

Appeal No. 747/2024

M.-L. L.

v.

**Secretary General
of the Council of Europe**

JUDGMENT

30 January 2025

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.

PROCEEDINGS

1. The appellant, M.-L. L., lodged her appeal on 26 March 2024. It was registered the same day under appeal No. 747/2024.
2. On 4 July 2024, the Secretary General in office at the time forwarded her observations on the appeal.
3. The public hearing took place in the hearing room of the Administrative Tribunal in Strasbourg on 19 November 2024. The appellant was represented by Nathalie Verneau. The Secretary General was represented by Jörg Polakiewicz, director of Legal advice and public international law (Jurisconsult), assisted by Sania Ivedi, head of the Litigation division, and Nina Grange, administrative officer in the same division.
4. During the hearing, the Chair of the Tribunal asked the Secretary General to add the contested decision, namely the decision of the Deputy Secretary General of 7 November 2023 not to confirm the appellant's appointment, to the case file. This decision and the memorandum of 3 November 2023 from the Directorate of human resources (DHR) informing the Deputy Secretary General of the Appointments Review Committee's recommendation to terminate the appellant's employment were communicated to the Tribunal on the same day as the hearing, namely 19 November 2024, and forwarded for information to the appellant on 27 November 2024.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

5. The appellant is a former Council of Europe staff member, who was recruited on 1 December 2020 as a grade B2 support assistant on a fixed-term contract (CDD) to the Secretariat of the Parliamentary Assembly. She had been employed by the Organisation before this, firstly on temporary contracts from 2002 to 2008, then on a CDD from 2008 to 2013, then again on various temporary contracts until 1 December 2020.
6. The appellant's final appointment was subject to a two-year probationary period. By decision of the Deputy Secretary General of 22 September 2022 following a recommendation

by the Appointments Board on 8 September 2022, the appellant's probationary period was extended by a year, to 30 November 2023.

7. Over the three years of the probationary period, five appraisal reports were drawn up. The first, signed on 28 February 2022 by the appellant's direct manager (N+1), related to the period from 1 December 2020 to 31 May 2021. The second, signed by the N+1 on 18 July 2022, related to the period from 1 June 2021 to 30 November 2021; according to a note from the N+1, this report was in fact an exact copy of the first and had been drawn up at the same time as it. These two reports concluded, on the basis of a single combined appraisal, that the appellant's performance had not been satisfactory. The third report, signed by the N+1 on 24 June 2022, related to the period from 1 December 2021 to 31 May 2022. The fourth, signed by the N+1 on 12 October 2023, covered the period from 1 June 2022 to 30 November 2022. Both of these reports concluded that the appellant had fully satisfied the requirements of her post. In the fifth and final report, also signed by the N+1 on 12 October 2023 and covering the period from 1 December 2022 to 31 May 2023, the N+1 issued a positive assessment, whereas on the same date (12 October), the appellant's reviewing manager (N+2) gave a negative assessment. The latter assessment was upheld by the head of the appellant's major administrative entity (i.e. the Secretary General of the Parliamentary Assembly), who, on 13 October 2023, made the recommendation not to confirm her in post. This recommendation stated as follows:

"In the light of the comments of [the direct manager and the reviewing manager], I note that, despite some progress made during the extension of her probationary period, [the appellant] has yet to demonstrate the expected level of commitment, involvement and team spirit. These, as well as solidarity with the team, proactive approach and a readiness to go the extra mile, are essential qualities required for an efficient collaboration within the Secretariat of an international organisation such as the Council of Europe. In this context, and in the light of the overall strategic needs of the Secretariat as anticipated by the People Strategy, I do not feel comfortable recommending the confirmation of [the appellant's] appointment".

8. On 20 October 2023, the Appointments Review Committee recommended that the appellant's employment should be terminated. This recommendation was adopted by two votes for and two against with one abstention, with the Chair having the casting vote.

9. On 7 November 2023, the Deputy Secretary General decided to follow this recommendation and not to confirm the appellant's appointment. This decision, which the appellant was informed of by a DHR memorandum of 20 November 2023, constitutes the impugned decision. The memorandum in question was worded as follows:

"I regret to have to inform you that, in accordance with Staff Rule 4130 and after thorough consideration of your employee file including your assessment reports and the opinion of the Appointments Review Committee on your probationary period, the Deputy Secretary General, by delegation of the Secretary General, has decided to terminate your employment on the ground that your probationary period was not successful.

The aim of the probationary period is to assess a staff member's suitability for the job and the international civil service. Yet, despite a one-year extension of your initial two-year probationary period, it was considered that your level of involvement and proactive approach within your team was inadequate. The extension of your probationary period did not allow you to remedy these insufficiencies, which are not compatible with the Organisation's needs.

