Appeal No. 743/2024

B. S.

v.

Governor of the Development Bank of the Council of Europe

***

JUDGMENT

25 November 2024

The Administrative Tribunal, composed of:

Paul LEMMENS, Chair,
Lenia SAMUEL,
Thomas LAKER, Judges,

assisted by:

Christina OLSEN, Registrar,
Dmytro TRETYAKOV, Deputy Registrar,

has delivered the following judgment after due deliberation.

PROCEDURE

1. The appellant, B. S., lodged his appeal on 8 January 2024. The following day, on 9 January 2024, the appeal was registered under No. 743/2024.

2. On 8 February 2024, the Governor of the Council of Europe Development Bank (the Bank) forwarded his observations on the appeal.

3. On 18 March 2024, the appellant filed submissions in reply.

4. On 16 April 2024, the Governor filed a rejoinder.

5. On 29 April 2024, the appellant filed a request for a stay of execution of the decision against which he was appealing (No. 2/2024). This request was dismissed by order of the Chair on 14 May 2024.

6. The public hearing on this appeal took place in the Administrative Tribunal's hearing room in Strasbourg on 3 June 2024. The appellant was represented by Maître Vaska Mitevski de La Lubie, a barrister practising in Strasbourg. The Governor was represented by Laura Guiard, a lawyer in the Directorate of legal affairs, assisted by Andrea Buccomino, deputy Director of legal affairs.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

7. Having applied for the position of Systems Engineer advertised in vacancy notice No. 11/2014, the appellant was recruited by the Bank as an End User Systems Engineer, at grade A2/1, on a one-year fixed-term contract (CDD) from 18 May 2015 to 17 May 2016. This period corresponded to his probationary period.

8. The appellant's appointment was confirmed following the probationary period and as a result he was given a further CDD, signed in February 2016 and lasting from 18 May 2016 to 17 May 2017. His contract was renewed for a further year in April 2017 for the period from 1 May 2017 to 30 April 2018.

9. Following an offer by the Bank in January 2018, the appellant was appointed to the same job of End User Systems Engineer, at grade A2/3, on a further CDD of four years, from 1 May 2018 to 30 April 2022.

10. Further to an offer by the Bank on 2 July 2021, which the appellant accepted on 19 July 2021, the appellant's CDD was renewed again for the period from 1 May 2022 to 30 April 2024. Prior to this, in an e-mail of 16 June 2021, the appellant had questioned the Bank's Directorate of human resources (DHR) as to the lawfulness of extending his CDD for two years. The e-mail was worded as follows:

> "Dear […],
>
> [I have been informed] that a two-year extension has been approved for me and that the new contract is being drafted for signature.
>
> As you are aware, I am now in my sixth year of service with the Bank, and at the end of the current contract (April 1, 2022) will be at full seven years serving on a post.
>
> According to the CEB Staff Regulations on contracts on posts, a fixed-term contract can be renewed (with another fixed-term contract) to a maximum of six years of service. …
>
> My understanding is that the Information Technology Division has put a request in due time a year before the expiry of my current contract) for my extension i.e. conversion to an indefinite-term contract, as I meet all the requirements ….
>
> I would very much appreciate if you could explain me the legal reasoning behind the new fixed-term contract which is being prepared for me. …."

11. The exchange of e-mails between the appellant and DHR ended with an e-mail from the deputy director of Human resources of 23 July 2021, worded as follows:

> "Thank you for your time via Zoom Monday morning, when we spoke about your contractual situation. I heard you on your perception of the situation and I understand that you would have preferred an earlier conversation about the proposal. At the same time, I noted your understanding that 2 years constitute the maximum length of renewal in your situation.
>
> Indeed, you were afforded a 4-year contract on post as of 1 May 2018, which constitutes the starting point of the 6-year limit on post. According to the regulatory framework (…), previous time on position is not taken into account in view of decisions on conversion, extension or expiry of fixed-term contracts on posts. …
>
> Please note that we received your acceptance of your contract extension. …".

12. In a letter from DHR of 8 September 2023, the director of Human resources notified the appellant that his CDD would terminate on the scheduled end-date of 30 April 2024. The letter referred to a conversation between the appellant and his superiors on 8 June 2023, during which the appellant had been informed that no request had been made by his managers for his CDD to be converted into an indefinite-term contract (CDI), bearing in mind his performance level and his competencies in the context of the needs of the Bank. The letter was worded as follows:

> "Dear [B. S.],
>
> In accordance with the Staff Regulations and Rules, fixed-term contracts expire in accordance with their terms, unless renewed or converted to an indefinite appointment.

