

**Appeal No. 742/2023**

**I. S.**

**v.**

**Secretary General  
of the Council of Europe**

**\*\*\***

**JUDGMENT**

**22 March 2024**

The Administrative Tribunal, composed of:

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

assisted by:

Christina OLSEN, Registrar,  
Dmytro TRETAKOV, Deputy Registrar,

has delivered the following judgment after due deliberation.

## **PROCEEDINGS**

1. The appellant, I. S., lodged an appeal on 31 October 2023. On the same day, the appeal was registered under No. 742/2023. On 10 November 2023, the Chair granted the appellant's request for greater anonymity.
2. On 13 February 2024, the Secretary General forwarded her observations on the appeal.
3. On 16 February 2024, the Tribunal decided to dispense with an oral hearing in this case in accordance with Rule 15, paragraph 1 of the Tribunal's Rules of Procedure.
4. On 23 February 2024, the appellant lodged his/her observations in reply.
5. On 5 March 2024, the Secretary General informed that she would not be submitting a rejoinder.

## **THE FACTS**

### **I. CIRCUMSTANCES OF THE CASE**

6. The appellant is a former staff member holding Russian citizenship who had been employed at the Registry of the European Court of Human Rights under consecutive fixed-term contracts from September 2014 to August 2023. The last renewal of the contract was for the period from 1 January 2022 to 31 August 2023.
7. On 16 March 2022 at the 1428<sup>th</sup> 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 to the Council of Europe.
8. On 20 April 2022 at the 1432<sup>nd</sup> meeting of the Ministers' Deputies, the Secretary General informed the Deputies of the decisions she intended to take in respect of 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.

9. During a meeting with representatives of the Directorate of Human Resources (DHR) held on 27 April 2023, the appellant was informed that in view of the Secretary General’s decisions on staff members with Russian nationality his/her fixed-term contract would not be renewed upon its expiry.

10. By letter dated 4 May 2023, the appellant was notified by the DHR of the non-renewal of his/her contract upon its expiry on 31 August 2023 as the Council of Europe was unable to continue to employ the appellant given that he/she “*no longer fulfil[ed] one of the fundamental conditions for employment with the Council of Europe, namely possession of the nationality of a member State of the Organisation*”.

11. Following this decision, the appellant sent an email dated 15 May 2023 to the DHR, requesting the conversion of his/her fixed-term contract into an open-ended contract. On 17 May 2023, the DHR responded that the Council of Europe was not in a position to offer the appellant a contract, whether fixed-term or open-ended, because he/she no longer met one of the eligibility criteria to be employed by the Organisation as explained in the above letter of 4 May 2023.

12. On 5 June 2023, the appellant sent to the Secretary General a request for management review. In this communication, the appellant, among other things, contested the decision not to renew his/her contract upon its expiry and not to convert it into an open-ended contract and requested that the Secretary General provide him/her with protection from possible retaliation by the Russian Government in relation to the performance of his/her professional duties for the Council of Europe.

13. In its reply dated 4 July 2023 to the appellant’s request for management review, the DHR confirmed the decision not to renew his/her fixed-term contract and the refusal to convert it into an open-ended contract. The appellant then lodged on 2 August 2023 a formal complaint with the Secretary General against this decision.

14. On 29 August 2023, the Secretary General dismissed the complaint in its entirety on the ground that it was partly inadmissible and, moreover, ill-founded.

15. On 31 October 2023, the appellant lodged the present appeal.

## II. THE RELEVANT LAW

16. The relevant provisions of the Regulations on appointments (Appendix II to the Staff Regulations) in force until 31 December 2022 read as follows:

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

“(…)

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. 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."

17. The relevant provisions of the Staff Regulations and Staff Rules in force as of 1 January 2023 read as follows:

#### **Article IV of the Staff Regulations – Entry into service**

“(...)

4.2 The paramount consideration in the appointment of staff members shall be the necessity of securing the highest standards of competence, professionalism and integrity. Only citizens of member States shall be eligible for appointment as staff members...

(...)

4.5 A fixed-term appointment, with the exception of fixed-term appointments in the framework of junior professional programmes or appointments to jobs with a planned turnover profile, shall be converted into an open-ended appointment at the end of four years' continuous service subject to the fulfilment of conditions to be established by the Secretary General.

(...)"

#### **Staff Rule on entry into service 410. Conditions for appointment**

“410.1 Appointment as a staff member of the Council of Europe is subject to fulfilment of the following conditions:

410.1.1 being a citizen of a state which is a member of the Council of Europe and fulfilling the conditions for appointment to the civil service of that state;

(...)"

#### **470. Fixed-term appointment**

“(...)

470.3 Unless extended, fixed-term appointment shall expire at the end of the contractual term.

470.4 Fixed-term appointment, with the exception of appointments under a Junior Professional Programme or the Turnover Workforce Scheme, shall be converted into an open-ended appointment at the end of four years' continuous service provided that:

470.4.1 workforce planning and financial assessment establish viability;

470.4.2 the knowledge, skills and competencies of the staff member are needed to fulfil needs identified by the Council of Europe; and

470.4.3 the staff member's conduct and performance have been satisfactory."

**Article VI of the Staff Regulations – Termination of service**

“6.1 Appointments for a fixed-term period shall expire in accordance with their terms.

(...)”

**THE LAW**

18. In his/her appeal, the appellant requests the Tribunal:

- to annul the decision of the Secretary General of 29 August 2023 rejecting his/her formal complaint and “*earlier related decisions by the Directorate of Human Resources concerning [his/her] contract*”;
- to convert his/her contract into an open-ended contract or, alternatively, to renew the existing contract;
- to be awarded the amount of lost salaries since 1 September 2023 until the date of the judgment to be delivered by the Tribunal as pecuniary damage and EUR 5 000 for non-pecuniary damage.

19. For her part, the Secretary General asks the Tribunal to declare the appeal unfounded and to dismiss it. Regarding the appellant’s request for compensation for the pecuniary and non-pecuniary damages, she asserts that the Organisation has not committed any irregularity that could give rise to liability towards the appellant. In the alternative, the Secretary General observes that the appellant does not provide any evidence to substantiate or support his/her claims.

**I. THE PARTIES’ SUBMISSIONS**

**A. The appellant**

20. The appellant relies on two grounds in support of his/her appeal: the absence of a legal basis justifying the contested decision, and its allegedly discriminatory nature.

21. Firstly, the appellant considers that the refusal to convert his/her fixed-term contract into an open-ended contract on the ground that he/she no longer holds the nationality of a member State of the Organisation lacks a legal basis.

22. The appellant claims that the possession of the nationality of a member State of the Organisation is not a requirement for the conversion of his/her fixed-term contract into an open-ended contract and that the only conditions which apply to such a conversion are the needs of the Organisation in terms of human resources, its financial viability, as well as the staff member’s competences and performance. The appellant highlights that in his/her case, the conditions for the conversion of his/her fixed-term contract were fulfilled since he/she had completed nine years of service, including the probationary period of two years, and the Organisation did not oppose the renewal of his/her contract on account of budgetary constraints or issues related to the Organisation’s needs, his/her knowledge, skills, competences or performance.

23. In the appellant's view, the condition of being a citizen of a member State applied at the time of his/her appointment nine years ago but did not apply to the conversion of his/her fixed-term contract. The appellant adds that the conversion of a contract is distinct from the renewal or the conclusion of a new contract and that the interpretation to the contrary advocated by the Secretary General is not based on law or judicial practice and deprives him/her of any effective remedy.

24. Secondly, the appellant contends that the refusal to renew and convert his/her contract on the ground that he/she no longer holds the citizenship of a member State constitutes an unjustified discrimination based on nationality.

25. The appellant quotes a series of elements, including statements by representatives of the Council of Europe Parliamentary Assembly and of the Committee of Ministers, as well as decisions taken by the Secretary General on staff members with Russian nationality, in support of his/her position that there is a presumption of discrimination in his/her case. Such a presumption shifts upon the Organisation the burden of proving that the difference in his/her treatment is not discriminatory. The appellant observes that the Organisation did not explain the legitimate aim pursued by not converting or renewing contracts of staff holding only Russian citizenship. Assuming there was a legitimate aim, the refusals to renew and convert their contracts were in any event disproportionate and had no regard to their particular circumstances.

26. The appellant submits further that he/she has been discriminated on account of the type of his/her contract. The appellant mentions in this regard the Secretary General's decision to maintain in their employment staff members holding only Russian citizenship under indefinite term contracts, without hardly providing any justification for this difference of treatment.

27. In the appellant's view, the discrimination he/she incurred constitutes a disproportionate interference with his/her right to respect for private and family life, in breach of Article 8 of the European Convention on Human Rights. In support of this allegation, the appellant points to the fact that after 15 years of service to the Organisation, he/she has lost his/her only source of income, his/her right to a pension upon retirement, his/her residence permit in France and the chance to be granted French citizenship for which he/she had applied in 2022. The appellant also indicates that he/she cannot be employed in an international or non-governmental organisation because of his/her nationality and cannot work in the private sector due to a lack of working permit and relevant experience.

