

# CONSEIL DE L'EUROPE

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# COUNCIL OF EUROPE

## TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

Appeal No. 720/2022  
(E v. Secretary General of the Council of Europe)

The Administrative Tribunal, composed of:

Nina VAJIĆ, Chair,  
Lenia SAMUEL,  
Thomas LAKER, Judges,

assisted by:

Christina OLSEN, Registrar,  
Dmytro TRETYAKOV, Deputy Registrar,

has delivered the following decision after due deliberation.

### PROCEEDINGS

1. The appellant lodged this appeal with the Tribunal together with further pleadings on 16 June 2022.
2. The appeal was registered the same day under No. 720/2022.
3. On 17 June 2022, the Chair granted the appellant's request for anonymity.
4. On 20 July 2022, the Secretary General forwarded her written observations. The appellant submitted a memorial in reply on 18 August 2022.
5. In the memorial in reply to the Secretary General, the appellant requested that witnesses be heard in order to clarify some factual matters. In a letter dated 6 September 2022, the Registrar of the Tribunal informed the appellant that the Tribunal had decided that there was no reason to hear witnesses at this stage of the proceedings and the matter would be considered again at the end of the hearing.
6. Pursuant to the Chair's decision, the hearing was held *in camera* in Administrative Tribunal's hearing room in Strasbourg on 28 October 2022. The appellant was represented by Giovanni Michele Palmieri, while the Secretary General was represented by Jörg Polakiewicz,

Jurisconsult and Director of Legal Advice and Public International Law, assisted by Benno Killian, Head of the Legal Advice Department, and Sania Ivedi and Nina Grange, both legal advisers in the same department.

## THE FACTS

### I. CIRCUMSTANCES OF THE CASE

7. At the time of the facts which gave rise to the present appeal, the appellant was an official of a member State seconded to the Council of Europe in accordance with [Resolution CM/Res\(2012\)2 of the Committee of Ministers establishing Regulations for secondments to the Council of Europe](#).

8. The appellant's first secondment to the Council of Europe was arranged for a period of one year beginning on 25 April 2018, through an agreement between the Organisation and the member State of which the appellant is a national. This agreement was amended three times to extend the secondment. The third amendment stated that it would be "extended exceptionally" until 24 April 2022.

9. On 21 September 2021, the Directorate of Human Resources of the Council of Europe (the DHR) sent the Permanent Representative to the Council of Europe of the state concerned a proposal to renew the secondment for a further period of one year. The draft amendment attached to the proposal stated that it would be "extended exceptionally" until 24 April 2023.

10. On 1 April 2022, an article was published in the press concerning the appellant. The article talked of the decision to place an official working for the Council of Europe under judicial supervision and their summons before a court in relation to indictable criminal offences.

11. On realising that the appellant was the person described in the press article, the DHR invited them to a meeting on 4 April 2022.

12. Following this meeting, on 14 April 2022, the DHR sent a letter to the Permanent Representative to the Council of Europe of the state concerned informing him that the Secretary General was withdrawing her proposal to renew the appellant's secondment for a further year and therefore that the secondment would terminate upon its expiry on 24 April 2022. On the same day, the DHR sent an e-mail to inform the appellant that the secondment would terminate on that date.

13. On 23 April 2022, the appellant lodged an administrative complaint with the Secretary General contesting the decision not to renew their secondment.

14. On 23 May 2022, the Secretary General dismissed the administrative complaint lodged by the appellant. Having pointed out that the DHR's proposal of 21 September 2021 to extend the appellant's secondment was not followed by the signature of an agreement formalising this extension, the decision to dismiss the complaint stated *inter alia* as follows:

"On 14 April 2022, the Director of Human Resources informed the Permanent Representative [of the state concerned] that the Secretary General did not wish to extend your secondment beyond its term. This decision was motivated by the need to safeguard the Organisation's interests and protect its reputation

and image, particularly in the light of the article published [in the press] which very clearly identified the Council of Europe, the department to which you were assigned, and your function”.

