

CONSEIL DE L'EUROPE—— ——COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

Appeal No. 567/2015 (Costas SKOURAS v. Secretary General)

The Administrative Tribunal, composed of:

Mr Giorgio MALINVERNI, Deputy Chair,
Ms Mireille HEERS, Judge,
Ms Lenia SAMUEL, Deputy Judge,

assisted by:

Mr Sergio SANSOTTA, Registrar,
Ms Eva HUBALKOVA, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant, Mr Costas Skouras, lodged his appeal on 28 July 2015. The following day, the appeal was registered under No. 567/2015 and the appellant granted permission to lodge further pleadings.
2. On 4 September 2015, the appellant informed the Tribunal that he did not wish to submit further pleadings.
3. On 16 September 2015, the Registry informed the parties that the Chair of the Tribunal had decided to ask the Deputy Chair to preside over this case.
4. On 23 September 2015, the appellant submitted comments on this issue, which were then passed on to the Secretary General.
5. On 2 October 2015, the Secretary General submitted his observations on the merits of the appeal.
6. On 3 November 2015, the appellant submitted observations in reply.

7. The public hearing took place in the hearing room of the Administrative Tribunal in Strasbourg on 10 December 2015. The appellant was represented by Professor Spyridon Flogaitis and Me Vasileios Meletios Pavlopoulos, lawyers practising in Athens, while the Secretary General was represented by Mr Jörg Polakiewicz, Jurisconsult and Director of Legal Advice and Public International Law, assisted by Ms Maija Junker-Schreckenber and Ms Sania Ivedi, administrative officers in the Legal Advice Department.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

8. At the time of the appeal, the appellant was a permanent staff member of the Council of Europe on a fixed-term contract. He was employed as Director of Information Technology, at grade A6. His contract had begun on 1 September 2010 and, after being extended, was due to expire on 31 August 2015.

A. Background to the present dispute

9. During the proceedings before the Tribunal, the parties outlined facts concerning the business requirements of the Directorate for which the appellant was responsible, facts which the Tribunal does not deem it necessary to summarise here and which will be cited below in the section entitled “The law”, insofar as they are relevant.

10. On 30 April 2015, the appellant met with the Director General of Administration (the appellant’s line manager) and the Director of Human Resources; he was given notice that the Secretary General was unable to renew his fixed-term contract and that his appointment would end on 31 August 2015.

11. On 15 May 2015, the Director of Human Resources notified the appellant in writing that his contract would not be renewed and that it would terminate on expiry. In this letter, he gave the following reasons:

“Given the context and the challenges ahead in the domain of Information Technologies, the Secretary General, in order to widen the range of possibilities, wishes to open the position of Director to the Directorate of Information Technologies to a recruitment competition.”

12. On 2 June 2015, the appellant submitted an administrative complaint to the Secretary General under Article 59, paragraph 2, of the Staff Regulations. He stated that he was challenging the decision to terminate his contract and called for it to be declared null and void.

13. On 2 July 2015, the Secretary General rejected the administrative complaint on the ground that it was ill-founded.

14. On 27 July 2015, the appellant lodged the present appeal.

15. On 16 September 2015, the parties were informed that the Chair had decided to ask the Deputy Chair of the Tribunal to preside over the case.

16. On 30 September 2015, the appellant submitted his comments.

B. Proceedings relating to the stay of execution of the act complained of

17. On 27 July 2015, the appellant applied to the Chair of the Tribunal for a stay of execution of the impugned administrative decision in accordance with Article 59, paragraph 9, of the Staff Regulations. He asked that his “*employment as Director IT [be] continued until such time as the decision of the Tribunal on this case is concluded*”.

18. By order of 11 August 2015, the Chair granted the appellant’s request, on the understanding that the stay of execution would expire on the day on which the Tribunal delivered its decision at the latest.

19. After giving the reasons for granting the requested stay, in the final paragraph of the order the Chair held:

“It is of course for the Secretary General to provide at any stage of the proceedings safeguards sufficient to preclude the existence of grave prejudice difficult to redress, safeguards which are currently lacking, and to request that the stay of execution which the Chair has today decided to grant be lifted.”

20. On the basis of this paragraph, on 12 August 2015 the Secretary General asked for the stay of execution to be lifted. He undertook to keep the post occupied by the appellant vacant and to refrain from appointing a new Director of Information Technology after the ongoing recruitment procedure, pending the Tribunal’s decision.

