

# CONSEIL DE L'EUROPE

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# COUNCIL OF EUROPE

## TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

Appeal No. 723/2022  
(Natalia ZAYTSEVA 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.

### PROCEDURE

1. The appellant, Natalia Zaytseva, lodged her appeal on 2 September 2022; it was registered on 7 September 2022, under No. 723/2022.
2. On 21 October 2022, after the Chair had agreed to extend the time-limit, the Secretary General submitted her observations on the appeal.
3. On 16 November 2022, the appellant informed the registry that she did not wish to submit observations in reply to the Secretary General's observations.
4. On 22 March 2023, the appellant added documents to the case file detailing the costs and expenses for which she was claiming reimbursement.
5. The public hearing took place in the court room of the Administrative Tribunal in Strasbourg on 28 March 2023. The appellant was represented by Maître Grégory Thuan Dit Dieudonné and Maître Nathan Colleville, both members of the Strasbourg Bar. The Secretary

General was represented by Sania Ivedi, legal adviser at the Legal Advice and Litigation Department of the Council of Europe, accompanied by Benno Kilian, head of that department.

## THE FACTS

### I. CIRCUMSTANCES OF THE CASE

6. The appellant is a former Council of Europe staff member of Russian nationality. She began working for the Organisation as a national civil servant seconded by the Russian authorities between 2011 and 2014 before being given several temporary contracts between 2018 and 2020. Having passed external competitive examination e16/2017 for human rights lawyers (grade A1/A2), she was placed on a reserve list. She was recruited from this reserve list on a fixed-term contract from 1 June 2020 to 31 July 2021 and assigned to the Directorate General of Human Rights and Rule of Law (DGI). The contract was renewed initially until 31 December 2021 then again until 31 May 2022.

7. On 28 February 2022, noting that the appellant's performance had been satisfactory, the Appointments Board recommended that her appointment should be confirmed.

8. On 11 March 2022, the Directorate of Human Resources (DHR) informed the Director General of DGI of the Appointments Board's recommendation concerning the appellant's probationary period. The same day, the Director General passed on this information to the appellant.

9. On 16 March 2022, at the 1428th meeting of the Ministers' 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 Russian Federation's membership of the Council of Europe. On this occasion a memorandum on the legal and financial consequences of the cessation of membership under Article 8 of the Statute ([document CM\(2022\)70](#)) was distributed to the Committee of Ministers and within the Secretariat.

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 with Russian nationality. With regard to staff on fixed-term contracts, the information document [SG/Inf\(2022\)17](#) distributed at this meeting differentiated between the situation of Russian nationals depending on whether or not they also had the nationality of another member State. It explained in this respect that "a fixed-term contract which comes to an end may not be renewed as the staff member would not meet one of the essential employment conditions, namely nationality of a member State". The same day, this information was passed on to the Organisation's staff through an announcement on the Intranet.

11. On 29 April 2022, the appellant submitted a request for unpaid leave until 1 September 2024, for family reasons.

12. On 2 May 2022, the appellant attended an interview with representatives of the DHR, during which she confirmed that she had only Russian nationality while specifying that she was in the process of acquiring the nationality of another Council of Europe member State.

13. By e-mails of 9 May and 12 May 2022, the DHR informed the appellant of the decisions to refuse her request for unpaid leave and not to renew her fixed-term contract. The latter decision informed the appellant that in order to comply with the statutory notice period, she would receive a lump sum amounting to her pay for two months from the date on which notice was given.

14. On 3 June 2022, the appellant lodged a first administrative complaint against the decision not to renew her contract and a second against the decision refusing her request for unpaid leave. These complaints were dismissed on 7 July 2022.

15. On 2 September 2022, the appellant lodged the present appeal.

## II. RELEVANT LAW

16. The provisions of the Staff Regulations<sup>1</sup> that are relevant to this case read as follows:

### **Article 14 – Recruitment conditions**

“To be eligible for appointment as a staff member of the Council, candidates must:

a. be nationals of a state which is a member of the Council of Europe and have the civic rights enabling them to be appointed to the civil service of that state; ...

### **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.

### **Article 23 – Termination of contract**

...

