CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeals Nos. 587/2018 and 588/2018
(Jannick DEVAUX (II) and (III) v. Secretary General)

The Administrative Tribunal, composed of:

Mr András BAKA, Deputy Chair,
Ms Françoise TULKENS,
Mr Christos VASSILOPOULOS, Judges**,**

assisted by:

Mr Sergio SANSOTTA, Registrar,
Ms Eva HUBALKOVA, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant, Ms Jannick Devaux, lodged both her appeals on 19 March 2018 and these were registered the same day under Nos. 587/2018 and 588/2018. The appellant sought firstly annulment of the refusal to maintain her level of pay during the period from 1 September to 31 December 2017 (appeal No. 587/2018) and, secondly, annulment of the decision not to renew her contract from 1 January 2018 (appeal No. 588/2018).

2. On 19 April 2018, the Secretary General forwarded his observations on the appeals. The appellant responded by submitting observations in reply.

3. On 4 June 2018, the Deputy Chair refused Ms Tanja Kleinsorge, the appellant's former line manager, leave to intervene in the proceedings (Article 10 of the Statute of the Tribunal), stating that the proposed intervention was intended to correct "*possible misrepresentations of the facts*". The Deputy Chair noted, however, that under the terms of paragraph 2 of the aforementioned Article 10, "submissions made in an intervention shall be limited to supporting the submissions of one of the parties" and that,

consequently, no other purpose was permitted (see, *mutatis mutandis*, the Chair's order of 21 October 2005, dismissing the request by Mr Apolonio Ruiz-Ligero, Vice-Governor of the Bank, for leave to intervene in Appeal No. 348/2005 – Carlos Bendito (IV) v. Governor of the Council of Europe Development Bank). He further stated that it was always open to the parties to bring directly to the attention of the Tribunal any information which the applicant might wish to submit to the Tribunal and that, in any event, the applicant could make use of her statutory rights to correct the "*possible misrepresentations*".

4. The parties having stated that they were prepared to waive their right to oral proceedings in the first appeal, on 22 June 2018 the Tribunal decided that there was no need to hold a hearing: the public hearing in the second appeal took place in the hearing room of the Administrative Tribunal in Strasbourg on 22 June 2018. The appellant was represented by Ms Nathalie Verneau, Council of Europe staff member, while the Secretary General was represented by Mr Jörg Polakiewicz, Director of Legal Advice and Public International Law (Jurisconsult), assisted by Ms Sania Ivedi and Mr Kevin James Brown, administrative officers in the Legal Advice Department.

5. Before the start of the oral proceedings, the appellant submitted a number of documents.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The appellant was a permanent Council of Europe staff member on a fixed-term contract. After working for the Organisation from 2000 until June 2012 as a temporary staff member and successfully completing a selection procedure based on qualifications, she was recruited to the Secretariat of the Parliamentary Assembly of the Council of Europe on a fixed-term contract, with effect from 1 September 2012. Her contract was subject to the rule in the Staff Regulations limiting the duration of employment to five years (Article 20 cited in paragraph 25 below) and ended on 31 August 2017, at which point the appellant held the grade B5, step 2.

7. On 1 June 2017, the Secretariat of the Parliamentary Assembly asked the Directorate of Human Resources (hereafter "DHR") about the possibility of the appellant staying on until the end of December 2017 in order to finish the activities on which she had been working and for which funding was assured until the end of the year thanks to voluntary contributions. The activities were PACE Social Affairs Committee activities relating to national parliaments' follow-up to the Council of Europe's "One in Five" campaign to combat sexual violence against children and the Strategy on the Rights of the Child. The Assembly's Secretary General asked that an exception be made for the appellant and that she be given a contract to enable her to complete the various initiatives planned up to and including December 2017.

8. The acting Director of DHR replied, saying that the appellant's fixed-term contract could not, in any event, be extended. He also pointed out that, as a rule, DHR guidelines on the use of temporary contracts called for a one-year waiting period between ending a fixed-term contract and starting a temporary one. In the interests of the department and to avoid jeopardising the activities in question, however, it might be possible to make an exception and to grant the appellant a temporary contract until December 2017. He said that the conditions under which the appellant would be employed on a temporary contract would be based on the provisions of Rule No. 1232 laying down the conditions of recruitment and employment of temporary staff members in France (see paragraph 26 below). Consequently, she could only be offered a contract with grade B5, step 1 (whereas she was on grade B5, step 2, when her fixed-term contract ended) and she would also lose her entitlement to the household allowance, resulting in a reduction in pay of EUR 686.46 per month.

9. According to the appellant, it was brought to her attention that the said reply, sent to the Secretary General of the Parliamentary Assembly, was dated 9 June 2017, and specifically mentioned the risk of her employment relationship becoming permanent. For the appellant, this reply from the Director of DHR was crucial.

10. On 7 July 2017, the head of the Contracts, Allowances and Leave Unit sent the appellant an email, stating:

> "(...),
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> Your current fixed-term contract, governed by Article 16 of the Regulations on Appointments (Appendix II to the Staff Regulations) (...), commenced on 1/09/2012 and ends on 31/08/2017. As you noted at the time of signing this contract, the latter cannot be extended as, under the rules, the maximum duration of such contracts is five years.
>
> The Secretary General of the Parliamentary Assembly of the Council of Europe has asked the Directorate of Human Resources that you be kept on from 1 September 2017 until the end of December 2017 in order to finish the project you are working on and for which funding is available until the end of 2017 thanks to voluntary contributions.
>
> To avoid jeopardising this project, the Director of Human Resources is prepared to allow the Organisation, on a one-off basis and provided the Parliamentary Assembly makes a formal request to this effect, to offer you a temporary contract governed by Rule No.1232 laying down the conditions of recruitment and employment of temporary staff members in France from 1 September until the end of December 2017, with no possibility of extension.
>
> For information, pursuant to the above-mentioned rule which will govern the proposed temporary contract, the net monthly remuneration will be calculated by reference to the first step of grade B5 and would amount to €4,075.83.
>
> (...)"

11. On 1 August 2017, the appellant met with the Head of the Department for the Administrative, Social and Financial Management of Staff who explained that, owing to the current budgetary situation, there was going to be a freeze on temporary contracts.

According to the appellant, he encouraged her to sign the contract of employment as quickly as possible in order to secure the offer that had been made to her.