The decision to dismiss the administrative complaint then referred to a letter received by the DHR at the same time as the article was published in the press, describing the facts for which a complaint against the appellant had been lodged with the police. Having specified that this complaint was dismissed, the decision added:

“Significant damage had already been done to the image and reputation of the Council of Europe at the time of the publication of the article ..., it was advisable to take the measures at the Organisation’s disposal to avoid any further damage.”

15. On 16 June 2022, the appellant lodged the present appeal.

## II. RELEVANT LAW

16. Under Article 40.a of the Statute of the Council of Europe (ETS No.1):

“The Council of Europe, representatives of members and the Secretariat shall enjoy in the territories of its members such privileges and immunities as are reasonably necessary for the fulfilment of their functions. ...”

17. Articles 3 and 21 of the General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 2) provide as follows:

### **Article 3**

The Council, its property and assets, wheresoever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case, the Committee of Ministers has expressly authorised the waiver of this immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution or detention of property. ...

### **Article 21**

Any dispute between the Council and private persons regarding supplies furnished, services rendered or immovable property purchased on behalf of the Council, shall be submitted to arbitration, as provided in an administrative order issued by the Secretary General with the approval of the Committee of Ministers.”

18. Articles 1 and 2 of Rule No. 481 of 27 February 1976 laying down the arbitration procedure for disputes between the Council and private persons concerning goods provided, services rendered or purchases of immovable property on behalf of the Council provide as follows:

### **Article 1**

Any dispute relating to the execution or application of a contract covered by Article 21 of the General Agreement on Privileges and Immunities of the Council of Europe shall be submitted, failing a friendly settlement between the parties, for decision to an Arbitration Board composed of two arbitrators each selected by one of the parties, and of a presiding arbitrator, appointed by the other two arbitrators; in the event of no presiding arbitrator being appointed under the above conditions within a period of six months, the President of the Tribunal de Grande Instance of Strasbourg shall make the appointment.

### **Article 2**

However, the parties may submit the dispute for decision to a single arbitrator selected by them by common agreement or, failing such agreement, by the President of the Tribunal de Grande Instance of Strasbourg.”

19. The scope of the Staff Regulations of the Council of Europe<sup>1</sup> is defined in Article 1, paragraph 1, thereof as follows:

“These Regulations shall apply to any person who has been appointed in accordance with the conditions laid down in them as a staff member (hereinafter referred to as ‘staff members’ or ‘staff’) of the Council of Europe (hereinafter referred to as the ‘Council’).”

20. Part VII of the Staff Regulations covers Council of Europe staff disputes. Article 59 relates to administrative complaints and states as follows with regard to persons entitled to submit a complaint to the Secretary General:

“2. Staff members who have a direct and existing interest in so doing may submit to the Secretary General a complaint against an administrative act adversely affecting them, other than a matter relating to an external recruitment procedure. The expression ‘administrative act’ shall mean any individual or general decision or measure taken by the Secretary General or any official acting by delegation from the Secretary General.

4. The Secretary General shall give a reasoned decision on the complaint as soon as possible and not later than thirty days from the date of its receipt and shall notify it to the complainant. If, despite this obligation, the Secretary General fails to reply to the complainant within that period, he or she shall be deemed to have given an implicit decision rejecting the complaint.

8. The complaints procedure set up by this article shall be open on the same conditions *mutatis mutandis*:

- a. to former Council of Europe staff members;
- b. to persons claiming through staff members or former Council of Europe staff members, within two years from the date of the act complained of; in the event of individual notification, the normal time-limit of thirty days shall apply;
- c. to the Staff Committee, where the complaint relates to an act of which it is subject or to an act directly affecting its powers under the Staff Regulations;
- d. to staff members and candidates outside the Council of Europe, who have been allowed to sit a competitive recruitment examination, provided the complaint relates to an irregularity in the examination procedure.”

