CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeal No. 606/2019
(Céline COSSET v. Secretary General of the Council of Europe)

The Administrative Tribunal, composed of:

Ms Nina VAJIĆ, Chair,
Ms Françoise TULKENS,
Mr Christos VASSILOPOULOS, Judges,

assisted by:

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

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant, Ms Céline Cosset, lodged her appeal on 18 March 2019. It was registered the same day under No. 606/2019.

2. On 3 May 2019, the then Secretary General forwarded his observations on the appeal.

3. On 31 May 2019, the appellant submitted observations in reply.

4. The public hearing on this appeal took place in the Administrative Tribunal's hearing room in Strasbourg on 14 June 2019. The appellant was represented by Ms Nathalie Verneau, Council of Europe staff member, assisted by Ms Cecile Anglade, lawyer, while the Secretary General was represented by Ms Sania Ivedi, administrative officer in the Department of Legal Advice and Public International Law (Jurisconsult), assisted by Ms Léa Boucard, assistant lawyer in the same department.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The appellant was a Council of Europe staff member. She was assigned to the European Directorate for the Quality of Medicines and HealthCare where she was working as a distribution operator and held the grade C2.

6. The appellant was employed by the Organisation, from 1 October 2015, on a two-year fixed-term contract ending on 30 September 2017.

7. In the job offer, it was explained that this contract was subject to a 24-month probationary period and that it could be terminated by either side at two months' notice. It was also specified that the contract was renewable for a period not exceeding five years.

8. In January 2017, the appellant underwent surgery, the details of which need not be disclosed here, in order to protect her privacy.

9. After suffering complications, instead of being off work for 3 or 4 weeks, the appellant was on sick leave until 20 September 2018, when she returned to work on a part-time basis for health reasons, with the aim of resuming full-time working in January 2019. This possibility of her returning to full-time employment was, moreover, noted in the medical certificate issued by the appellant's general practitioner on 12 December 2018.

10. In the meantime, the probationary period being due to end on 30 September 2017, both the latter and the fixed-term contract were extended three times: from 1 October 2017 until 31 March 2018, from 1 April 2018 until 30 September 2018 and from 1 October 2018 until 31 October 2018.

11. On 26 January 2018, the Directorate of Human Resources informed the appellant that on 23 November 2017, the Appointments Board had recommended that her probationary period be extended for a further 6 months, i.e. from 1 April 2018 until 30 September 2018. It was explained that the said extension would be conditional on the fixed-term contract being extended during this period.

12. The same day, an addendum to the contract of employment extending it by six months from 31 March 2018 until 30 September 2018 was sent to the appellant.

13. On 22 June 2018, the Director of Human Resources sent the appellant a memorandum terminating her probationary period. She informed her that following a thorough review of her file, including her appraisal reports and her observations on those reports, the Appointments Board had recommended that the Secretary General terminate her employment, subject to the required notice being given.

14. The Director told the appellant that she had eight working days within which to submit comments to the Secretary General. She added that, should the Secretary General

decide to act on this recommendation, the contract would end at two months' notice, in accordance with Article 17, paragraph 2, of the Staff Regulations and Article 20, paragraph 4, of the Regulations on appointments.

15. In the proceedings before the Tribunal, the appellant submitted her appraisal forms for 2015 and 2016 from the "general appraisal" section of which it can be seen that the appraisee "fully satisfied the requirements of the post". No forms or information have been provided for 2017 and 2018.

16. On 25 June 2018, the appellant sent the Deputy Secretary General the comments referred to in paragraph 14 above.

17. On 17 July 2018, the Director of Human Resources sent the appellant the following memorandum:

> "In accordance with Article 18, paragraph 2, of the Regulations on appointments (Appendix II to the Staff Regulations), the Secretary General has decided to extend your probationary period by 9 months.
>
> Please note that the fact that your probationary period has been extended does not entitle you to automatic extension of your contract for the same period.
>
> During this period, you will be appraised in accordance with Article 22 of the Staff Regulations."

18. Attached to the said memorandum was an addendum to the contract which read:

> "[the] contract signed on 16 July 2017, expiring on 30 September 2018, is extended until 31 December 2018."

19. On 20 September 2018, the appellant returned to her duties from sick leave. She was placed on part-time sick leave for health reasons from that date and work restrictions were introduced and adjustments made to accommodate her medical condition.