Consequently, our obligation will end on expiry of your fixed-term contract, on 31 January 2024."

10. At the end of November 2023, the appellant's CDD was extended by two months from 1 December 2023 to 31 January 2024 so as to give the required notice.

11. On 18 December 2023, the appellant lodged an administrative complaint against the decision to terminate her appointment.

12. On the same day, the appellant submitted a request for a stay of execution, in which she requested the suspension of the decision to terminate her employment on expiry of her CDD. By an order of 15 January 2024, the Chair of the Tribunal dismissed the request.

13. In a decision of 29 January 2024, the then Secretary General rejected the appellant's administrative complaint in its entirety on the ground that it was ill-founded.

14. On 26 March 2024, the appellant lodged the present appeal.

II. RELEVANT LAW

15. Until 31 December 2022, the provisions in force relating to probationary periods at the Council of Europe and appraisals were worded as follows:

Staff Regulations

Article 17 – Probationary period

1. Before staff members can be confirmed in their appointment, they must have satisfactorily completed a probationary period, the length of which shall be determined by the Regulations on Appointments.
2. During the probationary period a contract may be terminated by either party at two months' notice.

...

Article 22 – Appraisal

1. The appraisal process shall apply to all Council of Europe staff.
2. Appraisal shall take place at a uniform frequency throughout the Secretariat at the end of a given reference period.
3. Appraisal shall be based on objectives and competencies established between the appraiser and the appraisee at the beginning of the reference period.
4. The principles of equal opportunities and non-discrimination must be taken into account during the appraisal procedure.
5. Appraisal reports shall be part of staff members' administrative files.
6. The Appraisal Board shall monitor the fair and homogeneous application of the system in the different Major Administrative Entities.
7. The Secretary General shall lay down by rule the conditions governing the implementation of the appraisal system, and the Director of Human Resources in the Directorate General of Administration shall supervise the functioning of the system throughout the Secretariat.

Appendix II to the Staff Regulations - Regulations on appointments

Article 17 – Probation

1. Staff members recruited in accordance with the provisions of Articles 15 and 16 of these Regulations on appointments shall be subject to a two-year probationary period during which time they shall be appointed on the basis of fixed-term contracts.
2. During this period, either side may terminate the contract at two months' notice. Should this notice period extend beyond the term of the initial contract, then that contract shall be extended accordingly.

3. Termination of the contract on the initiative of the Secretary General shall be decided by him or her on the advice of the Board.

Article 18 – Probationary period

1. The probationary period is a trial and training period and may be extended by one year, in the case provided for in Article 20, paragraph 3.
2. Where the probationary period has been interrupted for reasons outside the staff member's control, the Secretary General may, on the advice of the Board, extend it by the length of the interruption.
3. During the probationary period, the staff member shall be assigned to a Major Administrative Entity or to different Major Administrative Entities in turn. He/she shall be entrusted with duties corresponding to his or her grade to enable him or her to acquire the necessary training under the supervision of his or her superiors. The staff member shall take part in induction activities organised by the Director of Human Resources and covering the aims, structure and functioning of the Council.
4. During the probationary period, staff members cannot apply for internal competitions or be promoted.

Article 19 – Appraisal during the probationary period

The conditions governing the appraisal of staff members during their probationary period are laid down in a General Rule. The provisions of Article 22 of the Staff Regulations apply, *mutatis mutandis*, to the appraisal of staff members during their probationary period.

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

1. Before the probationary period expires, the Board shall examine the staff member's file and, in particular, his or her appraisal reports made in accordance with Article 19.
2. If the staff member's work is satisfactory, the Board shall recommend that the Secretary General confirm him or her in his or her employment.
3. If the staff member's work is the subject of conflicting opinions, the Board may, in exceptional cases, recommend that the Secretary General extend the probationary period in accordance with the provisions of Article 18, paragraph 1.
4. If the staff member's work is unsatisfactory, the Board shall recommend that the Secretary General terminate the employment, subject to the required notice being given. The staff member concerned shall be notified of this recommendation and shall have the right to submit observations to the Secretary General within eight working days.

...

Rule No. 1356 of 12 March 2014 on appraisal

Article 1 – General introduction

1. The appraisal process shall be a process of dialogue between Secretariat members¹ and their hierarchical superiors. The main purpose of the appraisal process is to clarify the work of Secretariat members by establishing clear objectives, assess the results they have obtained towards the achievement of these objectives and help them develop the requisite competencies, thereby increasing the effectiveness and efficiency of Secretariat work. The appraisal is intended as an objective review of the past year's work; it also provides an opportunity for fixing objectives for the following year.

