



**Before:** Judge Teresa Bravo

**Registry:** Geneva

**Registrar:** René M. Vargas M.

KRIOUTCHKOV

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**SUMMARY JUDGMENT**

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**Counsel for Applicant:**

Dorota Banaszewska, OSLA

**Counsel for Respondent:**

Alan Gutman, AAS/ALD/OHR, UN Secretariat

Clementine Foizel, AAS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant, a P-3 staff member of the Economic and Social Commission for Asia and the Pacific (“ESCAP”) contests the decision not to select him for a P-4 post of Russian Reviser, with the Department for General Assembly and Conference Management (“DGACM”) in New York (“the post”).

## **Facts**

2. The Applicant serves as a Russian Translator at ESCAP at the P-3 level in Bangkok. He holds a permanent appointment.

3. From 20 January 2020 to 9 March 2020, DGACM advertised a Job Opening for three P-4 posts of Russian Reviser with the Russian Translation Service.

4. On 18 February 2020, the Applicant applied for the posts in question. The Hiring Manager evaluated whether the job applicants met the criteria set out in the Job Opening and prepared a shortlist of those who appeared most qualified. The Applicant was one of the 12 shortlisted candidates for the positions.

5. On 13 March 2020, the Applicant was invited to participate in a written assessment for the advertised post, which was to take place on 20 March 2020.

6. The written assessment was comprised of two parts (translation and revision). The first part of the assessment was a translation exercise to be completed from 9 a.m. to 1 p.m. New York time. This was followed by a two-hour break. The second part of the assessment was a revision exercise to be completed from 3 p.m. to 6 p.m. New York time. Because of the time difference between New York and Bangkok, where the Applicant is based, the test was due to take place overnight Bangkok time.

7. On 16 March 2020, the Applicant requested the Administration to conduct the written assessment during “regular business hours” Bangkok time.

8. The same day, the Administration informed the Applicant that the time of the written assessment could not be moved as all candidates had to take it at the same time. The Applicant did not participate in the written assessment.

9. By email of 4 March 2021, the Applicant was informed that the selection process for the post was completed and that his candidacy was not successful.

10. On 8 March 2021, the Applicant filed a request for management evaluation contesting the decision not to select him for the post.

11. By letter dated 19 March 2021, the Under-Secretary-General for Management Strategy, Policy and Compliance replied to the Applicant's request for management evaluation. The contested decision was upheld.

12. On 17 June 2021, the Applicant filed the application referred to in para. 1 above.

13. On 19 July 2021, the Respondent filed his reply.

## **Consideration**

### *Summary judgment*

14. According to art. 9 of its Rules of Procedure, the Tribunal may, on its own initiative, determine that summary judgment is appropriate.

15. In the case at hand and for the purpose of judicial efficiency, the Tribunal finds that the application should be decided through a summary judgment as there is no controversy on the facts, and the legal matter at stake has already been decided by this Tribunal in *Krioutchkov* UNDT/2021/052.

### *Motion for production of evidence*

16. In his application, the Applicant included a motion for production of evidence. He requested the Tribunal to order the production of "complete documentation from the last 30 years regarding the outcome of the selection procedures for the [P-4] Russian translator/reviser posts within [DGACM] in New York, including accurate statistics and information on how many internal

candidates based outside New York have been promoted in the last 30 years from [P-3] Russian translator posts to [P-4] Russian translator/reviser posts”.

17. In his reply, the Respondent argues that the Applicant’s request for production of documents should be rejected as the documents requested are irrelevant and unnecessary for a fair disposal of the case.

18. The Tribunal finds that the Applicant’s motion for production of evidence falls outside the scope of the current judicial review process since the Applicant does not specify the recruitment processes he is referring to, and in any case, a review of the lawfulness of prior selection processes falls beyond the purview of this case. Furthermore, it is manifestly unreasonable to request statistical data and documents from the “last 30 years”. Therefore, the motion is rejected.

*Merits*

19. The Applicant contests the decision not to select him for one of three P-4 posts of Russian Reviser with DGACM in New York.

20. The Applicant claims, *inter alia*, that the Administration’s decision denying his request to take the written test at a reasonable time is unlawful and improper. He argues that his candidacy was not given full and fair consideration and that he was denied a fair chance of promotion. He also claims that the decision is discriminatory.

21. The Respondent argues that the decision is lawful and that the Applicant’s claims have no merit. Furthermore, he points out that the same legal matter was considered by this Tribunal in *Krioutchkov* UNDT/2021/052 and that, in line with that Judgment, the present application should be dismissed.

22. The Tribunal recalls that the Administration is given ample discretion to establish the modalities and requirements of recruitment processes and that it is not the role of the Tribunal to replace the Administration in selection exercises.

23. The Tribunal notes that the Applicant did not participate in the written assessment, which was a compulsory step of the recruitment process.

24. The Appeals Tribunal held in *Loeber* 2018-UNAT-836, para. 30, that, by refusing to participate in an interview because of a belief that the panel was biased while offering no evidence of such bias, the applicant had stopped himself from challenging the outcome of the selection process.

25. A similar reasoning is applicable to this case. In fact, DGACM advised the Applicant that the written assessment had to be conducted at the same time for all candidates and that the timing could not be changed.

26. Therefore, since the Applicant decided not to participate in the written assessment, his non-selection for the vacant post, is only a consequence of his own actions, and as per *Loeber*, he stopped himself from contesting the selection outcome.

27. While the Tribunal understands that the schedule of the written assessment was probably inconvenient for the Applicant, it notes that he did not provide a reason why it was not possible for him to take the test. He simply asked for the test to be rescheduled “during regular business hours” in Bangkok.

28. The Tribunal further considers, as per *Krioutchkov* UNDT/2021/052, that the reason provided by the Administration for not being able to accommodate different schedules for the test, namely the avoidance of leaks, is fair and reasonable.

29. Consequently, the Tribunal finds that the Applicant failed to rebut the presumption of regularity.

### **Conclusion**

30. In view of the foregoing, the Tribunal DECIDES to reject the application.

(Signed)

Judge Teresa Bravo

Dated this 1<sup>st</sup> day of June 2022

Case No. UNDT/GVA/2021/038

Judgment No. UNDT/2022/054

Entered in the Register on this 1<sup>st</sup> day of June 2022

*(Signed)*

René M. Vargas M., Registrar, Geneva