

**Appeal No. 745/2024**

**Z. G.**

**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, Z. G., lodged her appeal on 17 January 2024. On the same day, the appeal was registered under No. 745/2024.
2. On 19 February 2024 the Secretary General forwarded her observations on the appeal.
3. On 23 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.

## **THE FACTS**

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

4. The appellant is a permanent staff member of the Council of Europe who was recruited at grade B2 on 1 March 2015. She was subsequently promoted to grade B4 on 1 May 2017 and to grade B5 on 1 May 2020.
5. Following the publication of vacancy Notice No. 105/2023, the appellant applied to take part in an internal competition for an A1/A2/A3 job. The appellant's application to this vacancy was possible in pursuance of Article 340.1 of the Staff Rule on classification of jobs and Article 2, paragraph 7.2 of the transitional measures set out in the Secretary General's Decision on entry into force of the Staff Rules implementing Staff Regulations adopted on 30 December 2022.
6. By decision dated 28 September 2023 of the Deputy Secretary General acting by delegation from the Secretary General, the appellant was appointed to the job she had applied to in pursuance of vacancy Notice No. 105/2023, at grade A1, step 3, with effect from 1 November 2023.
7. At the beginning of October 2023, an exchange of emails took place between the appellant and the Directorate of Human Resources (DHR) on which occasion the DHR explained that the decision to appoint the appellant to grade A1 instead of A2 was based on the consistent practice of the Organisation. According to this practice, only the years of professional experience within the Council of Europe at grades B5 and B6 are taken into account in the

calculation of the required minimum six years' professional experience equivalent to category A for an appointment at grade A2. Since the appellant's experience at a B5 level was less than six years, she had been appointed at grade A1.

8. On 25 October 2023 the appellant lodged an administrative complaint contesting the decision of 28 September 2023 to appoint her to grade A1 rather than A2.

9. On 24 November 2023 the Secretary General dismissed the appellant's administrative complaint in its entirety as ill-founded.

10. On 17 January 2024 the appellant lodged the present appeal.

## II. THE RELEVANT LAW

11. Article III of the Staff Regulations on classification of jobs states:

“3.1 All jobs in the Organisation shall be divided among the following categories:

3.1.1 category A, comprising professional or managerial roles;

3.1.2 category L, comprising interpretation or translation roles;

3.1.3 category B, comprising support, administrative or team-supervision roles or junior professional programmes;

3.1.4 category C, comprising technical, manual or service roles.

3.2 Within each category, jobs shall carry a grade, in accordance with the system in force in the co-ordinated organisations.

3.3 Appropriate arrangements shall be made by the Secretary General for the classification of jobs and staff according to the nature of the duties and responsibilities required.

3.4 The Secretary General shall make provisions to enable passage between categories.”

12. The provisions of the Staff Rules that are relevant to this case read as follows:

### **Staff Rule on classification of jobs Article 340 – Passage between categories**

“340.1 A staff member who holds an open-ended contract or an indefinite term contract and has been employed in the same category for at least six years, is eligible to apply to participate in an internal competition in respect of a vacancy in a category other than that to which they are currently assigned.

(...)

340.4 When a staff member successfully participates in an internal competition for a job advertised at C1/C2, B1/B2, L1/L2 or A1/A2/A3 level, the staff member's grade shall be determined by application, mutatis mutandis, of Article 440 of the Staff Rule on entry into service.

(...)

**Staff Rule on entry into service**  
**Article 440 – Beginning of career appointment**

(...)

440.2 Where the vacancy is advertised at A1/A2 level, candidates with at least six years' professional experience involving duties similar to those exercised by staff members in category A shall be appointed at grade A2.

(...)

**Staff Rule on career development**  
**Article 550 – Internal competitions**

550.1 Internal competitions are open to staff members confirmed in employment.

550.2 Following an internal competition a staff member may be transferred, promoted, or assigned to a job carrying a lower grade or to a job in a different category.

(...).”

13. Article 2, paragraphs 7.1 and 7.2 of the [Secretary General Decision of 30 December 2022](#) on entry into force of the Staff Rules implementing Staff Regulations states:

“7.1 The provisions of the Staff Rules related to passage between categories shall enter into force gradually according to the schedule below.

7.2 From January 2023, internal competitions for category A vacancies shall be open to eligible staff members employed in category B grades 5 and 6, and category L.”

## **THE LAW**

14. In her appeal, the appellant requests the Tribunal to set aside the decision taken on 28 September 2023 by the Deputy Secretary General on behalf of the Secretary General, appointing her as of 1 November 2023 to grade A1, step 3, following competition No. 105/2023, and “*to reconsider [her] experience outside and inside the organisation based on [her] tasks and responsibilities and grant [her] an A2 grade as a result of the new evaluation.*”

15. For her part, the Secretary General asks the Tribunal to declare the appeal ill-founded and to dismiss it in its entirety.