20. On 19 November 2018, the Organisation's medical service issued a report to the appellant's department, amending the restrictions and adjustments for the period up to 20 December 2018.

21. On 20 November 2018, the appellant met with the managers from her Directorate and was informed of the decision to terminate her contract on 31 December 2018 "for reasons concerning the organisation of work in the department".

22. The appellant told the Tribunal that her line managers made "very elusive" references to a medical report by the Council of Europe medical officer, allegedly questioning her ability to return to her duties full-time.

23. On 27 November 2018, the Organisation's medical service issued a second report to the appellant's department, concerning the (early) commencement of part-time work for health reasons, for a period of 15 days. The notice stated *inter alia* that the appellant's

medical condition would be reviewed in 15 days' time, following further medical examinations.

24. On 30 November 2018, the Director of Human Resources sent the appellant the following letter:

> "Article 23, paragraph 2, of the Staff Regulations stipulates that fixed-term contracts shall end on their expiry.
>
> For reasons concerning the organisation of work in the department to which you have been assigned, the Council of Europe is unable to renew your contract.
>
> Accordingly, your fixed-term contract will end on 31 December 2018. (…)".

25. On 4 December 2018, in reply to an email sent by the appellant to the Equal Opportunities Unit of the Directorate of Human Resources alleging that she had been discriminated against, the Unit stated:

> "Thank you for your message; our colleague […] is aware of the situation and has probably contacted you by now.
>
> We appreciate the difficult nature of the situation in which you find yourself, but it is based on the medical opinion of the Council of Europe's medical officer."

26. On 18 December 2018, the appellant submitted an administrative complaint to the Secretary General, under Article 59, paragraph 2, of the Staff Regulations, contesting the decision to terminate her probationary period.

27. On the same day, the appellant applied to the Tribunal for a stay of execution under Article 59, paragraph 9, of the Staff Regulations. By an order of 4 January 2019, the Chair of the Tribunal declined to grant the requested stay.

28. On 17 January 2018, the Secretary General rejected the administrative complaint on the ground that it was unfounded.

29. The Secretary General's decision was posted the same day to the appellant who acknowledged receipt on 19 January 2019.

30. On 18 July 2019, the appellant lodged the present appeal.

31. It appears from the information provided that the Organisation paid the appellant her salary for the month of January 2019 in order to comply with the notice period stipulated in Article 17, paragraph 2, of the Staff Regulations.

32. During the oral proceedings, the Tribunal learned that the appellant had found a job involving similar duties outside the Organisation, although it has not been given details of this appointment.

II. RELEVANT LAW

33. Matters relating to probationary periods are governed by Articles 17 and 18 of the Staff Regulations and by the Regulations on appointments (Appendix II to the Staff Regulations).

34. The relevant provisions of the Staff Regulations read as follows:

Article 17 – Probationary period

"1. Before staff members can be confirmed in their appointment, they must have satisfactorily completed a probationary period, the length of which shall be determined by the Regulations on Appointments.

2. During the probationary period, a contract may be terminated by either party at two months' notice."

Article 18 – Confirmation in employment

"Contracts confirming employment shall be of indefinite or fixed-term duration, as determined by the Regulations on Appointments without prejudice to Articles 19 and 20 of these Regulations."

35. The relevant provisions of the Regulations on appointments are worded as follows:

Article 17 – Probation

"1. Staff members recruited in accordance with the provisions of Articles 15 and 16 of these Regulations on appointments shall be subject to a two-year probationary period during which time they shall be appointed on the basis of fixed-term contracts.

2. During this period, either side may terminate the contract at two months' notice. Should this notice period extend beyond the term of the initial contract, then that contract shall be extended accordingly.

3. Termination of the contract on the initiative of the Secretary General shall be decided by him or her on the advice of the Board."

Article 18 – Probationary period

"1. The probationary period is a trial and training period and may be extended by one year, in the case provided for in Article 20, paragraph 3.

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

3. During the probationary period, the staff member shall be assigned to a Major Administrative Entity or to different Major Administrative Entities in turn. He/she shall be entrusted with duties corresponding to his or her grade to enable him or her to acquire the necessary training under the supervision of his or her superiors. The staff member shall take part in induction activities organised by the Director of Human Resources and covering the aims, structure and functioning of the Council.