28. The appellant states that, in case he/she returned to Russia, his/her professional involvement in the Organisation and his/her adherence to its values, and more generally his/her personal circumstances, would expose him/her to the risk of facing administrative and criminal liability. In the appellant's view, the Secretary General failed to consider these risks and by the same token, failed in her duty to protect him/her from the possible retaliation of the Russian Federation.

## **B. The Secretary General**

29. In relation to the first ground of the appeal, the Secretary General upholds that the decision not to renew the appellant's fixed-term contract upon its expiry and not to convert it

into an open-ended contract was taken in full compliance with the applicable rules and principles.

30. She reiterated that under the relevant provisions in the Staff Regulations and rules stipulating fixed-term contracts are, by definition, limited in time. This principle was explicitly reiterated in the appellant's employment contract, and he/she had no automatic right to the renewal of his/her contract beyond its expiry on 31 August 2023.

31. She further notes that the decision not to convert the appellant's fixed-term contract into an open-ended contract was based on the ground that he/she no longer met one of the employment eligibility criteria, namely that of nationality. Given that the above conversion constitutes a contract renewal, such renewal would imply signing a new agreement between the parties. As the appellant no longer fulfilled one of the eligibility criteria for employment, namely the nationality criterion, it was legally impossible for the Organisation to offer the appellant a new contract after 31 August 2023.

32. Regarding the appellant's allegation that the Organisation deprived him/her of any effective remedy, the Secretary General highlights that the present appeal demonstrates, on the contrary, that the appellant did actually have an effective remedy against the litigious decision, which is not tantamount to the guarantee of obtaining a favourable decision by means of such remedy.

33. As regards the second ground of the appeal, i.e. the alleged discrimination, the defendant underlines that it is neither unreasonable nor discriminatory for an international organisation to require its staff members to be citizens of its member States, for it is an objective criterion that applies equally to all staff members and is binding on the Administration, which cannot derogate from it. Since the appellant no longer met this criterion, he/she cannot claim he/she was in a situation analogous to those who met it and that he/she was discriminated against. Moreover, the Secretary General observes that the appellant cannot compare himself/herself to staff members holding indefinite-term contracts since the latter are, by nature, in a different situation than staff members holding fixed-term contracts and are not faced with the necessity of a contract renewal. As a consequence, the Secretary General maintains that it cannot validly be argued that there was any discrimination between these two categories of staff members in this case.

34. The Secretary General further emphasises that the decisions she took as regards staff members holding Russian citizenship reflected her concern to find a balanced solution concerning their contractual situation. Her decision not to terminate any fixed-term contracts of staff members holding solely Russian citizenship but to keep them in employment until expiry of their contracts – which was the case of the appellant – clearly demonstrates the attempt to limit the negative consequences of the cessation of the Russian Federation's membership in the Organisation on the staff members concerned.

35. The Secretary General rebuts the appellant's claim that the decision in question disproportionately interferes with his/her right to private and family life, by noting that the appellant cannot seek to avoid the unavoidable consequences of the expiry of his/her fixed-term contract, having agreed to such consequences when he/she accepted the offer of employment and took up his/her duties. The Secretary General adds that the appellant was informed in due course of her decision concerning staff members with Russian nationality and cannot claim that he/she had a legitimate expectation of having his/her fixed-term contract renewed.

36. As regards the appellant's claims that she failed to protect him/her from retaliation, the Secretary General reiterates that the Organisation cannot, for the reasons set out above, offer him/her protection in the form of a contract of employment and cannot either secure the appellant's right to remain in France, which is a matter for the French authorities. The Secretary General observes that the appellant does not provide evidence to demonstrate that his/her return to the Russian Federation, and as a result, the risk of facing retaliation, is imminent or likely.

37. The Secretary General concludes that the Organisation has fully respected its obligations towards the appellant, and it cannot be argued that the contested decision was unlawful or discriminatory.

## II. THE TRIBUNAL'S ASSESSMENT

38. As a preliminary remark, the Tribunal specifies that the decision not to renew the appellant's contract, and not to convert it into an open-ended contract will be dealt with as a single decision for the purposes of the present judgment.