### **I. THE PARTIES' SUBMISSIONS**

#### **A. The appellant**

16. In her appeal, the appellant contends that the DHR failed “*to take into genuine consideration [her] previous professional experience inside and outside the Council of Europe*” by applying the practice whereby, when a staff member moves to a job in another category, only the years of experience as a permanent staff member in a grade equivalent to that of the job to be filled – that is to say, in the case of an A grade job, only the years of employment in grades B5 and B6 – are taken into account for the purposes of determining the grade.

17. The appellant contends that the practice in question is not justified by the wording of the relevant provisions, namely Article 340.4 of the Staff Rule on classification of jobs and Article 440.2 of the Staff Rule on entry into service which applies *mutatis mutandis*.

18. The appellant argues further that because the possibility for staff members at B5 or B6 grade to be promoted internally to A grade has only been in place since the entry into force of the new Staff Regulations on 1 January 2023, the previous practice of the DHR, implemented in an entirely different context, cannot be relied on in the new context.

19. The appellant submits that the approach followed by DHR in her case discriminates against serving staff members. The fact that their external experience prior to joining the Council of Europe is discounted puts them at a disadvantage compared to external candidates participating in an external competition for an A grade job. She claims that the calculation of her relevant experience should start as of the date when she completed her first master's degree, namely in 2007.

20. Lastly, the appellant considers that the impugned practice is arbitrary because it does not take into account the actual roles, responsibilities and duties performed by staff members. She provides details regarding her duties at grade B4 in support of her claim that the related experience is fully relevant to her job. She alleges that both the fact that staff members at lower grades are called upon to exercise duties normally associated with higher grades due to budgetary constraints and that no reclassification exercise has been carried out in the Organisation since 2006, are circumstances which demonstrate that the grade held cannot serve as the basis for deciding on appointments to A1 or A2 grades.

## **B. The Secretary General**

21. The Secretary General submits that the contested decision was taken in full compliance with the applicable rules, principles and established administrative practice. She considers that the findings of the Tribunal in its judgment on Appeal No. 738/2023 (ATCE, Judgement of 25 January 2024 on Appeal No. 738/2023, *C. A. v. Secretary General*), are fully applicable to the present appeal given their similarities. In this judgment, the Tribunal ruled that “by developing the administrative practice according to which only years of experience as B5 and B6 permanent staff members count as years of experience in the performance of duties similar to those performed by A grade staff, the Administration did not exceed the limits of its discretionary power” (*ibid.*, paragraph 41). The present appeal should therefore be dismissed on the same grounds.

22. The Secretary General notes that, contrary to the appellant's allegations, the possibility for B grade staff members to be appointed in the A category already existed under the Staff Regulations in force until 31 December 2022. Since the context in which this administrative practice is applied has not changed with the entry into force of the new Staff Regulations in January 2023, the Secretary General argues that the practice as already applicable under the former rules remains entirely relevant under the new Staff Regulations.

23. The Secretary General recalls that in pursuance of the aforementioned practice, only years of experience as permanent staff members – namely the years during which they were employed on the basis of an indefinite-term contract (CDI), an open-ended contract (OEC) or a fixed-term contract (CDD) – are taken into account in the determination of the grade at the time of appointment, insofar as, under the terms of Article 340 of the Staff Rule on classification

of jobs, only these years determine eligibility for participation in an internal competition to fill a job in another category. Moreover, in pursuance of the practice in question, only staff members who have six years of experience at grades B5 and B6 are considered to have the six years of experience at a grade equivalent to grade A required by Article 440.2 of the Staff Rule on entry into service, applicable *mutatis mutandis*, for an appointment at grade A2.

24. The Secretary General observes that this administrative practice, which is based on objective criteria, has been wilfully and consistently applied by the Organisation. As such, it is binding both on the Organisation and its staff and can provide a legal basis for a decision such as the one taken in the case of the appellant.

25. Considering that the appellant had 3 years and 6 months of professional experience at grade B5, 3 years of professional experience at grade B4 and about two years of professional experience at grade B2, the Secretary General upholds that she did not meet the requirement of six years of professional experience at grade B5 or B6 required to be appointed at grade A2 following her passage between categories. She adds that since the appellant's eligibility to participate in the internal competition at issue was based on the number of years she had been employed as a permanent staff member of the Council of Europe and not on periods of employment outside the Council of Europe, it was fully justified to exclude years of professional experience gained outside of the Council of Europe when determining her grade.

