

Appeal No. 744/2024

I. S. V.

v.

**Secretary General
of the Council of Europe**

JUDGMENT

14 August 2024

The Administrative Tribunal, composed of:

Paul LEMMENS, 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. V., lodged her appeal on 15 January 2024. On the same day the appeal was registered under No. 744/2024.
2. On 19 February 2024, the Secretary General forwarded her observations on the appeal.
3. On 28 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 12 March 2024, the appellant lodged her observations in reply.
5. On 27 March 2024, the Secretary General submitted her rejoinder.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

6. The appellant is a Council of Europe staff member employed under an open-ended contract at grade A2 since 1 January 2023. She has been previously employed at the Council of Europe on the basis of successive fixed-term contracts (CDD) at grade A2 between 11 November 2013 and 30 June 2015, when her employment was terminated for lack of funds.
7. On 1 April 2017, the appellant was re-hired and was employed until 1 January 2023 under consecutive CDDs at grade A2.
8. From 1 August 2019 to 15 April 2021, the appellant was on unpaid leave for personal reasons.
9. On 5 January 2022, the appellant wrote to the Directorate of Human Resources (DHR) to seek information on, among other issues, the date at which she would be eligible for promotion to grade A3. The appellant's email read as follows:

“ (...) I had a question regarding my contract. I have been with the Council of Europe for a few years now (with leave of absence in between) and I am still at the same level as I was recruited in 2013, A2, step 1.

Would you be able to advise as to why my step level has not changed and when would I be eligible for A3? (...)"

10. By an email dated 19 January 2022, the DHR replied that the appellant would not be eligible for promotion before 15 December 2024 — effective on 1 January 2025. The email read as follows:

"In reply to your question about eligibility for promotion to grade A3, your period of unpaid leave is not counted in the calculation of the 6 years' service. Therefore, you will have completed the 6 years on 15 December 2024 and the effective date of the promotion would be 1 January 2025 (the effective date of all promotions is the first of the month). You will see below an extract from the Regulations on Appointments (appendix II to the Staff Regulations): (...)"

11. On 19 January 2022, the appellant enquired on the reasons why her period of employment with the Council of Europe between 11 November 2013 and 30 June 2015 was not taken into account in the calculation of the six years of service required to be promoted from grade A2 to grade A3. An exchange of emails ensued and on 7 September 2022, the DHR replied by an email worded as follows:

"As follow up to your question, I wish to inform you that your employment with the Council from 2013 to 2015 may not be taken into account in the determination of your entitlement to advancement in steps and eligibility for promotion to grade A3.

(...)

As regards your promotion to A3, it is recalled that you were recruited on 1/4/2017 at grade A2/step 1 following an interruption of your employment with the Organisation that ended in 2015. In line with the established administrative practice, periods of employment with the Organisation prior to an interruption of employment and a subsequent rehire by the Organisation are not taken into account as years of service in the meaning of Article 24 of the Regulations on appointments (Appendix IV to the Staff Regulations). Therefore, as I indicated in my message dated 19 January 2022, you would be eligible for promotion to grade A3 as of 1 January 2025 as long as the other conditions, such as satisfactory performance, are met. (...)"

12. In response to the DHR's email of 7 September 2022, the appellant sent an email dated 29 September 2022 asking the DHR when the decision not to take into account her period of service with the Organisation between November 2013 and June 2015 in the determination of her eligibility for promotion to grade A3 would be taken, and what the procedure was for such a decision. In reply to her query, the appellant received an email by the DHR dated 12 October 2022 which read as follows:

"You may consider my email of 7 September 2022 as the official decision concerning your request. There is no separate procedure for deciding such matters. (...)"

13. On 7 July 2023, the Head of the Major Administrative Entity (MAE) in which the appellant was working sent a memorandum to the Director of Human Resources proposing that she be promoted from grade A2 to grade A3 in accordance with paragraph 540.1 of the Staff Rule on career development, in force since 1 January 2023.