21. The appellant objected.

22. By order of 19 August 2015, the Chair rejected the said request for a stay of execution. He recognised that the Secretary General’s undertaking to refrain from filling the post precluded the risk of the appellant suffering any “grave prejudice difficult to redress” in the event that he should win his case before the Tribunal. The Chair also noted, however, that this declaration on the part of the Secretary General did not preclude the risk of the appellant suffering such prejudice in another respect. In effect, he held that:

“24. From the moment the appellant’s application for a stay of execution was granted, he became entitled to a number of benefits during the appeal proceedings, benefits which are not contingent on the outcome of the latter and which the appellant would lose if the stay of execution is lifted and he fails to win his case on the merits of the appeal.”

23. On 31 August 2015, the Secretary General submitted to the Tribunal judges observations on the Chair’s order of 19 August 2015. In this document, he stated that “in the present case, it [was] impossible for him to keep the appellant in post without seriously compromising the proper functioning of the Organisation (see, *mutatis mutandis*, Article 60, paragraph 7, of the Staff Regulations)”. He then presented his arguments (paragraphs 61 et seq. below).

RELEVANT LAW

A. The rules applicable to A6 staff members

24. Under Article 19 of the Staff Regulations, recruitment to an A6 or A7 post is governed by the provisions of Article 25 of Appendix II (Regulations on appointments) to the Staff Regulations.

25. Paragraph 5a. of these provisions deals with the recruitment of external candidates to A6 and A7 posts – such as the appellant – and provides as follows:

“5a. External candidates

Recruitment to an A7 or A6 post shall be governed by an initial contract for a fixed term of two years, corresponding to a probationary period subject to the provisions of Articles 17 (paragraph 2) and 18 (paragraphs 1 and 4) of these Regulations on Appointments.

If the Secretary General decides to confirm the staff member’s appointment, such appointment shall be extended for one or more periods varying in length between one and five years.

If the Secretary General decides not to confirm the staff member’s appointment, he/she shall terminate it with three months’ notice.

Where the probationary period has been interrupted for reasons outside the staff member’s control, the Secretary General may extend it by the length of the period of interruption.

B. The regulations on applications for a stay of execution

26. Article 59 (administrative complaint), paragraph 9, of the Staff Regulations governs applications for a stay of execution of the act complained of which are lodged at the administrative complaint stage.

27. Following objections from the Organisation regarding an initial application of these provisions after the lodging of the appeal, the Tribunal has consistently held that an initial request for a stay of execution may also be lodged when the appeal is being considered by the Tribunal, as in this instance. The Secretary General has never challenged this case-law before the Tribunal and is not challenging it in this appeal either. Article 59, paragraph 9, reads as follows:

“A complaint shall not have a suspensive effect. However, the complainant may apply to the Chair of the Administrative Tribunal, with copy to the Secretary General, for a stay of execution of the act complained of if its execution is likely to cause him or her grave prejudice difficult to redress. The Secretary General shall, save for duly justified reasons, stay the execution of the act until the Chair of the Administrative Tribunal has ruled on the application in accordance with the Tribunal’s Statute.”

28. Article 60 (appeals procedure) does not provide for the possibility of applying for a stay of execution. It does, however, deal with the maintenance of a stay of execution granted by the Chair of the Tribunal and the effects of lodging an appeal on the appellant’s situation, pending the Tribunal’s decision.

Paragraphs 4 and 5 of Article 60 provide that:

“4. An appeal shall have no suspensive effect. However, if a stay of execution of the act complained of has been granted by the Chair of the Administrative Tribunal following an application under Article 59, paragraph 9, that stay of execution shall be maintained throughout the appeal proceedings unless the Tribunal decides otherwise on a reasoned request from the Secretary General.

5. While an appeal is pending, the Secretary General shall avoid taking any further measure in respect of the appellant which, in the event of the appeal being upheld, would render unfeasible the redress sought.

29. The Tribunal’s Statute and Rules of Procedure likewise deal with the issue of staying execution of the act complained of, but their provisions either do not add anything to the Staff Regulations or are of no relevance to the present appeal.

C. Execution of stay of execution orders issued by the Chair and of Tribunal decisions

30. The statutory and regulatory texts contain no provisions on the execution of stay of execution orders issued by the Chair.