4. During the probationary period, staff members cannot apply for internal competitions or be promoted."

Article 19 – Appraisal during the probationary period

"The conditions governing the appraisal of staff members during their probationary period are laid down in a General Rule. The provisions of Article 22 of the Staff Regulations apply, mutatis mutandis, to the appraisal of staff members during their probationary period."

Article 20 – Confirmation in employment for an indefinite duration or for a fixed term

"1. Before the probationary period expires, the Board shall examine the staff member's file and, in particular, his or her appraisal reports made in accordance with Article 19.

2. If the staff member's work is satisfactory, the Board shall recommend that the Secretary General confirm him or her in his or her employment.

3. If the staff member's work is the subject of conflicting opinions, the Board may, in exceptional cases, recommend that the Secretary General extend the probationary period in accordance with the provisions of Article 18, paragraph 1.

4. If the staff member's work is unsatisfactory, the Board shall recommend that the Secretary General terminate the employment, subject to the required notice being given. The staff member concerned shall be notified of this recommendation and shall have the right to submit observations to the Secretary General within eight working days.

5. A fixed-term contract may initially be offered for a duration of at least six months and for a maximum duration of two years. It may be extended or renewed one or more times, each time for a maximum period of five years. When deciding whether a fixed-term contract shall be prolonged or not, the Secretary General shall take at least three criteria into account: the need of the Organisation in terms of competencies, secured funding and satisfactory performance of the staff member. The Secretary General may determine the application of these criteria and add additional criteria in a Rule.

6. Staff members recruited for the career path leading to indefinite-term contracts shall be granted such a contract upon confirmation in employment.

7. Following confirmation in employment, a staff member recruited for employment on fixed-term contracts shall be offered a fixed-term contract which may be renewed in accordance with the provisions of paragraph 5. Before a renewal which would bring the staff member's service on fixed-term contracts with the Organisation to more than nine years, the Director General of Administration, having consulted the Major Administrative Entity concerned, shall examine the file and make a recommendation to the Secretary General whether the contract should be extended beyond nine years or expire.

8. For staff members employed on fixed-term contracts following a competition under Article 15B of these Regulations and who are confirmed in employment, the Secretary General may decide to hold a special formal assessment procedure for specific profiles in specific grades allowing the successful candidates to be employed on indefinite-term contracts."

THE LAW

36. The appellant seeks the annulment of the decision to terminate her contract and asks to be allowed to return to the department to which she was assigned before, so that she can complete her probationary period, and to be allowed the opportunity the secure the fixed-term contract which was originally to have run until September 2020.

37. She is also claiming, in compensation for the pecuniary damage suffered, retroactive payment of the salaries which she would have received, from January 2019 until the date of her actual return to the department.

38. The appellant is further claiming EUR 5 000 in compensation for the non-pecuniary damage which she allegedly suffered as a result of the Organisation's behaviour towards her.

39. Lastly, she is claiming EUR 500 which she undertakes to pay to a trade union for the legal assistance which it provided.

40. For his part, the Secretary General requests the Tribunal to declare the appeal ill-founded and to dismiss it.

41. In his view, the claims for compensation and costs should also be dismissed.

I. THE ADMISSIBILITY OF THE APPEAL

42. After observing that the appellant lodged her appeal against an "implicit decision" rejecting her administrative complaint, the Secretary General points out that he did in fact give an explicit reply rejecting her complaint and that this reply was communicated to and duly received by the appellant. He does not raise any objections to the admissibility of the appeal on that ground, however.

43. The appellant makes no comment on the subject.

44. The Tribunal notes that submitting erroneous evidence could be deemed to constitute a procedural defect which may be sanctioned by the Tribunal.

45. With regard to the instant case, the Tribunal notes that the Secretary General does not claim that the appeal is inadmissible and nor has he made any submissions based on the said inaccuracy.

46. In any event, the Tribunal notes the correction made by the Secretary General.

II. ON THE MERITS

A. The appellant

47. The appellant makes it clear from the outset that the key point of her appeal is what she sees as a manifest inconsistency between two conflicting decisions, namely the Secretary General's decision to extend her probationary period until June 2019 and the decision to terminate her appointment as from 31 December 2018.

48. In her view, to not accompany a probationary period with a contract defies common sense. It also runs counter to the principle of good faith and the duty of care which should form the basis of any employment relationship between an international organisation and its staff.

49. The appellant then states that it seems reasonable to her to conclude that the Organisation terminated her contract wrongfully.