14. On 14 September 2023, the Director of Human Resources replied to the appellant's Head of MAE that "in order to ensure equality of treatment amongst our staff", periods of leave of absence were not taken into account as years of service. The appellant would only have completed the required six years of service in grade A2 on 15 December 2024 and thus be eligible for promotion to grade A3 on 1 January 2025, subject to satisfactory performance and conduct during the three consecutive years immediately preceding the proposal by her Head of MAE. The reply highlighted that the appellant had already received replies in January and

September 2022 informing her that her request was premature and further invited the appellant's Head of MAE "to resubmit a request to promote [the appellant] at the appropriate time".

15. On 29 September 2023, the appellant initiated the process of management review against the Director of Human Resources' decision dated 14 September 2023.

16. On 11 October 2023, she received a memorandum concerning her request for a management review. It read in particular:

"(...) I note that the decision [of 14 September 2023] set out the reasons for which you are not eligible for promotion to Grade A3, which had already been provided to you by a staff member of the Directorate of Human Resources in emails dated 13 and 19 January and 7 September 2022. These reasons are based on Article 24 of the Regulations on Appointments (Appendix II to the Staff Regulations which were in force until 31 December 2022); paragraph 540.1 of the Staff Rule on career development, which entered into force on 1 January 2023 and which did not alter the provisions regarding promotion from A2 to A3; as well as the longstanding and consistently applied administrative practice whereby periods of service preceding an interruption of employment with the Organisation are not taken into account in the calculation of eligibility for promotion to Grade A3.

To conclude, I find the decision taken on 14 September 2023 by [the Director of Human Resources] was properly taken, and I therefore confirm it, pursuant to paragraph 1440.4 of the Staff rule on grievance procedures. (...) should you be unsatisfied with this outcome of the management review, please note that you are entitled to challenge it by way of a formal complaint to the Secretary General, as provided by Article 1450 of the aforementioned Staff Rule."

17. Unsatisfied with the outcome of the management review, the appellant lodged on 20 October 2023 a formal complaint with the Secretary General.

18. On 20 November 2023 the Secretary General dismissed the complaint in its entirety on the grounds that it was inadmissible and, furthermore, ill-founded.

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

II. THE RELEVANT LAW

20. The rules governing the grievance procedures are laid down in Article 14 of the Staff Regulations and the corresponding implementing provisions of the Staff Rules, as follows:

Article XIV of the Staff Regulations - Grievance procedures

(...)

14.3 Staff members who consider that an administrative decision is prejudicial to their interest and conflicts with their terms and conditions of appointment, or with any pertinent provisions of the Staff Regulations, Rules, Instructions or Policies, may initiate the process of management review, allowing for the correction of an improper decision or, where a decision was properly taken, its confirmation along with a reasoned explanation. The modalities of the review shall be set out in Staff Rules adopted by the Secretary General.

14.4 After pursuing management review, staff members who are not satisfied with the outcome thereof may lodge a formal complaint with the Secretary General against the contested administrative decision adversely affecting them, provided that they have a direct and existing interest in doing so. The modalities of the complaints procedure shall be set out in Staff Rules adopted by the Secretary General.

14.5 The Secretary General's decision on the complaint may be appealed to the Administrative Tribunal of the Council of Europe in accordance with the provisions of the Tribunal's Statute. (...)

Staff Rule on grievance procedures

1420. DEFINITIONS

1420.1 An administrative decision is any decision, action or implicit decision, taken by an official with administrative powers or a staff member's manager, which affects a staff member's terms and conditions of employment or rights under the Staff Regulations or Rules or any applicable legal provisions.

(...)

1440. MANAGEMENT REVIEW

(...)

1440.2 A request for management review must be filed with the original decision-maker within 30 days from the date on which the contested administrative decision was notified to the staff member or, in the absence of notification, from the date on which the staff member became aware of the decision.

(...)

1450. COMPLAINTS PROCEDURE

(...)

