eligible for the interview even though she had informed them that she was in the process of obtaining the citizenship of Azerbaijan prior to the cessation of the membership of the Russian Federation to the Council of Europe. She reproaches the DHR for not having taken into account all the information available to it. Had they not failed to do so, her candidature would have been properly assessed and would not have been dismissed. From that moment onwards, unlike other candidates, she had to make additional efforts to be reinstated in the competition.

33. Secondly, the appellant considers that it was not justified to require her to provide proof of the nationality of a member State of the Council of Europe before the final recommendation of the Appointments Board. She refers to the case of her colleague, K., who was in the same situation as herself but who was allowed to provide such proof later. The appellant concludes, therefore, that there was no urgency in providing documentary evidence of her nationality and that the tighter deadline that was imposed upon her had thus placed her in an unequal position compared to other candidates.

34. The appellant concludes that the stress related to the necessity to deal with these additional requirements affected adversely her ability to prepare well for the interview.

B. The Secretary General

35. The Secretary General, for her part, considers the appellant's allegations unfounded and based on a misinterpretation of the facts. She stresses the wide margin of discretion which she enjoys in determining the modalities and conduct of competitive examinations, as well as in assessing the qualifications and competencies of candidates. This type of decisions, involving discretionary powers, are subject to only limited judicial review. The Secretary General recalls further that the burden of proof regarding alleged irregularities in a competitive procedure lies with the complainant. In the case at hand, the appellant does not provide any convincing element to question the legality of the procedure followed in her respect.

36. Referring to the case-law of this Tribunal and of the European Court of Human Rights, the Secretary General notes that discrimination occurs when individuals in identical situations are treated differently without an objective and reasonable justification.

37. The Secretary General underlines that in her email of 15 March 2022, the appellant simply stated that she had started a legal procedure to obtain Azerbaijani nationality, without providing any further details. The information provided regarding the mere possibility of obtaining the nationality of a member State was not in itself sufficient to affect the decision of 22 March 2022 to terminate the appellant's application.

38. The Secretary General notes that in her subsequent email of 24 March 2022, the appellant explained that she was entitled to obtain Azerbaijani citizenship in a matter of a few weeks, automatically and by operation of law. In light of the possibility for the appellant to comply with the nationality requirement before the end of the recruitment procedure, the DHR therefore reviewed its decision and reinstated the appellant as a candidate, even though it was under no obligation to do so.

39. As to the deadline to provide the proof of nationality of a member State, the Secretary General observes that it was the appellant herself who suggested to provide documentary evidence of her citizenship before the end of April, whereas her colleague, K., explained that his application for nationality could take up to 6 months to be decided. In these circumstances, the DHR relied on the information given by the appellant in deciding that the latter was required to provide documentary evidence of her Azerbaijani nationality before completion of the recruitment procedure.

40. The Secretary General considers that the situations of the appellant and K. were not the same due to the difference in the time necessary to process their respective applications for nationality at their respective countries. Therefore, it was fair and proportionate to treat them differently to take into account the different applicable time frames. In any event, the placement of K. on the reserve list was conditioned upon the provision of written evidence of the citizenship of a member State no later than 31 December 2022.

41. The Secretary General maintains that not only did the DRH comply with the principle of equality of treatment between candidates but also it did everything within its powers to ensure that the appellant and K. were treated as favourably and equitably as possible under the exceptional circumstances. The Administration thus demonstrated solicitude and flexibility in a situation where it had no obligation to reinstate their candidatures. Consequently, the appellant's allegations that she was discriminated and subjected to unnecessary requirements regarding the documentary evidence to be provided are unfounded.

42. As to the outcome of the competition, the Secretary General adds that the recommendation of the Appointments Board not to place the appellant's name on the reserve list was based on objective elements and was duly motivated.

II. THE TRIBUNAL'S ASSESSMENT

43. The present dispute arises from the appellant's claim that she was subjected to discriminatory conditions while taking part in a recruitment procedure. The appellant does not challenge the assessment of her performance in that procedure, nor does she clearly raise the issue of a procedural flaw affecting the competition. She claims, however, that the Administration caused her unnecessary stress and strain, and, on this basis, she asks the Tribunal to annul the decision not to place her name on the reserve list established for the purposes of this competition.

44. The appellant rests her claim on two arguments. The first argument relates to the fluctuation of the Administration's position on the admissibility of her application (paragraph 32 above). The second argument relates to the excessively short period of time she was given to provide proof of nationality of a member State (paragraph 33 above). These circumstances, for which the appellant holds the Administration responsible, placed her at a disadvantage, to the detriment of her ability to prepare for the interview.