> Your Head of Division, and his Deputy, informed you on 8 June 2023 that, taking into account the performance level and your competencies in the framework of the needs of the Bank, no request to convert your contract into an indefinite term one had been made.
>
> I therefore confirm that your fixed-term contract will end on 30 April 2024. …"

13. In an e-mail dated 9 October 2023, the appellant lodged an administrative complaint contesting the decision to end his CDD.

14. In a letter of 7 November 2023, sent to the appellant by e-mail on 8 November 2023, the acting Director of Corporate Services informed the appellant that the Governor had dismissed his administrative complaint. On the termination of his employment and the decision not to convert the CDD into a CDI, the letter stated as follows:

> "The reasons for not requesting a conversion were fully explained to you by your supervisors in a meeting on 8 June 2023. Contrary to what you argue, your managers explained that your performance, although satisfactory, did not reach the higher level expected for an indefinite-term contract. In particular, the past two performance evaluations were rated as satisfactory while a very satisfactory performance is required. Your competencies in the framework of the needs of the Bank were also taken into consideration in light of your management skills. In particular, a more autonomous profile with proven management and reporting skills is indeed expected from a longer-term perspective to meet the Bank's needs."

15. On 8 January 2024, the appellant lodged the present appeal.

II. THE RELEVANT LAW

16. The applicable law includes the following provisions of the Staff Regulations of the Bank which came into force on 1 January 2023 (the new Staff Regulations):

> "**Article 4. Entry in service**
>
> …
>
> 4.4 Staff members shall initially be appointed for a fixed-term period up to four years defined by contract. Except for non-renewable contracts, the Governor may decide to extend a fixed-term contract for a further fixed term of a minimum duration of three months, once or several times, for a total duration of service not exceeding six years.
>
> …
>
> 4.6 When deciding whether a fixed-term contract should be renewed or converted into an indefinite-term contract, three criteria should be taken into account: the needs of the Bank in terms of competencies, the performance of the staff member and the availability of budgetary resources, as further established by the Governor.
>
> …
>
> **Article 6. Termination**
>
> 6.1. Appointments for a fixed-term period shall expire in accordance with their terms.
>
> …"

17. Also of relevance are the following provisions of the Bank's Staff Rules, which also came into force on 1 January 2023 (the new Staff Rules):

> **"430. Duration of appointment**
>
> 430.1. Fixed-term contracts shall expressly provide for the duration of the appointment and for (i) the possibility of renewal one or more times up to six years and of conversion into an indefinite-term contract or (ii) automatic termination upon expiry without possibility of renewal.
>
> …
>
> 430.3 The relevant Director shall, on the basis of the criteria under paragraph 450 below, either i) inform the Director in charge of Human Resources that a renewal of a fixed-term contract will not be requested or ii) submit a request to the Director in charge of Human Resources to renew a fixed-term contract.

430.4 This request shall be submitted at least six months prior to the expiry date of the contract, and in principle four months prior to the expiry date of the contract with regard to one-year fixed-term contracts.
…

440. Conversion of fixed-term contracts into indefinite-term contracts

440.1. Conversion procedure

440.1.1. The Director concerned shall, on the basis of the below-mentioned criteria, either i) inform the Director in charge of Human Resources that a conversion of a fixed-term contract into an indefinite-term contract will not be requested; or ii) submit a request to the Director in charge of Human Resources to convert a fixed-term contract into an indefinite-term contract.
440.1.2. This request shall in principle be submitted at least twelve months prior to the expiry date of the contract.
440.1.3. The Director in charge of Human Resources shall seek guidance from a Contracts Review Committee (CRC) in order to make their recommendation for the Governor's decision.

440.2. Contracts Review Committee (CRC)

440.2.1. The CRC shall review the relevant documentation submitted in support of the request of the Director concerned and give its opinion to the Director in charge of Human Resources on whether or not to follow this request.
440.2.2. Meetings shall be held as needed to ensure that the staff members concerned are notified of the decision at the latest six months prior to the expiry of the fixed-term contract.
…

450. Criteria for renewals and conversions

450.1. With respect to the renewal of a fixed-term contract, the needs of the Bank in terms of competencies shall correspond to the needs of the job function and the competencies required, and the staff member's performance must be satisfactory.
450.2. The conversion of a fixed-term contract into an indefinite-term contract may occur only if considered to be in the long-term interest of the Bank, bearing in mind the organisational requirements, e.g. the medium to long-term needs of the Directorate concerned, the needs in terms of skills and competencies of the Bank at large, the strong performance of the staff member in all critical areas, including in mastering of the Bank's core competencies and values, the adaptability to take on other functions and the potential for career or skills development.
(…)

510. Performance management

…

510.4 Evaluation levels

510.4.1. The performance shall be evaluated either as "successful" or as "needs improvement".
510.4.2. A "successful" performance does not confer any automatic entitlement to further renewal of contract, to conversion into another type of contract, nor to step advancements, promotions and bonuses.

