

Appeal No. 736/2023

A. A.

v.

**Secretary General
of the Council of Europe**

JUDGMENT

30 November 2023

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 judgment after due deliberation.

PROCEEDINGS

1. The appellant, A. A., lodged his appeal on 10 July 2023. The appeal was registered on the same day under No. 736/2022.
2. On 8 August 2023, the Secretary General forwarded her observations on the appeal.
3. On 21 August 2023, the Tribunal decided not to hold a hearing in the case.
4. The appellant conducted his own defence. The Secretary General was represented by Jörg Polakiewicz, Director of Legal Advice and Public International Law (Jurisconsult).

THE FACTS

I. CIRCUMSTANCES OF THE CASE

5. The appellant, A. A., is an external job applicant.
6. On 4 May 2023, the Directorate of Human Resources published vacancy notice No e7/2023 related to the external competition for the recruitment of the Director of Filtering and Supporting Services at the Registry of the European Court of Human Rights. The vacancy notice indicated that a candidate must, as a minimum:

“- hold a university degree in law, preferably equivalent to a master’s degree (2nd cycle of the Bologna process framework of qualifications for the European Higher Education Area) or above, obtained in one of the Council of Europe member states;

- have at least 12 years’ professional experience in the field of law and thorough knowledge of the procedure, practice and case-law of the ECHR;

...

- have a very good knowledge of the two Council of Europe’s official languages (English and French)...”.

7. On 22 May 2023, the appellant submitted his job application form for the above post. In his application form, the appellant indicated, among other things, that he was a national of a Council of Europe member state, that he was a native English speaker and that he had no knowledge of French. He further indicated that he held a Master of Arts degree in diplomatic

studies, obtained in December 2011, and that he had more than 28 years of diplomatic service experience in national and European institutions.

8. By email of 9 June 2023, the appellant was informed that it had been decided not to shortlist him for the next stage of the selection procedure.

9. On the same date, the appellant submitted an administrative complaint against that decision.

10. On 10 July 2023, the Secretary General dismissed the appellant's administrative complaint in its entirety on the grounds that it was ill-founded. It was noted that the appellant did not meet the criteria relating to the required diploma, professional experience and linguistic knowledge.

11. The same day, the appellant lodged the present appeal, in accordance with Article 14.5 of the Staff Regulations.

II. THE RELEVANT LAW

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

Article IV Entry into service

“(…)

4.2 The paramount consideration in the appointment of staff members shall be the necessity of securing the highest standards of competence, professionalism and integrity. (…)

4.3 Selection shall be made on a competitive basis, without discrimination, in a manner that ensures the fairness and transparency of the process.
(…)”

13. The pertinent provisions of the Staff Rules read, insofar as relevant, as follows:

Staff Rule on Entry into Service

420. Non-Discrimination

420.1 Specific conditions for appointment, including but not limited to age, physical capacities, language skills, and citizenship of a particular member State, may be set in respect of vacancies provided that such conditions have an objective and reasonable justification.
(…)

480. Advertising Vacancies

(…)

480.3 A vacancy notice shall include, in addition to the conditions for appointment referred to in Article 410, information relevant to the job inter alia the following:

480.3.1 job description;

480.3.2 requisite qualifications, competencies and experience;

480.3.the knowledge of languages required;

(…)

490. Recruitment Procedures

490.1 Candidates who meet the criteria set out in the Staff Regulations and Staff Rules and the vacancy notice and whose applications demonstrate the best profile in terms of qualifications, experience and motivation shall be shortlisted for the recruitment evaluation process. Where appropriate, the shortlisting process may involve staff members chosen by the Director of Human Resources who have substantive knowledge of the jobs falling within the ambit of the vacancy notice.

490.2 The evaluation process shall be appropriate to recruitment needs, shall be carried out on a competitive basis and may include consecutive eliminatory stages.

(...)