¹ The term designates staff members under Article 1 of the Staff Regulations, temporary staff members under the relevant Rules and seconded officials under Article 1a of the Regulations for secondments to the Council of Europe established by [Resolution CM/Res\(2012\)2](#).

2. During appraisal interviews and throughout the appraisal process, the appraiser is responsible for providing guidance, assistance and reasonable managerial support to achieve the objectives. The appraisee is responsible for informing the appraiser about any difficulties s/he may encounter (or may reasonably foresee) in achieving the objectives.

...

Article 3 - The appraisal procedure

...

3. The appraisal exercise shall comprise two stages: the setting of objectives for the reference period and, at the end of the reference period, the appraisal of the results achieved in the light of the objectives set.

...

Article 4 - The appraisal procedure during the probationary period

1. The first objective-setting for staff members during their probationary period shall take place at the latest two weeks after they take up their duties. These staff members shall be subjected to three appraisal reports, the first covering the period up to the end of their sixth month of employment, the second covering the next period up to the end of their twelfth month of employment and the third covering the next period up to the end of their eighteenth month.

2. These three reports shall be presented to the Appointments Board at the latest three months before the end of the probationary period. The third appraisal report shall be countersigned by the Head of the Major Administrative Entity, who shall make one of the following recommendations: probationary period successful, extension of the probationary period, or termination of employment.

3. If the staff member is confirmed in employment, objectives shall be set under Article 3 above for the remainder of the calendar year provided that this is not less than four months. In the event of an extension of the probationary period, staff members shall continue to be appraised every four months.

...

Article 8 - Appraisal reports

1. Appraisal reports shall be drawn up by the appraiser, using the appropriate electronic form, based on the appraisal interview.

...

3. Appraisal reports shall be countersigned by the appraiser's appraiser (n+2). ...

...

6. The N+1 has the duty to provide the Secretariat members s/he will appraise with clear information about performance expectations throughout the reference period. S/he shall give Secretariat members regular feedback about their performance, both in areas in which they are doing well, and in areas in which they can further develop. In particular, the n+1 should make sure that Secretariat members are informed in writing when, during a reference period, their work shows significant shortcomings. The n+1 shall help Secretariat members to reach their objectives.

16. The relevant provisions of the regulations and rules in force since 1 January 2023 (and amended since) are as follows:

- with regard to entry into service:

Staff Regulations

Article IV – Entry into service

...

4.4 Staff members shall initially be appointed for a fixed-term period defined by contract. The Secretary General may decide to extend a fixed-term appointment for a further fixed term, once or several times, for a total duration of service not exceeding four years.

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

...

4.7 Staff members shall undergo a probationary period defined by the Secretary General, aimed at evaluating their suitability for the job.

...

Staff rule on entry into service of 30 December 2022

4120. Probationary period

4120.1 The probationary period shall be of one year, regardless of the staff member's working time.

4120.2 The probationary period is a trial period aimed at evaluating a staff member's suitability for the job and the international civil service.

...

4130. Assessment procedure during the probationary period

4130.1 At least two assessment reports shall be made over the course of the probationary period. The first report shall cover the period up to the end of the fourth month of appointment. The final report shall cover the period up to the end of the eighth month of appointment.

4130.2 The final report shall contain one of the following recommendations made by the Head of the Major Administrative Entity or by their delegated authority:

4130.2.1 to confirm the staff member's appointment;

4130.2.2 not to confirm the staff member's appointment, or;

4130.2.3 to extend the probationary period for six months, where it has not been possible to determine the staff member's suitability for the job and international civil service.

4130.3 The Secretary General shall then decide whether to confirm or not confirm the staff member's appointment or extend their probationary period. The decision shall be duly reasoned, and the staff member shall be notified of it at least one month before the end of their probationary period.

4130.4 In case of extension, after having considered a new recommendation covering the period up to the end of the fourteenth month of appointment by the Head of the Major Administrative Entity, the Secretary General shall decide whether to confirm or not confirm the staff member's appointment. The decision shall be duly reasoned, and the staff member shall be notified of it at least one month before the end of their probationary period.

- with regard to the Appointments Review Committee:

Staff Regulations

Article XIII – Staff participation

...

13.8 The Secretary General shall establish standing joint advisory committees, composed of staff members nominated by the Secretary General and other staff members nominated by the Staff Committee, and consult them, in particular on the following matters:

13.8.1 staff appointments, with the exception of appointments at A6 and A7 level; promotions; and termination of service;

...

Staff rule on staff participation of 30 December 2022

1330. Standing Joint Advisory Committees

1330.1 The following Standing Joint Advisory Committees shall be established:

...;

1330.1.2 Appointments Review Committee;

...

