

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

Appeal No. 721/2022
(Elena IZYUMENKO 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, Elena Izyumenko, lodged her appeal on 30 August 2022. The appeal was registered on 31 August 2022 under No. 721/2022.
2. On 10 October 2022 the Secretary General forwarded her observations on the appeal.
3. On 17 October 2022 the appellant filed her submissions in reply.
4. The parties having stated that they were willing to waive oral proceedings, the Tribunal decided that there was no need to hold a hearing.
5. The appellant conducted her own defence. The Secretary General was represented by Jörg Polakiewicz, Director of Legal Advice and Public International Law (Jurisconsult).

THE FACTS

I. CIRCUMSTANCES OF THE CASE

6. The appellant, Elena Izyumenko, is a former staff member of the Council of Europe holding Russian and French nationality who was employed as an Assistant lawyer – Russian

Federation (Grade B3) at the European Court of Human Rights (the Court) under a fixed-term contract (CDD) from 1 September 2020 to 31 August 2022.

7. This period corresponded to the appellant's probationary period. The contract stipulated, among others, that

“...like all fixed-term contracts, [it] will terminate on expiry (Article 23, paragraph 2 of the Staff Regulations)”, “[it] is subject to the probationary period regime of 24 months” and that “[i]t may be extended or renewed one or more times, but the total duration of employment under the [sic] at the Registry of the European Court of Human Rights, may not exceed four years”.

8. On 16 March 2022 at the 1428^{ter} meeting of the Deputies, the Committee of Ministers of the Council of Europe, acting under Article 8 of the Statute of the Council of Europe, adopted Resolution [CM/Res\(2022\)2](#) on the cessation of the membership of the Russian Federation to the Council of Europe. As a consequence, the Russian Federation ceased to be a member State of the Council of Europe on 16 March 2022. This decision was followed by the adoption on 23 March 2022, at the 1429^{bis} meeting of the Ministers' Deputies, of Resolution [CM/Res\(2022\)3](#) on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe.

9. The appellant's successful completion of the probationary period was attested in her third and last appraisal form, finalised on 25 March 2022. On the occasion, the Director of Common Services of the Registry of the Court commented:

“I confirm that, as a result of her excellent performance, the probationary period of Ms Elena Izyumenko has been successful. In normal circumstances I would have had no hesitation whatsoever to recommend her confirmation in employment on post n° 1640 until the end of the usual four-year period of assistant lawyers. However, as a result of the exceptional situation related to the expulsion of the Russian Federation from the Council of Europe, there can be no commitment at this stage of any employment beyond the end of her current contract. The decision will have to be taken in the light of a variety of factors including the relevant Council of Europe's policy, the availability of funding and the actual needs of the Court with regard to the processing of cases in respect of the Russian Federation.”

10. On 20 April 2022 at the 1432nd meeting of the Ministers' Deputies, the Secretary General informed the Deputies of the decisions she intended to take vis-à-vis staff members holding Russian nationality ([SG/Inf\(2022\)16](#)). She did so based on the indications outlined in information document [SG/Inf\(2022\)17](#) distributed at the meeting. As regards staff members on CDDs, the former document differentiated the situation of Russian nationals depending on whether they had also the nationality of a member state. It indicated:

“Staff members on fixed-term contracts who also have the nationality of a member state are considered to meet the eligibility criterion for appointment on the occasion of renewal of their contracts.

As regards those staff members who solely hold Russian citizenship (...) [t] hose staff on fixed-term contracts (31) will not have their contracts renewed when they expire. The majority of these staff (17) work in the Registry of the Court”.

As regards staff members of the Registry of the Court, document [SG/Inf\(2022\)16](#) further specified:

“Given the circumstances, I do not yet have a clear picture of the future needs of the Registry of the European Court of Human Rights to process Russian cases. I may therefore need to come back to this aspect once we have more information.”

11. On 4 May 2022 the Registrar of the Court held a meeting with Russian staff members of the Registry at which she announced that no contract of a B-grade assistant lawyer at the Russian Unit of the Court, irrespective of their citizenship, would be renewed.