50. Firstly, she contends that the decision was not duly justified. In her view, the criteria laid down in Article 20, paragraph 5, of Appendix II to the Staff Regulations (paragraph 35 above) for deciding whether to extend a fixed-term contract were not met in this instance. It is unlikely, she maintains, that the Organisation's needs would have changed within the space of four months; also, there were no problems with regard to funding (an external recruitment for distribution operators had been launched) and the appellant's appraisals were satisfactory.

51. Secondly, the appellant observes that the Secretary General's argument about the reorganisation of work runs counter to the principle of good administration and the duty of care insofar as she had indicated that she could resume full-time work from January 2019. She should have been allowed to complete her probationary period, therefore.

52. The appellant further submits that an adverse medical opinion issued by the Organisation's medical officer, which, she alleges, prompted the decision not to renew her contract, is further proof that the Organisation behaved in a manner contrary to the principles of good administration and good faith which it is duty bound to observe in its dealings with staff. The appellant contends that if the real reason for the decision not to extend her contract was a medical assessment, that should have been clearly stated, complete with concrete evidence and arguments, instead of giving a false reason, namely the reorganisation of work.

53. In conclusion, the appellant requests that the contested decision be set aside.

B. The Secretary General

54. With regard to the non-renewal of the appellant's fixed-term contract, the Secretary General begins by noting that the appellant was informed, from the outset of her first appointment at the Council of Europe, that fixed-term contracts are by definition limited in time, that they are not necessarily or automatically renewed and that they end on expiry.

In signing her successive contracts of employment, the appellant accepted all the terms and conditions thereof and cannot claim to have suffered any damage.

55. In response to the appellant's claim that "to not accompany a probationary period with a contract defies common sense", the Secretary General asserts that the duration of the two-year probationary period is entirely independent of the duration of fixed-term contracts. In his view, the mere fact of being on probation does not entitle staff members to a contract of two years' duration or any other duration equivalent to the length of the probationary period, if the latter is longer. As provided for in Article 20, paragraph 5, of the Regulations on appointments, "a fixed-term contract may initially be offered for a duration of at least six months and for a maximum duration of two years." The needs of the department or budgetary considerations may thus justify recruiting a staff member for a period of only six months or a year, i.e. for less than the normal duration of the probationary period.

56. The Secretary General further maintains that, in view of the current budgetary difficulties facing the Council of Europe, fixed-term contracts financed from the ordinary budget are limited to a period of six months, whether these contracts concern staff who are on probation or staff who have been confirmed in post. If one were to follow the appellant's reasoning, the mere fact of being on probation should confer entitlement to a contract of a duration equivalent to that of the two-year probationary period. The fact is, however, that there is no requirement or justification for according staff members on probation more favourable treatment than that accorded to staff members who were confirmed in post at the end of their probationary periods. Indeed, the vast majority of staff employed on fixed-term contracts who are confirmed in their appointments have contracts which are shorter in length than the two-year probationary period. This was the case even before the introduction of precautionary measures to tackle the current budgetary crisis at the Council of Europe.

57. The Secretary General adds that a two-year probationary period means that, as long as the staff member is employed by the Organisation – in particular if the needs of the Organisation so warrant and funding has been secured –, the first two years of their appointment will be subject to the rules governing probationary periods, regardless of the initial duration of their fixed-term contract and any successive renewals thereof. According to the Secretary General, the length of the contract is dictated by requirements relating to the needs of the service and available funding, whereas the purpose of the probationary period is to assess whether the staff member's work is satisfactory and the duration of one does not entail any obligation as to the duration of the other.

58. The Secretary General goes on to argue that his decision, reflected in the memorandum of 17 July 2018, to extend the appellant's probationary period by 9 months was justified by the application of Article 18, paragraph 2, of the Regulations on appointments, which provides for the possibility of extending the probationary period by the length of the interruption where it has been interrupted for reasons outside the staff member's control. He accordingly decided not to follow the Appointments Board's advice that the appellant's appointment should be terminated on 30 September 2018. As expressly

and clearly stated in the memorandum of 17 July 2018, the fact that the appellant's probationary period was extended by the length of the interruption did not in any way prejudge the duration of her appointment, whose renewal remained subject to the conditions applicable to any fixed-term contract, including the needs of the service and the availability of funding.

59. The Secretary General submits that the case-law is clear and consistent on this point and that there is no entitlement to renewal of a fixed-term contract.