45. The Tribunal recalls that it is well established in the case law that "the principle of equality requires that persons in the same position in fact and in law must be treated equally" (see Administrative Tribunal of the International Labour Organization (ILOAT), Judgment No. 4423, consideration 15; Council of Europe Appeals Board, *appeal No. 155/1989 – Andrei v. Secretary General*, decision of 21 September 1989, paragraph 39). It follows that treatment may vary provided that it is a logical and reasonable outcome of the circumstances

(see Administrative Tribunal of the International Labour Organization (ILOAT), Judgment No. 1324, consideration 7).

46. The Tribunal notes that the pertinent legal framework about the nationality eligibility criterion for appointment, its interpretation and application to the competition No. e22/2021 was discussed in detail in the case of Gurin (ATCE, *appeal No. 719/2022 – Dmitry Gurin v. Secretary General*, decision of 31 January 2023, paragraphs 43 to 66). In that case the Tribunal concluded 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". In this judgment, the Tribunal also found that the situation of candidates, who were able to demonstrate that the citizenship of another member State would be granted to them automatically by operation of law was different from the situation of candidates who had the possibility to acquire such a nationality through a naturalisation procedure that would be subject to a discretionary decision by the competent national authorities and was therefore purely speculative (Gurin, cited above, paragraph 61).

47. The Tribunal notes that, as of the date on which the Federation of Russia ceased to be a member of the Organisation (16 March 2022), the appellant was in a state of uncertainty as to whether she could continue to take part in the recruitment procedure. It finds that the communication of the DHR of the same day did not dispel that uncertainty, since it did not take a clear stand with respect to the information provided by the appellant concerning her eligibility for citizenship of a member State of the Organisation. This uncertainty was not lifted until 28 March 2022, when the DHR indicated that the appellant would be invited to an interview. The definitive invitation to an interview was only notified to the appellant the next day (29 March), scarcely a week before the interview date (4 April 2022).

48. The Tribunal concedes that the above circumstances were likely to contribute to a stressful situation for the appellant and to affect her ability to perform well at the interview. It also accepts that this situation may have been exacerbated by the requirement made for the appellant to provide proof of nationality of a member State of the Organisation in the short period of time left before the Appointments Board took a position on her candidature. Given the importance of the interview in the recruitment procedure, it cannot be excluded that the circumstances in question had a decisive impact on its outcome for the appellant.

49. This having been said, the Tribunal considers that it is not necessary for it to examine whether those circumstances gave rise to a failure on the part of the Administration to fulfil its obligations or could amount to discriminatory treatment of the appellant in relation to other candidates in a situation comparable to her own.

50. The Tribunal has repeatedly emphasised that it is necessary for both staff members and other individuals concerned to inform the Administration without undue delay and in unequivocal manner about their personal situation, if they believe that the Administration should take this information into account for the purposes of adopting a decision which affects them (see *mutatis mutandis*, ATCE, *appeal No. 581/2017 – Manuel Antonio de Almeida Pereira v. Secretary General*, decision of 7 March 2018, paragraph 47; and ATCE, *appeal No. 674/2021 – Paméla Mendez Carvalho v. Secretary General*, decision of 27 January 2022, paragraph 70). Likewise, if a staff member considers that he or she has been wronged by conduct attributable to the Administration, he or she should raise this matter as soon as possible so that the Administration can palliate its shortcomings. This requirement reflects the general

principle of good faith, which applies reciprocally in relations between an international organisation and its staff members.

51. The present case concerns an external competition, in which the Administration must rely to a large extent on the information submitted by the candidates. Therefore, it was for the appellant to provide information that would allow the Administration to properly assess her candidature. The Tribunal notes in this respect that in her email of 15 March, the appellant had merely evoked the existence of a pending application to acquire the nationality of a member State, without elaborating on the grounds for that application nor on her chances of obtaining such a nationality (paragraph 8 above). Indeed, once she did provide such information in her email of 24 March 2022, she was reinstated in the competition by the DHR.

52. The Tribunal observes further that the time frame which applied to the appellant for providing evidence of the nationality of a member State was based on the appellant's own submissions and assessments. Had the appellant considered that the date established for her interview did not leave her enough time or amounted to discrimination, it was incumbent on her to raise this matter as soon as possible to enable the Administration to remedy it. The Tribunal does not see in the facts of the case any attempts of the appellant to make the Administration aware, at the material time, of the challenges she faced and to seek relief by requesting the postponement of the interview. Nor did the appellant raise that issue during the interview.

53. Thus, the Tribunal finds that the appellant failed to submit properly and in due time her requests and concerns. Therefore, it cannot be held that the Administration did not examine her personal situation with the requisite due diligence.

III. CONCLUSION

54. In the light of the above the Tribunal concludes that the appellant's pleas are without merit and must be dismissed as unfounded.

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 6 June 2023 and delivered in writing in accordance with Rule 35, paragraph 1, of the Tribunal's Rules of Procedure on 12 June 2023, the English text being authentic.

Registrar of the Administrative Tribunal	Chair of the Administrative Tribunal
Christina OLSEN	Nina VAJIĆ