12. The appellant states that, under pressure from these adverse budgetary conditions and wishing to keep her job, she signed the contract in question on 16 August 2017. The Secretary General adds that, on that same day, the head of the said department again explained to the appellant that she was being offered a temporary contract governed by Rule No. 1232 from 1 September until 31 December, with no possibility of extension. The appellant was also informed that under Article 10 of Rule No. 1232, her net monthly remuneration would be calculated by reference to the first step of grade B5.

13. On 18 August 2017, the appellant met with the acting Director of DHR, who suggested that her department should ask DHR for a B6, step 1 contract, in order to preserve her current level of pay. He referred here to the Organisation's usual practice when staff members changed category or grade. He also observed that, in the case of the projects to which the appellant had been assigned, funding had been secured until December 2017 for a fixed-term contract with grade B5, step 2. The appellant therefore went back to her Department which asked DHR to upgrade her to grade B6, step 1.

14. According to the Secretary General, in the course of the meeting held that same day, the possibility of upgrading her temporary contract to grade B6 was mentioned. The acting Director of DHR clearly stated that, not having the text of Rule No. 1232 in front of him, he was uncertain whether it was possible to draw up a B6 temporary contract under the said rule. After this meeting, and at the request of the appellant, the Secretariat of the Parliamentary Assembly asked for her to be upgraded, under her temporary contract, to grade B6.

15. On 22 September 2017, however, the head of the Assembly's Central Division presented the appellant in person with a copy of a memorandum dated 20 September 2017, from the Director of DHR, in which the latter refused the PACE Secretariat's request to upgrade the contract to grade B6, step 1. The Secretary General further submits that in effect, Rule No. 1232 provides for the possibility of granting temporary contracts from grade C1 to grade B5, and that B6 is therefore excluded.

16. On 20 October 2017, the appellant lodged an administrative complaint against the refusal to offset the reduction in remuneration which she had suffered as a result of her being employed on a temporary contract from 1 September 2017. Her complaint was submitted to the Advisory Committee on Disputes which, on 21 December 2017, gave its opinion and found in favour of the appellant:

> "16. The Advisory Committee on Disputes considers that the main issue raised by the situation as presented (…) concerns the maintenance of pay levels when staff members change category or grade. It observes that the practice of maintaining pay levels in such cases, which is public knowledge within the Organisation, was referred to by the acting Director of Human Resources when he met with the appellant on 18 August 2017. (…). In the view of the Advisory Committee on Disputes, fairness demands that the benefit of this practice be extended to the appellant, particularly as she is performing the same tasks in her capacity as a temporary staff member as the ones she was carrying out up to August 2017,

> and her job is funded sufficiently to cover the salary for a fixed-term contract with grade B5, step 2, and from a source other than the Council of Europe's ordinary budget. It is regrettable that, after seventeen years of good and loyal service, she should be denied the benefit of this practice and so suffer a loss of income merely because she has ceased to be a "statutory" staff member (…).
>
> 17. The Advisory Committee on Disputes notes that the Directorate of Human Resources made genuine efforts to find a solution to the problem of the appellant's remuneration but that, in the end, the Director of Human Resources concluded, on 20 September 2017, that since Article 10 of Rule No. 1232 was clear and binding, she had no choice but to reject the request to award the appellant grade B6, step 1. In line with this assessment, the Committee observes that this provision does indeed refer to a number of grades, of which B6 is not one. That said, it is not entirely convinced that (…) the provisions of this text are "unambiguous as regards the remuneration of temporary staff". For it notes that there is a discrepancy between the English and French versions (…).
>
> 18. In the view of the Advisory Committee on Disputes, if Article 10 of Rule No. 1232 were to be understood as preventing the appellant from having her level of pay maintained, notwithstanding the practice mentioned above, it would cause staff who move from a contract covered by the Regulations on Appointments to temporary staff status to be treated less favourably in terms of remuneration than staff who move from temporary staff status to a contract covered by the Regulations on Appointments. In cases such as these, where the tasks and duties performed remain the same, the question arises as to whether there is an objective and reasonable justification for this difference in treatment as regards pay (…) and whether it is compatible with the principle of non-discrimination.
>
> 19. The Advisory Committee on Disputes therefore considers that the wording of Article 10 of Rule No. 1232 cannot be regarded as an absolute bar to the appellant benefiting from the above-mentioned practice so as not to have to suffer a reduction in pay. It can see why, in the light of Appendix I to this rule, in which B6 does not feature among the grades listed, the Directorate of Human Resources ultimately decided that it was not possible to award the appellant such a grade. It also considers, however, that, since the text in question does not expressly rule out the possibility, there is nothing in it to prevent the appellant from being awarded additional steps in order to bring her remuneration as a B5 temporary staff member into line with the remuneration she was receiving when employed at this grade under a contract covered by the Regulation on Appointments. (…)"

17. On 11 December 2017, the appellant's line manager forwarded to her an email from the head of the Parliamentary Assembly's Central Division, containing the following message:

> "(...),
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> I have just received approval from DHR, following approval from the Treasurer to stop charging … to the special account (CV) and to start charging her to the OB in order to release funds and enable Jannick to be kept on for a further two months (Jan-Feb). I cannot do 3 months yet owing to lack of funds. I think we might be able to do it in January.
>
> (...)"

18. From the information provided at the hearing, it appears that the projects which the appellant was managing were to be funded from voluntary contributions up to and including June 2018 and were awaiting financing for the remainder of the year. A contract concerning a further contribution from the Netherlands was being concluded and

the sum of EUR 25,000 promised by the Netherlands had, in the meantime, been transferred to the Council of Europe's account. The appellant says that, at the same time, discussions had started with the European Union representative with a view to implementing joint projects. In December 2017, therefore, the remainder of the 2017 voluntary contributions plus new contributions were sufficient to fund the projects until April 2018. In March 2018, the projects were suspended and the voluntary contributions were not used for the purposes for which they had been allocated.

19. On 18 December 2017, the appellant was informed that her contract of employment would not be renewed, DHR having decided to strictly enforce the rule whereby, on reaching the end of a fixed-term contract, staff must take a one-year break.

20. On 19 January 2018, the Secretary General rejected the appellant's administrative complaint in appeal No. 587/2018.

21. On 22 January 2018, the Secretary General rejected the appellant's administrative complaint in appeal No. 588/2018.

22. On 15 February 2018, the appellant proposed that the Secretary General settle the dispute referred to in Appeal No. 587/2018 equitably, based on payment of a sum of EUR 2,000. On 28 February 2018, the Director of DHR informed the appellant that the Secretary General could not agree to this.