Article 60, paragraphs 1 and 3, of the Staff Regulations provide as follows on the subject of appeals to the Administrative Tribunal:

“1. In the event of either explicit rejection, in whole or part, or implicit rejection of a complaint lodged under Article 59, the complainant may appeal to the Administrative Tribunal set up by the Committee of Ministers.

3. An appeal shall be lodged in writing within sixty days from the date of notification of the Secretary General’s decision on the complaint or from the expiry of the time-limit referred to in Article 59, paragraph 4. Nevertheless, in exceptional cases and for duly justified reasons, the Administrative Tribunal may declare admissible an appeal lodged after the expiry of these periods.”

21. The general rules on the secondment to the Council of Europe of officials sent by member States in accordance with their national legislation are set out in Part I of [Resolution CM/Res\(2012\)2 establishing Regulations for secondments to the Council of Europe](#), as follows:

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<sup>1</sup> The Staff Regulations which applied at the time of the facts in the present case are those which were adopted by [Resolution Res\(81\)20](#) of the Committee of Ministers of the Council of Europe on 25 September 1981. The 1981 Staff Regulations, amended subsequently on several occasions, were replaced, with effect from 1 January 2023, by the new Staff Regulations adopted by [Resolution CM/Res\(2021\)6](#) of the Committee of Ministers of the Council of Europe on 22 September 2021. All references in this decision to the Staff Regulations must therefore be understood to refer to the 1981 Staff Regulations.

“1. a. The present Regulations lay down the conditions for the secondment of international, national, regional and local officials, as well as other persons sent by member States in accordance with their national legislation, to the Council of Europe (‘seconded officials’).

b. Excluded from the scope of the present Regulations are:

- i. staff members recruited to the Council of Europe pursuant to Article 12, paragraph 3, of the Staff Regulations (whereby the Secretary General seeks to secure the services, for a limited time period, of civil servants and specialists);
- ii. experts called for brief consultations who are covered by the rules concerning travel and subsistence expenses of government experts and other persons chargeable to the Council of Europe budgets;
- iii. persons outside the Secretariat who are hired as consultants.

c. The rules and regulations applicable to staff shall apply to seconded officials only as specified hereafter. These Regulations may not be interpreted as conferring the status of staff members on seconded officials.

2. Seconded officials shall remain in employment or be paid by the member State from which he/she is seconded throughout the period of secondment and shall receive no salary from the Council of Europe.

3. National seconded officials shall be nationals of a member State of the Council of Europe and, in case of partial agreements, nationals of a member State of the Council of Europe or of the partial agreement concerned.

4. Seconded officials may work in any field where their services are deemed necessary, provided that there is no conflict with the interests of the Organisation. While on secondment with the Council of Europe, seconded officials shall neither receive nor seek instructions in connection with the performance of their duties from any government, authority, organisation or person outside the Council of Europe.”

22. The arrangements for the implementation of the assignment of an official of a member State to the Council of Europe are set out in part II of [Resolution CM/Res\(2012\)2 establishing Regulations for secondments to the Council of Europe](#), which provides in particular as follows:

“7.a. Secondment shall be effected by an agreement between the Secretary General and the Permanent Representative of the member State concerned or the Head of the international organisation. Upon a request of the Permanent Representative of the member State concerned, such an agreement may also be concluded with a person duly authorised under the national law of that State to represent the sending authority or institution. This agreement shall specify the following matters:

- the grade and function occupied by the seconded official in his or her employment in the administration to which he or she belongs (Article 14 below);
- the period of secondment (Articles 8 and 9 below);
- the duties to be entrusted to the seconded official and the Council of Europe official to whom he or she shall be answerable (Articles 11, 12 and 13 below);
- the place of residence of the seconded official prior to his or her secondment to the Council of Europe and the organisational and geographical details of the assignment at the Council of Europe (Articles 20 and 23 below);
- a certificate of social and medical cover (Article 16 b below);
- whether the relocation allowance and/or related expenses shall be paid to the seconded official or, alternatively, a stipulation that the relocation allowance and/or related expenses are not to be paid (Article 23 below);
- an assurance that the employer concerned as well as the seconded official have been informed of, and accept, the conditions provided for under the present Regulations;
- any special agreement varying the seconded official's obligation to serve on a full-time basis ...”.

23. The length of secondments to the Council of Europe is established in part III of [Resolution CM/Res\(2012\)2 establishing Regulations for secondments to the Council of Europe](#) in the following terms:

“8. The period of secondment must be at least four months and not more than two years. Secondment may be prolonged or renewed, but the total duration of one secondment period for any one seconded official may not exceed three years, except in cases of derogation granted by the Secretary General.

9. Any secondment shall terminate if the seconded official is no longer in employment or paid by the member State from which he/she was seconded.”

24. The obligations of seconded officials are set out in part VIII of [Resolution CM/Res\(2012\)2 establishing Regulations for secondments to the Council of Europe](#), which describes them as follows:

“19. Seconded officials:

a. shall carry out their duties and conduct themselves solely with the interests of the Council of Europe in mind, and shall refrain from any action which might be prejudicial morally or materially to the Council of Europe;

b. shall abstain from any action, and in particular any public expression of opinion, which may reflect on their position as a seconded official with the Council of Europe;

c. shall inform the Head of the Major Administrative Entity to which they are assigned if, in the course of their duties, they are called on to deal with a matter which impinges on their personal interests in a manner which might affect their objectivity;

d. shall maintain the utmost discretion in respect of facts and information which come to their notice in, or in connection with, the performance of their duties, and may not, without the authorisation of the Secretary General, communicate in any form whatever to an unauthorised person any document or information which is not public; these obligations shall continue after their period of secondment has terminated;

e. may not, either on their own initiative or in collaboration with others, publish or cause to be published any text relating to the work of the Council of Europe, nor make public statements or deliver lectures on such matters, without obtaining authorisation in accordance with the rules and regulations applicable at the Council of Europe;

f. shall be bound by the rules and regulations on hierarchical authority, loyalty and integrity, working time, prevention of fraud and corruption, protection of human dignity, secondary activities, management of alcohol-related risks, use of premises and facilities, use of information technology equipment, access to the personal administrative file and mediation applicable at the Council of Europe;

g. shall be bound by the rules and regulations on appraisal and on financial obligations applicable at the Council of Europe;

h. the Secretary General may terminate the secondment with one month’s prior notice in case of a violation of the present Regulations, including the rules and regulations applicable at the Council of Europe referred to in the present Regulations.”

## **THE LAW**

25. The appellant requests that the Secretary General’s decision to dismiss their administrative complaint against the non-renewal of their secondment for one more year be set aside.

26. The appellant then asks for compensation for non-pecuniary damage amounting to €90 000 and to be awarded a further €7 000 to cover costs incurred in the proceedings.

27. For her part, the Secretary General asks the Tribunal to declare appeal No. 720/2022 manifestly inadmissible and, in the alternative, ill-founded, and to dismiss it in its entirety, including with regard to the €7 000 in costs and all the claims for compensation for damage allegedly suffered.

## I. ARGUMENTS OF THE PARTIES

### A. On admissibility

#### 1. The Secretary General

28. The Secretary General submits that appeal No. 720/2022 is inadmissible *ratione personae* under the relevant provisions of Articles 59 and 60 of the Staff Regulations, which do not entitle a national official seconded to the Council of Europe to lodge an appeal with the Administrative Tribunal concerning the length and the termination of his or her secondment.

29. The Secretary General points out that these provisions limit the possibility of filing a complaint, and subsequently an appeal, to specific categories – in particular, staff members, former staff members, persons claiming through staff members or former staff members, the Staff Committee and candidates in competitive recruitment examinations – and these categories do not include seconded officials. She infers from this that the appellant does not have standing to bring a case before the Administrative Tribunal.