31. As regards Tribunal decisions, paragraphs 6 and 7 of Article 60 of the Staff Regulations state that:

“6. Decisions of the Administrative Tribunal shall be binding on the parties as soon as they are delivered. The Secretary General shall inform the Tribunal of the execution of its decisions within thirty days from the date on which they were delivered.

7. If the Secretary General considers that the execution of an annulment decision is likely to create serious internal difficulties for the Council, he or she shall inform the Tribunal to that effect in a reasoned opinion. If the Tribunal considers the reasons given by the Secretary General to be valid, it shall then fix the sum to be paid to the appellant by way of compensation.”

THE LAW

32. The appellant is filing the present appeal in order to have the Secretary General’s decision not to renew his contract set aside. He is also seeking compensation and reimbursement of his legal costs.

33. Following the Secretary General’s decision not to keep the appellant in post despite the stay of execution order of 11 August 2015 and the dismissal of the request to lift the stay of execution of 19 August 2015, the appellant submitted to the Tribunal a number of pleadings both in his observations in reply of 3 November 2015 (paragraph 6 above) and at the hearing.

34. The Secretary General has asked the Tribunal to declare the appeal ill-founded and to dismiss it. He considers that the claims for compensation for damage and reimbursement of costs should likewise be dismissed.

35. As regards the issue of execution of the stay of execution, the Secretary General made a few comments in his observations of 2 October 2015 (paragraph 10 above) and addressed the subject at the hearing.

I. THE PARTIES' SUBMISSIONS

A. The merits of the appeal

1. *The appellant*

36. The appellant submits that the decision not to renew his contract is unlawful and is in violation of the Organisation's rules for several reasons.

Firstly, he alleges that the decision was based on inaccurate information received by the Deputy Secretary General. According to the appellant, the Deputy Secretary General expressed dissatisfaction with his vision of the Organisation's strategic needs in the IT sector. During his last four months of employment, she reportedly sought to systematically undermine his suggestions so as not to reveal the inadequacy of the Council's financial resources in relation to its medium-term needs.

The appellant further alleges that the Deputy Secretary General aggravated the situation in two ways:

a) she rejected every version of a document which he had produced for the Committee of Ministers Rapporteur Group on Programme, Budget and Administration; she cut his Directorate's funding from 15 to 3 million euros. She then allegedly threatened not to renew his contract if he did not support her. As far as he is concerned, she abused her authority.

b) in preventing him from completing his appraisal for 2014, she allegedly abused her authority and undermined his legitimate expectation of renewal of his contract, given that at no point was it ever suggested to him that he was "under-performing". The draft appraisal form for 2014 and all the previous appraisals indicate on the contrary that he possessed all the requisite skills for the post of director held by him.

37. Secondly, where it is decided not to renew a staff member's contract, the Administration is required to follow a special procedure. The appellant contends, however, that the Administration did not allow the appraisal for 2014 to be completed. This decision to block the signing of the appraisal form was, he claims, intended to create a hostile environment, forcing the appellant to support the strategy which the Organisation wished to pursue in the IT field. The appellant reiterates that this behaviour was due to opposition to his own vision, even though it had been endorsed by an independent expert.

38. Thirdly, the appellant contends that the decision not to renew his contract was unlawful because it did not state the reasons on which it was based; in his view, the true reasons for the decision were concealed because they smacked of mismanagement, arbitrary decision-making and bad faith.

In actual fact, the decision not to renew his contract did not state the reasons therefor and is wholly unfounded; it does not stand up to scrutiny and provides no explanation that could be understood or challenged. The impugned decision thus allegedly violates the standards commonly recognised in administrative law and those of the European Convention on Human Rights.

The appellant further contends that the wording used to justify the decision not to renew his contract deprives him of any reasonable possibility of defending himself, in violation of the right to fair treatment.

The appellant further notes that, in the reply to his administrative complaint, the Secretary General stated that the decision not to renew his contract did not have to be justified, because all fixed-term contracts, by definition and under the relevant rules and regulations, specify exactly when they are due to expire. The appellant submits, however, that individuals whose performance has been satisfactory have a legitimate expectation of renewal. The decision not to renew a contract, therefore, should not be taken arbitrarily or on a whim, or as a covert form of revenge or punishment.

The appellant contends that the Secretary General acknowledged in his own words, in the reply to the appellant's administrative complaint, that the above allegations were the real reasons for the decision not to renew his contract.