18. Appendix 2 of Governor's Rule No. 02/22 of 15 December 2022, adopting the new Staff Rules to enter into force on 1 January 2023, contains the list of rules and other implementing provisions of the old Staff Regulations which were repealed from that date. On this list is Governor's Rule No. 01/2018 of 19 January 2018 concerning the procedures on the implementation of the [former] Regulations on Appointments. Article 11 of this Rule, on the conversion of CDDs into CDIs, provides as follows:

"1. Staff members' fixed-term contracts on posts cannot be renewed beyond six years of service.

2. A staff member shall not be entitled to the conversion of a fixed term contract into an indefinite-term contract. In line with Article 15, paragraph 3, of the Regulations on Appointments such conversion may occur only if considered to be in the long-term interest of the Bank, bearing in mind the organizational requirements, e.g. the medium to long-term working needs of the relevant Major Administrative Unit, the needs in terms of competencies of the Bank at large, the very satisfactory performance of the staff member in all critical areas, including a specific assessment of social competence, the adaptability to take on other functions and career/skill development potential. …".

19. The conversion of CDDs into CDIs is the subject of guidelines approved by the director in charge of Human resources on 14 February 2019. These guidelines, which are still in force, contain *inter alia* the following provisions:

> "**DECISION POINTS ON CONTRACTS AND THE ROLE OF THE CONTRACT REVIEW COMMITTEE (CRC):**
>
> The CRC only reviews requests for conversion into open-ended contracts.
> …
> To ensure consistency in the work and opinions of the CRC, the following conditions apply:
>
> **DOCUMENTATION**
> The CRC should have at their disposal:
> - The past two Performance and Development Reviews for the staff member concerned [Footnote 1: At least one of the two appraisals should have a rating above Good Performance and none below.];
> …".

THE LAW

20. In his appeal, the appellant requests that the Tribunal annul the decision of the Bank of 8 September 2023, in which he was notified that his employment would be terminated on 30 April 2024. The appellant requests primarily that the Tribunal order that his contractual relationship with the Bank be reclassified as a CDI or, in the alternative, that his contract be converted into a CDI. Failing this, he asks that the Bank be ordered to pay him compensation of 24 months' emoluments. He also seeks the reimbursement of the costs incurred in the current proceedings, amounting to 4 000 euros.

21. The Governor of the Bank asks the Tribunal to declare the appeal inadmissible because the appellant is disputing the length of the contract renewal he was offered in July 2021.

22. In the event that the Tribunal considers the appeal to be fully admissible, the Governor asks the Tribunal to declare the appeal unfounded and hence to dismiss all the appellant's claims. With regard in particular to the appellant's requests to be given a CDI – either through reclassification of his contractual relationship or through conversion of his CDD into a CDI –, the Governor argues that the Tribunal has no power to order such a reclassification or conversion, and therefore that these requests must be rejected. As to the appellant's compensation claim, the Governor considers the sum requested totally disproportionate in view of the appellant's length of service; he requests that any compensation which may be awarded by the Tribunal by way of exception should not exceed the reasonable amount of one month of emoluments per year of service, in other words nine months' worth in total.

III. THE PARTIES' SUBMISSIONS

A. Admissibility

1. *The Governor*

23. The Governor considers that the appeal is time-barred in that it calls for the renewal of the CDD with effect from 1 March 2022 because of an alleged surpassing of the maximum period of employment.

24. The Governor states that in the instant case, the decision that is liable to adversely affect the appellant is the offer to renew the contract, which he accepted on 19 July 2021. In the Bank's opinion, if the appellant wished to contest the decision on the ground that it extended his contract beyond the maximum limit applicable, he should have raised the issue at this point, filing an administrative complaint within 30 days of the offer to renew, in other words in August 2021, in accordance with the procedure provided for by Article 14 of the new Staff Regulations. However, the appellant did not submit a written reservation concerning the offer of a renewal, nor at any point did he attempt to question it or renegotiate. On this point, the Bank refutes the appellant's assertion that he only agreed to the extension of his contract in July 2021 after he had received an assurance from the Bank that his CDD would be converted into a CDI on expiry. As he did not raise this issue until his complaint of 9 October 2024, the Bank considers that in this respect, the complaint and hence the appeal should be considered time-barred and therefore inadmissible.