30. The Secretary General notes in addition that the Regulation on secondments to the Council of Europe does not make Articles 59 and 60 of the Staff Regulations applicable to seconded officials and does not assign them staff member status. In this respect the Secretary General notes that no contractual relationship has been established between the Organisation and the appellant, and the latter is still an official of a ministry of the member State concerned and has not received any salary from the Council of Europe. The Secretary General also disputes the appellant's argument based on the definition of a staff member given by the International Court of Justice (ICJ) in its Advisory Opinion of 11 April 1949, in which it stated that it understood the word "agent" to mean "any person who, whether a paid official or not, and whether permanently employed or not, has been charged by an organ of the Organization with carrying out, or helping to carry out, one of its functions – in short, any person through whom it acts". The Secretary General would argue that the appellant cannot claim to be a staff member in the light of this definition because it related only to the case for which it was given and cannot be substituted in the present case for the definition given in Article 1 of the Staff Regulations (see paragraph 19).

31. In the Secretary General's view, any complaint concerning the non-renewal of the appellant's secondment should be addressed to the relevant court of the state concerned, which is a co-signatory of the agreement governing the secondment. She also observes in passing that the department by which the appellant is employed agreed without any discussion to the Secretary General's decision not to renew the secondment.

32. For all the foregoing reasons, the Secretary General submits that this appeal is manifestly inadmissible and must be dismissed.

## 2. The appellant

33. The appellant maintains that they have standing to bring cases before the Tribunal and claims the status of international public official in this connection, in the light both of the general principles of international civil service law and of the right of access to a court laid down in the European Convention on Human Rights (ECHR).

34. The appellant points out that the definition given by the ICJ in its advisory opinion of 11 April 1949 understands the word “agent” in the most liberal sense and that there is no need for the person concerned to be employed or paid by the Organisation to be regarded as such.

35. The appellant considers that their standing as a staff member derives both from the duties they performed for and on behalf of the Organisation and from the framing of these functions provided by the applicable rules. In the appellant’s view, the fact that the Regulations on secondments to the Council of Europe do not mention Part VII of the Staff Regulations, on disputes, as being applicable to seconded officials is incompatible with the definition of a staff member given by the ICJ and hence with the general principle of international civil service law which it expresses.

36. The appellant argues next that denying the right to be heard by the Administrative Tribunal would constitute a breach of the right of access to a court guaranteed by Article 6, paragraph 1, of the ECHR, as interpreted by the case law of the Tribunal (decision of the ATCE of 24 April 1997, appeal No. 226/1996 – Zimmermann v. Secretary General, paragraphs 26, 28 and 29; decision of the ATCE of 31 January 2018, appeal No. 579/2017 – Uysal v. Secretary General, paragraphs 80 to 82). Contrary to what the Secretary General claims, the national authorities are competent neither *ratione materiae* nor *ratione personae* to decide on the lawfulness of the impugned decision since this is an act of the Secretary General, in which these authorities had no part. Furthermore, it is an act covered by the judicial immunity which the Secretary General might invoke, thus making it impossible for it to be examined by the national courts.

## B. Merits

### 1. The appellant

37. The appellant submits three grounds of appeal: the failure to provide reasons for the impugned decision, the infringement of the general principle of law requiring protection of legitimate expectation and the infringement of several other general legal principles such as the presumption of innocence, proportionality and the duty of care.

#### a. *Failure to provide reasons*

38. In relation to this ground of appeal, the appellant argues that the impugned decision does not even begin to furnish reasons – a reason was provided only when the appellant’s administrative complaint was dismissed. In the appellant’s opinion, the existence of at least the germ of a reason is one of the prerequisites for the contested administrative measure to be valid, and this was not true in the present case. In this connection, the appellant cites the case law of the European courts (judgment of the European Union Civil Service Tribunal of 14 December 2010, [Marcuccio v. Commission](#), paragraph 65) and notes that the total absence of any reasons



in the body of the administrative decision is incompatible with the relationship of trust and honesty which should exist between the Organisation and its staff.