60. The Secretary General further submits that the appellant's fixed-term contract was not renewed for reasons stemming from constraints related to the organisation of work in the department to which she had been assigned. He maintains that the interests of the department were the only consideration in the decision not to renew the appellant's contract of employment. In the written proceedings, the Secretary General indicated that since the appellant was unable to perform all her duties, the department was obliged to bring in additional staff to perform those tasks which she was unable to perform herself, resulting in extra expenditure. At the hearing, however, the Secretary General said that the tasks were divided up among the other members of the team.

61. The Secretary General concludes that, in view of these constraints, it was not in the interests of the service to extend the appellant's fixed-term contract since she was unable to perform all her duties. Nor was there any reason to suppose that the situation would improve, based on the information available at the time of the decision and the restrictions on her work duties, according to the assessment conducted by the Organisation's medical officer. In particular, the possibility that the part-time working for health reasons might end from January 2019 was unlikely to resolve the difficulties encountered.

62. Accordingly, even supposing she resumed full-time work in January 2019, there was no guarantee that the appellant could have performed all her duties without any restrictions. The balance of interests at stake precluded extending the appellant's contract beyond 31 December 2018.

63. With regard to the certificate issued by the appellant's general practitioner on 12 December 2018, "attesting" that the appellant's state of health was such that she would be able to resume full-time employment at the Council of Europe in January 2019, the Secretary General submits that this certificate is inoperative and not valid insofar as a general practitioner is not qualified to assess whether a staff member is fit for work and whether they are in a position to perform all their duties. In the Secretary General's view, such assessments are solely a matter for the Organisation's medical officer, a specialist in occupational medicine, who, at the time of the facts at issue, had no information at her disposal that would allow her to conclude with certainty that the restrictions on the appellant's work duties would no longer be necessary in January 2019.

64. The Secretary General adds that, in the instant case, the Organisation saw to it that all the interests involved, in particular those of the appellant, were respected in accordance with its duty of care. The appellant's fixed-term contract was renewed for the entire

18 months that she was on sick leave, even though there was no obligation to do so. The necessary steps were taken to modify the appellant's duties when she returned to work from sick leave. The Organisation also took care to inform the appellant, in good time, of the decision not to renew her contract and of the reasons for that decision. The appellant also benefited from the two months' notice that applies during the probationary period, with a sum equivalent to one month's salary being paid to her in January 2019 in lieu of notice. The appellant was treated with every consideration and the utmost respect.

65. All of the foregoing shows that the decision not to renew the appellant's fixed-term contract was well-founded and not vitiated by any irregularity, and that the appellant cannot claim to have suffered any infringement of her rights or legitimate interests.

66. In the light of the foregoing, the Secretary General considers that the present appeal is ill-founded.

C. The Tribunal's assessment

67. The Tribunal notes firstly that, normally, a probationary period is accompanied by an initial contract of employment and if, during that period, the contract is terminated, it is terminated in accordance with the relevant rules, on one or more of the permissible grounds for such termination. That means that the probationary period may not necessarily have concluded by the time the decision to end the person's employment is taken.

68. As regards more specifically the appellant's arguments, first, the Court accepts that, in view of the circumstances relating to the appellant's private life and health which surrounded the decision not to extend the probationary period, it might be wondered whether it was advisable for the Organisation to take such a decision at that time; that is not a question which the Tribunal could answer, however, because it must decide as to the law (Article 60, paragraph 2, of the Staff Regulations).

Secondly, the Tribunal notes that the criteria cited in Article 20, paragraph 5, of the Regulations on appointments (paragraphs 35 and 50 above) and relied on by the appellant in her case were not intended to be applied in a situation such as hers; they do not necessarily apply in this instance, therefore.

Thirdly, as regards the appellant's argument concerning the reorganisation of work, it is not for the Tribunal to determine whether there is any merit in that argument either, since the said reorganisation falls within the discretionary power of the management of the department in question unless, but this is not the case here, the decision taken is manifestly disproportionate in relation to the aim pursued. While this argument certainly overlapped with the considerations about the appellant's state of health, there is nothing to indicate that, from a legal point of view, the final decision overstepped the margin of discretion accorded to the Organisation in such matters.