...

1330.6 Each Standing Joint Advisory Committee shall strive to adopt its opinions by consensus. If no such consensus can be reached, the matter shall be subject to a vote. In the case of tie, the Chair shall have the deciding vote. Any member of the Committee may request that their views be recorded in the opinion.

...

1330.13 A Standing Joint Advisory Committee may, where necessary, invite a person or persons with specific relevant expertise to attend its meeting.

1350. Appointments Review Committee

Chair

1350.1 The Chair of the Appointments Review Committee shall be the Director of Human Resources or their representative.

Composition

1350.2 The Secretary General and the Staff Committee shall each create a list of members of the Appointments Review Committee comprising no fewer than ten staff members.

1350.3 Each time the opinion of the Appointments Review Committee is required, the composition of the Committee shall be determined based on members' availability and, as far as possible, the relevance of their expertise. This shall be done by selecting one staff member from each of the above-mentioned lists. The selection from the Secretary General's list shall be done by the Chair of the Committee and the selection from the Staff Committee's list shall be done by the Staff Committee.

Mandate

1350.4 The opinion of the Committee on Appointments Review shall be sought regarding:

(...)

1350.4.2 the non-confirmation of a staff member's appointment following a probationary period or the prolongation of a probationary period within the meaning of paragraph 4130.3 of the Staff Rule on entry into service;

...

- with regard to conflicts of interest:

Staff rule on duties, obligations and privileges of 30 December 2022

Conflict of interest

...

110.5 Staff members shall recuse themselves from any decision-making process in which they may be involved which could give rise to a conflict of interest for any reason.

...

THE LAW

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

- primarily, to reinstate her in the job in the department she occupied until the date on which her contract expired, namely 31 January 2024;
- alternatively, to order compensation for the loss incurred amounting to the sum corresponding to one month of her last basic salary payment per year of service;
- to order the payment of €500 to cover the cost of the proceedings.

18. The Secretary General asks the Tribunal to declare the appeal unfounded and to dismiss it, along with the appellant's requests in this connection. He notes, with regard to the appellant's main request, that the Tribunal has the power only to set aside the contested measure as it has unlimited jurisdiction in relation only to financial disputes. As to the appellant's request in the alternative, the Secretary General denies having committed any irregularity which could have incurred the Organisation's liability. He adds that in any case, the appellant's requests for compensation are unsubstantiated.

I. THE PARTIES' SUBMISSIONS

A. The appellant

19. Under the applicable law, the appellant asserts that despite the entry into force on 1 January 2023, of the new Staff Regulations and their implementing rules, the more favourable provisions to appraisees of the former Rule No. 1356 of the Secretary General of 12 March 2014 continued to apply to her probationary period for the 13 months following the entry into force of the new regulations. In this connection, she relies on the non-retroactive nature of the new regulations and the fact that the decision to extend her probationary period by one year was taken before the entry into force of the new regulations, on 22 September 2022.

20. In support of her appeal, the appellant relies mainly on four arguments: she accuses the Organisation (1) of a breach of the regulations on appraisals; (2) of a factual error and/or a mistaken assessment when preparing her appraisal reports; (3) of the lack of objectivity of the Appointments Review Committee; and (4) of a breach of the duty of care.

1. First ground of appeal: breach of the regulations on appraisal

21. In her first ground of appeal, the appellant claims primarily that the time limits applying to the appraisal procedure were not respected during her probationary period. More particularly, she argues that outside the first reference period, during which they were set within the proper time-limit – i.e. within two weeks of taking up her post (Article 4, paragraph 1, of Rule No. 1356) –, her objectives were subsequently set several months after the beginning of the reference period, or even outside it.

22. In the appellant's view, the failure to comply with the procedural time limits shows that she was not given the regular guidance and managerial support which she was entitled to expect from her superiors (Articles 1, paragraph 2, and 8, paragraph 6, of Rule No. 1356). She asserts that the context of the Covid-19 pandemic which marked the beginnings of her probationary period could not justify the failure of her superiors to fulfil their duty to provide her with reasonable support to reach her objectives. In this respect, she points out that she had very little

contact with her superiors during her first year of service and that no appraisal report was drawn up at the end of her sixth month of employment, in breach of Article 4, paragraph 1, of Rule No. 1356.

23. Lastly, the appellant adds that during the year over which her probationary period was extended, only one appraisal report covering a six-month period was drawn up, whereas she should have been appraised every four months (Article 4, paragraph 3, of Rule No. 1356).

