ADMINISTRATIVE TRIBUNAL
TRIBUNAL ADMINISTRATIF

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Appeals Nos. 761/2024 and 762/2024

L. D. (I and II)

v.

Secretary General of the Council of Europe

****

JUDGMENT

25 March 2025

The Administrative Tribunal, composed of:

Paul LEMMENS,
Lenia SAMUEL,
Thomas LAKER, Judges**,**

assisted by:

Christina OLSEN, Registrar,
Dmytro TRETYAKOV, Deputy Registrar,

has delivered the following judgment after due deliberation.

PROCEEDINGS

1. The appellant, L. D., lodged an initial appeal on 6 August 2024 and a second appeal on 12 August 2024. The first appeal was registered under No. 761/2024 and the second under No. 762/2024.

2. On 20 September 2024 and 1 October 2024, the Secretary General submitted his observations on the first and second appeals respectively.

3. On 21 October 2024, the appellant filed submissions in reply concerning her first and second appeals.

4. On 25 November 2024, the Secretary General submitted a rejoinder concerning both appeals.

5. In a memorandum dated 13 December 2024, followed up by an e-mail dated 16 December 2024, the Staff Committee of the Council of Europe submitted an application to intervene in Appeals Nos. 761 and 762 on the ground that they concerned the interests of the staff as a whole or at least a category of staff. In an order issued on 8 January 2025, having conferred with the parties, the Chair authorised the Staff Committee to submit written observations and specified the procedural documents to which it was to have access.

6. The Staff Committee’s written intervention was received by the Tribunal on 20 January 2025 and forwarded to the parties to the dispute.

7. The public hearing in Appeals Nos. 761 and 762 took place on 30 January 2025 in the Administrative Tribunal’s hearing room in Strasbourg. The appellant was represented by Me Steven Airiau, barrister at the Strasbourg Bar. The Secretary General was represented by Sania Ivedi, head of the Litigation Division, assisted by Nina Grange, administrator in the same division.

8. With the approval of the Tribunal, the appellant and the Secretary General filed written submissions on the Staff Committee’s intervention, by letters dated 7 February 2025.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

9. The appellant is a former Council of Europe staff member who was recruited on 1 May 2023 through competition No. e17/2021 on a fixed-term contract (CDD) as a B3 assistant lawyer in the Armenian unit of the Registry of the European Court of Human Rights (the Court). The job formed part of the Junior Professional Programme, which is limited to a four-year period.

10. Under the applicable provisions, the appellant could be appointed only after completing a one-year probationary period ending on 30 April 2024. During this period, the appellant's performance and professional competences were to be the subject of two assessment reports for the reference periods running from 1 May 2023 to 31 August 2023 (first assessment report) and from 1 September 2023 to 31 December 2023 (second assessment report).

11. Shortly after her arrival, on 11 May 2023, a meeting was held between the appellant, her managers and the Section Registrar, at the end of which it was agreed that the appellant would draft notes in single-judge cases in French, with the rest of her written work to be done in English. On 23 May 2023, the appellant's objectives for the first reference period were set.

12. The appellant's first assessment report was finalised in October 2023, being signed by her direct manager (N+1) on 18 October 2023, her reviewing manager (N+2) on 24 October 2023 and by the appellant herself on 30 October 2023. While this report concluded that the appellant had achieved her quantitative objectives for the reference period, it also indicated that there was room for improvement in her performance in terms of concern for quality, as well as her capacity for teamwork and co-operation. The appellant's direct manager highlighted the appellant's "persistent refusal to work in English despite the high level of proficiency in this language (C2) stated in [her] application form".

13. The objectives for the second assessment period were set on 31 October 2023.

14. On 29 January 2024, the appellant had a meeting with her direct manager regarding her second assessment report. At this meeting, her manager informed her that she would not be recommending that the appellant be confirmed in her appointment at the end of her probationary period. On the same day, after falling ill, the appellant was placed on sick leave, which was subsequently extended until 1 April 2024.

15. On 19 February 2024, the appellant lodged a formal complaint of psychological harassment with the Director of Human Resources against her direct manager.

16. The appellant's second assessment report was signed by the appellant's N+1 on 22 March 2024, by her N+2 on 15 April 2024 and by the appellant herself on 24 April 2024.

