



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2022-UNAT-1248

**Vladislav Krioutchkov
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Graeme Colgan Judge Martha Halfeld
Case No.:	2021-1575
Date of Decision:	1 July 2022
Date of Publication:	11 August 2022
Registrar:	Weicheng Lin

Counsel for Appellant:	Dorota Banaszewska
Counsel for Secretary-General:	Angélique Trouche

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Mr. Vladislav Krioutchkov contested before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) the decision not to select him for one of four positions of Russian Reviser, P-4, that had been advertised by the Department for General Assembly and Conference Management (DGACM) in New York (the positions).
2. In Judgment No. UNDT/2021/052, the UNDT dismissed Mr. Krioutchkov's application.
3. Mr. Krioutchkov has appealed to the United Nations Appeals Tribunal (Appeals Tribunal).
4. For the reasons given below, we dismiss the appeal.

Facts and Procedure

5. Mr. Krioutchkov is a Russian Translator serving at the P-3 level in the Economic and Social Commission for Asia and the Pacific (ESCAP) in Bangkok, Thailand. On 31 January 2019, he applied to a job opening for four positions of Russian Reviser, P-4, that had been advertised by the Department for General Assembly and Conference Management (DGACM) in New York (the positions).
6. The selection process was administered in accordance with ST/AI/2010/3 (Staff selection system). Mr. Krioutchkov was one of 17 job applicants whose applications were released to the hiring manager for review. The hiring manager shortlisted 14 candidates, including Mr. Krioutchkov, and decided that a written test would be carried out to assess whether the shortlisted candidates had met the technical requirements and competencies for the positions. To ensure fairness, the format of the test and the evaluation methodology were decided in advance.
7. On 28 February 2019, Mr. Krioutchkov was invited, along with the other shortlisted candidates, to sit a written assessment on 7 March 2019 from 9.00 a.m. to 6.00 p.m., New York time. The test was to take place at the same time for all shortlisted candidates, irrespective of their location. Mr. Krioutchkov, based in Bangkok, immediately requested that the time for the written test be adjusted to regular office time in Bangkok because the test would take place between 9.00 p.m. and 6.00 a.m. in his time zone. The

Administration replied that the time of the assessment was synchronized with other candidates and was not negotiable.

8. On 7 March 2019, Mr. Krioutchkov received two e-mails with parts 1 and 2 of the written assessment. Mr. Krioutchkov chose not to participate in either part of the assessment.

9. Six shortlisted candidates successfully passed the test, five of them outside “regular” office hours, including one candidate who had taken the test between 6.00 p.m. and 3.00 a.m. in his time zone.

10. The six successful candidates were further assessed through a competency-based interview and all of them were recommended for selection for the positions.

11. On 24 April 2019, Mr. Krioutchkov was informed that his application for the position had been unsuccessful (the non-selection decision).

12. On 21 June 2019, Mr. Krioutchkov requested management evaluation of the non-selection decision. In his request Mr. Krioutchkov alleged that he had not received full and fair consideration for the position and stated that he continued to believe that he was the victim of a “duty station based ... long-time discrimination” as he served at a regional commission which was not part of the DGACM system. He complained that he had almost 36 years of professional experience and had been consistently rostered for P-4 positions since 2008.

13. On 10 July 2019, Mr. Krioutchkov was informed that the Administration had decided to uphold the decision. The Management Evaluation Unit concluded that by not taking the written test, Mr. Krioutchkov deprived himself of the right to further consideration for the position and thus could not contend unfairness or discrimination. It relied on the jurisprudence of this Tribunal and the UNDT which has consistently held that candidates in a selection process must comply with the requirements, instructions and arrangements for any written test forming part of the selection exercise.

14. Mr. Krioutchkov filed an application against the non-selection decision before the UNDT (the application) on 8 October 2019, to which the Secretary-General replied on 8 November 2019.

15. On 4 May 2021, six days before the UNDT issued its Judgment, Mr. Krioutchkov sought leave to file a motion requesting that the UNDT order the production of accurate statistics and information on how many internal candidates based outside of New York had been promoted in the last 10 years from P-3 Russian translator to P-4 Russian translator posts (the motion).

16. On 10 May 2021, the UNDT issued Judgment No. UNDT/2021/052 in which it dismissed the application. The UNDT held that the Administration's reason for not accommodating different schedules was fair and reasonable. The scheduling of the exam at a set hour for all applicants was necessary to avoid leaks of the testing materials. The UNDT held further that Mr. Krioutchkov's decision not to participate in the selection process was his own and that, consequently, he was estopped from contesting the outcome of the process.

17. The UNDT, also, dismissed Mr. Krioutchkov's motion seeking statistical information on the grounds that the lawfulness of numerous prior selection processes was beyond the scope and relevance of his case.

18. Mr. Krioutchkov filed his appeal with the Appeals Tribunal on 8 July 2021. The Secretary-General filed his answer on 7 September 2021.

Submissions

Mr. Krioutchkov's Appeal

19. Mr. Krioutchkov submits that there existed a practice of DGACM to give priority in the selection procedures to the candidates working already for DGACM, in particular as regards the promotions of the internal candidates and he was disadvantaged since he had been mobile across the duty stations. The UNDT erred in failing to establish the existence of such discriminatory practice as a fact although this fact was relevant for the question of whether he had been given fair and full consideration and had not been subject to bias in the selection procedure for the position. His non-selection decision, he argued, resulted directly from the alleged discriminatory practice.