12. On 11 May 2022 during a meeting with the Director of Common Services of the Registry of the Court, the appellant was informed that the decision on the renewal or not of her contract and the contract of the second other assistant lawyer R., holding the nationality of a member State, in addition to the Russian nationality, would depend on the conclusions yet to be reached by the Plenary session of the Court devoted to the question of processing of Russian cases, which was scheduled for 30 May 2022. Following this session, during an exchange of emails on 3 June 2022, the Director informed the appellant that further discussions with the Registrar were necessary in order to come to a decision on the renewal of her contract.

13. On 16 June 2022 by notice DRH(2022)131 signed, on behalf of the Director of Human Resources, by the Head of the Department for the Administrative, Social and Financial Management of Staff, the appellant was notified about the non-renewal of her contract. The notice contained inter alia the following wording:

“Article 23, paragraph 2, of the Staff Regulations states that fixed-term contracts shall terminate on expiry.

Your fixed-term contract, signed on 4 June 2020, will expire on 31 August 2022.

Moreover, your Department’s needs in terms of competencies have evolved and are now different from those for which you were recruited.

Consequently, the Council of Europe is not in a position to offer you a new contract.”

14. By email dated 20 June 2022, the Registrar of the Third Section and his Deputy informed all Russian team members of the outcome of the Plenary session of the Court held on 30 May 2022 regarding the way the Court should deal with the applications against Russia after it ceased to be a Party to the European Convention on Human Rights. The email stated inter alia the following:

“There has been no conclusion yet, apart from the fact that it was agreed that Section III would, as until now, continue the examination of Russian cases in line with its agreed practice until September. In parallel work will be ongoing on proposing criteria which should be retained for continued examination (of presumably very limited) number of meritorious cases justifying being determined: and also elaborating judicial policy as to how deal (or not to deal) with the other cases still pending or to arrive. Those issues are then expected to be addressed at the plenary administrative meetings in September and October.

(...)

Thus, we are entering a period when meaningful work needs to be offered to you as lawyers before a judicial policy is elaborated and (as expected) a group of most important cases against Russian warranting being processed determined on the basis of a general judicial policy decision. It’s only then that a longer-term work organisation arrangement can be expected to be

done. This has been discussed at the Registrars' meeting last Friday. It has been agreed that during this period work should be offered to you on cases/tasks upon requests from other teams / Sections. Given that this would now be for a limited period, it would be done on an ad hoc basis (...). It should be stressed that this is an interim arrangement which in no way affects the managerial structure or pre-determines further organisation and work assignments.”

15. On 6 July 2022 the appellant submitted an administrative complaint against the decision not to renew her contract.

16. On 4 August 2022 the Secretary General dismissed the complaint in its entirety on the grounds that it was ill-founded.

17. On 5 September 2022 the appellant lodged the present appeal.

II. THE RELEVANT LAW

18. The pertinent provisions of the Staff Regulations¹ read, insofar as relevant, as follows:

Article 3 – Non-discrimination

“1. Staff members shall be entitled to equal treatment under the Staff Regulations without direct or indirect discrimination, in particular on grounds of racial, ethnic or social origin, colour, nationality, disability, age, marital or parental status, sex or sexual orientation, and political, philosophical or religious opinions.

2. The principle of equal treatment and non-discrimination shall not prevent the Secretary General from maintaining or adopting, in the context of a predetermined policy, measures conferring specific advantages in order to promote full and effective equality and equal opportunities for everyone, provided that there is an objective and reasonable justification for those measures.”

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 (...).”

¹ The Staff Regulations which applied at the time of the facts of 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. All references in the present judgment to the Staff Regulations are to be understood as references to the 1981 Staff Regulations. These 1981 Staff Regulations, with further amendments, were replaced as of 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).

Article 23 – Termination of contract

(...)

“2. Fixed-term contracts shall end on expiry.

2 bis. The Secretary General may decide not to renew a fixed-term contract if the staff member in question has been the subject of an appraisal or an interim appraisal concluding that his/her performance has not been satisfactory. The fixed-term contract of a staff member who has been the subject of an underperformance measure provided for in Article 22 bis, paragraph 3, cannot be renewed.

(...)