2. Second ground of appeal: factual error and/or mistaken assessment when drawing up the appellant's appraisal reports

24. In her second argument, the appellant complains of inconsistencies in her appraisal reports which reveal the contested decision to be a manifestly mistaken conclusion based on the evidence of her file. In this connection she points to the contradictions between the various protagonists involved in the appraisal process and the totally unexpected nature of the decision of the head of her major administrative entity not to recommend the confirmation of her appointment, whereas her previous appraisal reports had indicated ongoing progress in the quality of her work. The appellant also notes that the criticisms directed against her in the last report with regard to her performance as justification for the recommendation not to confirm her appointment do not reflect the real situation and are not substantiated.

3. Third ground of appeal: lack of objectivity of the Appointments Review Committee

25. In her third argument, the appellant complains about the lack of objectivity and neutrality of the Appointments Review Committee in the formation which examined her situation. In this respect, the appellant asserts that one of the members of the committee and a person who was invited to attend in the light of their specialised knowledge had had an employment relationship with her in the past and had drawn up appraisal reports on her in this context as her managers. Insofar as these persons' views were influenced by their previous work experience with the appellant, she claims that their participation distorted the Committee's opinion. The appellant points out that although the Committee only has an advisory role, its recommendations carry much weight in appointment decisions as in most cases, the Secretary General follows them.

4. Fourth ground of appeal: breach of the duty of care

26. The fourth argument is based on the Council of Europe's duty of care, a concept which reflects the balance of rights and obligations which should be struck between the administration and public service employees. This concept implies that the administration should take into account not just the interests of the department but also those of the staff member concerned. The appellant considers that having employed her for over 20 years on insecure contracts, the Organisation should have recognised her merit and given her a genuine chance to incorporate her services into a more lasting contract following the second competition she had passed. Having always given satisfaction in the Council of Europe departments where she worked and having passed two recruitment competitions at grade B1/B2, the appellant considers that she has adequately proven that she has the level of knowledge and skills required to work at the Council of Europe on assistant posts at this grade. She suspects that the Organisation may have put her on a "blacklist" and mentions in this connection the recent rejection of her application for an external competition held to recruit grade B1/B2 staff (vacancy notice No. e16/2024). In

these circumstances, the decision to terminate her employment is clearly at odds with the duty of care incumbent on the Organisation.

B. The Secretary General

27. To begin with, the Secretary General points out that according to the general legal principles concerning the application of legal rules over time, a legal text is applicable from the date of its entry into force up to the date of its repeal. Consequently, the Secretary General considers that for the procedure relating to the appellant's probationary period before 1 January 2023, it is the regulations in force until 31 December 2022 which apply, more specifically Article 17 of the old Staff Regulations and Articles 17 to 20 of the Regulations on Appointments (Appendix II), together with Rule No. 1356 of the Secretary General of 12 March 2014 on appraisal. On the other hand, for the procedure relating to the appellant's probationary period from 1 January 2023 on, it is the provisions of the Staff Regulations and the related implementing rules which came into force on 1 January 2023 which apply. Rule No. 1356 was repealed as of 1 January 2023 by Article 3 of the Secretary General's decision of 30 December 2022 on the entry into force of the Staff Rules implementing the Staff Regulations.

1. On the breach of the regulations on appraisal

28. With regard to the time that it took to set the appellant's objectives, the Secretary General explains that because of the special circumstances linked to the context of the Covid-19 pandemic, it was decided, having consulted the appellant, to combine the appellant's first two appraisals and simply carry out an evaluation in 2021. The Secretary General highlights the fact that following the initial objective-setting procedure at the beginning of the probationary period, these objectives changed very little afterwards. As a result, the appellant was aware of what was expected of her and could not complain that she had suffered any harm because of any alleged delay in setting her objectives.

29. The Secretary General concedes that during the year for which the appellant's probationary period was extended, two appraisal reports should have been prepared, rather than just one. He considers, however, that this departure from the standard procedure was not such as to undermine the validity of the assessment as the appellant fails to demonstrate how it adversely affected her performance.

2. On the factual error and/or mistaken assessment when drawing up the appellant's appraisal reports

30. As to the substance of the reports, the Secretary General would begin by pointing out that the decision whether or not to confirm a staff member's appointment following a probationary period was covered by the broad discretionary power he had where it came to appraising staff members' performance levels. He then goes over the facts in the instant case with the intention of demonstrating the genuine nature of the inadequate performance of which the appellant was accused, prompting the contested decision not to confirm her appointment.

31. Secondly, in response to the appellant's allegation that she was not sufficiently informed about her performance, the Secretary General acknowledges the progress and effort she made during her probationary period. However, he notes that regularly throughout the

period, which lasted three years, she was alerted by her superiors about the shortcomings of which she was accused and the need to make further efforts to reach the required level, both in the five reports she received and in exchanges with her managers. The appellant therefore had had extensive and sufficient time to prove her worth.