20. Mr. Krioutchkov further submits that the UNDT erred in procedure, such as to affect the decision of the case, by not granting his motion for disclosure of information and documents regarding the Administration's practice of selecting and promoting for the P-4 posts of Russian translators/revisers exclusively candidates within the same unit and service. The

requested information, he argues, is relevant and necessary to prove his contention of discrimination; and the failure to have ordered its discovery and production led to a failure to establish the relevant facts, and thus the UNDT erred on a question of fact resulting in a manifestly unreasonable decision.

21. Mr. Krioutchkov contends that the timing of the written test was unreasonable and the Administration had failed to justify why a candidate being forced to write a written assessment at night constitutes a reasonable and correct exercise of the administrative discretion.

22. Mr. Krioutchkov contends that the UNDT erred in fact and law by holding that he was estopped by the decision not to write the test. He maintains that he did not willingly choose to make himself unavailable for the test, but he was placed in circumstances which made it impossible to properly sit the test.

23. Mr. Krioutchkov asks that the Appeals Tribunal vacate the UNDT Judgment, rescind the contested non-selection decision and establish a new recruitment process; or alternatively, award adequate compensation for economic loss. In the further alternative, he requests that the Appeals Tribunal remand the case to the UNDT for additional fact-finding.

The Secretary-General's Answer

24. The Secretary-General submits that the non-selection decision was reasonable on the basis that Mr. Krioutchkov was estopped from further consideration for selection by his refusal to write the written test.

25. He also maintains that the reason for the timing of the test was justifiable on the grounds of convenience to the Administration.

26. He contends further that the UNDT did not err in dismissing Mr. Krioutchkov's motion on the grounds that the evidence he sought to be discovered was irrelevant.

27. The Secretary-General accordingly submits that the appeal should be dismissed at the decision of the UNDT be affirmed.

Considerations

28. The point of departure in this appeal is to recognise that the Administration has a broad discretion in staff selection matters. In review of any selection decision the standard of review is one of rationality. The decision must be supported by the information before the decision-maker and the reasons given for it. The question to be asked is whether there is a rational and justifiable connection between the information available to the administrative decision-maker and the conclusion he or she eventually arrived at.

29. The reason Mr. Krioutchkov was not selected for one of the vacant positions was he failed or refused to write the prescribed qualifying test. As a consequence, the Administration gave his application no further consideration.

30. As the UNDT correctly held, the timing of the written test, although probably inconvenient for Mr. Krioutchkov, was justifiable in that holding the test at a set hour worldwide was a rational way of avoiding leaks of the test materials. The inconvenience to the Administration of accommodating different test schedules outweighed the inconvenience of Mr. Krioutchkov being required to adjust his schedule. Mr. Krioutchkov has provided no evidence that the need for him to adjust his schedule was disproportionately onerous. Rather, he appears to have taken umbrage at the mere inconvenience itself without due consideration of the convenience of the Administration and the other candidates. The balance of convenience favoured the Administration in light of the international operational requirements of the Organisation. The scheduling decision was accordingly reasonable.

31. This Tribunal held in *Loeber* that a staff member will be estopped from challenging a non-selection decision should he or she refuse to participate in an interview.¹ The principle applies with equal force where a candidate, as in this instance, refuses to submit to a compulsory written examination as part of the selection exercise. Where a candidate refuses or fails to comply with a preliminary prerequisite without reasonable justification, there is no obligation on the Administration to give his or her application further consideration. The candidate in such circumstances disqualifies his or her application and waives his or her right to full consideration.

¹ *Loeber v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-836, para. 30.

32. Mr. Krioutchkov's allegation of unfair discrimination is equally unmeritorious. Discrimination involves differentiation on illegitimate grounds. Not every differentiation is illegitimate. In order to constitute discrimination, the non-selection decision would have to have been based on unfair grounds impacting his dignity or employment status disproportionately. Therefore, in determining whether the differentiation experienced by Mr. Krioutchkov (his non-selection in this specific instance) had an unfair impact, regard must be had to the nature of the differentiating decision and the purpose sought to be achieved by it. An important consideration always will be whether the primary purpose of the impugned decision sought to achieve a worthy and important organizational goal.

33. The requirements of selection and promotion of staff of the Organization, including written examinations for the purposes of assessment, are the appropriate means of giving effect to Article 101.3 of the Charter of the United Nations (and the Staff Regulations and Rules enacted to give effect to it) which provides that the paramount consideration in the employment of staff shall be the necessity of securing the highest standards of efficiency, competence and integrity.

34. The evidence in this case is indisputable. The differential treatment of Mr. Krioutchkov was rationally based on his failure to take the test. Had he taken the test and passed it, and was then not selected, he would then have been on firmer ground to challenge his non-selection as discriminatory on the ground he alleges. That is not to say there is any factual or legal merit in the ground of discrimination he alleges. The point rather is that his refusal to write the exam failed to get him out of the starting blocks in an unfair discrimination case. Mr. Krioutchkov's lack of success was therefore the result of his own choice of not participating in the written test. His own conduct resulted in the differential consideration of his candidature being rational, fair and non-discriminatory.

35. The UNDT's power to order discovery is subject to the principles of relevance and the probative value of the documents sought to be discovered. The evidence requested by Mr. Krioutchkov in his motion had no relevance in this instance. Such evidence related to past selection exercises up to 10 years before the selection process for the positions and had nothing to do with Mr. Krioutchkov's decision not to sit for the written test for the positions. The UNDT accordingly did not err in concluding that his motion was unsustainable on the grounds of the evidence sought being irrelevant and beyond the scope of his case.

Judgment

36. The appeal is dismissed, and Judgment No. UNDT/2021/052 is upheld.

Original and Authoritative Version: English

Decision dated this 1st day of July 2022 in New York, United States.

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Colgan

(Signed)

Judge Halfeld

Published and entered into the Register on this 11th day of August 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar