CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeals Nos. 722/2022, 731/2022, 732/2022 and 733/2022
(Olga OREKHOVA and Others v. Secretary General of the Council of Europe)

The Administrative Tribunal, composed of:

Nina VAJIĆ, Chair,
Lenia SAMUEL,
Thomas LAKER, Judges**,**

assisted by:

Christina OLSEN Registrar,
Dmytro TRETYAKOV, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. Olga Orekhova (the first appellant) lodged her appeal on 1 September 2022. The appeal was registered on 5 September 2022 under the number 722/2022.

2. Anna Gorodetskaya (the second appellant) lodged her appeal on 3 October 2022. The appeal was registered on 6 October 2022 under the number 731/2022.

3. Daria Chistiakova (the third appellant) lodged her appeal on 3 October 2022. The appeal was registered on 5 October 2022 under the number 732/2022.

4. Zhargal Budaev (the fourth appellant) lodged his appeal on 3 October 2022. The appeal was registered on 5 October 2022 under the number 733/2022.

5. On 17 October 2022, the Secretary General forwarded her observations on the appeals.

6. On 17 November, 14 and 15 December 2022, and 2 January 2023, respectively, the first, the third, the fourth and the second appellants filed their submissions in reply.

7. The public hearing of those appeals was held in the Administrative Tribunal's hearing room in Strasbourg on 24 January 2023. The appellants Daria Chistiakova and Zhargal Budaev

conducted their own defence. They also represented the two other appellants who could not attend the hearing. The Secretary General was represented by Jörg Polakiewicz, Director of Legal Advice and Public International Law (Jurisconsult), assisted by Benno Kilian, Head of the Legal Advice and Litigation Department, and Sania Ivedi, Legal Advisor in the Legal Advice and Litigation Department.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

8. The appellants in all four appeals are former staff members of the Council of Europe who were employed as assistant lawyers – Russian Federation (Grade B3) at the European Court of Human Rights (hereinafter "the Court") under a fixed-term contract ("CDD").

9. The appellants' contracts had been initially concluded for a period of 24 months, from 1 September 2020 to 31 August 2022, corresponding to the appellants' probationary period. The contract stipulated, among others, that

> "like all fixed-term contracts, [it] will terminate on expiry (Article 23, paragraph 2 of the Staff Regulations)", "[it] is subject to the probationary period regime of 24 months" and that "[i]t may be extended or renewed one or more times, but the total duration of employment under the [sic] at the Registry of the European Court of Human Rights, may not exceed four years".

10. On 16 March 2022, at the 1428ter meeting of the Deputies, the Committee of Ministers of the Council of Europe, acting under Article 8 of the Statute of the Council of Europe, adopted Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe. As a consequence, the Russian Federation ceased to be a member State of the Council of Europe on 16 March 2022. This decision was followed by the adoption on 23 March 2022, at the 1429bis meeting of the Ministers' Deputies, of Resolution CM/Res(2022)3 on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe.

11. All four appellants had successfully completed their probation period. In their third appraisal forms, finalised in March 2022, the Director of Common Services of the Registry of the Court confirmed that, as a result of their performance, their probationary periods have been successful and further added:

> "I confirm that, as a result of [her/his] performance, the probationary period of [name of the appellant] has been successful. In normal circumstances I would have had no hesitation whatsoever to recommend [her/his] confirmation in employment on post [respective post number of each appellant] until the end of the usual four-year period of assistant lawyers. However, as a result of the exceptional situation related to the expulsion of the Russian Federation from the Council of Europe, there can be no commitment at this stage of any employment beyond the end of [her/his] current contract. The decision will have to be taken in the light of a variety of factors including the relevant Council of Europe's policy, the availability of funding and the actual needs of the Court with regard to the processing of cases in respect of the Russian Federation."

12. On 20 April 2022, at the 1432nd meeting of the Ministers' Deputies, the Secretary General informed the Deputies of the decisions she intended to take vis-à-vis staff members with Russian nationality. She did so based on the indications outlined in information document

SG/Inf(2022)17 distributed at the meeting. As regards staff members on CDDs, the latter document differentiated the situation of Russian nationals depending on whether they have also the nationality of another member State. It indicated:

> "Staff members on fixed-term contracts who also have the nationality of a member state are considered to meet the eligibility criterion for appointment on the occasion of renewal of their contracts.
>
> As regards those staff members who solely hold Russian citizenship (…) [t}hose staff on fixed-term contracts (31) will not have their contracts renewed when they expire. The majority of these staff (17) work in the Registry of the Court".

As regards staff members of the Registry of the Court, document SG/Inf(2022)17 further specified:

> "Given the circumstances, I do not yet have a clear picture of the future needs of the Registry of the European Court of Human Rights to process Russian cases. I may therefore need to come back to this aspect once we have more information".