1450.2 The complaint must be lodged within 30 days from the date on which the outcome of the management review was notified or, in the absence of notification, within 30 days from the date on which the notification was due.

(...)

1460. APPEALS PROCEDURE

1460.1 The Secretary General's rejection, in whole or in part, of a formal complaint may be appealed to the Administrative Tribunal of the Council of Europe in accordance with the provisions of the Tribunal's Statute and Rules of Procedure.

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

Article 24

Beginning-of-career appointments and passage between categories of posts or positions

(...)

4. Staff members may be promoted to A3 after six years of service in the A2 grade upon a proposal by the Head of their Major Administrative Entity on the minimum condition that they have fully met the requirements of their post/position during the previous three years. On receipt of the proposal, the Director of Human Resources shall verify the relevant appraisals of the staff members concerned and submit the file to the Secretary General for his/her decision.

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

Article V of the Staff Regulations – Career development

(...)

5.4 The Secretary General may decide to promote a staff member to a higher grade within the same category in accordance with the established rules and procedures. Promotions shall be merit-based and shall strive to achieve fair geographical representation and gender parity.

Staff Rule on career development

540. Grade Advancement

540.1 Staff members employed in category A, grade 1, shall be promoted to grade A2 two years from their date of appointment as grade A1, subject to satisfactory performance and conduct. They may be promoted to grade A3 after six years of service at grade A2, upon a proposal to the Director of Human Resources by the Head of their Major Administrative Entity and subject to satisfactory performance and conduct during the three consecutive years immediately preceding the proposal.

THE LAW

23. In her appeal, the appellant requests the Tribunal:

- to annul the decision of the Director of Human Resources of 14 September 2023 not to promote her to grade A3;
- to annul the rejection of the formal complaint of 20 November 2023;
- to order the Secretary General to appoint her retroactively to grade A3 as of 1 October 2023;
- to award her compensation for pecuniary damage *ex aequo et bono*;
- to order the Secretary General to reimburse 500 euros in expenses.

24. For her part, the Secretary General asks the Tribunal to declare the appeal inadmissible and to dismiss it in its entirety. In the event that the Tribunal were to find the Organisation liable, the Secretary General submits, in the alternative, that the appellant has not provided any evidence to substantiate or support her request that the Tribunal award *ex aequo et bono* pecuniary damage.

I. THE PARTIES' SUBMISSIONS

A. Admissibility

1. The Secretary General

25. The Secretary General submits that the official decision in the matter at hand is the email which the appellant received from the DHR on 7 September 2022 informing her that her employment with the Council of Europe from November 2013 to June 2015 could not be taken into account in the determination of her eligibility for promotion to grade A3 and that therefore she would not be eligible for promotion to grade A3 before 1 January 2025. In the Secretary General's view, this emanates clearly from the very wording of the message that was sent to the appellant by the DHR on 12 October 2022 in reply to her request for clarifications: by this message, the appellant was unambiguously informed that the decision of 7 September 2022 constituted the official and final decision.

26. The Secretary General therefore maintains that the appellant should have lodged any complaint in this connection at the latest within thirty days of 12 October 2022, i.e. in November 2022. The Secretary General concludes that having introduced her request for management review on 29 September 2023 and her formal complaint on 20 October 2023 the appellant has not complied with the prescribed time limits and that her appeal is manifestly inadmissible for having been lodged out of time.

2. The appellant

27. The appellant refutes the Secretary General's plea of inadmissibility, arguing that the email of 7 September 2022 could not be considered an "administrative decision" and therefore did not constitute an act giving rise to a grievance that could cause the time limit to run. She submits that for there to be an "administrative decision" within the meaning of article 14.3 of the Staff Regulations, the procedure laid down by the internal rules must have been followed. In particular, both the request that gave rise to the decision and the decision itself must have been drafted by persons authorised to do so under the relevant rules. However, in her case, the

appellant was not entitled to apply herself for promotion to grade A3 and the administrative assistant in DHR who wrote to her on 7 September 2022 and 12 October 2022 did not have the authority to make a decision that falls to the Director of Human Resources.

28. Referring to her exchanges of emails with DHR in September and October 2022, the appellant notes that she had confined herself to formulating a request for information and that in response to this request, the DHR should have informed her of the procedure to be followed, instead of discouraging her from asserting her rights.

29. The appellant therefore submits that the memorandum sent on 14 September 2023 by the Director of Human Resources to her Head of MAE, rejecting the request formally submitted by the latter, constitutes the “administrative decision” within the meaning of Article 14.3 of the Staff Regulations. Having challenged this decision within the applicable time limits, no delay can be held against her and her appeal is admissible in its entirety.

B. Merits of the appeal

1. The appellant

30. The appellant claims that at the time her Head of MAE proposed her promotion, she fulfilled the conditions required by paragraph 540.1 of the Staff Rule on career development to be promoted from grade A2 to grade A3, since she had six years of service at grade A2 and her performance and conduct during the three consecutive years immediately preceding the proposal had been satisfactory. She contends that the decision denying her entitlement to a promotion on the grounds that she failed to fulfil these conditions is vitiated by an error of law.

31. As regards the condition of six years of service at grade A2, the appellant challenges the administrative practice relied on by the Administration to claim that these years of service must be uninterrupted. The appellant notes that the Administration does not provide any concrete examples or figures to illustrate the administrative practice in question, thereby failing to prove its existence.

32. The appellant also points out that the Staff regulations have been reformed recently and that if the legislator had wished to clarify that the eligibility for promotion from grade A2 to grade A3 requires six consecutive years of service at grade A2 without any interruption it could have done so, but it abstained. The provision as it stands is clear and does not justify the interpretation given to it by the Administration. According to the appellant this practice is contrary to generally accepted rules of interpretation in that it imposes a condition, that of continuity of service, which is in no way supported by the wording of the provision and which, moreover, is unfavourable to staff members and therefore contrary to the duty of care.

33. Furthermore, the appellant argues that since her period of service prior to her contract interruption has been counted towards her ten years of service with the Council of Europe for pension entitlement purposes, this period should also be counted towards her six years of service to be eligible for promotion to grade A3.

34. Finally, the appellant claims that the practice in question discriminates between staff members who work continuously for the Organisation and those who are obliged or choose for a legitimate reason to interrupt their service, as was her case. She points out in this respect that her contract was interrupted not by her choice but owing to funding problems, as evidenced by

the fact that she was reinstated as soon as funding allowed. Had she been informed in advance of the existence of this practice – which was not the case –, she would have decided to take unpaid maternity leave.

35. As for the condition of satisfactory performance and conduct, the appellant admits that she could not be assessed during her leave without pay from 1 August 2019 to 15 April 2021. However, considering that her appraisal reports for the years 2021, 2022 and 2023, as well as the period preceding her leave without pay, were all satisfactory, the appellant considers that she entirely fulfilled the required condition of three consecutive years of satisfactory performance.

2. The Secretary General

36. The Secretary General submits that the decision not to promote the appellant from grade A2 to grade A3 was taken in full compliance with the applicable rules and principles.

37. As regards the condition of six years of service at grade A2, the Secretary General argues that the decision not to take into account the appellant's period of service between 2013 and 2015 was based on the Organisation's consistent practice of not considering periods of employment which occurred before the new recruitment of the staff member. She maintains that this practice, which is not limited to the calculation of staff members' years of service required for promotion to grade A3, has been consistently and uniformly applied by the Organisation, thereby ensuring that staff members in comparable situations are treated equally.

38. In the Secretary General's view, the administrative practice in question is fully in line with the wording of both Article 24, paragraph 4 of the Regulations on appointments in force until 31 December 2022 and paragraph 540.1 of the Staff Rule on career development currently in force to which it continues to apply, since it merely specifies what periods of service can be taken into account in the calculation of the six years of service required to be eligible for promotion to grade A3. Moreover, contrary to the appellant's allegation, the practice in question does not breach the principle of equal treatment by distinguishing between the situation of staff members who are re-employed by the Council of Europe after an interruption in their employment, such as the appellant, and that of staff members who resume their employment after benefiting from maternity leave, leave without pay or long-term sick leave. Since leave does not interrupt a staff member's contractual relationship with the Organisation, the appellant cannot claim to be in a comparable situation.

39. The Secretary General further submits that the appellant's argument, relating to the fact that her period of service between 2012 and 2015 was counted towards her ten years of service with the Council of Europe for the purposes of pension entitlement, has no bearing on the present case. The rules of the pension schemes which provide for the possibility of acquiring pension rights by repaying the leave allowance received at the end of a contract constitute an exception to the applicable general principle according to which the contractual relationship between a staff member and the Organisation begins anew after an interruption of service.

40. The Secretary General therefore concludes on this point that in applying the contested administrative practice, the Administration did not exceed the limits of its discretionary power to determine a staff member's grade as a result of promotion.

41. As regards the condition relating to satisfactory performance and conduct, the Secretary General recalls that the appellant was on unpaid leave between 1 August 2019 and 15 April 2021. Consequently, due to the appellant's absence during that period, her performance could

not be assessed, and the condition relating to satisfactory performance and conduct during the three consecutive years immediately preceding the proposal was not met on 7 July 2023, when the proposal for her promotion was submitted by her Head of MAE to the Director of Human Resources.

II. THE TRIBUNAL'S ASSESSMENT

42. The Tribunal notes that the present appeal concerns the interpretation and application of the provisions on grade advancement cited in paragraphs 21 and 22 above.

A. Admissibility

43. In the light of the Secretary General's objection of inadmissibility, the Tribunal must first of all determine whether the administrative decision adversely affecting the appellant in the present case is, as the defendant claims, the communication sent to her by the DHR on 7 September 2022, subsequently confirmed by e-mail on 12 October 2022, or, as the appellant claims, the memorandum sent on 14 September 2023 by the Director of Human Resources to her Head of MAE.

44. The Tribunal recalls that according to paragraph 1420.1 of the Staff Rule on grievance procedures, an administrative decision is "any decision, action or implicit decision, taken by an official with administrative powers or a staff member's manager, which affects a staff member's terms and conditions of employment or rights under the Staff Regulations or Rules or any applicable legal provisions".

45. As the relevant case law has stated, administrative decisions are characterised by the fact that "they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences (United Nations Dispute Tribunal (UNDT), [Judgment No. 2024/001 of 30 January 2024](#), in the case of *Melbiksis v. Secretary General of the United Nations*, paragraph 19; see also Administrative Tribunal of the Council of Europe (ATCE), Appeal No. 645/2020, *Riccardo Priore (II) v. Secretary General of the Council of Europe*, [Judgment of 15 January 2021](#), paragraph 82).

46. As a preliminary point, the Tribunal observes that for the purposes of determining which was the administrative decision to be challenged in the present case, it is not bound by the wording of the DHR's e-mail of 12 October 2022, according to which the earlier e-mail of 7 September 2022 constituted the official and final decision concerning the appellant. As clarified in the above-mentioned case law (UNDT, *ibid*, paragraph 20), "deciding what is and what is not a decision of an administrative nature (...) must be done on a case-by-case basis and will depend on the circumstances, taking into account the variety and different contexts of decision-making in the Organization. The nature of the decision, the legal framework under which the decision was made, and the consequences of the decision are key determinants of whether the decision in question is an administrative decision".

47. In the case at hand, it is undisputed that the appellant had already inquired in January 2022 as to the way in which the relevant provisions of the Staff Regulations applied to her situation. At that time, however, she did not ask for a decision to be taken in her regard. Moreover, under the applicable rules, namely Article 24 of the Regulations on appointments in force at the time, the appellant was not competent to initiate the procedure required to obtain a promotion, since the indispensable procedure in question could only be triggered by a proposal emanating from her Head of MAE which, in the present case, was submitted only much later, namely on 7 July 2023. It was therefore incorrect for the DRH to inform the appellant, as it did

in the e-mail of 12 October 2022, that “there is no separate procedure for deciding such matters”.

48. As regards the reply given to the appellant in the e-mail of 22 September 2022, it does not appear that this reply was the result of the concrete application of the relevant rules to the particular situation of the appellant. Indeed, the wording of the e-mail in question does not express a refusal to grant a promotion requested or applied for. On the contrary, it informed the appellant of the date on which, in the Administration’s view, she would be entitled to a promotion, provided that she fulfilled the other conditions required, in particular as regards satisfactory performance. As such, the e-mail in question did not carry direct legal consequences on the appellant’s existing position and was not of such a nature as to affect her adversely, since it addressed a future hypothetical situation in which, as of 1 January 2025, the appellant could possibly be promoted. In those circumstances, the appellant could not be expected to complain *in abstracto* about the practice followed by the Administration in the application of the relevant rules.

49. In light of the foregoing, the Tribunal finds that it was only after the appellant’s Head of MAE had proposed to promote her on 7 July 2023 and following the Administration’s reply on 14 September 2023 refusing to follow-up on such a proposal, that the appellant could challenge the interpretation of the rules on grade advancement that had been applied in her individual case.

50. Given that the appellant challenged the decision of 14 September 2023 on time and no other issues on admissibility arise in the present case, the Tribunal concludes that the appeal is admissible and must be examined on the merits.

B. Merits

51. The Tribunal notes that the determination of a staff member’s grade - whether as a result of recruitment, promotion or a change of category - is an area in which the Secretary General has discretionary power (see *mutatis mutandis*, Appeals Board of the Council of Europe (ABCE), Appeal No. 146/1986, [Judgment of 3 August 1987](#), *Brown (I) v. Secretary General of the Council of Europe*, paragraphs 52 to 53; ATCE, Appeal No. 240/1997, [Judgment of 23 April 1998](#), *Adrianus van Loon v. Secretary General of the Council of Europe*, paragraph 31; see also Administrative Tribunal of the International Labour Organisation (ILOAT), Judgment 2490 of 1 February 2006, consideration 5). Accordingly, in the event of a dispute, it is not for the Tribunal to substitute its own judgment for that of the Administration. Nevertheless, it has a duty to ascertain whether the disputed decision was taken in accordance with the Organisation’s regulations and the general principles of law to which the legal systems of international organisations are subject.

52. In the present case, having regard to the statement of reasons given in the reply of the Director of Human Resources of 14 September 2023 to the appellant’s Head of MAE, as supplemented by the elements submitted before the Tribunal, the contested decision denying the appellant’s eligibility to promotion to grade A3 is premised on the following grounds: on the date of the proposal to promote the appellant, namely on 7 July 2023, the appellant had neither completed her six years of service in grade A2, nor had she achieved satisfactory appraisals for three consecutive years. The Tribunal will examine both grounds consecutively.

53. As regards the first condition for promotion to grade A3, the issue is whether the six years of service in grade A2 must be understood as six consecutive years, without interruption, or whether a total of six years, even if not continuous, may be taken into account.

54. The Tribunal reiterates that under the relevant case law, the interpretation that an organisation wilfully and consistently gives to a rule for years may become a binding element of personnel policy, to be applied to everyone who is in the same position in law and in fact. However, it is commonly accepted that “just as a staff rule must not conflict the staff regulation under which it is made, so a statement of practice must not conflict the rule it is elaborating” (ILOAT, [Judgment 486 of 3 June 1982](#), consideration 8).

55. As regards the required compatibility of the practice at hand with the rules which it purports to interpret, the Tribunal finds that the wording of the relevant provisions does not contain any ambiguity which would make it necessary to clarify the provisions’ scope. Paragraph 540.1 of the Staff rule on career development in force at the time of the proposal to promote the appellant clearly states that the first condition for a staff member to be eligible for promotion to grade A3 is that he/she has served the Organisation in the A2 grade for a period of six years, without any further specification.