39. In conclusion, the appellant considers that the decision not to renew his contract should be set aside.

2. *The Secretary General*

40. The Secretary General makes the point that, according to Article 25, paragraph 5 a., of the Regulations on appointments (paragraph 25 above), staff members appointed to grades A6 and A7 via a recruitment procedure may be appointed only on fixed-term contracts. He goes on to state that there is no way in which such appointments can be converted into indefinite-term appointments. As far as he is concerned, it is clear that any appointment arising from this provision is by nature time-limited. It is for the Secretary General alone to decide, in exercising his discretion, whether or not an A6 or A7 staff member should be kept on. The only requirement which this provision places on the Secretary General is the obligation to give three months' notice if it is decided to terminate a staff member's appointment.

41. The Secretary General likewise cites Article 23, paragraph 2, of the Staff Regulations which provides that "fixed-term contracts shall end on expiry". He further submits that the appellant was informed, from the outset of his appointment, that fixed-term contracts are by definition time-limited, that they are not necessarily or automatically renewed and that they end on expiry.

42. The Secretary General also refers to the Tribunal's case law, according to which a fixed-term appointment does not confer on a staff member any entitlement to renewal of his or her

contract or to a different type of appointment (ATCE, Appeals Nos. 469/2010 and 471/2011, Pumpyanskaya (II) and (III) v. Secretary General, decision of 20 April 2012, paragraph 57). This principle has been applied before in numerous Tribunal decisions regarding temporary contracts (see in this connection Appeal No. 256/1999, Grassi v. Secretary General, decision of 7 June 2000, or Appeal No. 308/2002, Levy v. Secretary General, decision of 28 March 2003, Appeal No. 309/2002, Belayev v. Secretary General, decision of 4 July 2003 and Appeal No. 390/2007, X v. Secretary General, decision of 7 March 2008).

43. The Secretary General goes on to challenge the appellant's claims that the failure to renew his contract infringes the principles of good faith, legitimate trust and legitimate expectation. He submits that the Council made no promises to the appellant and nor did it furnish him with any assurances that might have led him to entertain legitimate hopes of securing a renewal of his contract.

44. The appellant, furthermore, was fully aware that his contract was a fixed-term one and he was informed of the date on which it would end and of the fact that it would not be automatically renewed beyond that date.

45. The Secretary General also maintains that such decisions are a matter for the discretionary power of the Secretary General, as the appointing authority. He points out that he holds primary responsibility for the organisation of the Secretariat and is best qualified to know and assess the needs of the Organisation. This discretionary power is particularly wide in the case of appointments to A6 and A7 posts, to the extent that such post-holders are responsible, under the Secretary General's authority, for implementing the Organisation's policy, thus giving effect to the guidelines laid down by the Committee of Ministers.

46. As regards the appellant's claims that he had a legitimate expectation that his contract would be renewed because his appraisal reports indicated that his performance had been satisfactory, the Secretary General disputes this. He submits that the primary considerations when assessing whether a contract should be renewed are the needs of the service and the interests of the Organisation, in particular where A6 and A7 posts are concerned.

47. The appellant, furthermore, has provided no evidence of the existence of any such legitimate expectation or of a general practice of automatically renewing the fixed-term contracts of A6 and A7 staff. Even supposing, moreover, that such a practice did exist, that would not mean the appellant had a right to automatic renewal, which the Secretary General would be bound to respect regardless of the needs of the service.

48. The appellant was fully aware that renewal was not a foregone conclusion as he took the initiative of requesting a meeting with the Deputy Secretary General at the end of February 2015 to find out what the prospects were of having his contract renewed. At that meeting, the Deputy Secretary General told him that it would be for the Secretary General to decide in due course whether his contract would be renewed. This was the only information that the appellant received before the Secretary General made his decision. In the Secretary General's view, that hardly qualifies as "blackmail" or "threats", as the appellant claims.

49. As regards the appellant's claim that the decision not to renew his contract was not duly substantiated, the Secretary General considers that the Director of Human Resources clearly stated the reasons for this decision.

50. The Secretary General refers to international administrative case law, according to which even a short statement of reasons is acceptable provided it is adequate and coherent. He refers here to the Tribunal's decision in Appeal No. 390/2007, mentioned above.

51. Lastly, the Secretary General notes that the explanation given for the decision not to renew the contract was reiterated and clarified in his reply to the administrative complaint. He further points out that the international administrative courts do not require organisations' competent authorities to provide reasons in the decision itself, as notified to the staff member (ILOAT judgment 1590, Consideration 7).