13. On 16 and 17 June 2022, by notices DRH(2022) 132 to 134 and 136 addressed to each of the appellants respectively and signed, on behalf of the Director of Human Resources, by the Head of the Department for the Administrative, Social and Financial Management of Staff, the appellants were notified about the non-renewal of their contracts. The notices contained, *inter alia*, the following wording:

> "…upon expiry of your fixed-term contract, it will not be renewed. This is because, further to the cessation of the Russian Federation's membership of the Council of Europe as of 16 March 2022, staff members holding solely the Russian nationality such as yourself no longer fulfil one of the fundamental conditions for employment with the Council of Europe, namely possession of the nationality of a member State of the Organisation. The Council of Europe is consequently unable to continue to employ you after your current contract expires."

14. Following the appellants' request, in his email of 20 June 2022, which was addressed to all four appellants, the Head of the Department for the Administrative, Social and Financial Management of Staff provided explanations as regards the legal basis for non-renewal of their contracts, which read as follows:

> "As you rightly point out, you met the eligibility conditions for employment with the Council of Europe pursuant to Article 14 of the Staff Regulations at the time of your recruitment. Furthermore, you correctly quote the Secretary General that "*The condition of citizenship must be met at the time of recruitment but not necessarily throughout the whole period of validity of the employment contract.*" According to Article 23, para. 2 of the Staff Regulations, "fixed-term contracts shall end on expiry". Your current contracts expire on 31 August 2022, i.e. they will only be valid until that date. Fixed-term contracts may be renewed, but in order to do so, a new contract needs to be concluded and signed by both parties. The conditions for eligibility must be met each time an employment contract is concluded. However, since you no longer hold the citizenship of a member State of the Council of Europe, the eligibility conditions for employment with the Council of Europe as set out in Article 14 of the Staff Regulations will no longer be met in your cases following expiry of your current contracts and the Organisation is legally not in a position to conclude new employment contracts with you."

15. On 4, 6, 7 and 13 July 2022, respectively, the first, the fourth, the second and the third appellants submitted administrative complaints against the decisions not to renew their contracts.

16. On 4 August 2022, the Secretary General dismissed the complaints of all four appellants in their entirety on the grounds that they were ill-founded.

17. On various dates in September-October 2022 (see paragraphs 1 to 4 above), the appellants lodged their respective appeals, in accordance with Article 60 of the Staff Regulations.

II. THE RELEVANT LAW

18. The relevant provision regarding the submission of an administrative complaint is set out in Article 59, paragraph 2, of the Staff Regulations[1] and it 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."

19. Article 60, paragraphs 1 and 2, of the Staff Regulations lays down the rules governing the appeal procedure before the Administrative Tribunal:

> "1. In the event of either explicit rejection, in whole or part, or implicit rejection of a complaint lodged under Article 59, the complainant may appeal to the Administrative Tribunal set up by the Committee of Ministers.
>
> 2. The Administrative Tribunal, after establishing the facts, shall decide as to the law. In disputes of a pecuniary nature, it shall have unlimited jurisdiction. In other disputes, it may annul the act complained of. It may also order the Council to pay to the appellant compensation for damage resulting from the act complained of."

20. The appellants were selected and appointed pursuant to a selection procedure organised in accordance with Article 16 of the Regulations on Appointments (Appendix II to the Staff Regulations), paragraph 1 of which reads:

> "Article 16 – Junior professional programmes and profiles with planned turnover
> 1. The Secretary General may determine, by means of a Rule, specific job profiles which shall exclusively be filled in the framework of junior professional programmes or for which it is in the interest of the Organisation that a regular turnover takes place. In such a Rule, the Secretary General shall also set a maximum duration for employment under such profiles. Total employment with the Organisation under such profiles shall not exceed that maximum duration.(…)".

[1] The Staff Regulations which applied at the time of the facts of the present case are those which were adopted by Resolution Res(81)20 of the Committee of Ministers of the Council of Europe on 25 September 1981. All references in the present judgment to the Staff Regulations are to be understood as references to the 1981 Staff Regulations.
These 1981 Staff Regulations, with further amendments, were replaced as of 1 January 2023 by the new Staff Regulations (adopted by Resolution CM/Res(2021)6 of the Committee of Ministers of the Council of Europe on 22 September 2021).

