



Before: Judge Francesco Buffa

Registry: Geneva

Registrar: René M. Vargas M.

NEOCLEOUS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Nicole Wynn, AAS/ALD/OHRM, UN Secretariat

Introduction

1. The Applicant, who participated in a recruitment process and took a written assessment, contests his exclusion from the oral interviews held in connection with said recruitment process.

Facts and procedural background

2. On 11 August 2017, the Applicant applied for the position of Associate Civil Affairs Officer (National Professional Officer-B level), Civil Affairs Section, United Nations Peacekeeping Force in Cyprus (“UNFICYP”), advertised under job opening number 5/2017 (JO 5/2017).

3. By memorandum dated 8 January 2018, the Chief, Civil Affairs Section, UNFICYP, informed the Chief Civilian Personnel Officer, UNFICYP, that after review of eligible candidates’ Personal History Profiles/Curricula Vitae, 20 candidates were to be invited for a written test. The former added in his memorandum that “only applicants who pass the written test [would] be given an invitation to future interviews”. The Applicant was among those to be invited to take the written test.

4. Following the administration of the written test, candidates’ answers were anonymized and submitted for grading by a Panel. The Applicant, who was assigned candidate number 8, obtained a mark of 57.5 per cent. This score was below the passing mark applied by the Hiring Manager, which was initially set at 70 per cent and then revised to 65 per cent given that only one candidate reached the former. This passing mark was not known to the candidates.

5. Between 2 and 5 March 2018, the Applicant learned that candidates had been invited for interviews.

6. On 13 March 2018, the Applicant submitted a request for management evaluation to the Management Evaluation Unit (“MEU”), United Nations Secretariat, where he *inter alia* indicated not to have been invited for an oral interview. Consequently, he claimed that his candidature had not been fully and fairly considered and asked that “an independent party outside the mission ... re-evaluate the written assessment ... to verify that the highest scoring candidates [had been] invited for the oral interview”.

7. On the same day, the Applicant filed an application for suspension of action, pending management evaluation, of the decision to exclude him from the recruitment process for JO 5/2017.

8. By Order No. 62 (GVA/2018) of 21 March 2018, the Tribunal found the application for suspension of action receivable but rejected it for not meeting the requirement of *prima facie* unlawfulness.

9. On 20 April 2018, the MEU *inter alia* advised the Applicant that following review of his 13 March 2018 challenge to the selection exercise for JO 5/2017, his request had been found premature and, consequently, not receivable. In this connection, the MEU noted that there was no outcome for the selection process in question and considered that, based on jurisprudence from the United Nations Appeals Tribunal, “a staff member must a) challenge a specific selection process, and b) challenge the outcome of the [selection] process”.

10. By memorandum dated 30 April 2018, the Chairperson, Mission Review Panel for Locally Recruited Staff, UNFICYP (“the Mission Review Panel”), informed the Chief, Human Resources Management Section, UNFICYP, that upon review of the documentation and recommendations in connection with the selection process for JO 5/2017, the Panel had “found that the evaluation criteria were properly applied and the applicable procedures were followed” and that “[t]he process was fair and transparent”.

11. On 19 July 2018, the Applicant emailed the application referred to in para. 1 above to the Tribunal’s Geneva Registry. He completed it on 23 July 2018 at the Registry’s request.

12. On 1 August 2018, the successful candidate for JO 5/2017 took up his functions.

13. The Respondent submitted his reply on 23 August 2018 *inter alia* raising the issue of the application's receivability *ratione materiae* and with an annex filed on an under seal basis. Said annex was made available to the Applicant under seal.

14. By Order No. 183 (GVA/2018) of 1 November 2018, the Tribunal granted leave to the Applicant to submit comments on the Respondent's reply, which he did on 15 November 2018.

15. By Order No. 47 (GVA/2020) of 9 April 2020, the Tribunal determined that the case could be decided on the papers and ordered the parties to file closing submissions, which they did on 12 June 2020.

Consideration

Receivability

16. In light of the Respondent's arguments on the receivability of the application, the Tribunal will address this issue first.

17. For the reasons below, the Tribunal finds that the mere fact that the Applicant was not invited to a competency-based interview following the written assessment did not give rise to an administrative decision, and that such a step of the selection process may only be challenged in the context of an application against a specific decision with clear and direct legal consequences on the Applicant, such as the final selection decision.

18. The Tribunal has accepted in the past that certain intermediate decisions in a selection process—such as when a candidate is found not suitable/ineligible for a given post—constitute administrative decisions that can be challenged without having to wait for the finalization of a recruitment. The Applicant's case, however, is distinguishable from these precedents.

19. First, a relevant decision can be also implicit; if specific, it has to be specified who took the decision, when it was taken and what its content was, but only if it has a definitive impact (even indirect) on the position of the candidate (for instance, a different decision which implies the definitive exclusion of the candidate). In the case at hand, the Applicant failed to indicate a specific date and content of an administrative decision, and simply recalled the fact that he was not called for an interview while others were. This was not a definitive exclusion of the candidate, as at that time, as will be elaborated below, the Administration could still call the candidate for an interview in a different moment.

20. Secondly, the record shows that there was a change in the passing mark applied for the written test *subsequent* to the publication of the job opening. Such an action by the Hiring Manager was subject to review and endorsement by the Mission Review Panel, which could have requested remedial action and made the Applicant's exclusion provisional.

21. The Tribunal is mindful of the fact that the Applicant's application for suspension of action referred to in para. 7 above was found receivable. This finding, however, was arrived at in connection with a summary procedure aimed at considering interim relief based on a *prima facie* evaluation of the facts before the Tribunal. At the time, the above-mentioned change in the passing mark was unknown to the Tribunal.

22. In closing, the Tribunal notes that the MEU clearly advised the Applicant of its position about the requirement to challenge a specific recruitment process and, more importantly, a specific selection outcome. At the latest, the Applicant became aware of his non-selection on 1 August 2018, when the successful candidate assumed functions, and there is no documentary evidence that the Applicant requested management evaluation of his non-selection, which was a mandatory first step to contest the outcome of the recruitment process under JO 5/2017.

Conclusion

23. In view of the foregoing, the Tribunal finds the application inadmissible and rejects it in its entirety.

(Signed)

Judge Francesco Buffa

Dated this 13th day of August 2020

Entered in the Register on this 13th day of August 2020

(Signed)

René M. Vargas M., Registrar, Geneva