17. On 22 March 2024, the appellant had an interview with the Director of Human Resources, after which she received an e-mail from her, which read as follows:

> "Dear Madam,
> Following our conversation this morning, I can confirm that a temporary assignment has been identified in the department (…). If you are interested, please contact (…) who is the [person in charge], to arrange an appointment.
> Provided that your sick leave is not extended by your doctor, this could take place as early as next Monday. (…)"

18. On 25 March 2024, the appellant sent the following reply to the e-mail from the Director of Human Resources:

> "Dear Madam,
> Thank you for your e-mail.
> Even though my sick leave has been extended until 1 April inclusive, I have already contacted (…) to arrange an appointment for my return to work. (…)"

19. The same day, the appellant returned to work, cutting short her sick leave and taking up her new temporary assignment.

20. On 15 April 2024, the Director General of Administration signed the "ad personam" decision No. 8805 concerning the appellant's secondment to the Directorate General of Democracy and Human Dignity – Directorate of Anti-discrimination. The appellant was notified of this decision the same day.

21. On 17 April 2024, the appellant informed the Director of Human Resources that, because she had been on sick leave for 55 days, her probationary period should be extended by 55 days, i.e. until 24 June 2024. On the same day, the director replied that the sick leave had not had any impact on the assessment of her performance, and that her probationary period had therefore not been affected by her absence. In those circumstances, paragraph 4120.5 of the Staff Rule on entry into service, adopted by the Secretary General on 30 December 2022 and under which the probationary period could be extended in certain circumstances, did not apply. The expiry date of the appellant's CDD was therefore as stated in her contract, namely 30 April 2024.

22. On 17 April 2024, the appellant also received her second assessment report covering the period from 1 September 2023 to 31 December 2023. This report mentioned the recommendation from her managers that she not be confirmed in her post at the end of her probationary period, as she had not demonstrated her ability to meet the requirements of the job for which she had been recruited.

23. On 25 April 2024, the Appointments Review Committee voted by two votes to one in favour of the recommendation not to confirm the appellant's appointment.

24. On 29 April 2024, the Deputy Secretary General followed the advice of the Appointments Review Committee and decided not to confirm the appellant's appointment at the end of her probationary period. The appellant was informed of this decision on the same day by letter from the head of the Recruitment and Employment Management Division of the Directorate of Human Resources (DHR), with whom she had an interview the following day, on 30 April 2024.

25. On 30 April 2024, the appellant received another memorandum from the Director of Human Resources, dated the same day, which read:

> "I regret to inform you that, in accordance with Article 4130 of the Staff Rule and after a thorough review of your file including your assessment reports and the opinion of the Appointments Review Committee regarding your probationary period, the Deputy Secretary General, acting by delegation from the Secretary General, has decided to terminate your appointment on the grounds that your probationary period has not been successfully completed.
>
> The probationary period is aimed at evaluating a staff member's suitability for the job and the international civil service. Unfortunately, it has been decided that you have not met the necessary requirements. The job for which you were recruited requires professional competences including writing skills, an in-depth knowledge of the national legal system, the ability to carry out relevant legal analysis and a concern for quality. It was concluded, however, that your skills fall short of what is required to meet the needs of the Organisation.
>
> Consequently, your appointment will end on expiry of your fixed-term contract, i.e. today, 30 April 2024.
>
> This memo constitutes notice and you will be informed by my colleagues, at the earliest opportunity, of the formalities relating to your departure from the Organisation.
>
> Please note that, in order to comply with the one-month notice period, you will shortly receive compensation in lieu of notice for the appropriate period beginning as of this date (…)"

26. On 6 May 2024, the appellant lodged an administrative complaint against the Deputy Secretary General's decision of 29 April 2024.

27. On 7 May 2024, the appellant applied to the Tribunal for a stay of execution of the decision to terminate her employment at the end of her CDD, on 30 April 2024. By an order of 22 May 2024, the Chair of the Tribunal rejected the request for a stay of execution.

28. On 15 May 2024, the appellant lodged an administrative complaint against ad personam secondment decision No. 8805 adopted by the Director General of Administration. On 17 June 2024, this complaint was dismissed by decision of the then Secretary General, on the ground that it was inadmissible and, in the alternative, unfounded.

29. In the meantime, on 5 June 2024, the then Secretary General had dismissed the administrative complaint against the decision of the Deputy Secretary General to terminate the appellant's employment.

30. On 14 June 2024, the appellant sent an e-mail to DHR requesting payment for 21.5 days of "unused paid leave for the reference period from 1 May 2023 to 30 April 2024". DHR replied in e-mails dated 16 June and 5 July 2024, stating that no payment was due in respect of this unused leave as the appellant had not worked during the period covered by the compensation in lieu of notice.

