



Before: Judge Alexander W. Hunter, Jr.

Registry: Geneva

Registrar: René M. Vargas M.

GIANOTTI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT
ON RECEIVABILITY**

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Miriana Belhadj, UNOG
Jérôme Blanchard, UNOG

Introduction

1. On 27 September 2020, the Applicant appealed the “rejection by the Executive Secretary of the [United Nations Economic Commission for Europe (“UNECE”)] of the Applicant’s candidacy for the post of Economic Affairs Officer [...]”, (“the post”).
2. On 28 October 2020, the Respondent replied that the application was premature because the selection process for the post was still ongoing.
3. Having reviewed the evidence in this case along with the parties’ submissions, the Tribunal finds that the application is premature given that the selection process for the post has not yet been concluded. The application is therefore not receivable *ratione materiae*.

Relevant facts

4. The Applicant applied for the post on 29 November 2019.
5. On 30 January 2020, the Hiring Manager recommended the selection of the Applicant as a rostered candidate to the Executive Secretary of UNECE. On 31 January 2020, the Executive Secretary rejected the recommendation and requested a full-fledged recruitment process.
6. Fifteen candidates were shortlisted, including the Applicant and four female candidates were invited to a first written test, which was passed by only 4 candidates, including the Applicant and one female candidate.
7. A second written test was organized where only two male candidates, including the Applicant, reached the passing grade of 60/100 and were subsequently invited for a competency-based interview.
8. As the other candidate withdrew his application, the Applicant was the only candidate to be interviewed and thereafter recommended for the post.

9. The Central Review Body endorsed the recommendation of the Applicant on 29 May 2020 and on 10 June 2020, the Hiring Manager elevated the recommendation for the Applicant's selection to the Executive Secretary.

10. On 11 June 2020, the Executive Secretary again declined to appoint the Applicant for the post and requested that at least one female candidate be also recommended.

11. On 10 February 2021, at the Tribunal's request, the Respondent confirmed that "no final decision has been taken [with respect to the contested selection exercise] and that the selection process is de facto suspended. The Respondent also elected not to cancel the job opening given the current application".

Consideration

12. The Respondent argues that the application is not receivable because it is not directed to an administrative decision. He refers to the jurisprudence of the Appeals Tribunal, notably in *Hamad* 2012-UNAT-269 and *Nguyen-Kropp & Postica* 2015-UNAT-509, according to which an administrative decision is only challengeable before the Dispute Tribunal when it produces direct legal consequences in the legal order. He further recalls that in *Ngokeng* 2014-UNAT-460 (para. 37), the Appeals Tribunal further held that a decision to suspend a recruitment process is not a final administrative decision.

13. The Respondent further cites *Ishak* 2011-UNAT-152 in which the Appeals Tribunal stated that the steps involved in a recruitment process leading to a final selection decision may only be challenged in the context of an appeal against the outcome of the selection process but cannot be the subject of an appeal in themselves.

14. The Applicant responds that the contested selection process has been ongoing for eight months since the decision not to select him for the post was first taken. He argues that indefinitely suspending a selection process would effectively prevent a staff member from challenging his or her non-selection for a post.

15. The Applicant further argues that since ST/AI/2020/5 (Temporary special measures for the achievement of gender parity) was introduced after his selection was not approved by the Executive Secretary, different criteria would be applied to a new selection exercise and therefore the decision not to select him for the post clearly has a direct impact on him.

16. The Tribunal notes the Appeals Tribunal's jurisprudence that the suspension of a recruitment exercise is not a reviewable administrative decision because, absent a final decision on selection, there is no impact on the applicant's conditions of service (see for instance *Ngoken* 2014-UNAT-460).

17. In the present case, the recruitment process for the post is not completed and has therefore not resulted in a final selection decision. The record shows that while the recommendation for the Applicant's selection has been rejected on two separate occasions, as described above, there is no evidence that he has been excluded from the selection process and no other candidate has been selected for the post. Therefore, the selection process has not yet yielded any direct consequences in the Applicant's contract or terms of employment.

18. The Applicant's contention that the newly enacted ST/SGB/2020/5 will cause his non-selection is equally irrelevant absent a final decision.

19. In light of the above considerations and in the absence of a final selection decision, the current application is not receivable.

Conclusion

20. The application is dismissed as non-receivable *ratione materiae*.

(Signed)

Judge Alexander W. Hunter, Jr.
Dated this 26th day of February 2021

Case No. UNDT/GVA/2020/046

Judgment No. UNDT/2021/013

Entered in the Register on this 26th day of February 2021

(Signed)

René M. Vargas M., Registrar, Geneva