52. The Secretary General considers that in the case in question, the rules were observed, the grounds having been communicated to the appellant in the letter of 15 May 2015 and then repeated and clarified in the reply to his administrative complaint, thereby enabling the appellant to challenge them in the present appeal.

53. It is clear from the foregoing that the appellant was fully aware of the reasons for the decision not to renew his contract, a fact also borne out by the arguments which he presents in this connection.

54. As regards the context and the challenges facing the Organisation in the IT sector, the Secretary General refers to the audits carried out and the steps taken and concludes that the appellant was unable to follow the Deputy Secretary General's directives during the development phase of the Council's strategy.

55. Given the need to ensure full implementation of the strategy and priorities adopted in the IT sector, the Secretary General deemed it inadvisable to renew the appellant's appointment.

56. With regard to the appellant's claim that the procedure which led to the decision not to renew his contract was irregular, the Secretary General submits that the only procedural requirement incumbent on the Council was to give three months' notice. This requirement was in fact observed.

57. Lastly, as regards the allegations that the appellant was subjected to pressure, blackmail and threats, the Secretary General denies these accusations. The appellant, moreover, has provided no evidence to support them, yet under international administrative law the burden of proof lies with him.

58. The appellant's allegation that he was subjected to pressure in order to secure his backing for the IT strategy adopted by the Secretary General and presented to the Committee of Ministers is, if anything, proof of his utter failure to comprehend what the role of a director is. The Secretary General points out that, under Articles 2 and 30 of the Staff Regulations, staff members, whatever their rank in the Organisation, are subordinate to the Secretary General and

the Deputy Secretary General. They are bound to implement the orders issued by their superiors and to perform the tasks assigned to them.

59. The Secretary General concludes that when the matter of whether to renew the appellant's contract arose, he put the needs and interests of the Organisation first, as was his duty. He goes on to say that, given that the appellant had been unable to draw up a new IT strategy and that major methodological difficulties had emerged during the development of this strategy, it was apparent to the Secretary General that the challenges which lay ahead in the IT sector demanded that a new recruitment procedure be held.

60. In the Secretary General's view, it is clear from all of the foregoing that the decision not to renew the appellant's contract was taken in the context of a wide margin of discretion which was exercised by the Secretary General in a lawful manner.

B. Non-execution of the stay of execution

1. The Secretary General

61. After the Chair refused his request to lift the stay of execution, the Secretary General submitted observations for the attention of the Tribunal judges (paragraph 23 above).

62. In these observations, the Secretary General submits that the orders of 11 and 19 August 2015 have no precedent in the Tribunal's case law concerning stays of execution. He further submits that the orders in question reverse past case law, without, however, presenting convincing arguments.

63. The Secretary General points out that the order of 11 August 2015 "invited" him to provide safeguards sufficient to preclude the existence of grave prejudice difficult to redress in order to have the stay of execution lifted. The Secretary General adds that, in response to this invitation and having due regard to the points made by the Chair in his order, the Secretary General immediately furnished the Tribunal with such safeguards. He undertook to keep the post vacant and to refrain from appointing a new Director of Information Technology after the ongoing recruitment procedure, pending the Tribunal's decision.

64. After noting that the Chair had accepted, in his order of 19 August 2015, that "the Secretary General's undertaking [was] such as to preclude the existence of "grave prejudice difficult to redress" (Article 59, paragraph 9, of the Staff Regulations) with regard to the possibility of the appellant remaining in post should he win his case before the Tribunal", the Secretary General submits that it is extremely difficult to follow the Chair's reasoning, as subsequently presented in the said order. The order stated that the appellant had gained "a number of benefits" from having been granted a stay of execution on 11 August 2015, although it did not specify what those benefits were, and that it was only right now that the appellant should be protected from the prejudice he would suffer were he to lose those benefits. According to the Secretary General, the Chair thus justifies his decision not to lift the stay of execution using a new argument, one that was not discussed in the proceedings between the parties, and which the appellant had not even asked to be taken into consideration.

65. The Secretary General submits that his undertaking to keep the post of Director of Information Technology vacant pending the decision was sufficient to ensure that the appellant would be fully compensated in the unlikely event that his appeal should be declared well-founded. However, keeping the appellant in post pending the decision, even though his fixed-term contract had ended, had nothing whatsoever to do with the outcome of the present proceedings. The Secretary General adds that he fails to see how keeping the appellant in post might be necessary in order to avoid causing grave prejudice difficult to redress in the present instance, without affording him undue advantages.