*b. Infringement of the principle of legitimate expectation*

39. The appellant asserts that the conditions set by the relevant international case law for a legitimate expectation to arise were met in this case (judgment No. 782 of the Administrative Tribunal of the ILO of 12 December 1986, [Gieser v. the European Molecular Biology Laboratory \(EMBL\)](#), paragraph 1). The appellant mentions the following circumstances in this connection: a substantive promise was made by the Organisation as to its desire to extend the secondment; the promise came from a competent person or a person deemed competent to make it; the breach of the promise caused harm to the appellant; and the position in law had not altered between the date of the promise and the date on which fulfilment was due.

40. As to this final circumstance, the appellant points out that the article published in the press was not a new fact capable of altering the position in law between the date of the promise and that of the contested decision. The article reported mere accusations, which were revealed to be false from the outset, or shortly thereafter, and which therefore could not warrant any change in the decision in question.

41. Lastly, the appellant mentions the circumstances of their hurried departure from the Organisation, which in their view provided further evidence that the extension of the secondment was considered to be settled and certain.

*c. Violation of presumption of innocence, proportionality and duty of care*

42. The appellant considers that in this case, the Secretary General did not exercise her discretionary powers lawfully because she failed to take account of all the relevant aspects and because she drew mistaken conclusions from the case file. The result of this was the violation of several general principles of law including the rights to presumption of innocence, proportionality, duty of care and good faith.

43. The appellant acknowledges that an international organisation may wish to defend its reputation and its image from any damage where its staff have engaged in incompatible activities but submits that no such damage can be said to have occurred where the personal responsibility of the staff member is not in question, as in the present case. The appellant points out that the Secretary General took the disputed decision without verifying in any way that these activities, which were attributed to the appellant in a defamatory manner, had actually taken place. Nor did the Secretary General take into account the subsequent developments in the case which seemed to demonstrate the appellant's innocence, such as the discontinuation of the judicial measures taken against them. The result is an irrational and arbitrary decision.

2. The Secretary General

*a. Failure to provide reasons*

44. The Secretary General points out that the impugned decision was justified mainly by the need to safeguard the Organisation's interests and protect its reputation and image following the serious allegations made in the press concerning the appellant. Furthermore, this decision was taken in a context also characterised by similar allegations from another source.

The appellant was perfectly well informed of these reasons, which were the subject of the meeting with the DHR. Exhaustive reasons for the decision in question were provided to the appellant subsequently in the reply to the administrative complaint.

*b. Infringement of the principle of legitimate expectation*

45. The Secretary General argues that the appellant could not have been certain that the secondment would be extended until the agreement between the Council of Europe and the state concerned had been signed. While there was no finalised agreement, the Organisation was not bound by its proposal for the secondment to be renewed and was entitled to withdraw it for valid reasons, as in the present case.

*c. Violation of presumption of innocence, proportionality and duty of care*

46. The Secretary General maintains that the impugned decision took due account of the general principles of law. In exercising its broad discretion in the matter, the Administration concluded nonetheless that for the interests at stake to be properly balanced out, it was appropriate and justified to withdraw the proposal to renew the appellant's secondment and that this did not give rise to an infringement of the principles in question.

## II. THE TRIBUNAL'S ASSESSMENT

### A. On admissibility

47. The Tribunal would begin by pointing out that at the time of the facts, the appellant was not a staff member within the meaning of Article 1 of the Staff Regulations. The appellant's legal status was that defined by the Regulations for secondments to the Council of Europe, which states expressly in paragraph c that none of its provisions may be interpreted as conferring the status of staff members on seconded officials.

48. In addition, the appellant's situation resembled neither the specific circumstances of the Uysal case, in which the Tribunal treated the seconded official in the same way as the external candidates in a recruitment competition ([Uysal v. Secretary General](#), paragraph 100), nor the exceptional circumstances of the Paolillo case, in which it was pointed out that, in cases of harassment, seconded officials enjoy the same guarantees as staff members ([Paolillo v. Secretary General](#), paragraph 25).