4140. Procedure for Appointment at Grades A6 and A7

4140.1 Vacancies at grades A6 and A7 which are not filled by transfer shall be filled by an external procedure.

4140.2 Only those candidates who meet the conditions for appointment as set out in the Staff Regulations and Staff Rules and the criteria set out in the vacancy notice shall be shortlisted.

4140.3 Shortlisted candidates whose applications demonstrate the best profile in terms of qualifications, experience and potential to exercise a senior management role are identified by the Director of Human Resources for approval by the Secretary General.

(...)

THE LAW

14. In his appeal, the appellant requests the Tribunal to declare his appeal admissible and well-founded and to annul the Secretary General's decision of 10 July 2023 to reject his formal complaint.

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

I. THE PARTIES' SUBMISSIONS

A. The appellant

16. The appellant challenges the decision of the DHR not to shortlist him for the next stage of the selection procedure for the recruitment to the post of the Director of Filtering and Supporting Services at the Registry of the European Court of Human Rights (vacancy notice No e7/2023). His major contention is that the Administration violated the principle of equal treatment and discriminated against him despite his significant working experience in the European institutions. He considers that he was discriminated for being a Muslim. In his opinion, the decision not to select him also violated principles of good administration and of legitimate expectations.

17. The appellant also considers that the Secretary General committed an error of facts, when assessing his job application. He notes that his Masters of Arts degree in diplomatic studies included international law as one of its subjects. He also submits that he had 15 years "of professional experience in the field of diplomacy and international law and thorough knowledge of the procedure, practice and case-law of the ECHR". He finally submits that his

mother tongues are English and French because his mother was Canadian, and she was native speaker in English and French.

B. The Secretary General

18. The Secretary General recalls that in determining the modalities and conduct of competitive examinations, as well as in assessing qualifications and competencies of the candidates, the selection authorities of an international organisation enjoy a wide margin of discretion. Such decisions, involving discretionary powers of international organisations, are subject to only limited judicial review and may be quashed only if they were taken by an incompetent authority, are vitiated by a formal or procedural defect, are based on an error of fact or of law, fail to take account of all the relevant facts, are vitiated by a misuse of power or draw manifestly erroneous conclusions from the file. The burden of proof regarding alleged irregularities in the procedure lies with the appellant.

19. According to the Secretary General, no irregularity is to be found in the way the external recruitment procedure at issue was conducted nor in the way the application of the appellant was assessed during the shortlisting stage. The evidence shows that this assessment was carried out in accordance with the applicable rules and principles on recruitment as well as the terms of the vacancy notice. The Directorate of Human Resources' (DHR) decision not to shortlist the appellant's application for the competition No e7/2023 was therefore fully justified.

20. The Secretary General notes that in order to be shortlisted for this competition, candidates had to meet, as a minimum, the requirements set out in the vacancy notice which included, among others, language proficiency, relevant education and work experience (see paragraph 6 above). These criteria were clear and specific.

21. In his application form the appellant indicated that he had a master's degree in diplomatic studies, that he had been working as a diplomat since 2011 and that he had no knowledge of French. In the light of this information, it was concluded that the criteria relating to the required diploma, professional experience and linguistic knowledge had not been met. The Secretary General submits that this assessment is not vitiated by any material error.

22. The Secretary General further notes that in the light of Article 4140.2 of the Staff Rule on entry into service and the terms of the vacancy notice, it was the duty of the DHR to ensure that only those candidates whose applications met the requirements set out in the vacancy notice e7/2023 were shortlisted for the competition. Since according to the information provided by the appellant in his application he clearly and objectively did not meet any of the above criteria, there was not even room for a discretionary assessment of his eligibility on the part of the DHR. Therefore, the decision not to shortlist the appellant for this recruitment procedure is in line with the powers exercised by the DHR in this matter and is not legally flawed. The DHR had to comply with Article 4140.2 of the Staff Rule on entry into service and the decision not to shortlist his application was also "*necessary to preserve the regularity of the ongoing recruitment procedure*" (see ATCE, appeal No 719/2022, *Gurin v. Secretary General*, [decision of 26 January 2023](#), paragraph 52 *in fine*).