66. The Secretary General further states that having furnished all the safeguards required in order to avoid grave prejudice difficult to redress, he was unable to continue employing the appellant because such a decision would be likely to “create serious internal difficulties for the Council”, to quote Article 60, paragraph 7, of the Staff Regulations.

67. The Secretary General contends that keeping the appellant in post would interfere with the work of the Organisation and would compromise the running of an important sector thereof.

68. Firstly, it would set a worrying precedent, with repercussions far beyond the present case, and hinder the implementation of the Council of Europe’s contractual policy based on the award of fixed-term contracts, as decided by the Committee of Ministers. In effect, any Council of Europe staff member whose fixed-term contract was due to expire could simply apply for a stay of execution in order to remain in post, even though he or she would have no contract, and this until such time as the Tribunal delivered its decision.

69. Secondly, keeping the appellant in post could seriously compromise the smooth running of a strategic sector of the Organisation. The decision not to renew his contract had been taken in a context where a new IT strategy had been decided by the Secretary General and approved by the Committee of Ministers. This strategy, and the priorities that emerged from it, now have to be implemented by the Directorate of Information Technology and, first and foremost, by its Director. It is clear that the appellant is not the most appropriate person to implement the strategy which has been adopted, and in which he has expressed a complete lack of confidence. A special relationship needs to exist between the Secretary General, the Deputy Secretary General and senior managerial staff, one based on trust and loyalty.

70. Lastly, the Tribunal, like all international administrative courts, possesses specific powers; these are exercised within the bounds and in the manner determined by the Staff Regulations. The Chair’s decision to protect the appellant from the loss of “benefits” derived from the fact of having been granted a stay of execution plainly goes beyond the legal framework established by the Committee of Ministers. Under Article 59, paragraph 9, of the Staff Regulations, the Tribunal merely has the power to grant “a stay of execution of the act complained of”. In urgent proceedings, the Tribunal does not have full jurisdiction. In particular, it cannot compel the Secretary General, who alone has the power to make appointments, to continue employing a staff member whose contract has ended before the merits of the appeal have even been examined.

71. In his observations (paragraph 23 above), the Secretary General reiterated that his undertaking to keep the post of Director of Information Technology vacant pending the Tribunal's decision was such as to ensure compliance with the points made by the Chair in his order of 11 August 2015.

72. He further stated that since keeping the appellant in post after his contract expired would interfere with the work of the Organisation and would compromise the running of an important sector thereof, his undertaking ended when the appellant's contract expired, i.e. on 31 August 2015.

73. The Secretary General, however, has not filed any submissions on this point, either in the observations to the judges or in the observations which he lodged during the proceedings.

74. Nor did he do so at the hearing. He reiterated, however, that he had carried out the stay of execution orders and argued that his decision to suspend the recruitment procedure rendered the application for a stay of execution devoid of purpose. With regard more specifically to the question of keeping the appellant in post, the Secretary General contends that that was liable to seriously interfere with the work of the Organisation and to compromise the running of an important sector thereof.

2. *The appellant*

75. The appellant submits that the Secretary General's decision not to comply with the stay of execution order significantly exacerbated the Secretary General's earlier inappropriate behaviour.

76. In the appellant's view, the Secretary General's refusal to comply with the Chair's order is clearly evident in his response to the Administrative Tribunal. He submits that it is clear from these events that the Secretary General's actions were dictated by his obsession with removing the appellant from his post by any means and at any cost to the Organisation.

77. In addition and significantly, these actions prove that the Secretary General consciously elected to violate the European Convention on Human Rights, not only because he decided not to renew his contract, but also because he did not comply with the stay of execution order.

78. At the hearing, the appellant emphasised the fact that in a law-governed state, judicial decisions must be executed, whether one liked them or not.

79. In conclusion, the appellant submits that the Secretary General's behaviour amounts to a direct violation of Article 60, paragraphs 4 and 5, of the Staff Regulations. He adds that, contrary to what the Secretary General claims, such violation cannot be justified under paragraph 7 of the same article. It is obvious that the Secretary General can, at his discretion, inform (in a reasoned opinion) the Tribunal that he will not execute an annulment decision (which leads to compensation fixed by the Tribunal), but not a stay of execution granted by its Chair. The above rule, argues the appellant, seems entirely logical because if Article 60, paragraph 7, could also

apply to stays of execution, the ability of the Administrative Tribunal to introduce temporary protection measures would be reduced to zero.