23. On 19 March 2018, the appellant lodged the present appeals.

II. RELEVANT LAW

24. Article 59, paragraphs 2 and 3, of the Staff Regulations reads as follows:

> "2. Staff members who have a direct and existing interest in so doing may submit to the Secretary General a complaint against an administrative act adversely affecting them, other than a matter relating to an external recruitment procedure. The expression "administrative act" shall mean any individual or general decision or measure taken by the Secretary General or any official acting by delegation from the Secretary General.
>
> 3. The complaint must be made in writing and lodged via the Director of Human Resources.
>
> (...)
>
> b. within thirty days of the date of notification of the act to the person concerned, in the case of an individual measure; or
>
> c. if the act has been neither published nor notified, within thirty days from the date on which the complainant learned thereof (...)"

25. According to Article 20 (Confirmation in employment for an indefinite duration or for a fixed term) of Appendix II: Regulations on Appointments, Staff Regulations, paragraph 2b., a fixed-term contract may not be less than six months; it may be

renewed one or more times but the maximum period of employment may not exceed five years.

26. Temporary contracts are governed by Rule No. 1232 of 15 December 2005 laying down the conditions of recruitment and employment of temporary staff members from 1 January 2006.

Pursuant to Article 2.1, the provisions of Article 3 of the Staff Regulations on non-discrimination apply to temporary staff.

According to Article 3.3 of this Rule, temporary contracts may be renewed in accordance with the conditions laid down in the said Rule, but renewal does not confer entitlement to further renewal or to conversion into another type of contract.

Under the terms of Article 10**,** furthermore, the remuneration of temporary members of staff is to be calculated by reference to the first step of the basic salary for the appropriate grade on the lists appearing in Appendix I concerning the list of standard duties for temporary contracts. The latter refers to grades C1 to B5.

THE LAW

I. JOINDER OF APPEALS

27. Given the connection between the two appeals, the Administrative Tribunal orders their joinder pursuant to Rule 14 of its Rules of Procedure.

II. EXAMINATION OF THE APPEALS

Appeal No. 587/2018

28. The appellant is seeking annulment of the decision taken by memorandum of 20 September 2017, refusing to offset the reduction in pay arising from the change of contractual category.

29. The Secretary General invites the Tribunal to declare the appeal inadmissible and, secondarily, ill-founded and to dismiss it.

A. On the admissibility of the appeal

1. *The Secretary General*

30. The Secretary General begins by noting that the decision against which the appellant would have grounds to submit a complaint is the temporary employment contract which she was offered on 4 August 2017 and which she accepted on 16 August 2017, and not the memorandum sent by the Director of DHR to the Secretary General of the Parliamentary Assembly on 20 September 2017.

31. In the view of the Secretary General, the contract formally and definitively establishes that the appellant was to be employed at grade B5, step 1, from 1 September 2017. This contract, argues the Secretary General, is the only act capable of being considered an administrative act adversely affecting the appellant within the meaning of Article 59, paragraph 2, of the Staff Regulations.

32. Furthermore, the appellant had been informed as far back as June 2017 that, were she to be employed on a temporary contract, her pay would be reduced as she could only be employed at grade B5, step 1, and she would no longer be entitled to the household allowance. This information was reiterated to her directly and communicated in an email sent by DHR on 7 July 2017, in which the appellant was duly informed that pursuant to Article 10 of Rule No. 1232, her net monthly remuneration would be calculated by reference to the first step of grade B5. The appellant was reminded of this again when she met with the head of the Department for the Administrative, Social and Financial Management of Staff on 1 August 2017.

33. The temporary contract which the appellant was offered on 4 August 2017 clearly stipulated all the terms and conditions of her employment, including the grade and step to which she was be appointed. The appellant was aware that under the contract, she was to be employed at grade B5, step 1, and if she believed that this situation was detrimental to her, then she ought to have contested it from the date on which she became aware of the situation, and within not more than thirty days after signing her contract on 16 August 2017. In the event, the temporary contract became final as the appellant failed to contest it in accordance with the prescribed procedure and within the requisite time-frame.

34. The Secretary General contends that the memorandum sent by the Director of DHR on 20 September 2017 merely confirmed the terms of the contract and the information that had been brought to the appellant's attention on 7 July and 1 August 2017, concerning the application of Article 10 of Rule No. 1232 to her particular case. The Secretary General goes on to state that under no circumstances may an act which merely confirms an earlier, final decision be considered a new decision that would cause the time-limit for lodging an administrative complaint to start running afresh. The contract, therefore, is the only act against which the appellant would have grounds to submit a complaint.

35. The Secretary General concludes from this that the complaint lodged by the appellant on 20 October 2017, that is to say, long after the 30-day time-limit which began to run on 16 August 2017 at the latest, namely the day when she accepted her temporary contract, was lodged too late and that, consequently, the present appeal is inadmissible because it is out of time.

36. The Secretary General further considers that the appeal is also inadmissible for lack of standing, as the appellant freely consented to the act which allegedly adversely affected her. She was informed of the fact that she would be appointed to grade B5, step 1. She signed her temporary contract without any reservations and in full

knowledge of the facts and any withdrawal of that acceptance would be a breach of good faith.

2. *The appellant*

37. The appellant argues that, contrary to what the Secretary General claims, the decision not to offset the loss of pay arising from the move from one type of contract to another consists of two separate decisions, occurring at two different times and based on two different grounds. According to the appellant, the refusal to offset the loss of remuneration which she suffered as a result of moving from one type of contract to another cannot be considered mere confirmation of the decision to grant her a contract. Referring to the email of 7 July 2017, the decision to grant her a temporary contract at the end of her fixed-term contract was meant to ensure that the delivery of the projects she had been working on, for which funding had been secured and which had been declared a priority by the Parliamentary Assembly and the Secretary General, would not be compromised.

38. The appellant submits that the decision not to offset the reduction in remuneration was based not on the interests of the department but on a rigid and overly legalistic application of the rules, with no regard whatsoever to the usual practice, whose existence is not disputed. According to the appellant, this assessment is in line with the ILOAT's case law, according to which the new decision must modify the earlier decision and not be identical to it in substance or, at the very least, deal with issues other than the ones addressed in the earlier decision or be based on new grounds.

39. As is clear from the facts, the acting Director of DHR came up with a way to accommodate the appellant and suggested that the Secretariat of the Parliamentary Assembly make a request to this effect, which it duly did. The appellant considers, therefore, that at that point, the question of whether to maintain her level of pay had not been settled. It was the new Director of Human Resources who gave a definitive answer to this question in her memorandum of 20 September 2017, contradicting all the individuals mentioned. It must be concluded, therefore, that the decision against which the present appeal should be directed is the memorandum of 20 September 2017.