2. Fixed-term contracts shall end on expiry.

### **Article 45 – Leave**

...

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<sup>1</sup> 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. These 1981 Staff Regulations, with further amendments, were replaced on 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.

4. The provisions governing unpaid leave are set out in Appendix VII to these Regulations.

#### **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. ...”

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

#### **Article 13 – Functions of the Board with regard to recruitment and promotions**

“At the end of a recruitment procedure or an internal competition which may result in the promotion of a staff member, the Board shall assess the procedure and submit a recommendation to the Secretary General on the basis of all the relevant information at its disposal. Where a number of applicants are included in the recommendation, they shall be listed in order of merit.

#### **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. ...

#### **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.

(...). »

18. The relevant provisions of the Staff Regulations on unpaid leave (Appendix VII to the Staff Regulations) read as follows:

**Article 1**

“These Regulations, issued in accordance with Article 45, paragraph 4, of the Staff Regulations, set out the conditions under which a staff member may be granted unpaid leave, or shall be ex officio placed on unpaid leave, by the Secretary General.

**Article 3**

1. Two different types of unpaid leave are to be distinguished:

- leave for family events;
- leave for personal reasons.

Leave may be granted at the staff member's request in particular for the following reasons:

- a. in respect of leave for family events:

i. to bring up a child;

...

2. In taking his or her decision, the Secretary General shall have regard to the exigencies of the service and the nature of the reasons adduced. Any refusal of an application for unpaid leave must be duly justified in writing.”

## **THE LAW**

19. The appellant asks the Tribunal to annul the Secretary’s General decision of 9 May 2022 refusing to grant her unpaid leave and her decision of 12 May 2022 not to renew her fixed-term contract.

20. The appellant also asks:

- a) for the Secretary General to be ordered to offset her loss of earnings from the date of the end of the contract up to the date of the end of the two-year contract which should have been renewed through payment of a sum amounting to a total of 167 675 Euros (EUR) for material damage;
- b) for the Secretary General to be ordered to pay her the sum of EUR 10 000 for non-pecuniary damage; and
- c) to be awarded EUR 8 000 in costs.

21. The Secretary General invites the Tribunal to declare the appeal unfounded and to dismiss it.

## I. The parties' arguments

### A. The appellant

22. With regard to the decision not to renew her contract, the arguments the appellant raises are of two types. They include, on the one hand, the alleged breach by the Organisation of its duty of care as it failed to treat her with the requisite dignity and humanity and, on the other, discrimination on the grounds of nationality and her contractual situation.

23. In her first plea, the appellant points to the particularly fragile situation she found herself in because she had to bring up her two children alone as her spouse lived abroad. These circumstances made her highly dependent on her employer's decisions and Administration placed her in an unacceptably uncertain situation before presenting her with a *fait accompli*, giving her very little time to manage the administrative details of a rushed departure abroad.

24. The appellant claims in this connection that the Organisation gave her the legitimate expectation that her contract would be renewed in the light of the many clear and concurring signals given to this effect by several of the key interested parties. In support of this, she cites several items of evidence, namely her long service with the Organisation – since 2011, her outstanding appraisals, the support of her superiors, the fact that since 2021 she had held a post whose funding had been retained in the 2022 budget and the circumstance that the process of renewing her fixed-term contract was practically complete even before the announcement, in April 2022, that the fixed-term contracts of staff with Russian nationality alone would not be renewed.

25. In view of the situation and her legitimate expectation, the appellant considers that the suspension of the procedure to renew her contract between 28 February 2022 (the date of the Appointments Board's recommendation) and 12 May 2022 (the date of the contested decision) was not justified and resulted in a breach of the duty of care. She points out that up until 16 March 2022 (the date on which the Russian Federation's membership of the Council of Europe ceased), she had the nationality of one of the member States of the Organisation. The appellant also considers that Administration should have informed her of this suspension, bearing in mind that the Secretary General's communication to the Committee of Ministers on 16 March 2022 did not meet the requirement of keeping her informed. The appellant points out that, because of this omission and the fact that she was not given any notice, she was denied a period of four months during which she could have managed the transition towards the termination of her contract.

26. The appellant also bases her first plea against the decision not to renew her contract on the fact that the reason given in support of the decision was mistaken. According to the appellant, the nationality requirement provided for in Article 14 a of the Staff Regulations did not apply to the renewal of her contract at the end of her probationary period because, at that point she was "confirmed" in her employment whereas Article 14 a applied only to staff who had been "appointed". This interpretation is the result of the fact that the successive fixed-term contracts concluded at the end of a probationary period form a uniform whole during which the staff member's status is considered to be quasi-permanent. The appellant also insists on the distinction that is made in the Staff Regulations, in Article 20 of the Regulations on Appointments, between renewing a fixed-term contract following a probationary period (paragraph 7) and concluding a

separate contract resulting in the establishment of a probationary period (paragraph 5). She also cites memorandum [CM\(2022\)70](#), presented by the Secretariat to the Committee of Ministers, in which it is expressly stated, in paragraph 17, that “the condition of nationality must be met at the time of recruitment but not necessarily throughout the whole period of validity of the employment contract”. The appellant also refers to Article 6, paragraph 5, of the new Staff Regulations, which does not regard loss of nationality of a member State as a possible reason for dismissal.

27. In her second plea against the decision not to renew her contract, the appellant alleges discrimination based on her nationality and her contractual situation. She claims in this respect that the decision to exclude only staff members of Russian nationality on fixed-term contracts from the Organisation is based on unreasonable grounds. In the appellant’s view, if the Secretary General’s aim was to retain within the Secretariat only those staff members with the nationality of a member State, Russian staff members on indefinite-term contracts should also have been concerned. The high legal risk given as a reason by the Secretary General not to exclude these staff members is not reasonable justification.

28. The appellant also points out that the functions she was performing when her contract was not renewed were unconnected with the Russian Federation, which made it all the less justified to impose the criterion of nationality of a member State on her. Even supposing they were justified, the measures taken by Administration were disproportionate given the clear imbalance between the reason given and the interests of the appellant at stake. In view of the small number of staff members in the same situation as the appellant, other solutions with less impact on her could have been applied, in particular unpaid leave. The appellant points out in this respect that this solution would have satisfied both the department’s interests and her own as it would have enabled her to remain within the Organisation for the time needed to complete the necessary formalities to obtain the nationality of a Council of Europe member State – by marrying her partner.

29. In the light of these arguments, the appellant submits that the decision not to renew her contract amounts to a difference in treatment with no objective justification and hence a discriminatory one.

30. As to the decision to refuse to grant her unpaid leave on the ground that such leave could not extend beyond the end of the validity of her employment contract, the appellant considers that this argument fails to take account of the applicable legal provisions. As a mother with a young child, she wished to be granted such leave to join her partner abroad so that both parents could bring up their child together. However, not only does the objection which was made to this fail to take account of the justifications she gave but it is also based on a requirement which does not figure in the applicable provisions. In the appellant’s view, it is sufficient, under these provisions, to have the status of a staff member of the Organisation at the time that the request for unpaid leave is made and granted. The appellant adds that the decision in question also amounts to breach of the Organisation’s duty of care towards her for the reasons already outlined (see paragraph 23 above).



## **B. The Secretary General**

31. The Secretary General begins by pointing out that pursuant to the general principles in question, staff members on fixed-term contracts do not have the automatic right to the renewal of their contract as this is a matter for the Secretary General's discretion. She would also point out that once the Committee of Ministers had made its decision of 16 March 2022 on the cessation of the Russian Federation's membership of the Council of Europe, it became impossible to renew the appellant's contract as she no longer fulfilled the nationality requirement. In the Secretary General's view, this was a prerequisite for the conclusion of any new employment contract with the Organisation and hence also for the renewal of the appellant's contract.

32. The Secretary General notes that the appellant wrongly cites paragraph 17 of memorandum [CM\(2022\)70](#) (see paragraph 26 above): the point of this passage is that the contract of a staff member who no longer meets the nationality condition – whether this is a fixed or indefinite-term contract – remains valid until it expires. The memorandum does not state however that the nationality condition no longer applies when new employment contracts are concluded. It actually states quite clearly that “fixed-term or temporary contracts would in principle not be renewed or extended for staff members holding the nationality of a State which is no longer a member of the Organisation”.

33. Since she does not meet the nationality condition, the other circumstances referred to by the appellant, which are not contested – such as her professional performance, the successful completion of her probationary period and the lack of any link between her functions and the Russian Federation – are not such as to call into question the contested decision.

34. As to the time it took for the non-renewal decision to be made, for which the appellant criticises the Secretary General, the Secretary General notes firstly that no new contract is issued automatically at a department's request and it is not unusual for the decision on the renewal of a fixed-term contract to be taken only very shortly before it expires. Furthermore, in view of the unprecedented situation of the aggression of Ukraine by the Russian Federation, it was reasonable for the Organisation to take interim measures and suspend the renewal of Russian staff members' fixed-term contracts in this light. No decision on the renewal of these contracts could be announced until the Secretary General had decided on her overall approach to the contractual situation of staff members of Russian nationality – and this did not happen until 20 April 2022 (see paragraph 10 above).

35. Given these circumstances, the Secretary General argues that the time it took for the appellant to be informed (on 20 April 2022, through an announcement on the Intranet then at a meeting with DHR representatives on 2 May 2022) then personally notified (on 12 May 2022) that her contract would not be renewed was entirely reasonable. The Secretary General points out that the appellant was awarded compensation in lieu of notice taking the form of a sum equivalent to her pay for a length of two months from the date of notice. The appellant was also granted a period of one month following the termination of her functions to return her residence permit – a period which she did not ask to be extended at the time of the facts.

36. For all these reasons, the Secretary General considers that she satisfied her duty of information and care by ensuring that all the interests at stake including those of the appellant, were taken into account.

37. With regard to the alleged discriminatory nature of the contested decision, the Secretary General asserts that it was neither unreasonable nor discriminatory not to renew the fixed-term contracts of staff who, like the appellant, had only Russian nationality. Firstly, such staff members cannot be equated to Russian staff with the nationality of another member State as they continue to meet the nationality condition laid down by Article 14 a of the Staff Regulations. Secondly, such staff members cannot be compared to Russian staff on indefinite-term contracts as such contracts are not, by definition, subject to a renewal procedure.

38. As to the appellant's request for the decision to refuse her unpaid leave to be annulled, the Secretary General points out that only staff on current contracts may be placed on unpaid leave. In support of this argument, she cites the title of Part IV of the Staff Regulations ("Rights of Staff Members"), which includes Article 45 on leave, and the wording of Article 45, paragraph 4, of the Regulations on unpaid leave, which refers to "staff members" as those who are entitled to such leave. Therefore, to be entitled to the leave requested, the appellant would have had to remain a staff member up to 1 September 2024 and her fixed-term contract would have had to be renewed for the entire duration of the leave, which was impossible. This entirely valid argument was explained to the appellant and, moreover, the Secretary General could not be accused, when justifying the contested decision, of failing to take due account of the appellant's submissions concerning her personal circumstances.

## II. THE TRIBUNAL'S ASSESSMENT

### A. Non-renewal of the contract

39. In her first plea, the appellant contests the decision not to renew her contract on the grounds that the reason given not to renew is not valid, that the circumstances of her case gave rise to a legitimate expectation that there would be a renewal and that the decision amounts to a breach by the Organisation of its duty of care.

40. The appellant does not contest the nature of her fixed-term contract, which, as the Tribunal has pointed out repeatedly (ATCE, Appeals Nos. 469/2010 and 473/2011, decision of 20 April 2012, *Seda Pumpyanskaya (II) and (III) v. Secretary General*, paragraph 57, and Appeals Nos. 587 and 588/2018, decision of 9 October 2018, *Jannick Devaux (II) and (III) v. Secretary General*, paragraph 109), does not confer any entitlement to renewal. The Tribunal notes in this connection that in the present case, the appellant's appointment conditions unequivocally stated that her contract would end on the date of expiry in accordance with the applicable legal provision.