32. As to the appellant's argument concerning the differences in opinion between the fourth and fifth appraisal reports, the Secretary General argues that the differences in the assessments by her direct manager (N+1) on the one hand and her reviewing manager (N+2) and the head of her major administrative entity on the other can be accounted for by the specific responsibilities inherent in the managerial roles of the various persons involved in the assessment process. The differences in these respective responsibilities inevitably mean that differing and broader perspectives and issues will be considered when assessing staff members' performance. In particular, the head of the major administrative entity took account of the entity's long-term needs, the prospects of the appellant within the Organisation and the interests of the Organisation as a whole when recommending not to confirm her appointment.

3. On the lack of objectivity of the Appointments Review Committee

33. The Secretary General asserts that the appointment of the Appointments Review Committee was carried out in conformity with paragraph 1350 of the Staff Rule on staff participation. He considers that the appellant provides no evidence for her allegations that a member of the Committee and the person who was invited as a representative of the major entity concerned were in a position of conflicting interests which would have prevented them from ruling impartially on the appellant's situation. In the Secretary General's opinion, the mere fact that the two people called into question by the appellant were her direct managers in the past is no reason to raise doubts as to their ability to examine her case impartially.

4. On the breach of the duty of care

34. The Secretary General raises several points which he regards as evidence that in the instant case, the Organisation ensured that all the interests at stake, particularly those of the appellant, were respected in accordance with its duty of care.

35. The Secretary General points out that the appellant's probationary period was extended by one year to enable her to prove her worth in her job, that she was informed, in good time, that it had been decided not to renew her contract and given the reasons for this decision, and that she had been granted the two months' notice which apply during the probationary period. She was also supported by the Administration in her search for a new job through an outplacement service providing one-to-one coaching.

36. Lastly, the Secretary General refutes the appellant's argument that her application for external competition No. e16/2024 was rejected under false pretences. He explains that the reason why her application was rejected was that, among the 1685 applications received, her profile did not most closely match the requirements set out in the vacancy notice in terms of qualifications, experience and motivation.

II. THE TRIBUNAL'S ASSESSMENT

A. On the preliminary question of the applicable law

37. This case raises a preliminary question concerning the regulations that applied during the appellant's probationary period, and specifically during the period between 1 January 2023, when the new Staff Regulations and Staff Rules came into force and 31 January 2024 (see paragraphs 19 and 27).

38. The Tribunal will examine this matter in direct conjunction with the merits, with which it is closely linked.

B. On the merits

39. In her first ground of appeal, the appellant argues that the appraisal procedure was vitiated by several irregularities and that these undermined her chances of making progress during her probationary period (paragraphs 21-23).

40. The Secretary General, for his part, acknowledges the departures from standard procedure referred to by the appellant. He submits however that these were partly justified in view of the particular circumstances of this case and denies that they caused any harm to the appellant, with the result that she cannot rely on this argument to request the annulment of the contested decision (paragraphs 28 and 29).

41. To begin with, it should be noted that Article 4, paragraph 1, of the old Rule No. 1356 of 12 March 2014 on appraisal, which applies to the first two years of the appellant's probationary period, provided as follows: "The first objective-setting for staff members during their probationary period shall take place at the latest two weeks after they take up their duties. These staff members shall be subjected to three appraisal reports, the first covering the period up to the end of their sixth month of employment, the second covering the next period up to the end of their twelfth month of employment and the third covering the next period up to the end of their eighteenth month".

42. As described by the provision cited, the appraisal procedure should therefore have taken place in three stages, each beginning with an objective-setting process designed to clarify what work was expected from the staff member and ending with an appraisal of the results achieved in relation to the objectives set.

43. In the instant case, the Tribunal notes that, while the appellant's objectives for her first reference period, from 1 December 2020 to 31 May 2021, were set within the time limit of two weeks after she took up her duties, namely on 7 December 2020 (see first appraisal report), this was not the case after that. The appellant's objectives for the reference period from 1 June 2021 to 30 November 2021 were not set until 3 March 2022 (see second appraisal report), i.e. more than nine months after the beginning of this period and even three months after the end of it. Likewise, the appellant's objectives for the period from 1 December 2021 to 31 May 2022 were not set until 25 February 2022 and revised on 4 March 2022 (see third appraisal report), i.e. about three months after the beginning of the period concerned.