56. By comparison, the rules governing the second condition for promotion to grade A3, which relate to satisfactory performance, explicitly state that this condition must be assessed over an uninterrupted period of time. Indeed, paragraph 540.1 of the Staff rule on career development provides that staff members must have had a satisfactory performance and conduct “during the three consecutive years immediately preceding the proposal [for promotion]”. It is worth noting that this wording makes the three year continuous service requirement even more explicit than the previous version of the rule, in force until 31 December 2022, which provided that the concerned staff member should have fully met the requirements of his/her post or position “during the previous three years”.

57. In the light of the above, the lack of any specification in the applicable rule as to the continuous nature of the six year period of service appears to be a deliberate choice of the legislator.

58. The Tribunal further finds that the Administration’s restrictive interpretation of the requirement of the six years of service as being necessarily uninterrupted has adverse effects on staff members. Effectively, by excluding from the six year calculation the years of service accrued prior to a contract interruption, the administrative practice unduly restricts staff members’ rights.

59. Given the above, the Tribunal considers that the administrative practice in question, rather than clarifying the law to which it relates, deviates from it by introducing an additional condition not provided for in the applicable provisions. That practice cannot therefore serve as a legitimate basis for calculating the appellant’s seniority. This finding is sufficient for the Tribunal to conclude that the Administration erred in considering that, at the date of the memorandum of 7 July 2023 requesting the appellant’s promotion, she had not completed the required six years of service.

60. In light of the above, it is not necessary to address the appellant’s additional arguments based on the applicable rules for pension entitlement purposes (see paragraph 33) and on an alleged discrimination between different categories of staff members (see paragraph 34).

61. As regards the second condition for promotion to grade A3, namely the satisfactory performance and conduct during the three consecutive years immediately preceding the proposal to the Director of Human Resources, the Tribunal notes that the appellant had not fulfilled this condition on the date on which her Head of MAE proposed her promotion, i.e. on 7 July 2023. Indeed, having returned from her unpaid leave only on 15 April 2021, the

appellant's performance and conduct could not have been assessed during three consecutive years immediately preceding the proposal to promote her.

62. It follows that, while the first ground for refusing the appellant's promotion, relating to her years of service, could not validly justify the contested decision, the second ground, relating to the assessment of the appellant's performance during the three years immediately preceding the proposal to promote her, did. Thus, the said decision was based on at least one valid ground. As a consequence, it stands.

63. The Tribunal concludes therefore that the Administration rightly denied the appellant's promotion which had been requested by her Head of MAE in September 2023 and the appeal is unfounded insofar as the appellant claims an entitlement to be promoted to grade A3 as of 1 October 2023.

64. This conclusion remains valid even though the date on which the appellant could possibly have fulfilled the two necessary conditions of six years of service and three consecutive years of satisfactory performance is no later than 15 April 2024 – i.e. three consecutive years following the date of the appellant's return from unpaid leave on 15 April 2021 – and not 15 December 2024, as the Administration maintains.

65. Although it is not for the Tribunal, in the context of the present proceedings, to rule on the manner in which the Administration is required to take the latter circumstance into account when determining the appellant's legal position as regards her right to promotion to grade A3, the appellant might nevertheless seek to avail herself of this circumstance, including by making use of the legal remedies available to her.

For these reasons, the Administrative Tribunal:

Dismisses the Secretary General's plea of inadmissibility;

Declares appeal No. 744/2024 admissible;

Declares the appeal unfounded and rejects it;

Decides that each party will bear its own costs.

Adopted by the Tribunal in Strasbourg by written procedure on 13 August 2024 and delivered in writing in accordance with Rule 22, paragraph 1, of the Tribunal's Rules of Procedure on 14 August 2024, the English text being authentic.

The Registrar of the
Administrative Tribunal

Christina OLSEN

The Chair of the
Administrative Tribunal

Paul LEMMENS