21. The eligibility criteria for recruitment at the Council of Europe are set out in Article 14 of the Staff Regulations. The nationality criterion is spelled out in sub-paragraph a, as follows:

> "To be eligible for appointment as a staff member of the Council, candidates must:
>
> a. be nationals of a state which is a member of the Council of Europe and have the civic rights enabling them to be appointed to the civil service of that state;"

22. The term "recruitment" is defined in Article 2, paragraph 1 of Appendix II to the Staff Regulations (Regulations on Appointments) as follows:

> "1. Recruitment is the appointment to a vacant post or position of a candidate following an external competitive selection procedure".

23. Probation and confirmation in employment at the Council of Europe are regulated in Articles 17 and 18 of the Staff Regulations, which read:

> **"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 18 – Confirmation in employment**
>
> Contracts confirming employment shall be of indefinite or fixed-term duration, as determined by the Regulations on Appointments (…)";

as well as Articles 17 and 20 of the Regulations on Appointments, which read:

> **"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 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.
> (…)
> 5. A fixed-term contract may initially be offered for a duration of at least six months and for a maximum duration of two years. It may be extended or renewed one or more times, each time for a maximum period of five years. When deciding whether a fixed-term contract shall be

prolonged or not, the Secretary General shall take at least three criteria into account: the need of the Organisation in terms of competencies, secured funding and satisfactory performance of the staff member. The Secretary General may determine the application of these criteria and add additional criteria in a Rule.
(…)
7. Following confirmation in employment, a staff member recruited for employment on fixed-term contracts shall be offered a fixed-term contract which may be renewed in accordance with the provisions of paragraph 5. Before a renewal which would bring the staff member's service on fixed-term contracts with the Organisation to more than nine years, the Director General of Administration, having consulted the Major Administrative Entity concerned, shall examine the file and make a recommendation to the Secretary General whether the contract should be extended beyond nine years or expire".

24. The termination of fixed-term contracts is subject to the provisions of Article 23 of the Staff Regulations:

"Article 23 – Termination of contract

(…)
2. Fixed-term contracts shall end on expiry.
2 bis.[21] The Secretary General may decide not to renew a fixed-term contract if the staff member in question has been the subject of an appraisal or an interim appraisal concluding that his/her performance has not been satisfactory. The fixed-term contract of a staff member who has been the subject of an underperformance measure provided for in Article 22 bis, paragraph 3, cannot be renewed.
2 ter.[22] When a fixed-term contract ends at its expiry date after confirmation in employment, a notice period of three months shall be observed.

3. A contract for either a fixed or an indefinite period may be terminated at the end of a calendar month by:
a. the staff member, as a result of his or her resignation; such resignation shall take effect at the end of a period of notice of at least three months from the date on which resignation was tendered, unless the Secretary General agrees to shorten this period at the request of the staff member, who shall give reasons therefore;
b. the Secretary General, on one of the following grounds:
i. abolition of the post, after consultation of the Joint Committee and subject to at least three months' prior notice to the staff member;
ii. dismissal for disciplinary reasons;
iii. manifest unsuitability or unsatisfactory work on the part of the staff member, calling for the imposition of a termination-of-contract underperformance measure under Article 22bis, in cases where the individual-performance-enhancement process has not had the required positive results. A termination-of-contract measure shall carry prior notice of at least three months;[23]
iv. permanent invalidity as provided for in the Pension Scheme Rules."

THE LAW

I. JOINDER OF APPEALS

25. Given the similarity of the factual circumstances and legal framework of the appeals, the Administrative Tribunal orders their joinder pursuant to Rule 14 of its Rules of Procedure[2].

[2] The Rules of Procedure which apply to the present cases are those which were adopted by the Administrative Tribunal of the Council of Europe on 1 September 1982. All references in the present judgment to the Rules of Procedure are to be understood as references to the 1982 Rules of Procedure.

II. EXAMINATION OF APPEALS

26. In their appeals, the appellants request the Tribunal to declare the Secretary General's decision not to renew their fixed-term contracts as arbitrary and unlawful, and to set it aside. As a consequence, they ask the Tribunal to be paid pecuniary damage in the amount of lost salaries for the period of twenty-four months (from 1 September 2022 to 31 August 2024) which would have been due to them had their employment with the Organisation not been unlawfully terminated. The first, third and fourth appellants also claim EUR 10,000 each as compensation for non-pecuniary damages, while the second appellant claims EUR 11,000 under this head.