49. The Tribunal considers that, in the light of the applicable regulations, seconded officials do not, in principle, have standing to bring a case before the Tribunal. The Regulations on secondments to the Council of Europe clearly set out the principle that the rules which apply to Council of Europe staff members apply only to seconded officials under conditions which it specifies. None of the provisions of these regulations makes Articles 59 and 60 of the Staff Regulations on disputes at the Council of Europe applicable to seconded officials.

50. Nonetheless, the Tribunal points out that Article 6, paragraph 1, of the European Convention on Human Rights, as interpreted by the European Court of Human Rights, secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal (judgment of 21 February 1975, in the case of [Golder v. the United Kingdom](#), paragraph 36). Pursuant to this principle, the Tribunal considers that it is its task to

ascertain whether in the present case, the appellant could submit their complaints to some form of judicial review.

51. The Tribunal observes initially that the appellant's complaints and allegations are directed against the Council of Europe and intended to prompt the Tribunal to find that the Secretary General's decision to withdraw her proposal to renew the appellant's secondment was illegal. Despite the fact, as the Secretary General rightly points out, that there was no contractual relationship between the Organisation and the appellant, the impugned decision brought an end to any prospect that the secondment would be renewed. The appellant could therefore consider that this decision had adversely affected them.

52. In the Secretary General's opinion, the appellant should have addressed the appeal regarding the non-renewal of the secondment to the relevant court of the state concerned, which was a co-signatory of the agreement on the secondment. The Tribunal notes however, as it noted above, that the appellant's complaint in this case relates to a decision made by the Council of Europe and not to any decision or failure to act of any sort on the part of the national authorities. While it is true that the renewal of the secondment would in any case have required the agreement of both parties – the Council of Europe and the state concerned –, it is not for the Tribunal to speculate as to whether the state concerned would have agreed to the Organisation's proposal to renew the secondment. It is clear that without this agreement, no extension of the secondment could have taken place.

53. As to the idea of an appeal against the Council of Europe in a national court, the Tribunal points out that the Council of Europe enjoys judicial immunity on the territory of its member States and at no point did the Secretary General refer to the possibility of waiving this immunity in the present case.

54. The Tribunal points out, with regard to disputes between international officials and the international organisations employing them, that the European Court of Human Rights has specified that the judicial immunity of international organisations before national courts is only admissible under Article 6, paragraph 1, of the European Convention on Human Rights if the restriction it entails is not disproportionate. Therefore, it is compatible if the parties to the case have reasonable alternative means to protect their rights effectively (judgment of 18 February 1999 in the case of [Waite and Kennedy v. Germany](#), paragraphs 68-74; judgment of 12 July 2001, [Prince Hans-Adam II of Liechtenstein v. Germany](#), paragraph 48; decision of 5 March 2013, [Chapman v. Belgium](#), paragraphs 51-56; decision of 6 January 2015, [Klausecker v. Germany](#), paragraphs 69-77, with regard to the alternative remedy of an arbitration procedure).

55. Insofar as this case law can be applied *mutatis mutandis* to the examination of the present dispute, the Tribunal is required to ascertain whether the appellant had a reasonable alternative means of asserting their rights.

56. The Tribunal notes that the agreement between the Organisation and the member State concerned on the appellant's secondment provided for arbitration as a means of settling disputes. Under one of the general provisions of the agreement, it was specified that any controversy or claim arising from the provisions of the agreement or their infringement was to be dealt with in accordance with the conditions and provisions of Rule No. 481 of 27 February 1976 of the Secretary General of the Council of Europe.

57. While arbitration could have been an appropriate setting in which to examine the appellant's complaints, the Tribunal points out that as a third party to the secondment agreement, the appellant did not have direct access to this remedy. As the European Court of Human Rights has specified, to be effective, a remedy must be independent of any discretionary action by the authorities and must be directly available to those concerned so that they can present their arguments and express their opinion in the case (judgment of 6 December 2005, [Gurepka v. Ukraine](#), paragraphs 59 to 61).

58. In the absence of reasonable alternative remedies capable of protecting the appellant's rights effectively, the Tribunal is required to fill the gap by declaring this appeal admissible.