2. *Appellant*

25. In reply to the objection of admissibility raised by the Governor, the appellant submits that he cannot be accused of not having contested the renewal of his CDD in 2021 as not only did this new contract enable him to continue being employed by the Bank for two more years but it was also a means of maintaining the possibility of being granted a CDI when it came to an end. This did not therefore constitute, in the appellant's view, an administrative act adversely affecting him and hence capable of being the subject of an administrative complaint. The appellant argues that the same applies to the explanations he was given concerning his contractual situation during his exchanges with DHR when the renewed contract was negotiated. Because these explanations were not given by the Governor, the appellant submits that they cannot be regarded as a definitive administrative act. The appellant also argues that he accepted the offer to extend his contract in July 2021 only after he had received an assurance from DHR that when his CDD expired, it would be converted into a CDI. Given these circumstances, the appellant argues that only the decision to terminate his employment with the Bank permanently, set out in the letter of 8 September 2023, could constitute the administrative act adversely affecting him which he could contest by means of an administrative complaint.

B. Merits of the appeal

1. *The appellant*

a) On the reclassification of the contractual relationship between the appellant and the Bank as a CDI

26. The appellant bases his request for his contractual relationship with the Bank to be reclassified as a CDI on the fact that he had been kept in an employment relationship under successive CDDs for a period of nearly nine years in breach of the applicable statutory provisions which limit the length of employment on CDDs to six years. The appellant points out that at no point in the successive versions of the Staff Regulations do the provisions in question make a distinction regarding the maximum length of employment depending on whether the staff member was recruited on a post or a position. Consequently, in the appellant's view, the Bank cannot maintain that his first three contracts on a position should be left out of the calculation of the length of his employment in relation to the six-year limit and that these six years could only begin to be counted when he was appointed on a post on 1 May 2018.

b) On the decision not to convert the CDD which expired on 30 April 2024 into a CDI

27. The appellant claims that the decision to terminate his employment and not convert his CDD into a CDI is unlawful because it is not substantiated by sufficient reasons and is vitiated by a manifest error of assessment and a procedural irregularity.

28. Firstly, he argues that the reason given for the contested decision is no more than an administrative formula, which is not enough to explain the reasons for the non-renewal of his contract. The appellant refutes the reported content of the discussion he had with his superiors on 8 June 2023. While he accepts that he was informed at this meeting that his contract was being terminated, he denies that it was explained to him in what way his performance level and his competencies failed to meet the needs of the Bank. As the disputed decision provided no clarification as to the supposedly inadequate level of his competencies and performance, the reasons given are, in the appellant's view, inadequate and the response to his administrative complaint was not such as to remedy this inadequacy. The appellant goes on to describe the circumstances in which the appraisal of his performance in 2023 was validated, and how this amounted, in his view, to an attempt on the part of the Bank to compensate for the inadequacy of its reasons in retrospect.

29. Secondly, the appellant claims that the Bank committed a manifest error of assessment by failing to apply the relevant rules or to appreciate the quality of his performance. In connection with this complaint, he observes that paragraph 450.2 of the new Staff Regulations merely makes the conversion of CDDs into CDIs subject to "strong performance" and does not require, as the Bank does in this case "very good performance" in the last two appraisals or provide for the possibility for the Bank to adopt implementing provisions legitimising such a requirement. The appellant then refers to the results of his appraisals and the bonuses he was awarded as evidence that the Bank drew clearly erroneous conclusions from his file, leading it to under-estimate his performance. He also contests the right of the Governor to exercise discretionary powers on this matter from the viewpoint of an assessment of the Bank's needs. It was not justified for the Bank to rely on a change in its needs in terms of qualifications and competencies to justify the termination of the appellant's employment when it published a vacancy notice for a job to begin on 1 May 2024 on a post whose duties are identical to those of the appellant.

30. Thirdly, the appellant argues that there was a procedural irregularity in that the director concerned failed to inform the director in charge of Human resources that a conversion would not be requested within the stipulated 12-month period preceding the expiry of the contract, in breach of paragraph 440 of the new Staff Rules.

2. *The Governor*

a) On the reclassification of the contractual relationship between the appellant and the Bank as a CDI

31. The Governor submits that if the Tribunal considered the objection to the renewal of the appellant's CDD in 2021 admissible, the offer of renewal should in any case be deemed to comply with the applicable law. The Governor notes in this respect that until the entry into force of the new Staff Regulations – in which the distinction between "post" and "position"

was eliminated at contractual level –, the applicable provisions of the regulatory framework had always applied different maximum lengths of service depending on whether the staff member was appointed to a post or a position.

32. The Governor points out that when he was recruited in 2015, the appellant was appointed to a position, and it was not until 2018 that he was appointed to a post. Consequently, when his contract was to be renewed in 2021, the appellant had not occupied a post for over six years and the six-year limit for contracts on posts had been respected. The Governor notes that if we pursue the appellant's argument that the six-year limit should have applied regardless of the distinction between positions and posts, this limit would have been breached when the four-year CDD he was offered in 2018 was signed, as this contract entailed seven years' service in total at the Bank.

33. In the alternative, the Governor argues that even if it is accepted that the renewal of the appellant's CDD in 2021 was in breach of the rule on maximum length of service with the Bank, this breach would not give rise to a right to a CDI pertaining to the appellant.

b) On the decision not to convert the CDD which expired on 30 April 2024 into a CDI

34. The Governor disputes all the arguments raised by the appellant in support of his appeal against the refusal to convert his contract.

35. With regard to the appellant's submissions regarding an alleged failure to provide reasons for the contested decision, the Governor refers to the reasons which prompted the appellant's managers not to request the conversion of his contract, which were communicated to him at the meeting of 8 June 2023. The Governor notes that these reasons were reiterated in the letter notifying the appellant of the termination of his contract on 8 September 2023 and were repeated and described in more detail in the response to the appellant's administrative complaint, in a letter of 7 November 2023. The Governor infers from this that the reasons given were sufficient, consistent and communicated in good time to the appellant, thus enabling him to contest them. The appellant's argument concerning his appraisal for 2023 is moreover of no relevance as this appraisal was made after the contested decision, which was based on the appraisals for 2021 and 2022.

36. As to the appellant's submissions concerning a manifest error of assessment, the Governor maintains that in the absence of the conditions required for the award of a CDI, there was no reason to set the procedure which could have led to the conversion of his contract in motion as it was bound to fail. In the present case, the requirement to have attained a "very satisfactory" performance in the last two appraisal rounds (2021 and 2022), as required by the directives on conversion, had not been met. The Governor points in this respect to the discretionary nature of the decision at stake. He argues that in any case, satisfactory performance does not in itself confer a right to contract conversion.

37. In reply to the appellant's argument that the procedure was vitiated by an irregularity, the Governor provides some clarification on the applicable procedure with a view to illustrating that it was complied with perfectly and that the director in charge of Human resources was informed in good time that the appellant's managers would not be requesting the conversion of his contract. The Governor maintains that even if the alleged irregularity were found to have occurred by the Tribunal, it could not result in the annulment of the

contested decision because it had no impact on the decision and caused no harm to the appellant.

IV. THE TRIBUNAL'S ASSESSMENT

A. Object of the appeal

38. On the appeal form, under the heading "Object of the appeal", the appellant requests the annulment of the decision of 8 September 2023 to terminate his employment on expiry of his CDD, "in addition" to the award of a CDI and "otherwise", compensation for the harm suffered. Under the heading "Grounds of the appeal", he calls "primarily for the reclassification of the contractual relationship as a [CDI]" and "in the alternative, the conversion of the current contract into a [CDI]".

39. The Tribunal considers the appeal truly to be directed solely against the decision of 8 September 2023, which the appellant asks to be set aside. It also understands that the appellant argues that this decision is unlawful, primarily because it overlooks the fact that his CDD should have been regarded as having been converted automatically into a CDI, meaning that the Bank could not apply the rules on CDDs to his contractual relationship, or, in the alternative, because the Bank could not, when terminating his employment, refuse to convert his CDD into a CDI.

B. Admissibility

40. The Governor asserts that the appeal is inadmissible because the appellant is contesting the offer of a two-year renewal of his CDD. In the Governor's opinion, this offer was made to the appellant in July 2021, meaning that it is out of time.

41. As has just been explained, the Tribunal considers the appeal to be directed solely against the decision of 8 September 2023 as the reference to the unlawfulness of the previous offer to renew his CDD by two years is made only in support of the complaints against that decision. Having interpreted the object of the appeal in this manner, the Tribunal must find that the objection of inadmissibility is directed against a decision which is not the object of the appeal. It follows that the objection is moot and must therefore be dismissed.

42. Since the appeal is not inadmissible on any other ground, the Tribunal declares it admissible.

C. The merits

a) Complaint concerning the failure to reclassify the contractual relationship between the appellant and the Bank as a CDI

43. The Tribunal notes the appellant's principal argument, which is that his contractual relationship with the Bank, which has now been discontinued, must be regarded as that of a CDI because the maximum period of employment on a CDD was exceeded.

44. In the light of the object of this appeal as specified above (paragraph 39), the Tribunal notes however that no causal or connective link can be established between the expiry of the appellant's last CDD and the alleged surpassing of the maximum length of employment on a CDD. While the termination of the appellant's employment is covered by a decision of

September 2023, the alleged surpassing of the maximum six-year limit on CDDs can only be related to a previous decision, depending on the moment at which this overshoot occurred.

45. Having established this, it is not necessary for the Tribunal to rule on whether the maximum length of employment on a CDD should be calculated from the date on which the appellant was first appointed to a position or solely from the later date of his appointment to a post. Even if this alleged overshoot were proven, it would have no impact on the lawfulness of the decision at issue as the latter was separate and independent from any offer of employment or offer to renew a CDD which the appellant had received in the past.

46. In this connection, the appellant is wrong to assert that the effect of concluding a CDD for a length exceeding the established limit is the "reclassification" of his contractual relationship as a CDI. Even if it is supposed that the Bank infringed the rule concerning the maximum length in force for employment on a CDD, this infringement would not necessarily create a new entitlement, namely the right to a CDI, and nor would it result in the automatic conversion of his CDD into a CDI.

47. Under these circumstances, the Tribunal considers that the argument relating to the surpassing of the maximum length of a CDD and the failure to automatically transform a CDD into a CDI on expiry of the six-year limit is in any case ill-founded.

b) Complaint concerning the refusal to convert the CDD which expired on 30 April 2024 into a CDI

48. The Tribunal points out that it is well-established that an Organisation's decision to terminate an employment relationship at the end of his contract is part of that Organisation's discretionary powers, over which the Tribunal exercises only limited control (Administrative Tribunal of the Council of Europe (ATCE), Appeal No. 723/2022, *Natalia Zaytseva v. Secretary General of the Council of Europe*, decision of 12 June 2023, paragraph 42 and cited case law). In the instant case, the discretionary nature of the disputed decision is confirmed by the wording of paragraph 510.4.2 of the new Staff Rules, which states that "a 'successful' performance does not confer any automatic entitlement to further renewal of contract" or "to conversion into another type of contract".

49. When ruling on the lawfulness of an administrative decision, it is for the Tribunal to determine from the circumstances: "whether the rules on competence, form and procedure were observed; whether the official was given reasonable notice, even if the contract did not require it; whether the decision was duly substantiated and the reasons for it were conveyed to the official in such a way that he might properly defend his interests; whether some material fact was overlooked or there was some obvious mistake of fact or of law; and whether the decision was taken in the organisation's interests or shows some abuse of authority" (Administrative Tribunal of the International Labour Organisation (ILOAT), judgment 1317 of 31 January 1994, *Amira*, paragraph 24 and cited case law).

50. With regard, firstly, to procedural regularity, the appellant complains that the information concerning the fact that the conversion of his CDD was not to be requested was not correctly passed on to him. The Tribunal notes in this respect that the relevant rule, namely paragraph 440.1.1 of the new Staff Rules provides that the director concerned is required to pass on this information to the director in charge of Human resources, not the staff member concerned. The important thing is that the staff member concerned should be informed in good

time about what is to happen to the CDD, which is to say, "at the latest six months prior to the expiry of the fixed-term contract", as stipulated in paragraph 440.2.2 of the Staff Rules.

51. It is clear from the applicable rules therefore that the appellant was unjustified to complain in his administrative complaint that he had not received the information that no request had been made for his CDD to be converted. On the other hand, it is not disputed that the appellant was informed with six months' notice, namely on 8 September 2023, that his contract would expire on 30 April 2024.

52. Before the Tribunal, the appellant rewords his complaint somewhat and seems to complain instead that the director in charge of Human resources was not informed in good time that there would be no request to convert his CDD (see paragraph 30). The Tribunal notes however that the appellant is wrong to claim that the 12 months' notice required under paragraph 440.1.2 of the new Staff Rules was not observed, as this notice period relates only to situations in which conversion is requested. In any case, even it is supposed that the director in charge of Human resources was informed less than 12 months before the expiry of the contract, the Tribunal does not see how such a delay could have had any effect on the decision not to extend the appellant's employment relationship.

53. It follows that this complaint must be declared inadmissible as being devoid of interest or in any case unfounded.

54. With regard, secondly, to the requirement to give reasons, the Tribunal points out that it is well-established case law that "the obligation to give reasons for any decision which, as in this case, adversely affects a person is intended to provide the staff member concerned with sufficient information to enable them to ascertain whether that decision is well founded or whether it suffers from a defect that would enable them to challenge, and the Tribunal to review, the lawfulness of the impugned decision. Whether sufficient reasons have been given for an act will thus be assessed in the light of the factual and legal context in which that act was adopted" (ATCE, Appeal No. 606/2019, *Céline Cosset v. Secretary General of the Council of Europe*, decision of 30 October 2019, paragraph 72), bearing in mind that sufficient reasons can be considered to have been given if the decision "was adopted in circumstances known to the staff member concerned which enable him or her to understand the scope of the measure concerning him or her" (ATCE, Appeal No. 651/2020, *B v. Secretary General of the Council of Europe*, decision of 13 July 2021, paragraph 80).

55. In the instant case, the Tribunal notes that the disputed decision by the director of Human resources on 8 September 2023 is substantiated with reference to a meeting held on 8 June 2023, during which, according to the Bank, the appellant was informed of the reasons why no request had been made to convert his CDD into a CDI. The appellant denies, however, that this is what occurred and asserts that on this occasion, no mention was made either of the inadequate nature of his qualifications and competencies or of the Bank's needs. Since the Bank has not provided any evidence capable of illustrating the actual nature of the exchanges during this meeting, it has to be found that the meeting in question cannot be taken into account when deciding whether reasons were given in accordance with the regulations.

56. The question is whether the reasons provided in the decision of 8 September 2023, describing the appellant's performance level and competencies in relation to the Bank's needs, without any further specification, can be considered sufficient in the specific circumstances of the case. In response, the Tribunal points out that the relevant case law establishes the principle

that "the reasons for an act must, in principle, be communicated to the staff member at the same time as the decision adversely affecting them" (ATCE, Appeal No. 606/2019, *Céline Cosset v. Secretary General of the Council of Europe*, decision of 30 October 2019, paragraph 73). It also accepts, depending on the specific circumstances surrounding the decision, that it may be sufficient to supply the beginnings of a statement of reasons in the initial decision provided that adequate reasons are given when the complaint against the decision is dismissed (judgment of the European Union Civil Service Tribunal of 11 July 2013, *Tzirani v. Commission*, F-46/11, paragraph 159, and case law cited). The relevant case law states that the existence of the beginnings of a statement of reasons is subject to a detailed assessment by the courts (judgment of the Court of Justice of the European Union of 11 June 2020, *Commission v. Di Bernardo*, C-114/19 P, paragraph 55). In cases in which an administrative complaint has been lodged, courts or tribunals must check whether the reasons given to a staff member in the context of the dispute enabled them, among other things, to challenge them on appeal (ILOAT, judgment No. 2112 of 30 January 2002, *Nasrawin*, paragraph 5) and to defend their interests in full knowledge of the facts (ILOAT, judgment 1317 of 31 January 1994, *Amira*, paragraphs 24 and 28, and case law cited).

57. In the light of the case law principles cited, the Tribunal considers that the Bank's initial decision contained the beginnings of a statement of reasons, albeit very brief, in that it referred to the appellant's performance level and competencies in relation to its needs when justifying its decision not to convert his CDD into a CDI. The Tribunal finds that on the basis of these elements, the appellant was able to lodge an administrative complaint contesting the alleged inadequacy of his profile in terms of competencies and performance in relation to the Bank's needs. The needs in question, which were not identified in the disputed decision, were subsequently described sufficiently in the decision to dismiss the appellant's administrative complaint, in which the Bank explained that, with a view to the long term, it was seeking somebody with a more autonomous profile with proven management and reporting skills. With regard to the appellant's competencies, the decision to dismiss his complaint also specified that the appellant's performance, although satisfactory, had not reached the higher level expected for a CDI (see paragraph 14).

58. The Tribunal considers therefore that the disputed decision, as complemented by the decision to dismiss the appellant's administrative complaint sets out adequately although briefly the reasons leading to the termination of his employment. Hence it provided sufficient information for him to assert his rights and for the Tribunal to be able to carry out checks.

59. In the light of the foregoing, there is reason to find that in the circumstances of the case, the disputed decision was sufficiently substantiated. The appellant's complaint that insufficient reasons were given must therefore be dismissed as being unfounded.

60. The third issue to consider is whether the contested decision had a legally admissible and sufficient basis in the components of the case file or, as the appellant claims, it is vitiated by a legal error or a manifest error of assessment.

61. In this respect, the Tribunal notes that by deciding not to convert the appellant's CDD into a CDI, the Bank based itself on paragraph 450.2 of the new Staff Rules. In so doing, the Bank considered that the appellant failed to meet two of the criteria set out therein, namely "the needs in terms of skills and competencies of the Bank" as a whole and "the strong performance of the staff member in all critical areas, including … the adaptability to take on other functions and the potential for career or skills development". In principle these are appropriate criteria to

justify the Bank's decision to discontinue its contractual relationship with the appellant. The complaint of a legal error is therefore unfounded.