69. Nevertheless, unlike in the case of an employee who can terminate their contract without having to give an explanation, an employer who terminates a contract is required to provide a reason for their decision. This principle applies even when, as in the Organisation's regulations (Article 17 of the Staff Regulations – paragraph 34 above), the obligation to give reasons is not explicitly provided for. Were that not the case, moreover, it would be difficult to see why the managers met with the appellant on 20 November 2018 and why, in her letter of 30 November 2018, the Director of Human Resources bothered to give a reason, albeit a cursory one.

70. This obligation to give reasons also applies, of course, in cases where, as in this one, the probationary period has had to be extended.

71. The Tribunal is therefore required to ascertain whether the impugned decision was duly substantiated.

72. The Tribunal points out that the obligation to give reasons for any decision which, as in this case, adversely affects a person is intended to provide the staff member concerned with sufficient information to enable them to ascertain whether that decision is well founded or whether it suffers from a defect that would enable them to challenge, and the Tribunal to review, the lawfulness of the impugned decision. Whether sufficient reasons have been given for an act will thus be assessed in the light of the factual and legal context in which that act was adopted.

73. The Tribunal also considers that the reasons for an act must, in principle, be communicated to the staff member at the same time as the decision adversely affecting them. Under certain conditions, however, an insufficient statement of reasons for an act may be supplemented, either at the administrative complaint stage or after the appeal has been lodged.

74. Factual information and explanations provided by the Administration after the adoption of the impugned act which contain inconsistencies and contradictions do not meet the above requirements. In effect, such information is unlikely to provide the interested party with a sufficient indication of the basis of the contested decision to enable them to challenge its lawfulness before the Tribunal and the latter to exercise its powers of review.

75. The Tribunal notes that the reasons given to the appellant in the present case were insufficient and, above all, at odds with the information provided to the Tribunal.

Firstly, even though the observations made by the appellant to the Secretary General on 25 June 2018 (paragraph 16 above) also referred to health problems and the appellant's job appraisal, the notification sent to the appellant on 22 June 2018 informing her of the Appointments Board's recommendation (paragraph 13 above) does not state why, in contrast to what was proposed on 23 November 2017 (paragraph 11 above), the said Board was now proposing that the appointment be terminated. A notification which

requires comments on the part of the recipient, however, should provide far more detailed information than that which was supplied to the appellant here.

Secondly, from the documents communicated to the Tribunal, it does not appear that, when the appellant met with her line managers on 20 November 2018, she received exhaustive explanations as to the "reasons concerning the organisation of work in the department", administrative jargon which in itself does not explain much. The "very elusive" reference to a medical opinion (paragraph 21 above) is, in any case, not in line with the report drawn up on 27 November 2018 (paragraph 23 above) and therefore after 20 November 2018.

Lastly, the Equal Opportunities Unit of the Directorate of Human Resources states that the decision to terminate the contract was based on the "medical opinion of the Organisation's medical officer", which does not tally with what the appellant had previously been told (paragraph 25 above). Also, there does not seem to have been any communication with the appellant regarding this opinion, which was not communicated to the Tribunal either.

The Court therefore concludes that the decision to terminate the appellant's contract was not sufficiently and correctly substantiated, as the explanations which she received were cursory and contradictory.

76. It must be recognised, however, that under Article 17, paragraph 2, of the Staff Regulations (paragraph 34 above), it was open to the Organisation to terminate the contract at any time. This option would have remained intact even if, following the Secretary General's decision of 17 July 2018 to grant a nine-month extension of the probationary period, the Organisation had immediately extended the contract by nine months instead of three months from 30 September 2018.

77. In this particular instance, however, no conclusion may be drawn from this option afforded to the parties to the contract of employment under the Staff Regulations because the Directorate of Human Resources was in any case required to comply with the obligation to give reasons.

78. In conclusion, the appeal is founded and the impugned act must be set aside.

D. The appellant's claims for compensation

79. In addition to the annulment of the decision to terminate her contract, the appellant asks to be allowed to return to the department to which she was assigned before, so that she can complete her probationary period, and to be allowed the opportunity the secure the fixed-term contract which was originally to have run until September 2020.

80. The appellant is also claiming, in compensation for the pecuniary damage suffered, retroactive payment of the salaries which she would have received, from January 2019 until the date of her actual return to the department.

81. The appellant is further claiming EUR 5 000 in compensation for the non-pecuniary damage which she allegedly suffered as a result of the Organisation's behaviour towards her.

82. Lastly, she is claiming EUR 500 which she undertakes to pay to a trade union for the legal assistance which it provided.