41. Decisions not to renew a fixed-term contract are discretionary in nature and subject only to limited review by the Tribunal. They will be annulled only if they were not taken by a competent authority, are vitiated by a formal or procedural defect, are based on an error of fact or law, fail to take account of essential facts, are vitiated by an abuse of power or rely on

conclusions wrongly drawn from the evidence in the file (see ATCE, Appeal No. 26/1996, decision of 24 April 1997, *Daniel Zimmermann v. Secretary General*, paragraph 37; Administrative Tribunal of the International Labour Organization (ILOAT), Judgment No. 2040, consideration 5; and Judgment No. 3858 of the ILOAT, consideration 12).

42. Although an international organisation is not generally required to extend a fixed-term contract, it is required to examine whether or not it is in its interest to renew the contract and to take its decision accordingly. While such decisions are part of an organisation's discretionary powers, they should not be arbitrary or irrational; they must be based on a valid reason and be announced within good time (see ILOAT: [judgment No. 1128](#), consideration 2; [judgment No. 1154](#), consideration 4; [judgment No. 1983](#), consideration 6; [judgment No. 2406](#), consideration 14; [judgment No. 3353](#), consideration 15; [judgment No. 3582](#), consideration 9; [judgment No. 3586](#), consideration 10; [judgment No. 3626](#), consideration 12, and [judgment No. 3769](#), consideration 7).

43. The Tribunal notes that in the present case the reason given by the Secretary General for the decision not to renew the appellant's contract is the fact that after the decision of 16 March 2022 on the cessation of the Russian Federation's membership, renewal was impossible because the appellant no longer fulfilled the nationality condition laid down in Article 14 a of the Staff Regulations.

44. The dispute as to whether the nationality condition applies – as the appellant claims – only on conclusion of the first employment contract on which staff are appointed following a recruitment procedure or – as the Secretary General claims – this condition is essential for the conclusion of any subsequent employment contract with the Organisation, has already been settled by the Tribunal.

45. In its decision on Appeals Nos. 722/2022, 731/2022, 732/2022 and 733/2022, *Olga Orekhova and Others v. Secretary General*, the Tribunal considered it legitimate to apply the nationality requirement for renewal of a fixed-term contract in a situation where the staff members concerned, like the appellant, met the nationality requirement when they were first appointed but no longer met it when their contract was to be renewed at the end of their probationary period (see paragraphs 56 to 61 of the decision). In this case, the Tribunal found that in view of the applicable rules and the interpretation of the regulations, “the nationality criterion must be seen as a condition inherent to the very purpose of a fixed-term contract” and this criterion “tends to nullify the margin of discretion available to the Secretary General under Article 20, paragraph 5, of the Regulations on Appointments”.

46. In the present case, the appellant does not make any argument liable to question the validity of this finding or its applicability to the case. The appellant cites paragraph 17 of memorandum [CM\(2022\)70](#) of the Secretary General of 15 March 2022 wrongly, as the relevant passage of paragraph 17 unequivocally states that fixed-term contracts cannot, in principle, be renewed or extended for staff who do not or no longer have the nationality of a Council of Europe member State. Likewise, the appellant's argument based on the wording of Article 6, paragraph 5, of the new Staff Regulations, claiming that the loss of nationality of a member State is not one of the possible reasons given for termination of a staff member's functions, has no effect on the

present case. Apart from the fact that this provision has now been amended and now provides expressly that the Secretary General may terminate the contract of staff members confirmed in their employment if the State of which the staff member has nationality ceases to be a member of the Organisation, the question here is not of terminating the appellant's contract but of refusing to renew it – two scenarios which cannot be equated to one another and are governed by differing provisions.

47. It follows that the conclusion which has to be taken in this case is the same as that adopted in the decision cited above in the case of *Orekhova and Others v. Secretary General*: not only was the Secretary General entitled by law to impose the nationality requirement on the appellant but the fact that this requirement was not met left her no other choice than to refuse to renew her contract. Consequently, the Secretary General cannot be accused of having based her decision on erroneous grounds or a misinterpretation of the relevant provisions.