## **B. Merits**

59. The Tribunal first notes that the appellant did not have any right in the present case to the renewal of the secondment as an agreement had not been concluded on the subject between the Organisation and the state concerned. Nor had the Organisation made a promise to renew; moreover, it was not in a position to make this undertaking vis-à-vis the appellant as the finalisation of the secondment did not depend entirely on the Council of Europe but was subject to consent from the authorities of the state of which the appellant is a national.

60. On the other hand, the Council of Europe had sent a proposal to renew the secondment to the state concerned and it was for the authorities of the state to either accept or reject this proposal. The Tribunal also notes that there was nothing in the case file to suggest that the Organisation had undertaken not to go back on its decision by making a firm and irrevocable proposal. As long as the state concerned had not taken any position, the Organisation therefore was entirely at liberty to withdraw its proposal by virtue of the discretionary power vested in it with regard to decisions concerning the implementation of secondments to the Council of Europe.

61. The Tribunal points out that under established case law an Organisation's discretionary decisions are subjected to limited review by the Tribunal, which must respect the Organisation's freedom to decide and should not substitute its own judgment for that of the Organisation (see for example, on recruitment, ATCE, [Zimmermann v Secretary General](#), appeal No. 226/1996, decision of 24 April 1997, paragraph 37).

62. The Tribunal also points out that the impugned decision must be assessed in the light of all the facts which had occurred and were known to the Administration at the relevant moment, namely the first days of April 2022 (see United Nations Appeals Tribunal, [Gisage v. Secretary-General of the United Nations](#), Judgment No. 2019-UNAT-973, paragraphs 30 and 32). At that point, when the appellant's secondment was reaching its end, the serious allegations concerning the appellant which had arisen in the public domain required the Administration to decide, in a short time, whether it was still in its interest to stand by the proposal to renew the secondment.

63. The Tribunal notes that when taking the decision to withdraw this proposal, the Administration took into account several circumstances. Firstly, there was the fact that the Organisation was not bound by its proposal, the appellant's secondment had already been extended beyond the usual maximum limit and the authorities of the state concerned had not yet given their opinion on the proposal to extend of 21 September 2021; and secondly, with regard to the allegations published in the press, it was clear that the Organisation was exposed

to the risk of serious damage to its reputation and its image by continuing to have a link with the appellant.

64. In these circumstances, the Tribunal considers that it was not unreasonable for the Administration to decide to act rapidly and decisively and withdraw its proposal to renew the secondment thus avoiding any risk of ultimately undermining its general interests. While it is understandable that, in retrospect, in view of the successive events which showed that the allegations in question were unfounded, the appellant felt wronged, it remains true that the Administration cannot be blamed for this. At the time of the facts, the Administration could only base its decision on the information it had its disposal, which it did not have the power to check.

65. The Tribunal notes that before taking the contested decision, the Administration took care to hear the appellant and give them the opportunity to put forward their point of view. It also notes that in its reply to the appellant's administrative complaint, the Administration fleshed out its reasons for the impugned decision and thus provided exhaustive reasons in support of its decision, responding to the complaints the appellant put forward in the complaint.

66. In the light of the foregoing, the Tribunal draws the conclusion that the impugned decision is neither unreasonable nor unfounded and that the Administration exercised its discretionary powers in this case without doing anything unlawful.

### **C. CONCLUSION**

It follows from the foregoing that the appeal is unfounded and must be dismissed.

For these reasons,

The Administrative Tribunal:

- Dismisses the appellant's request for witnesses to be heard;
- Dismisses the Secretary General's argument that the appeal is inadmissible;
- Declares the appeal ill-founded and dismisses it;
- Decides that each party shall bear its own costs.

Adopted by the Tribunal on 25 January 2023 and delivered in writing on 1 February 2023 pursuant to Rule 35, paragraph 1, of its Rules of Procedure, the French text being authentic.

Registrar

Chair

Christina OLSEN

Nina VAJIĆ