II. THE TRIBUNAL'S ASSESSMENT

A. On the arguments concerning the merits of the appeal

80. The Tribunal notes that, according to its own case law and according to international administrative case law, the authority responsible for recruitment enjoys wide discretionary power. This power, however, must be exercised in accordance with certain rules which stem from the said case law and need not be reiterated here.

81. The Tribunal recognises that when it comes to recruiting senior officials, this discretionary power is more extensive because of the particular relationship that obtains between staff in this category and the head of the Organisation. This special relationship, however, can never warrant turning discretionary power into arbitrary power, as the basic rules governing the recruitment of international civil servants still have to be observed. That is why the Tribunal has in the past drawn the Organisation's attention to the desirability of drafting more detailed written rules regarding the recruitment of A6/A7 staff members (ATCE, Appeals Nos. 555/2014 and 556/2014 – Mayer and Kellens v. Secretary General, decision of 28 April 2015, paragraph 86).

82. The Tribunal considers that the same principles apply when it comes to renewing contracts. It will therefore examine the appellant's arguments in the light of these principles. It will bear them in mind when considering the appellant's argument concerning the retention, on a permanent post, of a staff member on a fixed-term contract who has given satisfaction.

83. The Tribunal likewise recognises that under the Council's recruitment system as it stands at present, there is nothing in the rules or its own case law to indicate that there is a right to renewal of a fixed-term contract, even if, as in this instance, the individual concerned has given satisfaction.

84. It is clear to the Tribunal that the various arguments submitted by the appellant are not sufficient to convince it that there has been an infringement of his rights in this case.

85. These considerations particularly apply to the appellant's first allegation. The appellant, in fact, has failed to show that the real reason for the decision not to renew his contract was his position vis-à-vis the Deputy Secretary General rather than, as he was told, the Organisation's desire to employ persons better able than himself to meet the challenges that lay ahead in the IT sector.

86. The Tribunal considers that it is worth recalling here the terms of paragraph 2 of Article 30 of the Staff Regulations which reads as follows:

Article 30 – Responsibility for performance of duties

“1. Whatever their rank in the Organisation, staff members are required to assist and advise their superiors. They are responsible for discharging the tasks entrusted to them. The responsibility of their subordinates does not absolve them of the responsibilities which devolve upon themselves.

2. Where an order received by a staff member seems to that staff member to be irregular, or if he or she considers that its execution is likely to have undesirable consequences of a serious nature, he or she shall convey his or her opinion to the person giving the order, if necessary in writing. If the latter confirms the order the staff member may refer the question to the hierarchical authority immediately above. If the latter confirms the order, the staff member shall carry it out, unless its execution would constitute an act contrary to criminal law or to the safety regulations applicable to the Council. Staff members may request that they be given such confirmation in writing.

3. However, if the superior giving the order considers that it must be executed promptly, notwithstanding the provisions of paragraph 2, the subordinate shall carry it out unless its execution is contrary to criminal law or to the safety regulations applicable to the Council.”

It is clear from these provisions that the appellant was required to comply with the instructions issued by his superior even if he did not agree with them and that, in any case, to do so could have no effect on his professional reputation.

87. As to his second complaint, concerning the failure to complete the appraisal for 2014, the Tribunal notes that the appraisal report is a different administrative act from the one which the appellant is complaining of in the present appeal. If he believed that irregularities had occurred in the appraisal procedure for 2014, he should have challenged it through the complaints procedure.

88. Insofar as the appellant alleges that the appraisal report influenced the decision not to renew his contract, it must be recognised that he has produced no evidence to support this claim. It should further be noted that, during the proceedings before the Tribunal, the Secretary General acknowledged that the appellant had discharged his tasks satisfactorily and that if he was not keeping him on, it was not because he had “under-performed”.

89. As regards the third claim to the effect that the non-renewal decision was unlawful, the Tribunal notes that this complaint related mainly to the Secretary General’s alleged failure to give the real reason and the fact that the Organisation allegedly violated the rule whereby all decisions must be justified.

90. With regard to the first part of this complaint, the Tribunal has already commented. With regard to the second part, the Tribunal notes that, even though he was under no obligation to do so, the Secretary General provided reasons which the Tribunal is therefore required to examine. In the view of the Tribunal, this statement of reasons, although short, was consistent with what was said later and sufficient to enable the appellant to understand why the Organisation was unwilling to renew his contract.