48. The same applies to the alleged discriminatory nature of the contested decision. In the present case, as for the appellants in the case settled on 29 March 2023, the Secretary General did not infringe the principle of non-discrimination by treating the appellant differently to staff with another nationality and/or another type of contract as their situation was not comparable. The Tribunal refers in this connection to the relevant provisions of the decision in question (paragraphs 64 to 67).

49. With regard to the appellant's complaint of a breach of a legitimate expectation that her fixed-term contract would be renewed, the Tribunal considers that none of the circumstances of the case are such as to have given the appellant such an expectation.

50. As to the appellant's outstanding appraisals, which are not contested, the Tribunal points out that it is the established case law that the legitimate expectation of the renewal of a fixed-term contract cannot be created by very good or outstanding performance (United Nations Administrative Tribunal, Judgment No. 1137 of 25 July 2003, [White v. Secretary General](#), section VI).

51. As to the signals of support which her superiors showed her, the appellant does not demonstrate that these were "precise, unconditional and consistent assurances originating from authorised, reliable sources" capable of giving rise to a legitimate expectation worthy of legal protection (Court of Justice of the European Union, judgment of 16 July 2020, [ADR Center v. Commission](#), C- 584/17 P, EU:C:2020:576, paragraph 75 and cited case law). Neither does the appellant provide any evidence of the allegation in her submissions that the draft contract renewal was approved by the Office of the Secretary General. Nor do the nature of the functions performed by the appellant (having no connection with the Russian Federation) or the way in which her work was financed (through a post retained in the budget) amount to such "precise, unconditional and consistent assurances".

52. Likewise, the fact that the Appointments Board recommended the definitive appointment of the appellant and that the Board's opinion was forwarded to the DHR cannot be equated with statements capable of legally binding the Organisation (ATCE, Appeals Nos. 469/2010 and 473/2011, decision of 20 April 2012, *Seda Pumpyanskaya (II) and (III) v. Secretary General*,

paragraph 59). Of course, these facts could have given the appellant hope that her contract renewal would be completed; however, at no point could she consider that the Organisation had made any promise to her to this effect.

53. In any event, a plea based on a breach of a legitimate expectation is bound to fail as soon as it contravenes a rule of the Organisation (see *mutatis mutandis*, ILOAT, [judgment No. 3776](#), consideration 11). The appellant could not legitimately expect to have her contract renewed beyond 1 June 2022, when on this date, she no longer met one of the requirements for entitlement to employment laid down in Article 14 a of the Staff Regulations.

54. As to the allegation of a breach of the duty of care, the Tribunal notes that already on 25 February 2022, in a note distributed to the Committee of Ministers which the appellant cites in her submissions, it had been stated that the fixed-term contracts of staff members with the nationality of a State which ceased to a member of the Organisation would not in principle be renewed or extended.

55. It is patently obvious therefore that, even before the Appointments Board ruled on the appellant's case on 28 February 2022, the general issue of the future of staff members of Russian nationality on fixed-term contracts had been raised. The matter was not decided once and for all until 20 April 2022, through the dissemination to the Committee of Ministers and to staff of the Secretary General's information document ([SG/Inf\(2022\)17](#)). In the Tribunal's opinion, for as long as the Secretary General had not decided on her approach to all the staff members in the same situation as the appellant, it was reasonable and consistent with proper administrative practices for the Secretary General to refrain from taking a decision on the renewal of the appellant's contract.

56. What remains to be decided, however, is whether during the period of time up to the notification of the appellant of the contested decision on 12 May 2022, the Administration's conduct constituted a breach of its duty of care, as the appellant claims. More particularly, the appellant complains that she was not informed of the follow-up to the Appointments Board's recommendations and that the information concerning the decision not to renew her contract reached her belatedly.

57. The Tribunal points out in this respect that the principle of good faith and the concomitant duty of care demand that international organisations treat their staff with due consideration in order to avoid causing them undue injury; an employer must consequently inform officials in advance of any action that may imperil their rights or harm their rightful interests (ATCE, Appeals Nos. [587](#) and [588/2018](#), decision of 9 October 2018, *Jannick Devaux (II) and (III) v. Secretary General*, paragraph 108 and cited case law).