27. For her part, the Secretary General asks the Tribunal to declare the appeals ill-founded and to dismiss them.

III. PRELIMINARY CONSIDERATIONS

28. Before examining the merits of the case, the Tribunal considered several requests addressed to it by the appellants and namely:

- the request made by the first appellant in paragraph 41 of the grounds of her appeal that the Tribunal "request information from the Secretary General on how many staff members holding exclusively Russian nationality continue their employment with the Council of Europe" and the similar request submitted by the second appellant in paragraphs 54 of the grounds of her appeal that the Tribunal "request the Council of Europe to provide 1) information as to how many staff members holding solely the Russian citizenship have been employed with indefinite-term contracts (CDI) by the Council of Europe after 16 March 2022, when Russia was excluded from the Council of Europe; 2) the list of the mentioned staff members; 3) information whether exclusion of Russia from the Council of Europe has affected their employment";
- the request made by the fourth appellant in paragraph 44 of the grounds of his appeal that the Tribunal order the Secretary General "to furnish information regarding new employments after the expulsion of Russia from the Council of Europe and whether Russian employees work or could work in those respective departments", as well as
- the request made by the first appellant in the conclusions of her rejoinder that the Tribunal order "the Secretary General to provide evidence confirming that [the recruitment] conditions were duly verified in respect of other assistant lawyers upon renewal of their initial two-years' contracts (for example, for those recruited after the competition of 2015)".

29. Acting under the powers conferred to it by Article 7, paragraph 5, of its Statute, the Tribunal decided not to request the Secretary General to provide it with the information in question, as it did not consider it necessary for the purposes of the examination of the appeals.

These 1982 Rules of Procedure, with further amendments, were replaced as of 10 February 2023 by the new Rules of Procedure, adopted by the Administrative Tribunal of the Council of Europe on 26 January 2023 and applicable to cases registered on and after 10 February 2023.

IV. THE PARTIES' SUBMISSIONS

1. The appellants

30. The appellants argue that the eligibility criterion of nationality of a member State mentioned in Article 14 of the Staff Regulations applies only at the time of recruitment following an external competitive selection procedure and does not apply in the case of confirmation in employment by renewal of a contract, since such renewal cannot be equated to a recruitment within the meaning of the Staff Regulations and is therefore not subject to Article 14 of these regulations. Consequently, the Administration erred in law by imposing that the nationality criterion be fulfilled also at the moment of renewal of their contracts, when Russia was no longer a member of the Organisation.

31. They further maintain that even if the Tribunal finds that the nationality requirement applies to each and every appointment beyond recruitment, Article 14 did not apply in their case because the renewal did not constitute an appointment. They note that the Staff Regulations contain no indications that a renewal would constitute an appointment. Neither do they contain a definition of appointment or renewal. Several similar terms, such as "renewal", "prolongation" and "extension of the contract" are used interchangeably in the Staff Regulations without any clear distinction between them. They question how in these vague, unclear regulations, the respondent can argue with any certainty that a renewal of their contracts would constitute an appointment. They argue that on the contrary there are indications that a renewal of a contract would not constitute an appointment. They refer to Article 17 of the Staff Regulations that speaks about confirmation in employment, which in the appellants' opinion is not a new appointment but confirmation of the already existing appointment.

32. Furthermore, the appellants maintain that the decisions not to renew their contracts run contrary to Article 20 of the Regulations on Appointments, which makes confirmation in employment subject to the sole condition of a satisfactory performance under probation, irrespective of a nationality criterion. Without actually knowing whether the Appointments Board recommended their confirmation in employment, the appellants consider that in the light of their positive appraisals, it would not have had the liberty not to recommend such a confirmation under the terms of the applicable provisions. They consider further that following confirmation in their employment, they would have been entitled to a renewable fixed-term contract to which no nationality prerequisite applied.

33. The appellants challenge the decision not to renew their fixed-term contract also on the ground that it is improperly and insufficiently motivated: the only reference made in it to the nationality ground, without any indication as to the applicable rules providing the legal basis for the decision, was not sufficient – in the appellants' view – to enable them to ascertain whether this decision was well founded. As to the reference made in the rejection of their administrative complaints to the decrease in the staffing needs of the Registry, the appellants consider that it was not proper to put forward this as another reason to justify the decision in question. The decision rejecting the appellants' administrative complaints indicated in this connection that "[e]ven if [the appellant] had met the eligibility criteria for appointment, it would not have been justified to offer [her/him] a new fixed-term contract in view of the declining needs of the Registry of the Court in terms of the number of assistant lawyers necessary to deal with cases against the Russian Federation. The number of incoming cases lodged against the Russian Federation and consequently the staffing needs of the Registry to

deal with these cases have decreased significantly following the cessation of membership of the Russian Federation in the Council of Europe".