91. Accordingly, the appellant’s complaints are unfounded and his appeal must be dismissed.

B. On non-execution of the stay of execution order of 11 August 2015

92. The Tribunal notes that the obligation to observe the procedural rules irrespective of the outcome of the dispute means that it is required to consider this issue, as the appellant requests, even though it has just ruled that the appellant’s appeal is unfounded.

93. The Tribunal is bound to point out that, contrary to what he claims, the Secretary General did not execute the order of 11 August 2015 concerning the application to stay execution of the decision not to renew the contract, even though he refrained from filling the appellant's post pending the outcome of the present dispute. This last measure cannot be deemed to constitute execution of the said order.

94. Having arrived at this conclusion, the Tribunal must consider the question of whether the Secretary General was within his rights to refrain from executing the Chair's order, which did in fact constitute a judicial decision.

95. In the Tribunal's view, the answer has to be that he was not.

96. Having merely submitted that he had executed the order of 11 August 2015 by suspending the procedure for filling the post, the Secretary General has not presented the Tribunal with arguments concerning the "non-execution" of this order.

97. The Tribunal, for its part, notes that the unexecuted decision was an enforceable judicial decision and that, as such, it was binding on the parties, whether they liked it or not. This is a basic principle that has its foundation in a law-governed state, a foundation that was mentioned at the hearing by the appellant and which constitutes one of the core values of the Organisation.

98. The Tribunal further notes that no conclusion may be drawn from the fact that this was an order made by its Chair rather than a decision taken by the Tribunal itself, since both types of judicial instrument have the same binding and mandatory character vis-à-vis the parties involved.

99. The Tribunal therefore concludes that the position taken by the Secretary General had no legal basis and amounts to a violation of the general legal principle that enforceable judicial decisions must be executed.

100. Lastly, the Tribunal observes that under Article 60, paragraph 4, of the Staff Regulations, the Secretary General could have asked the Tribunal, in a reasoned request, not to maintain a stay of execution granted by the Chair. Instead, the Secretary General merely sent an explanation of his position to the Tribunal judges, without making any request.

III. ON THE CLAIMS FOR DAMAGES AND COSTS

101. The appellant has submitted claims for damages concerning both the merits of the appeal and the non-execution of the stay of execution order. He is also claiming costs in the amount of 8 500 euros. The Secretary General disputes these claims.

102. The Tribunal rules that, since the appellant lost his case on the merits of the appeal, he should not be awarded damages or costs. The appellant, moreover, has not filed a claim under Article 11, paragraph 3, of the Statute of the Tribunal, concerning the reimbursement of expenses incurred, in cases where the Tribunal has rejected an appeal.

103. With regard to the non-execution of the stay of execution order, the appellant is claiming payment of his salary from 1 September 2015 until the date on which the decision is published. The Secretary General asks that this claim be dismissed.

104. The Tribunal notes that under Article 60, paragraph 2, of the Staff Regulations, in disputes of a pecuniary nature, it has unlimited jurisdiction.

105. The Tribunal further notes that, pursuant to the orders of 11 and 19 August 2015, the appellant was entitled to salary covering the period during which, under the terms of the first order, he should have remained in post. Since the payment of this sum is not contingent on the outcome of the appeal but arises from the requirement to execute a judicial decision, the Organisation must pay the sum in question.

III. CONCLUSION

106. The appellant's arguments concerning the merits of the appeal are unfounded. The appellant's claims for damages related to the merits of the appeal and his claim for costs and expenses are dismissed.

107. The Secretary General has failed to observe the general legal principle whereby enforceable judicial decisions must be executed. He must pay the appellant the salaries due to him from the end of his contract until the date on which the present decision is published.

For these reasons, the Administrative Tribunal:

Declares the appeal unfounded and dismisses it;

Rules that the Secretary General has violated the general legal principle that enforceable judicial decisions must be executed;

Orders the Secretary General to pay the appellant the sum corresponding to his salary for the period from 1 September 2015 until the date on which the decision is published;

Orders each party to bear its own costs.

Adopted by the Tribunal in Strasbourg on 29 January 2016 and delivered in writing on the same day pursuant to Rule 35, paragraph 1, of its Rules of Procedure, the French text being authentic.

The Registrar of the
Administrative Tribunal

The Deputy Chair of the
Administrative Tribunal

S. SANSOTTA

G. MALINVERNI