58. In the present case, the Tribunal notes that the process by which the Secretary General succeeded in determining her approach in relation to staff members on fixed-term contracts with Russian nationality took place entirely transparently. The appellant was in a position to follow all the stages of this process, as shown by the knowledge reflected in her submissions of the information provided at the time of the facts in question. The Tribunal cannot see how this information could be considered inadequate and/or could have been more comprehensive with regard to the appellant's situation before the Secretary General announced her decision to the Ministers' Deputies on 20 April 2022. Nor does the Tribunal see in what way the individual exchanges which the appellant had in the meantime with the DHR and her superiors were in conflict with the general information available to her.

59. The Tribunal also notes that regardless of the unprecedented situation which the Council of Europe faced because of the cessation of the Russian Federation's membership, there is no rule requiring Administration to meet any specific deadlines for the renewal of contracts and the notification of the staff member concerned. Lastly and above all, the Tribunal points out that, even if the contract renewal process could have been completed more rapidly in the two months between 28 February 2022 and 20 April 2022, the appellant would in any case have been incapable of meeting the nationality requirement for renewal on the date of 1 June 2022 when it came into force.

60. While it is true that the appellant was only notified that her contract would not be renewed on 12 May 2022, meaning that the two-month notice period was not respected, it remains that she was awarded compensation, taking the form of a lump sum equivalent to two months' pay from the date of notice.

61. From all the above it can be concluded that the Secretary General did not breach her duty of information and care, or her obligation to respect the appellant's dignity and to avoid causing her unnecessary and/or excessive harm.

## **B. Refusal to grant unpaid leave**

62. To examine the appellant's request for the annulment of the decision to refuse her unpaid leave, the Tribunal must refer to the applicable regulatory framework.

63. Under Article 45 of the Staff Regulations, leave is an entitlement provided for in the staff member's contract. It presupposes a service relationship between the staff member and the Organisation and represents one of the diverse possible legal situations that staff members can occupy in relation to their employment. Having regard to the applicable regulatory framework at the Council of Europe, the Tribunal notes that leave does not have any effect on the length of contracts, which is governed by its own rules under, *inter alia*, Article 23 of the Staff Regulations. These rules are distinct from those which apply to leave, including the provisions on unpaid leave, which are found in Appendix VII to the Staff Regulations containing the Regulations on unpaid leave.

64. Accordingly, placement of a staff member on unpaid leave is only possible if the staff member continues to have an employment relationship with the Organisation. Termination of this relationship will inevitably result in the end of the leave as the length of leave cannot exceed or have any impact whatsoever on the length of employment (see *mutatis mutandis* ILOAT, [judgment No. 157](#), consideration 1).

65. In the present case, the appellant's contract expired on 31 May 2022. For it to be possible to grant her unpaid leave up to 1 September 2024, she would have had to have remained a staff member throughout this entire period and this would have implied having to renew her contract from 1 June 2022 for the entire duration of the leave requested. Since it was impossible to renew her contract, any leave granted her in response to her request of 29 April 2022 would have had to end in any case on 31 May 2022.

66. It follows that the Secretary General's decision to refuse to grant the appellant unpaid leave was not in breach of the applicable regulations and in basing this decision on the impossibility of

granting leave for a period going beyond the expiry of the appellant's contract, the Secretary General fully satisfied her obligation to justify her decision.

67. In conclusion, the appeal is unfounded and must be dismissed.

68. As regards the appellant's claims for damages, the Tribunal observes that where the damage relied on by an appellant originates in the adoption of a decision which is the subject of claims for annulment, as is the case here, the rejection of those claims for annulment entails, in principle, the rejection of the claims for damages, since the latter are closely connected.

69. In the instant case, since the appellant's claims for annulment were rejected as a whole, the claims for compensation and all the claims made by the appellant in her appeal must be rejected in their entirety.

### III. CONCLUSION

For these reasons,

The Administrative Tribunal:

- Declares the appeal unfounded and dismisses it;
- Decides that each party shall 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 French text being authentic.

Registrar of the  
Administrative Tribunal

Christina OLSEN

Chair of the  
Administrative Tribunal

Nina VAJIĆ