26. Regarding the appellant's allegations that the administrative practice in question is arbitrary, the Secretary General emphasises that this practice is based on the objective assessment that tasks performed by staff members in grades B5 and B6 can be considered as similar to those performed in category A, while this is not the case for tasks performed by staff members in grade B4 and below.

27. As regards the appellant's allegations that the administrative practice constitutes a discrimination and an unequal treatment between candidates recruited following an external recruitment procedure and staff members appointed following an internal competition, the Secretary General refers to the finding of the Tribunal that it is not discriminatory to value the professional experience of internal and external candidates according to different systems because the situations of the two groups are objectively different (*ibid.*, paragraph 38 with further references).

28. The Secretary General concludes that, in the light of the applicable rules and established administrative practice, the appellant's appointment to grade A1 following the internal competition in question is justified and consistent with the principle of equal treatment.

## II. THE TRIBUNAL'S ASSESSMENT

29. The question which the Tribunal must consider in this case is whether, in the circumstances, it was justified for the Administration, in line with existing administrative practice, to determine the appellant's grade when she moved to a different category by taking into account only her previous experience at grade B5 and excluding the experience that she acquired at lower grade posts and outside the Organisation.

30. The Tribunal notes that it has examined similar contentions in its judgment on Appeal No. 738/2023, [cited above](#). It reiterates that any contentions about mismatch between the actual

duties performed and the grade held had to be raised in due time before the Administration and then, if necessary, before this Tribunal (*ibid.*, paragraph 30).

31. It further reiterates that a construction which an organisation wilfully and consistently puts on 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. That flows from the general principles that an organisation must show good faith and frame personnel policy in objective terms. Thus, having construed the relevant provisions - paragraph 340.4 of the Staff Rule on classification of jobs and paragraph 440.2 of the Staff Rule on entry into service - in such a way that only duties performed by staff at grades B5 and B6 are considered similar to duties performed in category A, for the purposes of calculating the six years required for appointment to grade A2, the Administration merely put a particular construction on those provisions within the scope of its discretionary power (*ibid.*, paragraphs 31 and 32). The impugned administrative practice is not contrary to the wording of the relevant provisions, since it merely clarifies their scope, by specifying the duties which may be considered similar to duties performed in category A when determining whether to appoint a staff member to grade A1 or A2 (*ibid.*, paragraph 34). Furthermore, 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. Accordingly, in the event of a dispute, the Tribunal cannot 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 (*ibid.*, paragraph 33, with further references).

32. As to the alleged arbitrariness of the impugned practice, the Tribunal approaches this question by examining whether the practice has an objective and reasonable basis and whether it is consistent with the objective pursued by the rules whose implementation it allows (*ibid.*, paragraph 36). The Tribunal considers that the grade actually held by staff members is an objective criterion for assessing the nature of the work performed and the level of responsibility exercised by them in view of the Administration's obligation to see that staff members are given work appropriate to their grade (*ibid.*, paragraph 37, with further references).

33. As to the plea of unjustified different treatment between external and internal candidates, the Tribunal considers that it is not discriminatory to value the professional experience of staff members moving from one category to another following an internal competition and that of candidates recruited following an external competition according to different systems insofar as the circumstances of the two groups are objectively different. The Tribunal notes that according to the relevant case law, "the fact that account is taken of relevant experience [of internal and external candidates for the purposes of their classification in step following a competition] by means of two separate systems" is not contrary to the principle of equal treatment "provided that the two groups are objectively different and the two systems are adapted to the particular circumstances of each group (...)". That is the case, in particular, where the professional experience acquired by internal candidates before they entered the service of the Organisation has already been taken into account at the time of their recruitment, their professional experience acquired within that Organisation having, moreover, also been taken into account at the time of their advancement in step or promotions. Thus, the Administration does not discriminate if, in an internal competition to fill a vacancy in another category, it uses the criterion of grade to assess the level of responsibility of internal candidates, even though no such criterion is applicable to external candidates in a recruitment process (*ibid.*, paragraphs 38 and 39).

34. In the light of the foregoing, the Tribunal concludes that by developing the administrative practice according to which only years of experience as B5 and B6 permanent staff members count as years of experience in the performance of duties similar to those performed by A grade staff, the Administration did not exceed the limits of its discretionary power (*ibid.*, paragraphs 41). The same applies to the assessment of the appellant's professional experience in the light of this practice: by not taking into consideration the appellant's years of experience as a B4 permanent staff member, together with those she acquired outside the Organisation, the Administration did not exceed the limits of its discretionary power either.

### III. CONCLUSION

35. On the basis of the foregoing considerations, the Tribunal concludes that the present appeal is wholly unfounded and must be dismissed.

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