3. A contract for either a fixed or an indefinite period may be terminated at the end of a calendar month by:

a. the staff member, as a result of his or her resignation; such resignation shall take effect at the end of a period of notice of at least three months from the date on which resignation was tendered, unless the Secretary General agrees to shorten this period at the request of the staff member, who shall give reasons therefore;

b. the Secretary General, on one of the following grounds:

i. abolition of the post, after consultation of the Joint Committee and subject to at least three months' prior notice to the staff member;

ii. dismissal for disciplinary reasons;

iii. manifest unsuitability or unsatisfactory work on the part of the staff member, calling for the imposition of a termination-of-contract underperformance measure under Article 22bis, in cases where the individual-performance-enhancement process has not had the required positive results. A termination-of-contract measure shall carry prior notice of at least three months;

iv. permanent invalidity as provided for in the Pension Scheme Rules.”

Article 59 – Complaints procedure

(...)

“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.”

Article 60 – Appeals procedure

“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.

2. The Administrative Tribunal, after establishing the facts, shall decide as to the law. In disputes of a pecuniary nature, it shall have unlimited jurisdiction. In other disputes, it may annul the act complained of. It may also order the Council to pay to the appellant compensation for damage resulting from the act complained of.”

19. The relevant provisions of Appendix II to the Staff Regulations (Regulations on Appointments) read as follows:

Article 16 – Junior professional programmes and profiles with planned turnover

“1. The Secretary General may determine, by means of a Rule, specific job profiles which shall exclusively be filled in the framework of junior professional programmes or for which it is in the interest of the Organisation that a regular turnover takes place. In such a Rule, the Secretary General shall also set a maximum duration for employment under such profiles. Total employment with the Organisation under such profiles shall not exceed that maximum duration. (...).”

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 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.

(...)

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.

(...)

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. (...).”

THE LAW

20. In her appeal, the appellant requests the Tribunal to declare the Secretary General's decision not to renew her fixed-term contract as arbitrary and unlawful and to set it aside. As a consequence, she asks the Tribunal to be paid pecuniary damage in the amount of lost salaries for (at least) the period from 1 September 2022 to 31 August 2024 which would have been due had her employment with the Organisation not been unlawfully terminated, in addition to EUR 10,000 in compensation for non-pecuniary damages.

21. For her part, the Secretary General asks the Tribunal to declare the appeal ill-founded and to dismiss it.

I. THE PARTIES' SUBMISSIONS

A. The appellant

22. The appellant claims that the Administration failed in its obligation to state the real reasons for its decision not to renew her contract. She acknowledges that the challenged decision states the grounds on which the Organisation relied for deciding not to renew her contract, namely the fixed-term nature of the contract and the evolution of her Department's needs. But for the appellant those grounds are in contradiction with previous announcements made by the Organisation regarding the conditions for such a decision. Thus, they do not constitute the real reasons motivating the challenged decision. The appellant concludes that the Administration failed to act transparently, in good faith and with due care while communicating such reasons. She adds that since the Appointments Board had no discretion with regard to whether to recommend or not her confirmation in employment following the successful completion of the probation period, the Director of Common Services of the Registry of the Court clearly exceeded the limits of his authority when he commented, in her last appraisal form, that there could be "no commitment at this stage of any employment beyond the end of [her] current contract" (see above paragraph 9).

23. The appellant maintains that the fixed-term duration of her initial two-year contract with the Organisation, as a staff member hired in accordance with Article 16 of the Regulations on Appointments, could not serve as a ground in itself for the contract's non-renewal. She argues that having successfully passed her probationary period, she had a legitimate expectation to have her initial fixed-term contract renewed. In support of this argument, she invokes *inter alia* the wording of the relevant provisions of the Staff Regulations, particularly Article 23, paragraph 2bis. The appellant concludes that by relying on the fixed-term duration of her contract as a separate ground for its non-renewal, the Organisation acted arbitrarily and in violation of Article 17, paragraph 1, Article 18 and Article 23, paragraphs 2bis and 3 of the Staff Regulations, as well as Article 16, paragraph 1, and Article 20, paragraph 2, of the Regulations on Appointments.

24. Concerning the evolution of the Department's needs in terms of competencies –, the appellant claims that this ground was applied arbitrarily. In this sense, she notes that within the entire Russian Unit, she was the sole staff member to which it was applied. The appellant claims further that this ground is unsubstantiated as no objective factors were pointing to such evolution and would have allowed anticipating the decision on non-renewal. Information from management dated 20 June 2022 indicated to the contrary, i.e., that Russian cases would

continue to be examined in line with agreed practice and that only once a judicial policy on processing of Russian cases would have been elaborated by the Plenary session of the Court scheduled in October 2022, a longer-term work organisation arrangement could be expected to be done (see above paragraph 14). The appellant provides further a series of informative elements, including statistical data, relating to cases against the Russian Federation, aimed at demonstrating that her competencies as an assistant lawyer at the Russian Unit remained relevant beyond 16 June 2022 - the date on which she received the formal notice of the non-renewal of her contract. Thus, she concludes that in the absence of any legitimate reasons for not renewing her contract, the Administration abused of its power and violated Article 20, paragraph 5, of the Regulations on Appointments.

25. The appellant alleges a further violation of the same provision of the Regulations on Appointments, inasmuch as the Administration took into consideration only the needs of her Department, and not those of the Organisation in general upon deciding not to renew her contract. She asserts that the principle of due care would have required the Administration to first assess whether it was possible to reassign her to other units of the Registry or other Departments within the Organisation before deciding not to renew her fixed-term contract. As a proof that mobility of staff members on contracts identical to hers is possible, the appellant gives examples of colleagues recruited following a competition organised under Article 16 of the Regulations on Appointments, who were transferred to other units of the Registry.

26. Finally, the appellant contends that the Administration violated Article 3 of the Staff Regulations, in breach of the principles of equal treatment, transparency and good faith. She maintains that she was discriminated by comparison to a colleague R. who was in an identical situation and who, unlike the appellant, benefited from a five-month extension of her contract. Just as with the appellant, the colleague in question had been recruited following the competition e28-2019 Assistant lawyer - Russian Federation (Grade B3), was employed under an initial fixed-term contract of two years, had successfully passed the probationary period and held the citizenship of a Council of Europe member State upon the expiry of the initial contract. The appellant adds that the manner in which the mobility of the colleague concerned was carried out, i.e., without any competition nor any call for interest, failed to meet the necessary standards of transparency and objectivity.

27. The appellant claims further that the Organisation acted in violation of its duty of care by failing to properly advise and support her while she was facing a situation of extreme uncertainty regarding her employment, due to unprecedented circumstances beyond her control. She contends that the DHR should have arranged an individual meeting with her with a view to explaining the reasons for not renewing her contract prior to formally notifying, on 16 June 2022, the end of her employment. Considering that such individual meetings were held with staff members of the Registry whose contracts were not renewed on account of their Russian citizenship, the appellant upholds that she suffered from a discriminatory approach in this respect too.

28. The appellant also claims to have been discriminated on account of her nationality. She refers to the fact that the non-renewal of the fixed term contracts of staff members holding only Russian nationality was motivated by reference to their nationality, and not the Department's needs. In the appellant's view, this reveals that the real reason for the challenged decision is her nationality.

29. The appellant concludes that the lack of coherent and transparent communication, as evidenced by the failings of the Administration, offers strong grounds to suggest that the decision not to renew her fixed-term contract was not impartial, but motivated by the intention to discriminate her solely on account of her Russian nationality. She argues that the challenged decision was taken amid a general context of hostility towards Russian staff members marked by the desire to gradually terminate their employment at the Council of Europe, starting with the staff in the most vulnerable position – that is, assistant lawyers hired most recently on fixed-term contracts.

B. The Secretary General

30. The Secretary General considers that the decision not to renew the appellant's fixed-term contract upon its expiry was decided in full compliance with the applicable rules and principles governing appointments. She recalls that fixed-term contracts are, by definition, limited in time and that Article 23, paragraph 2 of the Staff Regulations states unambiguously that fixed-term contracts shall end on expiry. This principle was also explicitly reiterated in the appellant's employment contract (see above paragraph 7). The Secretary General recalls in this connection, with reference to the case-law of the Tribunal, that there is no right to automatic renewal of a fixed-term contract.

31. The Secretary General submits that the satisfactory performance of the appellant was not disputed and that the decision not to renew her contract was taken solely on the basis of the criterion regarding the needs of the Organisation in terms of competencies. Under the circumstances, the fact that the appellant had successfully completed her probationary period was irrelevant. While the successful completion of the probationary period is a necessary requirement for the renewal of a fixed-term contract at the end of this period, it does not apply exclusively.

32. In the appellant's particular case, the decision not to renew her contract was based on the ground that the staffing needs of the Registry of the Court for the processing of cases against the Russian Federation had significantly decreased. According to information provided by the Registry of the Court, the number of incoming cases between the date of the Russian Federation's cessation of membership and 30 September 2022 had decreased by more than 50% compared to the same period in 2021. This trend was likely to become even more accentuated after the Russian Federation ceased to be a Party to the European Convention on Human Rights. Against this background, it was considered that the staffing requirements for processing cases lodged against the Russian Federation in the foreseeable future were sufficiently covered by the lawyers employed at the Registry.

33. The Secretary General notes that the appellant's claims that the reasons provided for the non-renewal of her contract were not "*real*" are unsubstantiated. The management of the Registry of the Court and the Administration provided information on the circumstances and reasons underlying the non-renewal of the appellant's contract transparently, diligently and timely. Whether it was the recommendation contained in her third appraisal report, the communication from the Secretary General of 20 April 2022, the information meeting organised by the Registrar on 4 May 2022, the appellant's meeting with the Director of Common Services on 11 May 2022, his emails of 3 June 2022 or the formal decision notified to her by the DHR on 16 June 2022, the staffing needs of the Registry were consistently presented as the criterion on which the decision would be or was based. Thus, the appellant was

duly informed of those reasons, in accordance with the general principle of international civil service law, which states the obligation of the Administration to give reasons when taking a decision affecting staff members.

34. The Secretary General further notes that contrary to the appellant's allegations, the decision on the non-renewal of her contract was not conditional on a decision of the Plenary session of the Court in this regard. The competent authority on management decisions regarding the staff of the Registry is the Secretary General (or the Registrar of the Court by delegation from the Secretary General), not the Plenary session of the Court. Nevertheless, the management of the Registry considered it preferable to withhold the decision on the renewal of the appellant's contract, pending the conclusions of the Plenary session of 30 May 2022, in case this would result in a change in the overall situation, which ultimately was not the case.

35. Concerning the appellant's complaint that the DHR did not arrange an individual meeting with her, the Secretary General notes that such meetings were systematically organised with staff members holding solely Russian citizenship and whose fixed-term contracts expired and could not be renewed on this particular ground. The appellant did not fall into that category since the non-renewal of her contract was not based on her Russian citizenship. Furthermore, if she deemed it necessary, nothing prevented her from requesting a meeting with the DHR on her own initiative. Given the fact that fixed-term contracts end on expiry and that the conditions for the renewal of the appellant's contract under Article 20, paragraph 5 of the Regulations on Appointments were not met in view of the staffing requirements of the Registry of the Court, the appellant cannot claim that she had a "legitimate expectation" of having her fixed-term contract renewed. No such promise had been made to her.

36. Insofar as the appellant claims that the challenged decision violated Article 20, paragraph 5 of the Regulations on Appointments by taking into consideration only the needs of the Department and not those of the Organisation in general, the Secretary General observes that there is no obligation resulting from the referred provision or any other provision to that effect, that would require the Administration to first assess whether it is possible to reassign a staff member to another department within the Organisation before deciding not to renew a fixed-term contract. The "*needs of the Organisation*" under this provision must be understood as the needs of the Department to which the staff member is assigned. In accordance with the terms of Vacancy notice No e28/2019, the appellant was recruited to deal with cases against the Russian Federation at the Registry of the Court. Given that the needs for which she was specifically recruited had evolved and that her competencies were no longer required due to the decrease in the actual needs of the Court with regard to the processing of cases in respect of the Russian Federation, it was perfectly legitimate for the Organisation not to renew her contract following its expiry. The Secretary General further notes that there was no need for additional staff with the appellant's specific competencies in other Departments of the Registry of the Court.

37. As to the appellant's complaint that she was treated differently in comparison to R., - another assistant lawyer holding, in addition to Russian citizenship, the nationality of another member State, the Secretary General notes that the contract of that particular staff member was renewed only for a limited duration of 5 months and that this decision was justified by the specific needs of the Registry's Conflicts Unit. The staff member in question was considered the most suitable to meet this short-term need in view of her relevant professional experience,

contrary to the appellant's situation. The different treatment of their respective situations was therefore fully justified.

38. As to the appellant's allegations of discrimination on the ground of her nationality, the Secretary General observes that the decision on non-renewal of the fixed term contracts of staff members holding only the Russian nationality did not refer to the needs of the Organisation because these staff members no longer met the nationality eligibility criterion laid down in Article 14 (a) of the Staff Regulations. As a consequence, it was legally impossible for the Organisation to renew their contracts and any further assessment of the criteria for a possible renewal as set out in Article 20, paragraph 5 of the Regulations on Appointments would have been futile. At the same time, a lawyer K. , who had obtained the nationality of a member State in addition to his Russian citizenship before the end of his contract and who had asked the Director of Common Services whether there was any possibility of his continuing to be employed since he now fulfilled the nationality eligibility criterion, was informed by the Director that "*the contracts of Russian assistant lawyers will not be extended, including for those holding Council of Europe nationalities, for reasons related to the Court's needs*".

39. Insofar as the appellant considers that the decision not to renew her contract "*was not impartial, but guided by a hostile approach towards the Russian staff members*", the Secretary General emphasises that, on the contrary, the decisions taken by her as regards the situation of staff holding Russian citizenship reflected her concern to find a balanced solution concerning the contractual situation of all categories of staff members of Russian citizenship in a situation that was unprecedented for the Organisation. In taking this decision she had regard to the relevant legal and practical considerations as well as the needs of the Organisation, while ensuring at the same time that the rights of the staff members concerned were respected. She decided not to terminate any fixed-term contracts of staff members but to keep them in employment until expiry of their contracts. She further decided that staff members on fixed-term contracts holding the citizenship of another member State alongside their Russian citizenship would be considered, on the basis of this second citizenship, to meet the eligibility criterion for appointment on the occasion of renewal of their contracts. The Secretary General considers that this approach clearly demonstrates the attempt to limit the negative consequences of the cessation of the Russian Federation's membership to the Organisation for the staff members concerned.

40. The Secretary General concludes that the Organisation has fully respected its obligations towards the appellant, and it cannot be argued that the impugned decision was arbitrary or unlawful. All arguments raised in this respect should be dismissed.

II. THE TRIBUNAL'S ASSESSMENT

41. The Tribunal notes from the outset that under paragraph 2 of Article 20 of the Regulations on Appointments, if the staff member's work during the probationary period is satisfactory, the Appointments Board is to recommend that the Secretary General confirm the staff member concerned in employment. The actual decision whether to confirm an appointment and to offer a new contract is, however, for the Secretary General to take and remains within the realm of her discretion, in accordance with Article 20, paragraph 5 of the Regulations on Appointments.

42. The Tribunal further reiterates that the exact purpose of a fixed-term contract is to render the eligibility criteria applicable to its renewal. To argue otherwise would deprive the fixed-term contract of one of the reasons for which it was stipulated in the first place, namely, to ensure that at its expiry, the conditions for its renewal are still satisfied (Administrative Tribunal of the Council of Europe (ATCE), Appeals Nos. 722/2022, 731/2022, 732/2022 and 733/2022, *Olga Orekhova and Others v. Secretary General*, decision of 4 April 2023, paragraph 59).