40. As to the claim that she has no standing because she signed the contract, the appellant notes that, in many legal systems, it is recognised that consent can only be relied upon against the person who gave it if that consent was given in full knowledge of the facts. In this particular instance, the appellant signed her contract under pressure from the Head of the Department for the Administrative, Social and Financial Management of Staff who told her that, owing to the budgetary situation, there was going to have to be a freeze on the granting and renewal of temporary contracts, irrespective of how they were funded, a statement that later proved to be false. On this point, the appellant notes that in effect, only temporary contracts funded by the ordinary budget were affected by the "precautionary measures" taken by the Secretary General in the summer 2017. That being so, the consent which the appellant felt compelled to give quickly cannot be held against her, as she did not give it in full knowledge of the facts.

41. The appellant is therefore of the opinion that her appeal should not be declared inadmissible.

3. *The Tribunal's assessment*

42. The Tribunal considers that the time-limit stipulated in Article 59, paragraph 3b., of the Staff Regulations should be applied in specific instances having regard to the subject matter of the case and what it is, in essence, that the appellant seeks to achieve.

43. In the view of the Tribunal, the key issue in the present appeal is the reduction in remuneration resulting from the change in the type of contract under which the appellant was to be employed in the Parliamentary Assembly. It is true that the appellant signed a new temporary contract and, in so doing, accepted all the conditions indicated, including the one stipulating that she was to be paid as a B5, step 1. The Tribunal recognises, however, that, at the end of her fixed-term contract which expired on 31 September 2017, the appellant found herself in a precarious situation and that she consented to all the conditions stipulated in the new contract in order to have some financial peace of mind, if only for a while.

44. The Tribunal further observes that, both before signing the temporary contract and afterwards, the appellant carried on looking for a way to resolve the problem of the reduction in pay which she had suffered and was confident that a satisfactory solution would be found. It was in this context that the negotiations she had begun ended with the memorandum sent by the Director of DHR on 20 September 2017 (see paragraphs 11, 13-15 above).

45. In addition and above all, this memorandum, of which the appellant received a copy on 22 September 2017, was a reply not to a new request on her part but rather to an initial request from the Secretary General of the Parliamentary Assembly, asking for the grade that had been awarded with the contract to be "revised". The Secretary General of the Council of Europe stated that this request could not be granted. It is clear therefore that the memorandum in question did not amount to a reiteration by the appellant of an earlier request, but was rather a new request on the part of the Secretariat of the Parliamentary Assembly. Article 59, paragraph 2, of the Staff Regulations, however, does not require the administrative act adversely affecting the appellant to be addressed to the appellant, it being sufficient that it adversely affects him or her.

46. The Tribunal concludes that, having lodged her administrative complaint on 20 October 2017 (see paragraph 16 above), the appellant complied with the time-limit stipulated in Article 59, paragraph 2, of the Staff Regulations.

47. As to the second preliminary objection, the Tribunal, referring to the observations which it has just made, concludes that the appellant does have an interest in taking action because the refusal to offset the reduction in remuneration resulting

from the change of contractual category adversely affects her and this interest still exists even though she signed the contract.

48. Accordingly the Tribunal rejects the preliminary objections raised by the Secretary General and declares the present appeal admissible.

B. On the merits

1. *The appellant*

49. The appellant notes, as regards the application of the well-known practice of maintaining the level of pay, that it was the acting Director of DHR himself who drew her attention to the fact that it was common practice at the Council of Europe to preserve a staff member's pay if he or she moved to a different type of contract and who pointed out that the projects on which the appellant was working were being funded through extra-budgetary resources, on the basis of a B5, step 2 contract. According to the appellant, the Administration's sole motive for refusing to preserve her pay was rigid enforcement of the rules and regulations. It was not a decision based on financial considerations, or the interests of the Organisation.

50. The appellant further contends that the refusal to apply the practice of preserving the pay of staff who move from a permanent contract to a temporary one runs counter to the principle of equal treatment of staff and the principle of non-discrimination. She submits that the Organisation has a contractual policy which for too long has relied on the misuse of temporary contracts to recruit staff to work on long-term projects, thereby giving rise to a difference in treatment between the two categories of staff that amounts to discrimination.

51. In allowing Council of Europe departments to circumvent the internal rules on the recruitment of temporary staff, the Administration has created a *de facto* situation which places temporary staff in the same position as permanent staff with regard to their tasks. The Administration cannot use the legality argument to rigorously enforce a clause in the internal rules when that same Administration allows departments to circumvent the rules governing contractual policy.

52. Where staff are recruited on temporary contracts to permanent posts, and are thus called upon to perform the same duties and exercise the same responsibilities as permanent staff, they must effectively be considered to be in the same situation as their permanent colleagues and as such subject to the same rules, including where pay is concerned. In the appellant's view, the principle of equal treatment of staff, which finds legal expression in the principle of non-discrimination, demands that staff in the same factual situation be treated in the same way.

53. The appellant goes on to argue that the refusal to offset the loss of remuneration is contrary to the principle of equity, as the decision which affects her working and pay conditions does not in any way serve the interests of the department in which she has

worked for many years. The impact of the said decision on her conditions of pay is all the more severe as she has to make repayments until 2024 in connection with the purchase of pension rights.

54. The appellant also emphasises her legitimate expectation that what was a widely accepted practice at the Council of Europe would also apply to her. The Administration, indeed, does not dispute the existence of this practice, whose application in cases similar to her own has not yet been raised. She also expected her pay to be preserved because the whole purpose of this practice is to offset any loss remuneration arising from career development, due to the "step effect".

2. *The Secretary General*

55. The Secretary General refutes the appellant's contention that Rule No. 1232 was applied too rigidly. In his view, the provisions of the said rule are clear and unambiguous as regards the remuneration of temporary staff and therefore require no interpretation. More specifically, Article 10 of the rule clearly refers to the first step of the basic salary for the appropriate grade. The same article refers to the list in Appendix I, from which it appears that only the grades featured in the list may be used to determine the remuneration of temporary staff and that those grades range from C1 to B5, with no mention of B6. It follows that under Rule No. 1232, it is not permitted to award the B6 grade to a staff member employed on a temporary contract, or to award steps beyond the first step. The appellant received the maximum remuneration which it was possible for her to receive as a temporary staff member. There is no leeway in such matters.