44. As to the dates on which the appraisals of the appellant's performance were conducted, the Tribunal notes that her first appraisal was on 28 February 2022 (see first appraisal report)

and was not conducted therefore until nine months after the expiry of her first reference period. The appellant's appraisal for the second reference period did not take place until July and August 2022 (see second appraisal report), i.e. over seven months after the end of the period in question. Furthermore, the second appraisal report was merely a copy of the first, and was drawn up only a few weeks before the appraisal for the third reference period (see third appraisal report, signed on 24 June 2022 by the direct manager, and followed by comments from the reviewing manager on 27 June 2022 and the head of the major administrative entity on 23 August 2022), only shortly before the Appointments Board examined the appellant's file on 8 September 2022 and recommended the extension of her probationary period. An appraisal report was subsequently drawn up for the period from 1 June 2022 to 30 November 2022, and objectives were set on 10 February 2023 (see fourth appraisal report, drawn up by the direct manager on 12 October 2023).

45. With regard to the year for which the appellant's probationary period was extended, the Tribunal notes that a fifth appraisal report was drawn up for the period from 1 December 2022 to 31 May 2023, for which objectives were set on 23 February 2023, i.e. about three months after the beginning of the period concerned. This fifth report, drawn up by the direct manager on the same date as the fourth (12 October 2023), was finalised the following day (with comments by the reviewing manager on 12 October 2023 and the head of the major administrative entity on 13 October 2023).

46. From the foregoing it is clear that in the first two years of the appellant's probationary period, she benefited from only one appraisal for the first two reference periods, in breach of the letter of the law of the applicable regulations, which provide for two. This is confirmed moreover by the documents on the case file and the Secretary General's written submissions, which acknowledge that it was decided to combine the first two appraisals and conduct only one appraisal during 2021 because of the Covid-19 pandemic.

47. Likewise in the year for which the appellant's probationary period was extended, the appellant was given only one negative appraisal report, covering a six-month period, whereas she should have received at least two, each for a four-month span. This conclusion applies regardless of whether this period was covered by the old or the new regulations as, in both cases, whether under Article 4, paragraph 3, last sentence, of the old Rule No. 1356 of 12 March 2014 on appraisal or under paragraph 4130.1 of the Staff Rules on entry into service currently in force, the rule requires staff members to be appraised twice during the first eight months of the extension of their probationary period.

48. The Tribunal notes that the applicable regulation does not provide for any derogation from the provisions governing the frequency of appraisals during probationary periods or for the staff member concerned to be able to waive the procedure. Nor does the Secretary General provide any evidence in support of his assertion that the appellant was consulted on the decision to combine her first two appraisal reports or still less agreed to this. In reality, the documents in the case file show the contrary as, in her comments on the first appraisal report, the appellant clearly expresses regret that the criticisms of her work were not communicated to her earlier, as this would have helped her to understand better what was expected of her.

49. The Tribunal points out that when exercising the supervisory powers assigned to it in this area, it has a duty to consider whether the correct procedure was followed (ATCE, Appeal No. 650/2020, *Levertova v. Governor of the Council of Europe Development Bank*, [decision of 12 February 2021](#), § 51 and case law cited). It is also established case law that thorough

compliance with the rules governing the organisation of appraisals and the conduct of the procedure provided for in this respect is a means of offsetting the especially large degree of discretion enjoyed by evaluators when appraising a staff member (see, in particular, General Court of the European Union, judgment of 15 June 2022, *QI v. European Commission*, T- 122/21, paragraph 144 and case law cited). This requirement is particularly marked if the appraisee is on a probationary period and confirmation of their employment by the Organisation is dependent on the successful completion of this period.

50. In the instant case, in view of the considerable delays with which the appellant's objectives were set during the probationary period and the failure to ensure that she was appraised during this period with the requisite frequency, the Tribunal considers that it has been established that the applicable procedure was not observed, and that no special circumstance could justify this failure.

51. Therefore, the question that needs to be considered is whether the procedural irregularities found were significant in nature and could have harmed the appellant, which is contested by the Secretary General. According to the relevant case law, failure to meet deadlines laid down for an evaluation procedure does not amount to an irregularity capable of making the contested decision unlawful if the delay has not caused the staff member injury (ILOAT, [Judgment No. 4505 of 6 July 2022](#), *R v. WIPO*, consideration 5).

52. In the appellant's case, the Tribunal notes that the consequence of the procedural delays noted is that over the first two years of her probationary period, the appellant received only one piece of feedback in good time on her level of performance and conduct, namely the appraisal completed on 28 February 2022 for the reference period from 1 December 2020 to 31 May 2021 (first appraisal report), which was simply duplicated for the reference period from 1 June 2021 to 30 November 2021 (second appraisal report). More importantly still, during the third and final year of her probationary period, the appellant was not given any feedback in good time, as the only appraisal report to have been drawn up for this period was adopted in October 2023 (fifth appraisal report), only a few days before the meeting of the Appointments Review Committee which recommended that her employment should be terminated. This report related to a period of six months (from 1 December 2022 to 31 May 2023) when it should have covered a period of only four months. The result is that over a three-year period in the context of the appraisal procedure, the appellant was properly alerted to the risk she ran of not being confirmed in her appointment only once, at the end of the first year of her probationary period. The Tribunal notes in this respect that following this negative feedback, the appellant made efforts which enabled her to make progress (see the third appraisal report).