43. There is the general principle that a staff member under a fixed-term appointment is not entitled to the renewal of his contract, as “[t]he very nature of this type of contract precludes the existence of any such entitlement” (ATCE, Appeals Nos. 469/2010 and 473/2011, *Seda Pumpyanskaya (II) and (III) v. Secretary General*, decision of 20 April 2012, paragraph 57, and Appeals Nos. 587/2018 and 588/2018, *Jannick Devaux (II) and (III) v. Secretary General*, decision of 9 October 2018, paragraph 109). The decision whether to renew a fixed-term contract is discretionary in nature and is subject to limited judicial review. It may be quashed only if it was taken by an incompetent authority, is vitiated by a formal or procedural defect, is based on an error of fact or law, fails to take account of all the relevant facts, is vitiated by a misuse of power or draws manifestly erroneous conclusions from the file (see, in this regard, ATCE, Appeal No. 226/1996, *Zimmermann v. Secretary General*, decision of 24 April 1997, paragraph 37; Administrative Tribunal of the International Labour Organization (ILOAT) *Judgment No. 2040*, consideration 5; and ILOAT *Judgment No. 3858*, consideration 12).

44. In the present case, the reason for non-renewal of the appellant’s fixed-term contract was based on the provision of Article 20, paragraph 5, of the Regulations on Appointments, which explicitly provides that the needs of the Organisation in terms of competencies shall be taken into account when deciding whether a fixed-term contract shall be prolonged or not (see above paragraph 19). Therefore, the Tribunal considers that the Secretary General was entitled to apply this rule as the legal basis of the challenged decision.

45. The Tribunal further notes that the Administration is bound by “the obligation to give reasons for any decision which [...] adversely affects a person”, this obligation being “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 it, and the Tribunal to review, the lawfulness of the impugned decision.” (see ATCE, Appeal No. 606/2019, *Céline COSSET v. Secretary General*, decision of 30 October 2019, paragraph 72). According to the Administrative Tribunal’s case-law, “[t]his principle applies even when, as in the Organisation’s regulations [...], the obligation to give reasons is not explicitly provided for.” (ibid., para. 69). In the present case, the reason of evolved needs of the Organisation was clearly stated in the official communication of 16 June 2022 to the appellant (see above paragraph 13) and there is no indication that any other reason for non-renewal of the appellant’s contract has ever been advanced.

46. Insofar as the appellant complains about being treated differently from other colleagues affected by the cessation of the Russian Federation’s membership in the Organisation, the Tribunal notes that the appellant, holding French and Russian nationality, was not in the same situation as the other assistant lawyers who had only Russian nationality and thus could not enter in a new contract with the Organisation. In this respect, the Tribunal refers to its decision in the case of *Orekhova and Others v. Secretary General* (cited above). Neither could her situation be compared to that of lawyers whose fixed-term contracts had not yet expired.

47. The only comparable situation was that of R. who had her contract extended for further 5 months. The Secretary General provides several reasons for such different treatment and explains that R.'s professional experience made her the most suitable candidate to respond to the Registry's needs (see paragraph 37). In the light of the information provided by the defendant, the Tribunal considers that such decision was within the discretion of the Administration and the reasons provided are not arbitrary or otherwise manifestly unreasonable. The Tribunal further notes that it appears from the written submissions of the Secretary General that the appellant was not the only staff member holding the nationality of a member State, in addition to the Russian nationality, whose fixed term contract was not renewed as a result of the Registry's evolving needs (see above paragraph 38).

48. In addition, the Tribunal finds that there is no obligation for the Secretary General deriving from the applicable rules to assess the possibilities of reassigning to other Departments of the Council of Europe a staff member whose fixed term contract is not renewed. Therefore, no breach of the relevant regulatory framework can be attributed to the defendant in this respect.

III. CONCLUSION

49. In the light of the foregoing the appellant's complaints are unfounded and are to be dismissed. Consequently, the appellant should not be awarded any compensation for damages.

For these reasons, the Administrative Tribunal:

Declares the appeal ill-founded and rejects it;

Decides that each party will bear its own costs.

Adopted by the Tribunal in Strasbourg on 6 June 2023 and delivered in writing in accordance with Rule 35, paragraph 1, of the Tribunal's Rules of Procedure on 12 June 2023, the English text being authentic.

Registrar of the
Administrative Tribunal

Christina OLSEN

Chair of the
Administrative Tribunal

Nina VAJIĆ