34. A further ground adduced by the appellants to challenge the decision not to renew their contracts is its discriminatory nature. In the appellants' view, the real rationale underlying this decision was the intention, on the one hand, to implement budgetary cuts and on the other hand, to put an end to the employment of all Russian staff members, starting by the staff in the most vulnerable situation, namely recently recruited assistant lawyers with fixed-term contracts. They allege that by taking this course of action, the Administration yielded to the pressure exercised within the Organisation by certain political groups and the prevailing bias against Russian staff members. They refer, in particular, to a written declaration entitled "Follow-up to the expulsion of the Russian Federation from the Council of Europe: staff issues" (Written declaration No. 743 | Doc. 15520 | 02 May 2022), in which twenty-six members of the Parliamentary Assembly of the Council of Europe urged the leadership of the Organisation to terminate all contracts of Russian staff members. The circumstances in which the decision was taken corroborate its partial/dicriminatory character: the appellants' skills and competencies were totally disregarded, the Russian unit at the Registry continues to be operational and there are still lawyers and other staff members holding only the Russian nationality who continue to be employed at the Council of Europe under other types of contracts. The second appellant notes, in particular, that she worked for the Conflict Unit which dealt with the complaints related to the armed conflict in Ukraine and she was the only Russian lawyer there. In her opinion, the Organisation could not claim that they had no need for a Russian lawyer there.

35. Under the last ground raised in their appeals, the appellants claim that the contested decision violated their legitimate expectation to obtain an extension of their contract for a further two years. Several factors supported this expectation: the reference in the vacancy notice to a "once-only opportunity of employment for a total maximum duration of four years", the mention made in the offer of their first CDD that this contract was "initial" and "renewable" in connection with the fact that the first contract covered only their probationary period, the acknowledgment in their last appraisal form that the "usual" employment period for assistant lawyers was 4 years, as well as the past practice of the Registry which had consistently renewed assistant lawyers' initial contracts upon the successful completion of their probation.

2. The Secretary General

36. The Secretary General considers that the decision not to renew the appellants' fixed-term contracts upon their expiry was decided in full compliance with the applicable rules and principles governing appointments. She recalls that fixed-term contracts are, by definition, limited in time and Article 23, paragraph 2 of the Staff Regulations states unambiguously that fixed-term contracts shall end on expiry. This principle was also explicitly reiterated in the appellants' employment contracts, which stipulated that they were concluded for the period from 1 September 2020 to 31 August 2022 and that like all fixed-term contracts, they would terminate on expiry (see paragraph 9 above).

37. The relevant case law is clear and consistent that there is no right to automatic renewal of a fixed-term contract. Therefore, in line with the applicable rules as well as the established case law, the appellants were not entitled to an automatic renewal of their contract beyond that date.

38. The Secretary General notes that in the appellants' cases, the decision not to renew their fixed-term contract was based on the ground that they no longer met one of the appointment eligibility conditions, namely that of being a national of a member State of the Council of Europe as set out in Article 14 (a) of the Staff Regulations. In her opinion, the nationality eligibility criterion laid down in this provision must be met not only on the occasion of a first appointment following recruitment but also on the occasion of any subsequent appointment upon renewal of a fixed-term contract following its expiry.

39. The Secretary General maintains that the time of recruitment is the most appropriate time to verify whether eligibility conditions set out in Article 14 of the Staff Regulations are met. When these conditions are fulfilled at the time of recruitment, they continue, in the vast majority of cases, to be fulfilled throughout the duration of the staff member's employment. This presumption does not imply, however, that these conditions are no longer required of a staff member for any new appointment, when signing and concluding new contracts. Any renewal of a contract requires a new agreement between the parties concerned. The conclusion of a new contract renewing a previous contract which is due to expire constitutes a new appointment. It requires a decision by the Secretary General, as the appointing authority under Article 36 (c) of the Statute of the Council of Europe and Article 11 of the Staff Regulations. Accordingly, the nationality eligibility criterion must be fulfilled and verified on the occasion of each contract renewal. Since the appellants no longer fulfilled the nationality eligibility criterion, it was not possible for the Organisation, from a legal point of view, to conclude new contracts with them and, accordingly, to renew their fixed-term contract after their expiry on 31 August 2022.

40. The Secretary General reiterates the broad discretionary powers in issues of renewal of fixed-term contracts and observes that even if the appellants had met the eligibility criteria for appointment, it would not have been justified to offer them a new fixed-term contract in view of the declining needs of the Registry of the Court in terms of the number of assistant lawyers necessary to deal with cases against the Russian Federation.

41. As to the undisputed fact of satisfactory professional performance of the appellants, who successfully completed their probation period, it is irrelevant because it was not possible, in any case, to offer them new employment contracts. The successful completion of the probationary period is a necessary but not the exclusive requirement for the renewal of a fixed-term contract at the end of the probationary period.