83. For his part, the Secretary General maintains that the appellant suffered no prejudice as a result of wrongdoing on the part of the Council of Europe. The claim for compensation for pecuniary and non-pecuniary damage allegedly suffered by the appellant should be dismissed, therefore.

84. In the unlikely event, however, that the Tribunal should conclude that the Council of Europe was responsible, the Secretary General makes the following observations in the alternative.

85. With regard to pecuniary damage, the Secretary General points out that the appellant is currently employed. That means that she has not suffered any pecuniary damage, having quickly managed to find alternative employment. There is therefore no need to pay her a salary retroactively as she is currently receiving one. In his view, it is for the appellant to prove the pecuniary damage suffered yet she has adduced no evidence to support her allegations in this respect.

86. At the very least, should the Tribunal consider awarding the appellant a sum in compensation for the pecuniary damage allegedly suffered, the salaries received by the appellant during the period in question should be deducted from any sum which might be payable.

87. As regards the claim for EUR 5 000 in compensation for the alleged non-pecuniary damage, the Secretary General submits that this claim cannot be accepted insofar as the appellant has adduced no evidence of the existence of such damage. In his view, the appellant cannot therefore claim non-pecuniary damage attributable to the Organisation, which acted in full compliance with its duty of good faith and care towards her.

88. The Secretary General makes no comments regarding the reimbursement of costs.

89. The Secretary General accordingly asks that the Tribunal dismiss the appellant's claims for compensation.

90. With regard to the appellant's first claim (paragraph 79 above), the Tribunal notes that, under Article 60, paragraph 2, of the Staff Regulations, except for disputes of a pecuniary nature, where it has unlimited jurisdiction, it may only annul the act complained of. It follows that the Tribunal, except in cases of a pecuniary nature, may not take decisions other than decisions to set aside. It is for the Secretary General, in executing the present decision, to choose the manner of executing the decision and for the appellant

to challenge it if she disagrees using the remedies available to her (ATCE, Appeals Nos. 530/2012 and 531/2012 – Françoise PRINZ (II) and Alfonso ZARDI (II) v. Secretary General, decision of 6 December 2012, paragraph 87). This claim must be dismissed, therefore.

91. As regards the pecuniary damage, it is the view of the Tribunal that it must order the unpaid salaries to be reimbursed. While it is true that, in the past, the Tribunal has been invited to take into consideration earnings from other employment in an appeal concerning the execution of an earlier decision, the fact is that, ultimately, the Tribunal ruled on another point of law (Appeal No. 348/2005 – Carlos Bendito (IV) v. Governor of the Council of Europe Development Bank, decision of 19 May 2006, paragraph 51) without taking into account the earnings in question. In this case, it deems it appropriate to order that the amounts which would have been due had the appellant not been dismissed be paid in full. In this instance, they are to be calculated until the expiration of the nine-month extension of the probationary period.

92. With regard to non-pecuniary damage, the Tribunal considers it fair to award the appellant the sum of EUR 2 500 (Article 60, paragraph 2, fourth sentence, of the Staff Regulations). This sum is intended to compensate for the non-pecuniary damage suffered as a result of a measure which was taken unlawfully at a time when the appellant was experiencing health problems.

With regard to the request for legal assistance, the Tribunal considers the sum claimed to be justified and orders that it be reimbursed. The appellant having indicated that she would pay this sum to a trade union for the assistance she received, the Tribunal notes that it is not for it to decide how the amount awarded is to be used.

III. CONCLUSION

93. In conclusion, the decision complained of is annulled.

94. Consequently, in respect of pecuniary damage, the appellant is entitled to payment of the sums indicated in paragraph 91 above and, in respect of non-pecuniary damage, to the sum of EUR 2 500 plus EUR 500 in costs.

For these reasons,

The Administrative Tribunal:

- Sets aside the impugned decision;

- Rules that, in respect of pecuniary damage, the appellant is entitled to be paid the sums indicated in paragraph 91 above, and, for non-pecuniary damage, the sum of EUR 2 500 plus EUR 500 in costs.

Adopted by the Tribunal in Strasbourg on 23 October 2019 and delivered in writing in accordance with Rule 35, paragraph 1, of the Tribunal's Rules of Procedure on 30 October 2019, the French text being authentic.

The Registrar of the Administrative Tribunal	The Chair of the Administrative Tribunal
S. SANSOTTA	N. VAJIĆ