56. The Secretary General notes that DHR displayed the utmost kindness and concern in the present case. No promises or guarantees, however, were given to the appellant in her conversations with the staff from DHR. As regards in particular the meeting with the acting Director of DHR on 18 August 2017, he was sympathetic and open to the possibility of granting the appellant's request for her pay to be maintained at the same level. As he made clear in the course of the interview, however, he could only grant her request if he were permitted to do so under the rules. He did not have the text of Rule No. 1232 to hand during the interview and he can hardly be blamed for not knowing at the time whether the list of grades set out in Rule No. 1232 went up to B5 or B6.

57. Furthermore, as regards the practice of maintaining staff members' pay levels, the Secretary General points out that this practice applies only to permanent staff on fixed-term contracts, when they change grade or move to a different type of post or position. In such cases, there may in fact be a reduction in pay owing to the step effect. In the case of temporary staff, however, this practice is never applied, including in cases where they go on to be recruited as permanent staff on fixed-term contracts. This is mainly because temporary staff are not awarded steps, so the issue of the step effect, which is the reason for applying the practice in question, does not arise in their case. Similarly, the practice in question does not apply in cases such as that of the appellant,

where a staff member on a fixed-term contract went on to be employed on a temporary contract. This is especially true where maintaining the level of remuneration is not legally possible under the relevant rules and regulations, as is the case here.

58. With regard to the appellant's allegation that the failure to apply the practice in question in her particular case amounted to unjustified discrimination, the Secretary General points out that discrimination means treating differently, without an objective and reasonable justification, persons in comparable situations. In this particular instance, however, the situation of the appellant as a temporary staff member cannot be considered comparable to that of permanent staff as regards the issue of remuneration, since the regulatory framework which applies to these two categories of staff in terms of remuneration is totally different. There was no unjustified discrimination in the present case, therefore.

59. The Secretary General adds that there is no applicable principle or practice within the Council of Europe that would prevent a staff member from suffering a reduction in pay in the event of a change to his or her conditions of employment, as set out in the contract of employment. The appellant cannot lay claim to any subjective right to continue receiving the same level of remuneration after her move from permanent staff member to temporary staff member status. The reduction in her remuneration was the inevitable consequence of her being employed on a temporary contract after her fixed-term contract expired.

60. In the light of the foregoing, the Secretary General considers that the present appeal is ill-founded.

3. *The Tribunal's assessment*

61. The Tribunal notes firstly that the existence of different types of contract within the Council of Europe and their implementation are an integral part of the Organisation's contractual policy. The aim of this policy is two-fold: firstly, to ensure the optimum functioning of all Council departments and so achieve optimum results and, secondly, to ensure that the staff assigned to these departments are treated in a way that is fair, transparent, honourable and non-discriminatory.

62. The Tribunal takes the view that for a contractual policy to be effective and sound, it must be based on an appropriate assessment of the different kinds, content and nature of the work and/or duties performed within the Organisation, before establishing which type of contract should be assigned to a specific post. In other words, the type of employment contract must be line with the particular features of the job.

63. In the case in question, the Tribunal observes that the appellant, after working for the Organisation on fixed-term or temporary contracts since August 2000, secured, in September 2012, a five-year fixed-term contract for a post as project manager in the Parliamentary Assembly (see paragraph 6 above). When this contract ended, on 31 August 2017, the appellant held the grade B5, step 2. In view of the fact that the

project with which she had been dealing was not yet finished at that point and that it was in the interest of the Organisation to complete it, the appellant was offered a three-month temporary contract at grade B5, step 1, resulting in a reduction in salary and the loss of certain financial benefits (see paragraph 10 above).

64. The Tribunal notes that the decision to award her the grade B5, step 1, was not warranted by the budgetary constraints with which the Organisation had been having to contend for some time, and that the project in which the appellant was involved was funded through extra-budgetary contributions (see paragraphs 10 and 18 above). The reasons for the said decrease in step – and the ensuing reduction in pay – were administrative, and had to with the change in the type of contract (see paragraph 26 above).

65. The Tribunal observes, however, that the Organisation, in offering the appellant a temporary contract in order to be able to continue and, as far as possible, finish the project which she had been running, acted in accordance with the relevant rules, namely Rule No. 1232, Article 10 of which clearly states that "the remuneration of temporary members of staff shall be calculated by reference to the first step of the basic salary for the appropriate grade on the lists appearing in Appendix I". The said appendix refers only to grades C1-B5. Grade B6, which had been the subject of negotiations between the parties, is not mentioned (see paragraph 26 above).

66. The strict application of the rules of the Organisation in the present case cannot in itself be deemed to amount to a breach of the general principles of law, in particular the duty of due diligence or the duty of care. As to the fact that the temporary contract which was offered later to the appellant afforded a lower salary than the fixed-term contract, the Tribunal notes that the difference in question is not in itself contrary to the said general principles of law and, consequently, cannot be deemed to constitute a breach in the present case.

67. That said, the Tribunal cannot disregard the fact that the appellant, as a newly temporary staff member with the grade B5, step 1, continued performing the same tasks, duties and functions as she had performed as a staff member on a fixed-term contract with the grade B5, step 2, something the Secretary General does not deny. The appellant was thus in a situation comparable to the one that raises the issue of equal treatment. In effect, as a temporary staff member, the appellant was *de facto* in a situation similar if not identical to the one in which she had been as a staff member on a fixed-term contract, yet was subject to different rules.

68. Having noted that the Organisation proceeded in accordance with the rules in force, the Tribunal nevertheless reminds it that international organisations are bound to abide by the principle of equal treatment and in particular to comply with the requirement that there be equal pay for work of equal value; if their rules do not ensure adherence to that principle and the requirement of equal remuneration, it is their duty to initiate procedures that do (see ILOAT, judgment no. 2313, Z.P. v. the World Health Organization, of 4 February 2004, paragraphs 5-6). At the same time, where an

international organisation is required to apply the principle of equal treatment to officials in dissimilar situations, the organisation has a broad discretion to determine the extent to which the dissimilarity is relevant to the rules concerned and to define rules taking account of that dissimilarity (see ILOAT, judgment no. 3034, the complaints filed against the European Organisation for the Safety of Air Navigation and against Eurocontrol of 6 July 2011, paragraph 24).

69. The Tribunal concludes that the situation in which the appellant found herself as a temporary staff member was a direct result of the strict application of the existing rules. Referring to the case law mentioned, however, the Organisation should consider defining appropriate rules in order to prevent further cases of *de facto* unequal treatment from occurring. As a source of law, moreover, Rule No. 1232 is subordinate to the general principles of law and to the Staff Regulations, Article 3 of which aims to ensure equal treatment between staff members and which applies to temporary staff by reason of Article 2.1 of Rule No. 1232.