42. As to the appellants' allegations of not being provided with sufficient information regarding the legal basis for non-renewal of their contracts, the Secretary General notes that they were informed of the statutory provision on which the decision not to renew their contract was based, namely Article 14 of the Staff Regulations. Furthermore, document CM(2022)70 on *"Legal and financial consequences of the cessation of membership in the Council of Europe under Article 8 of its Statute"*, which was distributed on 15 March 2022 to the Committee of Ministers and widely circulated within the Secretariat, included an analysis of the implications of Article 14 of the Staff Regulations for the situation of staff members employed under fixed-term contracts and holding the citizenship of a former member State. This information was also contained in document SG/Inf(2022)17, distributed to the Committee of Ministers on 20 April 2022. In addition, in its reply of 20 June 2022 to the appellants' request, the DHR reiterated that the decision not to renew their contracts was based on Article 14 of the Staff Regulations. Therefore, the Secretary General considers that the appellants were fully informed of the legal basis underlying the decision not to renew their contracts.

43. As regards, the appellants' allegations of discrimination, the Secretary General underlines that it is neither unreasonable nor discriminatory for an international organisation to require its staff members to be citizens of its member States. This requirement allows the Council of Europe to have a Secretariat whose composition reflects its member States. Article 14 (a) of the Staff Regulations is the statutory reflection of this principle. The nationality criterion laid down in this provision is an objective condition that applies equally to all staff members and is binding on the Administration, which cannot derogate from it. Since the appellants no longer fulfilled this condition, the decision not to renew their contract was fully justified.

44. Furthermore, contrary to the allegation of the appellants, it was neither unreasonable nor discriminatory not to renew fixed-term contracts of staff members who only held Russian citizenship, since they were in a different situation from those who held indefinite-term contracts. The Organisation's commitments to these two different categories of staff are different in that indefinite-term contracts are not of a limited duration and are not subject to any renewal procedure. Since the situation of these two categories of staff is different by nature, it cannot validly be argued that there was any discrimination between them.

45. Insofar as the appellants consider that the decision not to renew their contract *"was not impartial but guided by a hostile approach towards the Russian staff members"*, the Secretary General considers these allegations unsubstantiated. She emphasised that, on the contrary, the decisions taken as regards the situation of staff holding Russian citizenship reflected her concern to find a balanced solution concerning the contractual situation of all categories of staff members of Russian citizenship in a situation that was unprecedented for the Organisation. In taking this decision the Secretary General had regard to the relevant legal and practical considerations as well as the needs of the Organisation, while ensuring at the same time that the rights of the staff members concerned were respected. In the light of the applicable statutory provisions, in particular Article 14 (a) of the Staff Regulations, the decision not to renew the fixed-term contracts of staff members solely holding Russian citizenship upon their expiry imposed itself. It should be observed in this context that the Secretary General decided not to terminate any fixed-term contracts of staff members holding solely Russian citizenship but to keep them in employment until expiry of their contracts, which clearly demonstrates the attempt to limit the negative consequences of the cessation of the Russian Federation's membership in the Organisation for the staff members concerned.

46. The Secretary General further recalls that all staff members were informed of the Secretary General's related approach and decisions on 20 April 2022. In addition, staff members concerned, including the appellants, had meetings with representatives of the DHR to inform them personally of the decisions taken and to discuss their situation.

47. Lastly, the Secretary General submits that given the fact that fixed-term contracts end on expiry and that it was not possible to renew the appellants' contracts under the circumstances, the appellants cannot claim that they had a "*legitimate expectation*" of having their fixed-term contract renewed. No such promise had been made to them.

V. THE TRIBUNAL'S ASSESSMENT

48. In the circumstances of the present case, the appellants successfully passed their probation and expected to be confirmed in their employment. However, after their initial fixed-term contract expired, new contracts confirming employment were not offered to them, on the grounds that they no longer satisfied one of the eligibility criteria, namely that of a nationality of a member State of the Council of Europe.

49. The appellants' first ground of appeal is an error of law allegedly committed by the Administration. In their view, the nationality eligibility criterion was applicable only at the time of the conclusion of their initial contract, while the Secretary General considers that the eligibility criterion in question is to be complied with at the moment of signing any new employment contract with the Organisation.

50. The first question that the Tribunal is therefore called to settle in the present dispute relates to the determination of the legal rules which applied to the appellants once they had successfully passed their probationary period.

51. The Tribunal notes from the outset that the parties are in agreement as to the fact that once it was ascertained that the appellants' work during the probationary period was satisfactory, the general rule which applied was Article 20 of the Regulations on Appointments (see paragraph 23).

52. Under this rule, if the staff member's work is satisfactory, the Appointments Board is to recommend that the Secretary General confirm the staff member concerned in employment, in accordance with Article 20, paragraph 2 of the Regulations on Appointments. The actual decision whether to confirm an appointment and to offer a new contract is, however, for the Secretary General to take and remains within the realm of her discretion, in accordance with Article 20, paragraph 5 of the Regulations on Appointments.