39. From the outset, the Tribunal notes that Article 6.1 of the Staff Regulations and Article 470.3 of the Staff Rule on entry into service establish the principle that fixed-term appointments expire in accordance with their terms. The Tribunal's consistent case law in this respect is that a staff member under a fixed-term appointment is not entitled to the renewal of their contract (ATCE, Appeals Nos. 722/2022, 731/2022, 732/2022 and 733/2022, *Orekhova and Others v. Secretary General*, [decision of 4 April 2023](#), paragraph 53) and the decision not to renew a contract is discretionary in nature and subject only to limited review by the Tribunal (*ibid.*, paragraph 41). Accordingly, the Tribunal will annul a decision not to renew a contract only if it: was not taken by a competent authority, is vitiated by a formal or procedural defect, is based on an error of fact or law, fails to take account of essential facts, is vitiated by an abuse of power or relies on conclusions wrongly drawn from the evidence in the file. 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 powers, they should not be arbitrary or irrational; they must be based on a valid reason and be announced within good time (see ATCE, Appeal No. 723/2022, *Zaytseva v. Secretary General*, [decision of 12 June 2023](#), paragraph 42 with further references).

40. Turning to the present case, the Tribunal observes that the reason given by the Secretary General to explain the contested decision is that, since the appellant no longer fulfilled the nationality criterion, it was legally impossible for the Organisation to conclude a new contract with him/her whether it be renewal of the contract, or its conversion into an open-ended one.

41. In this respect the Tribunal reiterates that it has already settled the question of whether the nationality criterion is an acceptable requirement for employment by an international organisation and must be met only on conclusion of the first employment contract on which staff members are appointed or whether it applies also to the conclusion of any subsequent employment contract with the Organisation. The Tribunal held that "it is the exact purpose of a fixed-term contract to render the eligibility criteria applicable to its renewal" (see *Orekhova and Others v. Secretary General*, [cited above](#), paragraphs 57 and 59.) The Tribunal finds no reason to depart from those findings in the present case given that the extension of the employment relationship between the appellant and the Organisation, whether it be renewal of



the existing contract or its renewal to other type of contract, could only be possible with the parties entering into a new contract, subject to meeting the eligibility criteria by the appellant. Given that the nationality criterion is an objective one, it tends to nullify the Secretary General's margin of discretion when deciding whether to pursue an employment relationship with a staff member (*ibid.*, paragraph 60).

42. The appellant's ground of appeal alleging that the impugned decision is legally flawed for lack of legal basis must therefore be dismissed as unfounded.

43. In so far as the appellant complains about discrimination on the ground of his/her nationality and on the ground of the type of his/her contract, the Tribunal refers to its above findings about the nationality criterion and the nature of the fixed-term contracts (see paragraphs 39 and 41) and concludes that the appellant could not be considered in a comparable situation neither to the Russian nationals on contracts of indefinite duration, nor to the employees of other nationalities on fixed-term contracts. Thus, the Administration did not violate the principle of non-discrimination in deciding to treat the appellant differently from staff members of other nationality and/or on other types of contracts, who are thus not in a situation comparable to that of the appellant (*ibid.*, paragraphs 64 to 67.)

44. In view of the above, the appellant' ground of appeal based on alleged discrimination must be dismissed as unfounded too.

45. As regards the appellant's claim that the Secretary General failed in her duty of care, the Tribunal observes that the consequences complained of by the appellant, which relate to the impact of the contested decision on his/her personal situation (paragraph 27), are the inevitable effects of the loss of his/her job. Having found that the Organisation did not commit any unlawful act in terminating its employment relationship with the appellant, the Tribunal considers that those effects do not constitute a prejudice for which the Organisation could be held liable.

46. As to the alleged risk of retaliation from the Russian authorities, the Tribunal notes that the appellant did not specify what other measures of protection he/she possibly expected to receive from the Secretary General apart from the annulment of the decision not to offer him/her a new contract. Irrespective of the fact that it was legally impossible for the Organisation to offer the appellant a new employment contract (paragraph 41), the Tribunal does not consider that the Organisation's duty of care towards its staff entails the duty to offer a contract. Therefore, the appellant's claim that the refusal to offer him/her such a contract entailed the failure to protect him/her is without merits.

### III. CONCLUSION

47. In conclusion, the present appeal is unfounded and must be dismissed. Consequently, the appellant should not be awarded any sum in compensation for damage.

For these reasons, the Administrative Tribunal:

Declares the appeal unfounded and dismisses it;

Decides that each party will bear its own costs.

Adopted by the Tribunal in Strasbourg on 20 March 2024 and delivered in writing in accordance with Rule 22, paragraph 1, of the Tribunal's Rules of Procedure on 22 March 2024, the English text being authentic.

The Registrar of the  
Administrative Tribunal

Christina OLSEN

The Chair of the  
Administrative Tribunal

Nina VAJIĆ