70. In the light of the foregoing, the Tribunal finds that appeal no. 587/2018 is unfounded.

Appeal No. 588/2018

71. The appellant asks the Tribunal to set aside the decision of 18 December 2017 as contrary to the statutory regulations, and to leave it to the Secretary General to draw the appropriate conclusions, including notably by reinstating the appellant in her duties with retroactive effect from 1 January 2018, at grade B5, step 2. Failing that, to find that the termination of the contract in question was wrongful and to award damages with interest to compensate for the injury suffered.

A. On the admissibility of the appeal

1. *The Secretary General*

72. The Secretary General begins by noting that the decision against which the appellant would have grounds to submit a complaint is the decision which was notified to her on 7 July 2017, reiterating the terms of the decision sent by the acting Director of DHR to the Secretary General of the Parliamentary Assembly, to grant her a temporary contract from 1 September to 31 December 2017. This email therefore, is the only act that might be considered an administrative act adversely affecting the appellant within the meaning of Article 59, paragraph 2, of the Staff Regulations. That runs counter, therefore, to the decision contained in this email dated 7 July 2017, which clearly established that the said temporary contract valid until 31 December 2017 could not be extended, and that she should have lodged an administrative complaint at that point. In effect, the reminder issued by the Director of General Services of the PACE Secretariat on 18 December 2017 was confirmation of the information that had been brought to the appellant’s attention on 7 July 2017.

73. The Secretary General concludes from this that the administrative complaint lodged by the appellant on 22 December 2017, i.e. after the 30-day time-limit which began running on 7 July 2017, was lodged too late and that, consequently, the present appeal is inadmissible because it is out of time.

2. *The appellant*

74. The appellant notes firstly that the Secretary General has raised no objections to her request to include in the case file, before the hearing, the memorandum from the acting Director of DHR dated 9 June 2017 (see paragraph 9 above), and she reiterates her request that it be added to the case file.

75. The appellant notes secondly that there is nothing in the text of Rule No. 1232 that would allow the Secretary General to rule out, in advance and as a matter of principle, the possibility of renewing a temporary contract from the moment it is concluded. While there is no established right to have a temporary contract renewed, that does not mean a staff member can be thus deprived of the possibility of having his or her contract renewed, still less if the conditions for renewal have been met.

76. The decision not to renew the temporary contract as it neared its end cannot be considered mere confirmation of the decision to rule out in advance the possibility of renewal of the contract at the time when it was concluded. In effect, the decision of 7 July 2017 to grant the appellant a temporary contract was simply, at the express request of her department, a way to avoid compromising the delivery of projects for which her input was needed, given her competences, experience and contacts. The first decision, therefore, was based on the interests of the department. The second decision, of 18 December 2017, not to renew her contract was based on rigid application of a text that had no legal force, namely the rule requiring staff to wait for a period between completing a fixed-term contract and starting a temporary one.

77. These two decisions, occurring at two different points of time and based on different grounds, must be regarded as separate, therefore; in effect, the decision not to renew the appellant's temporary contract, taken on 18 December 2017, is the one against which her appeal should be directed.

78. Although the Secretary General has not pleaded lack of standing, following the signing of the temporary contract on 16 August 2017, the appellant argues that, in many legal systems, it is recognised that consent can only be relied upon against the person who gave it if that consent was given in full knowledge of the facts, in other words if it is informed and serious. In this particular instance, however, the appellant signed her contract under pressure from the DHR representative who told her that owing to the budgetary situation, there was going to be a freeze on the granting and renewal of temporary contracts, irrespective of how they were funded, a statement that later proved to be false. For in the end, only temporary and fixed-term contracts funded by the ordinary budget were affected by the precautionary measures taken by the Secretary General in the summer 2017.

79. The appellant therefore concludes that her appeal should not be regarded as inadmissible.

3. *The Tribunal's assessment*

80. The Tribunal has already mentioned that the time-limit stipulated in Article 59, paragraph 3 b., of the Staff Regulations must be applied in specific instances having regard to the subject matter of the case and what it is, in essence, that the appellant seeks to achieve (see paragraph 42 above).

81. The Tribunal notes that the subject matter of the present appeal is the non-renewal of the appellant's contract after her last contract expired on 31 December 2017. The principal question therefore is which was the final decision whereby the appellant was refused a contract after the date mentioned above.

82. The Tribunal observes that in an email dated 7 July 2017, the appellant was informed that she was being offered a temporary contract "from 1 September until the end of December 2017, with no possibility of extension" (see paragraph 10 above). Then, on 16 August 2017, the appellant signed this contract, knowing that it would end on 31 December 2017. The Tribunal does not consider it necessary to determine whether she did so under pressure or not: in any event, the said contract was the only way open to her to continue managing the project which she had begun in 2012 (see paragraphs 8, 10-11 above) and to continue supporting herself after working for the Organisation for many years.

83. The Tribunal further observes that, although the email of 7 July 2017 did, technically speaking, state that the said contract was non-renewable, it is clear from the facts of the case that, after it was signed, the negotiations concerning its renewal continued until 18 December 2017, when the appellant learned, via her department, that that she would not be able to continue working for the Organisation (see paragraphs 10 and 19 above).

84. In the light of these considerations, the Tribunal rejects the Secretary General's preliminary objection to the admissibility of the case and declares the present appeal admissible.

B. On the merits

1. *The appellant*

85. The appellant maintains that the fact that she was given no formal guarantees is not sufficient to detract from the legitimacy of the expectation which she had that her contract would probably be renewed. In effect, the information contained in the email of 11 December 2017 was given in a way that led her to believe that renewal was more than likely: the fact that funding was available and assured made it a certainty that the projects which she had been running would continue and hence that her contract would

be renewed. Indeed, the head of the central division of the Parliamentary Assembly had begun the process of transferring funds, which was a prelude to requesting authorisation to extend the appellant's contract. Given the availability of funding, and the topical and important nature of the project on which she had been working, and which had been identified as a priority by the Parliamentary Assembly and by the Secretary General himself, she had no reason to suppose that there would be any difficulty in obtaining authorisation to extend her contract.

86. It was in the interest of the department, therefore, to keep the appellant on, at least for the year 2018. Also, if she was a given a temporary contract for the last four months of 2017, it was for reasons to do with the interests of the department. And it was on these same grounds that the request to renew her contract was refused, even though the needs of the department did not change between August and December 2017.