53. The latter rule is the reflection of the general principle that a staff member under a fixed-term appointment is not entitled to the renewal of his contract, as "[t]*he very nature of this type of contract precludes the existence of any such entitlement"* (Appeals Nos 469/2010 and 473/2011, *Seda Pumpyanskaya II and III v. Secretary General*, decision of 20 April 2012, paragraph 57, and Appeals Nos 587/2018 and 588/2018, *Jannick Devaux II and III v. Secretary General*, decision of 9 October 2018, paragraph 109). The decision whether to renew a fixed-term contract is discretionary in nature and is subject to limited judicial review. It may be quashed only if it was taken by an incompetent authority, is vitiated by a formal or procedural defect, is based on an error of fact or law, fails to take account of all the relevant facts, is vitiated by a misuse of power or draws manifestly erroneous conclusions from the file (see, in this regard, Appeal No 226/1996, *Zimmermann v. Secretary General*, decision of 24 April 1997, paragraph 37; Administrative Tribunal of the International Labour Organization ("ILOAT") Judgment No. 2040 *Durand-Smet* (No. 4), 31 January 2001, consideration 5; and ILOAT Judgment No. 3858 *B.H (No 2) v. CPI*, 2017, consideration 12).

54. The criteria which are to be taken into consideration by the Secretary General when exercising her discretion are spelled out in the same rule. They include the need of the Organisation in terms of competencies, secured funding and satisfactory performance of the staff members. The Tribunal notes that the wording of the provision in question suggests that these considerations are not exclusive. Indeed, Article 20, paragraph 5 of the Regulations on

Appointments provides that "when deciding whether a fixed-term contract shall be prolonged or not, the Secretary General shall take **at least** three criteria into account (…)" (emphasis added).

55. In the light of the above, the Tribunal finds that the appellants were not entitled to receive a new contract solely on the basis of their satisfactory performance during probation, nor did this circumstance alone suffice to justify any legitimate expectation of renewal of their contract. This is because satisfactory performance is only one among other criteria which may come into play when adopting the discretionary decision to confirm in appointment, in accordance with Article 20, paragraph 5 of the Regulations on Appointments. In terms of procedure, the Tribunal notes that the Appointments Board did indeed refer to satisfactory performance of the appellants and accordingly confirmed the successful completion of their probationary period, in accordance with Article 20, paragraph 2 of the Regulations on Appointments. The Board's recommendation, however, left the Secretary General's discretion in this matter intact and no irregularity in the procedure may be observed in this regard.

56. The Tribunal further considers that the wording of Article 20, paragraph 5 of the Regulations on Appointments allows the Secretary General to take into account, when deciding whether to confirm in appointment, other criteria, in addition to those expressly mentioned in this provision. In the cases at hand, the main criterion which was invoked by the Secretary General for grounding the challenged decision and which is not mentioned in Article 20, paragraph 5 of the Regulations on Appointments is the nationality criterion set out in Article 14 (a) of the Staff Regulations. The question that arises in this connection is whether the nationality criterion should apply in the specific context of the present case.

57. The Tribunal notes that the condition according to which only individuals holding the nationality of a member State may become staff members of an intergovernmental organisation is widespread in the field of international public service (see for instance Article 1, paragraph 1, and Article 3 (a) of the NATO Civilian Personnel Regulations, Regulation 6 (b) of the OECD Staff Regulations and Article 27 of the Staff Regulations of EU officials). At the Council of Europe, Article 14 (a) of the Staff Regulations is the statutory reflection of this principle. As an objective condition which applies to any recruitment, the nationality criterion leaves no room to the discretion of the Administration: in the absence of such a condition, a recruitment would not be legally possible.

58. As to the question whether the criterion of nationality should apply also to the renewal of a fixed-term contract, the Tribunal recalls that the principles of statutory interpretation are well settled in the case law of international administrative tribunals. Under this case law, it is a basic rule of interpretation that words which are clear and unambiguous are to be given their ordinary and natural meaning and that words must be construed objectively in their context and in keeping with their purport and purpose (see, for example, ILOAT, Judgment No. 4031, M. (No. 3) v. WHO, under 5, and Judgment No. 3744, S. v. FAO, under 8).

59. Bearing in mind this rule of interpretation, the Tribunal finds that it is the exact purpose of a fixed-term contract to render the eligibility criteria applicable to its renewal. To argue otherwise would deprive the fixed-term contract of one of the reasons for which it was stipulated in the first place, namely, to ensure that at its expiry, the conditions for its renewal are still satisfied. Thus, the nationality criterion must be seen as a condition inherent to the very purpose of a fixed-term contract. Under these circumstances, it was legitimate to require that this condition be met at the time the appellants were to be confirmed in their employment.