53. In the light of these circumstances, there is no doubt that the failure to observe the applicable deadlines for the appraisal procedure had an impact on the appellant by depriving her of crucial information which she could have taken into account to progressively improve her performance and meet her superiors' expectations. According to the relevant case law, "a staff member whose service is not considered satisfactory is entitled to be informed in a timely manner as to the unsatisfactory aspects of his or her service so that steps can be taken to remedy the situation"; this, it holds, is a fundamental aspect "of the duty of an international organisation to act in good faith towards its staff members and to respect their dignity" (ILOAT, [Judgment No. 2414 of 2 February 2005](#), consideration 23).

54. It should therefore be held that in the instant case, by departing from the applicable procedure, the Organisation failed to meet its obligation to provide the appellant with regular

feedback on her performance and alert her about the shortcomings of which she was accused, and that this caused her undoubted harm. The Tribunal also notes that the Secretary General does not provide any evidence to the contrary. His assertions that the appellant was informed regularly of the shortcomings of which she was accused, and the results expected of her – in particular through e-mails and oral exchanges concerning the tasks she had completed and the organisation of her work – are for the most part unsubstantiated.

55. Consequently, it must be found that the appraisal procedure followed during the appellant's probationary period was vitiated by a substantive irregularity, as was the contested decision which marks the culmination of this procedure.

III. CONCLUSION

56. In the light of the foregoing evidence, the appellant's first ground of appeal is founded. Accordingly, and without it being necessary to rule on the other grounds, the contested decision should be set aside.

IV. CLAIMS FOR DAMAGES AND COSTS

57. The appellant is entitled to compensation for the harm caused to her.

58. Under Article 14.2 of its Statute, the Administrative Tribunal may annul administrative decisions. Where appropriate, it may also order the payment of compensation to the appellant for damages resulting from the contested administrative decision. However, it does not have the authority to order the appellant's reinstatement within the Organisation. It follows that the appellant's primary request, for the Tribunal to order her reinstatement, must be dismissed.

59. As to the appellant's alternative request for financial compensation for the damage incurred, the Tribunal notes that if her probationary period had been successful, the appellant's CDD could have been renewed for a further year. The Tribunal also notes firstly that the third and fourth appraisal reports contained positive appraisals of the appellant, stating that she had made efforts to remedy the shortcomings found in the previous reports, and secondly that the Appointments Review Committee was divided when, on 20 October 2023, it recommended that the appellant's employment be terminated. Bearing in mind the circumstances of the case, the Tribunal considers that if she had been regularly monitored through the appraisal procedure, there was a fifty percent probability that she would have completed her probationary period successfully. The appellant would not, however, have been entitled to the renewal of her CDD after it came to an end. Consequently, the material relief may in principle be set at half the amount of her last basic salary payment (plus any allowances which the appellant was paid before her departure from the Organisation) multiplied by the number of months (twelve) for which she could have been employed if her CDD had been renewed. In the instant case, it has to be taken into account however that the appellant's last CDD was extended by two months to give her the required notice (paragraph 10). The last basic salary payment must therefore be multiplied by ten.

60. Having been deprived of the regular support and supervision which a staff member on a probationary period can reasonably be expected to be afforded, the appellant also suffered non-pecuniary damage, which the recognition of the infringement alone cannot adequately remedy. Accordingly, the Tribunal finds it appropriate to award the appellant €5 000 under this head.

61. Lastly, the appellant seeks the reimbursement of her costs and expenses, amounting to €500. Bearing in mind the nature and importance of the dispute, the Tribunal awards this sum.

For these reasons, the Administrative Tribunal:

Declares the appeal admissible and well-founded and sets aside the impugned decision;

Orders the Council of Europe to pay the appellant a sum equivalent to half the amount of her last basic salary payment, plus any allowances paid before her departure from the Organisation, multiplied by ten, along with a sum of 5 000 (five thousand) euros in compensation for non-pecuniary damage and a further 500 (five hundred) euros for costs.

Delivered by the Tribunal on 30 January 2025, the French text being authentic.

The Registrar of the Administrative
Tribunal

The Chair of the Administrative
Tribunal

Christina Olsen

Paul Lemmens