87. As regards the duty of care, the appellant recalls the traumatic manner in which she learned that her employment at the Council was to be terminated. In choosing to announce four days before the Christmas break that she would not be coming back in January, without even giving her a coherent explanation for terminating the 17-year working relationship, or showing her the slightest empathy, the Council of Europe violated its duty of care towards its staff and, more generally, acted in a manner that was neither generous nor supportive.

88. The appellant argues that the difference in treatment between temporary contracts and fixed-term contracts is discriminatory. Although temporary staff and staff on fixed-term contracts may be called upon to perform the same duties and assume the same responsibilities, the rules which treat temporary contracts less favourably than the rules governing fixed-term contracts (in particular the 3-month notice rule) engender a difference in treatment which is not based on any objective or reasonable criterion. Where temporary staff are recruited to permanent staff posts with the same duties and responsibilities, and where their contracts are renewed to the point where they become "permanent temporaries", the Organisation should ensure that they receive similar treatment, or at any rate accord them the same care. The Organisation, therefore, should not have taken a non-renewal decision so suddenly, without giving three months' notice, bearing in mind that, as a temporary staff member, the appellant has had a career worthy of a permanent staff member.

89. The appellant points out that the principle of equal treatment of staff, which finds legal expression in the principle of non-discrimination, requires that staff members who are in the same factual situation be treated the same way. In effect, a new category of staff has been created within the Organisation, namely "permanent temporary" staff, as a result of the current contractual policy. In the appellant's view, the rules governing the recruitment of permanent staff are being circumvented by the practice of recruiting temporary staff to permanent posts, in violation of the principle of equal treatment which requires that the same protection be accorded to all staff working in comparable posts.

2. *The Secretary General*

90. The Secretary General begins by pointing out that the acting Director of DHR never gave the appellant any guarantees that he would grant any request to extend her contract. Although the head of the central division of the PACE Secretariat did in fact begin the administrative process of exploring the financial feasibility of extending the appellant's temporary contract until February 2018, this was simply a case of completing administrative formalities involving mere technical transfers of budgetary appropriations, without the approval of senior management in the PACE Secretariat or DHR. It was not a request to extend the appellant's temporary contract, therefore.

91. No request to extend the appellant's temporary contract was made by the Parliamentary Assembly Secretariat, mainly because the DHR decision of June 2017 made it clear that there was no possibility of extending the appellant's contract following the one-off award of a temporary contract until the end of December 2017, but also because the activities which the appellant had been managing did not warrant making an exception and keeping her on as a temporary staff member for a further two months.

92. The email sent on 11 December 2017 by the head of the Central Division of the Assembly Secretariat to the head of the appellant's division, informing her that budgetary appropriations could be transferred to fund a temporary contract until the end of February 2018, did not in any way constitute an announcement that the contract would be extended until February 2018. This email was rather a reply to a request from the head of division along those lines, and merely stated that sufficient funds were available for a two-month extension.

93. Regarding the availability of budgetary funds to cover a possible extension of the appellant's temporary contract, the Secretary General states that the latter's job was funded through voluntary contributions from the member states. That said, the EUR 25,000 voluntary contribution from the Netherlands, to which the appellant refers, is not enough to deploy projects in the long term and to thus have any real impact. This contribution would have been sufficient to fund a temporary contract for a maximum period of three months in 2018, but not to implement and successfully complete projects with a vision that went beyond a few months. It is clearly not in the interest of the Organisation to deploy activities in cases where sufficient financing is not forthcoming in the long term. In any event, the budgetary resources would not have been available to fund the appellant's contract beyond three months.

94. The Secretary General notes that the appellant was informed, from the outset of her first appointment at the Council of Europe, that temporary contracts, like fixed-term contracts, are by definition limited in time, that they are not necessarily or automatically renewed and that they end on expiry. In signing these contracts, the appellant accepted all the terms and conditions thereof and cannot now claim to have suffered any damage.

95. The Secretary General explains that the reasons for not extending the appellant's temporary contract after 31 December 2017 relate mainly to the Organisation's policy on granting temporary contracts, the purpose of which is to avoid any inappropriate use of contracts of this kind. In effect, the purpose of a temporary contract is to provide the Organisation with support for a specific, time-limited task.

96. In this particular case, the Secretariat of the Parliamentary Assembly had expressed the need to keep the appellant on until the end of December 2017 as it was necessary to complete various activities being conducted by the appellant, and which were to run until the end of 2017. The activities on the basis of which special leave had been granted to employ the appellant on a temporary contract at the end of a fixed-term contract were due to end in December 2017 and there was no justification for extending the special authorisation beyond that date.

97. The Secretary General concludes from this that the present appeal is manifestly ill-founded.

3. *The Tribunal's assessment*

98. The Tribunal notes that, like other international administrative courts, when ruling on applications submitted to it, it has regard not only to the texts in force within the defendant organisation but also the "general principles of law and basic human rights" (see ILOAT judgment No. 1333, Franks and Vollering, of 1994 (paragraph 5)).

99. The said general principles of law include, *inter alia*, the principle of equal treatment and due diligence together with the duty of care.

100. The Tribunal further notes that the competent authority should, when taking a decision concerning the situation of a member of staff, take into consideration all the factors which may affect its decision and, in particular, the interests of the staff member concerned. That is a consequence of the administration's duty to have regard for the welfare of its staff, which reflects the balance of the reciprocal rights and obligations established by the staff regulations and, by analogy, the conditions of employment of other servants, in the relationship between a public authority and civil servants (see judgment of the European Union's Civil Service Tribunal of 4 May 2010, case no. F-47/09).

101. The Tribunal refers to its previous considerations concerning the functioning of the Organisation of which the contractual policy is an integral and very important part (see paragraph 62 above); it takes the view that, in pursuing its contractual policy, the Organisation should simultaneously ensure that the interests of all staff members, whether they are established civil servants or not, are respected. That means not only implementing the regulations on staff management in a way that is strict, fair and consistent, but also treating staff with respect for their human dimension. This rule applies in particular in the case of questions relating to their professional career and, more specifically, when their career at the Council of Europe ends (see, *mutatis*

mutandis, judgment no. 546/2014, Devaux v. Secretary General, paragraph 22, 30 January 2015).

102. Certainly, the Secretary General, the Council of Europe bodies and the Organisation's senior management have a responsibility to ensure the optimum functioning of all departments and have some discretion as to the regulatory framework applicable to contracts. It is obvious, however, that it is impossible to do that properly without involving – directly or indirectly – middle-management staff, as they are the ones who have detailed knowledge of their day-to-day tasks and duties, including the scale of human resources needed to carry out the requisite work and the financial resources available for that purpose.