60. Moreover, by its very nature, the nationality criterion tends to nullify the margin of discretion available to the Secretary General under Article 20, paragraph 5, of the Regulations on Appointments mentioned above. As an objective criterion, it differs from other criteria, such as performance, which depend on a subjective assessment. Thus, not only was the Secretary General entitled to enforce the nationality criterion upon the appellants, but the absence of this condition left her with no other choice than to refuse to renew the appellants' contracts.

61. The Tribunal therefore considers that the decision of the Secretary General in the appellants cases was lawful. It considers furthermore that by indicating the nationality criterion established in Article 14 of the Staff Regulations as the ground for her decision, she complied with her duty to inform the appellants about the reasons preventing her from renewing their contracts. The appellants' disagreement as to the applicability of such a criterion to their case does not deny the fact that the Secretary General did inform them about the objective and effective reason for denying their further employment within the Organisation.

62. In support of their allegation that the contested decisions are not sufficiently reasoned, the appellants also mention the fact that the Secretary General referred to another ground in her replies to their administrative complaints, i.e. the declining needs of the Registry of the Court. In this respect, the Tribunal observes that the Secretary General mentions this ground only in the alternative ("*even if you had met the eligibility criteria for appointment, it would not have been justified to offer you a new fixed-term contract in view of the declining needs of the Registry of the Court in terms of the number of assistant lawyers necessary to deal with cases against the Russian Federation*"). It notes further that in any event, in view of the applicability of the nationality criterion, this criterion alone sufficed to motivate the challenged decision. Therefore, it is irrelevant whether the Administration further supplied additional arguments to justify such a decision. Such arguments need not be examined by the Tribunal.

63. The appellants' grounds of appeal alleging an error of law and a violation of the duty to state reasons must therefore be dismissed.

64. In so far as the appellants complain about discrimination on the ground of their nationality and on the ground of type of their contracts with the Organisation, the Tribunal reiterates that according to the relevant case law, "the principle of equality requires that persons in the same position in fact and in law must be treated equally" (see ILOAT, Judgment No. 4423, L. (No. 2) v. EPO, consideration 15; Decision of the Council of Europe Appeals Board of 21 September 1989, in Appeal No. 155/1989 - ANDREI v. Secretary General, paragraph 39).

65. Insofar as the appellants raise this complaint in respect of their nationality, the Tribunal considers that it is within the competence of the Organisation to require its staff members to be citizens of its member States and this requirement is neither unreasonable nor discriminatory. This requirement is clearly provided in Article 14 (a) of the Staff Regulations and has been systematically mentioned in the recruitment procedures. The nationality criterion laid down in this provision is an objective condition that applies equally to all staff members and is binding on the Administration, which cannot derogate from it. Since the appellants no longer fulfilled this condition, they cannot claim to be in analogous situation to those who possess the nationality of a member State of the Council of Europe and the decision not to renew their contracts on this ground was not discriminatory.

66. The appellants second argument under this head is equally unfounded, since their fixed-term contracts were not terminated but expired on the agreed date and their situation as regards the non-renewal for which the Secretary General, as established above, had hardly any discretion (see paragraph 60), could not be compared to the situation of other categories of staff who are Russian nationals, but who did not have their contracts expired and who were not faced with the necessity of a contract renewal in order to continue their employment with the Organisation.

67. In the light of the foregoing, the Tribunal concludes that the Administration could rely on the nationality eligibility criterion in the appellants' cases and did not violate the principle of non-discrimination in deciding to treat the appellants differently from staff members of other nationality and/or on other type of contracts, who are thus not in a situation comparable to that of the appellants (see, *mutatis mutandis*, EU General Court, Judgment of 13 July 2022 in case T- 194/20, JF v. EUCAP Somalia, in particular paragraphs 97 to 126). The appellants' grounds of appeal based on alleged discrimination must therefore be dismissed.

VI. CONCLUSION

68. In conclusion, the present appeals are unfounded and must be dismissed. Consequently, the appellants should not be awarded any sum in compensation for damage.

For these reasons, the Administrative Tribunal:

Decides to join the appeals;

Declares the appeals unfounded and rejects them;

Decides that each party will bear its own costs.

Adopted by the Tribunal in Strasbourg on 29 March 2023 and delivered in writing in accordance with Rule 35, paragraph 1, of the Tribunal's Rules of Procedure on 4 April 2023, the English text being authentic.

Registrar	Chair
Christina OLSEN	Nina VAJIĆ