23. With regard to the additional information provided by the appellant in his appeal concerning his qualifications and competencies with a view to establishing an error of fact in the assessment of his application by the DHR, the Secretary General stresses that it is on the basis of the information contained in the application form that the DHR determines whether an

application meets the criteria of the vacancy notice. Any information submitted after the application deadline may not be considered for the purpose of shortlisting candidatures. In this connection, she notes that it is the candidates' responsibility to fill in their application form as accurately and precisely as possible. When submitting their application, they formally certify that the statements contained in their application are, to the best of their knowledge, correct and complete. Accordingly, the appellant cannot claim before the Tribunal the existence of an error in assessing his application by presenting additional elements which were not contained in his application, or which even explicitly contradict the statements contained in his application form.

24. The Secretary General concludes that it is clear from the above that the impugned decision was based on objective elements and that the appellant's allegations that it is vitiated by arbitrariness and discrimination are not only unsubstantiated but completely unfounded.

II. THE TRIBUNAL'S ASSESSMENT

25. The Tribunal notes from the outset that the matter which is raised in the present appeal and which it is competent to examine is the decision of the Administration not to shortlist the appellant in an external competition and the rejection of his administrative complaint by the Secretary General. The Tribunal is not called to examine the personal circumstances of the appellant that were not referred to or had no bearing on the selection procedure in question.

26. The Tribunal recalls 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). 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).

27. The Tribunal notes that in the reasoning supporting the impugned decision, the Secretary General explained the reasons for her view that the appellant did not meet three obligatory requirements stated in the vacancy notice. It transpires that the Administration based its decision on the information provided by the appellant himself in his application form.

28. In so far as the assessment of the appellant's language proficiency is concerned, the Tribunal reiterates that when it comes to an external competition, the Administration must rely to a large extent on the information submitted by the candidates, thus it is for the candidates themselves to provide information allowing the Administration to properly assess their candidature (ATCE, appeal No 729/2022, *Emiliya Ramazanova v. Secretary General*, [decision of 6 June 2023](#), paragraph 51). It was the appellant himself who indicated that he had no knowledge of French and who certified the veracity of this information in his application

form by validating it. The Administration's assessment was based on the information contained in the application form and known to it at the relevant moment (see, *mutatis mutandis*, ATCE, appeal No 720/2022, *E v. Secretary General*, [decision of 25 January 2023](#), paragraph 62).

29. The appellant challenged the above assessment of his language proficiency by providing a new argument in his appeal (see paragraph 17 above). The Tribunal considers, however, that in the circumstances of the present case it is not necessary to decide on the admissibility or probative value of that information, as in any event in order to be shortlisted the appellant had to meet all eligibility criteria that had been set in the vacancy notice. The language proficiency was only one out of the three eligibility criteria which according to the Administration's assessment the appellant did not meet.

30. As to the other two eligibility criteria imposed in the vacancy notice, namely the fact of holding a relevant university degree and of possessing relevant work experience, such criteria were established within the exercise of the Organisation's discretionary powers. It is clear that a degree in diplomatic studies is not a law degree within the meaning of the advertisement. It is also clear that the appellant's alleged professional experience in diplomacy and international law does not give proof of thorough knowledge of procedure, practice and case-law of the ECHR, as requested in the vacancy notice (see paragraph 6 above).

31. The Tribunal is of the opinion that the conclusion of the Administration that the appellant did not meet the above criteria was based on the information submitted by the appellant in his job application form and it does not appear to be manifestly erroneous or vitiated by misuse of power.

32. In the light of the foregoing the appellant's complaints are unfounded and are to be dismissed. Consequently, the appellant should not be awarded any compensation for damages.

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 8 November 2023 and delivered in writing in accordance with Rule 22, paragraph 1, of the Tribunal's Rules of Procedure on 30 November 2023, the English text being authentic.

Registrar of the
Administrative Tribunal

Chair of the
Administrative Tribunal

Christina OLSEN

Nina VAJIĆ