103. The Tribunal notes that, for some time now, the Organisation has had to contend with serious budgetary problems which demand the adoption of necessary, or even unavoidable, measures involving cutbacks to some of its activities, together with human resources. Not even the most severe budgetary difficulties, however, entitle the Organisation to act in a manner that would be incompatible with the values of an international organisation, including respect for its staff, the duty of care and non-discrimination.

104. In the instant case, the appellant worked for the Organisation for seventeen years, obtaining good results and, consequently, good appraisals from her superiors. More specifically, in September 2012, she was given a fixed-term contract to manage various projects in the Parliamentary Assembly Secretariat (see paragraph 6 above). Pursuant to Article 20, paragraph 2b. of Appendix II to the Staff Regulations, the duration of the said contract could not exceed five years (see paragraph 25 above).

105. The Tribunal observes that, at the end of the appellant's fixed-term contract, the projects with which she had been dealing were not finished. The Secretariat of the Parliamentary Assembly and the appellant herself had to find a solution, therefore. The Tribunal is pleased to note the positive reaction of the Administration which, despite the rule about having to wait one year between a fixed-term contract and a temporary one, offered the appellant a three-month temporary contract.

106. After it emerged during this "additional" period that the projects in question could not be successfully completed, the competent persons set about trying to find a suitable solution. And indeed they succeeded to some extent because possible funding for a further temporary contract of at least two months was found a few days before the appellant's temporary contract was due to expire (see paragraph 17 above). The Tribunal has no doubt that until she received this positive response, the appellant must have gone through a worrying and stressful period.

107. Despite all the efforts made, however, the appellant was suddenly informed, one week later, that her contract would not be renewed.

108. In this context, the Tribunal points out that the principle of good faith and the concomitant duty of care demand that international organisations treat their staff with due consideration in order to avoid causing them undue injury; an employer must consequently inform officials in advance of any action that may imperil their rights or harm their rightful interests (see ILOAT, judgment no. 3861, L.G. v. CPI, paragraph 9)

109. The Tribunal considers that the manner in which the Administration acted in the present case is entirely contrary to the said principle. There is no denying that the appellant had no vested right to be offered a new temporary or other contract that would have allowed her to continue working for the Organisation. The fact that appointments have been renewed in the past does not amount to a promise of renewal (see UNAT, Hepworth v. Secretary General of the United Nations, 22 July 2009, paragraph 42; and, *mutatis mutandis*, UNAT, M., A., M., E. and F. v. the International Criminal Court, no. 3444, paragraph 3), since the non-renewal decision is discretionary in nature (see ILOAT, no. 3444 cited above, paragraph 4). Given the many years for which she had been working for the Organisation, however, the appellant deserved to be treated with greater respect, as befitted her status. The Tribunal concedes that the Secretary General needed to make cutbacks in response to the very serious budgetary difficulties facing the Organisation and which, generally speaking, might have been considered valid grounds for the decision not to renew a contract (see NATO Administrative Tribunal, case no. 2014/1011, paragraph 36, 12 November 2014). It is of the opinion, however, that in the particular circumstances of the present case, where all the conditions for renewing the temporary contract for a period of at least two months or even three months had been met (see paragraph 17 and above) and where the Organisation had already waived the waiting-period rule, having offered the appellant a temporary contract immediately after her fixed-term contract ended, the refusal to offer her a new contract, which would have been in the interests of the department, was contrary to the interests of the Organisation and appellant alike.

110. In the light of these considerations, the Tribunal does not consider it necessary to rule on the allegations concerning the imperatives of the Organisation's contractual policy (see paragraph 88 above). Nor is it necessary, *mutatis mutandis*, to examine the memorandum from the acting Director of DHR dated 9 June 2017, as requested by the appellant (see paragraph 80 above).

111. In conclusion, the Tribunal considers that the present appeal is well-founded, the decision in question being contrary to the general principles of law, namely the principle that there is a duty of care, and should therefore be set aside.

C. Damages

112. The appellant asks to be awarded a sum equivalent to 17 months' salary corresponding to grade B5, step 2, as compensation for pecuniary damage, and EUR 30,000 as compensation for non-pecuniary damage. She justifies her claim by presenting arguments as to the damage relied upon. In the alternative, the appellant asks to be reinstated in her job with retroactive effect from 1 January 2018.

113. For his part, the Secretary General fails to see what might justify such compensation and considers that no such sums should be awarded.

114. The Secretary General puts forward arguments and ends with the assertion that the appellant was always well aware of the conditions of employment being offered to her over the years that she worked for the Organisation and that, furthermore, she has provided no evidence that she would be unable to find another job. The Secretary General further contends that the appellant has provided no evidence of the existence of the non-pecuniary damage alleged.

115. After studying the arguments advanced by the parties, the Tribunal considers it appropriate to rule on the appellant's principal claim and decides to award her pecuniary compensation equivalent to two months' salary corresponding to grade B5, step 1. It further considers that the appellant has suffered non-pecuniary damage and awards her the sum of EUR 2,000.

III. CONCLUSION

116. Appeals nos. 587/2018 and 588/2018 are admissible.

117. Appeal no. 587/2018 is unfounded and must be dismissed.

118. Appeal no. 588/2018 is well-founded and the act of 18 December 2017, whereby the appellant was informed of the Organisation's decision, must be set aside.

119. The appellant is entitled to a sum equivalent to two months' salary corresponding to grade B5, step 1, for pecuniary damage, plus EUR 2,000 for non-pecuniary damage.

For these reasons,

The Administrative Tribunal:

Orders the joinder of the appeals;

Dismisses the Secretary General's pleas of inadmissibility and declares appeals nos. 587/2018 and 588/2018 admissible;

Declares appeal no. 587/2018 to be unfounded and dismisses it;

Declares appeal no. 588/2018 well-founded and sets aside the contested act;

Orders the Secretary General to pay the appellant the sum equivalent to two months' salary corresponding to grade B5, step 1, for pecuniary damage, plus EUR 2,000 for non-pecuniary damage.

Adopted by the Tribunal in Strasbourg, on 25 September 2018, and delivered in writing in accordance with Rule 35, paragraph 1, of the Tribunal's Rules of Procedure on 9 October 2018, the French text being authentic.

The Deputy Registrar of the Administrative Tribunal	The Deputy Chair of the Administrative Tribunal
E. HUBALKOVA	A. BAKA