62. In addition, the Tribunal notes that the assessment which the Bank made of the appellant's profile in the light of these criteria before deciding not to convert his contract was confirmed by the evidence in the case file, as reflected in his appraisal reports. From 2019 onwards and repeatedly, in 2020, 2021 and 2022, the appellant's managers identified areas in which he could improve his skills and yet there was nothing in the reports which showed any progress in this area. The Tribunal also notes that the areas of competence in question, namely project planning and management, were ones which were highlighted in the vacancy notice published in October 2023 to fill a similar post to that of the appellant.

63. In support of its assessment, the Bank also referred to the guidelines of 14 February 2019 on the conversion of CDDs into CDIs. Under these guidelines, at least two of the last appraisals of the staff member concerned must exceed a good performance to be able to justify a request for conversion, and this was not the case for the appellant because his performance for the periods concerned (2021 and 2022 appraisals) did not exceed a "good" performance rating.

64. The arguments which the appellant puts forward in asserting that this requirement does not apply to him have no weight. While it is true that the "very satisfactory" performance requirement did not apply to him under Governor's Rule No. 1/2018 because this instrument was repealed on 1 January 2023 (paragraph 18), the "exceeding good performance" requirement continued nonetheless to figure in the guidelines of 2019 on converting CDDs to CDIs (paragraph 19). Yet, as long as the provisions of the DHR guidelines were not at variance with the new Staff Rules and Regulations, which came into force on 1 January 2023, they could continue to be applied and the Governor could be guided by them when exercising the discretionary power accorded to him in this respect (paragraph 48) to determine what constitutes the "strong performance" required by paragraph 450.2 of the new Staff Rules.

65. Therefore, the Tribunal concludes in this respect that the Governor did not exceed the limits of his authority when, in order to decide whether or not the appellant's CDD should be converted into a CDI, he checked if one of the appellant's last two appraisals had ranked his performance as greater than good and, on finding that it was not, he considered that one of the requirements to proceed with the contract conversion was not met. Insofar as the last two appraisals in question were those for 2021 and 2022, the appellant's argument concerning the circumstances in which the appraisal of his performance in 2023 was validated (paragraph 28) cannot cast any doubt on this conclusion.

66. The Tribunal also considers that the Governor could legally rely on the appraisal system set up within the Bank to assess the appellant's "performance" within the meaning of paragraph 450.2 of the new Staff Rules. Bearing in mind that staff appraisal is a regulated process whose aim is to draw objective and transparent conclusions about staff members' performance levels, the appellant's annual appraisal reports could be considered a reliable and sufficient source of information through which to determine whether it was justified to convert his CDD into a CDI. It cannot therefore be claimed that the Bank should have carried out more detailed enquiries into the appellant's performance before deciding that it was not in its interest to request the conversion of his CDD.

67. As to the appellant's argument that after these appraisal procedures, the Bank should have given him a performance rating higher than "good", the Tribunal considers that the appellant is in no position to question his appraisals at this stage. If the appellant had wished to argue in favour of a higher ranking than that accorded to him, he should have lodged a complaint to that effect using the remedies available to him at the material time and sought a decision which he could, if necessary, have challenged before the Tribunal (see, *mutatis mutandis*, ATCE, Appeal No. 738/2023, *C. A. v. Secretary General of the Council of Europe*, judgment of 25 January 2024, paragraph 30). The Tribunal also notes that the appellant's arguments concerning the Covid bonus and the merit-based step increment he received both relate to the reference year of 2020 whereas the decision not to convert his CDD into a CDI is based, in accordance with the regulations, on his appraisals for the reference years of 2021 and 2022. These arguments therefore are moot in the instant case.

68. Lastly, the Tribunal would point out with regard to the staff appraisal procedure, that "a reporting officer has wide discretion (…). The presumption is that such assessment is made in good faith in the interests of both organisation and staff member, and it will stand unless there is an obvious mistake of fact or failure to show the sort of objectivity that ought to govern reporting" (ILOAT, judgment No. 1136 of 29 January 1992, *Popineau (Nos. 3 and 4)*, paragraph 6).

69. In the light of the foregoing, the Tribunal concludes that the complaint alleging a manifest error of assessment must be dismissed as unfounded.

V. CONCLUSION

70. The Tribunal concludes that the Governor's decision not to extend the appellant's employment is not vitiated by a procedural irregularity, is supported by adequate reasons and is not the result of a mistaken assessment in law or in fact. The present appeal is unfounded and must be dismissed.

For these reasons, the Administrative Tribunal:

Declares the appeal admissible but unfounded and rejects it;

Rules that each party shall bear its own costs.

Delivered by the Tribunal on 25 November 2024, the French text being authentic.

The Registrar of the Administrative Tribunal	The Chair of the Administrative Tribunal
Christina Olsen	Paul Lemmens