31. On 3 July 2024, the Director of Human Resources informed the appellant's representative of her decision to take no further action on her complaint of psychological harassment. The Director's letter read as follows:

> "Dear Sir,
>
> Following the filing of Ms [L. D.]'s formal complaint of psychological harassment against (...), dated 19 February 2024, and as agreed at our meeting at the Council of Europe on 22 March 2024, I launched an internal investigation into the allegations made in the complaint. As stipulated in the Policy on Respect and Dignity in the Council of Europe, the investigation was outsourced and entrusted to the consultancy firm [E. H.].

> After conducting their investigation and gathering a certain amount of information on Ms [D]'s complaint, the investigators sent their report to the Directorate of Human Resources on 28 June 2024. It appears from this document that the investigators failed to find that there had been proven harassment on the part of (...) within the meaning of the Policy on Respect and Dignity. Consequently, and in accordance with the said Policy (paragraph 7.4.7.), I hereby inform you that I have decided not to pursue the matter further. (…)"

32. On 6 August 2024, the appellant lodged Appeal No. 761 against the decision to terminate her employment.

33. On 12 August 2024, the appellant lodged Appeal No. 762 against the ad personam decision to temporarily assign her to another entity in the Organisation.

34. On 29 August 2024, the appellant filed a second request for a stay with the Tribunal, in which she sought the suspension of the implementation of the decision to terminate her employment with the Organisation, and the suspension of the entry into service of the staff member who had reportedly replaced her in the Registry of the Court. By an order of 10 September 2024, the Chair of the Tribunal rejected the request for a stay of execution.

35. On 19 September 2024, the appellant challenged the decision to take no further action on her harassment complaint by lodging an administrative complaint. This complaint was dismissed by decision of the Secretary General, notified to the appellant in a letter dated 21 October 2024. The appellant lodged an appeal against this decision. It was registered under No. 766/2024 and is currently being considered by the Tribunal.

II. THE RELEVANT LAW

36. The relevant provisions of the regulatory framework read as follows:

- as regards the conditions under which the available remedies may be exercised in order to challenge an administrative decision adversely affecting the appellant:

Staff Regulations
Article XIV – Grievance procedures

> (…)
> 14.3 Staff members who consider that an administrative decision is prejudicial to their interest and conflicts with their terms and conditions of appointment, or with any pertinent provisions of the Staff Regulations, Rules, Instructions or Policies, may initiate the process of management review, allowing for the correction of an improper decision or, where a decision was properly taken, its confirmation along with a reasoned explanation. The modalities of the review shall be set out in Staff Rules adopted by the Secretary General.
> 14.4. After pursuing management review, staff members who are not satisfied with the outcome thereof may lodge a formal complaint with the Secretary General against the contested administrative decision adversely affecting them, provided that they have a direct and existing interest in doing so. The modalities of the complaints procedure shall be set out in Staff Rules adopted by the Secretary General.
> 14.5 The Secretary General's decision on the complaint may be appealed to the Administrative Tribunal of the Council of Europe in accordance with the provisions of the Tribunal's Statute. (…)
> (…)

Staff Rule on grievance procedures adopted by the Secretary General on 30 December 2022

> (…)

1450.COMPLAINTS PROCEDURE
1450.1 A staff member who is not satisfied with the outcome of the management review or has not been notified of the outcome of the management review within the time limit, shall be entitled to lodge a formal complaint with the Secretary General pursuant to Article 14.4 of the Staff Regulations.
1450.2 The complaint must be lodged within 30 days from the date on which the outcome of the management review was notified or, in the absence of notification, within 30 days from the date on which the notification was due.
1450.3 A formal complaint may also be lodged:
(…)
1450.3.3 by those referred to in Article 14.10.1 to 14.10.3 of the Staff Regulations, within 30 days from the date on which the contested administrative decision was notified to them or, in the absence of notification, from the date on which they became aware thereof;
(…)

Statute of the Administrative Tribunal
Article VII – Admissibility

7.1 An appeal shall be admissible only where the administrative decision which it contests is final and where the appellant has exhausted all remedies available under the Staff Regulations, in the prescribed manner and within the applicable time limits. The appeal brought before the Tribunal must raise in substance the same grievance as that in respect of which such available remedies were sought.
(…)
7.5 The appellant must have a direct and existing interest in challenging the contested decision throughout the whole duration of the procedure.

- as regards entry into service and the probationary period:

Staff Regulations
Article IV – Entry into service

(…)
4.4 Staff members shall initially be appointed for a fixed-term period defined by contract. The Secretary General may decide to extend a fixed-term appointment for a further fixed term, once or several times, for a total duration of service not exceeding four years.
(…)
4.7 Staff members shall undergo a probationary period defined by the Secretary General, aimed at evaluating their suitability for the job.
(…)

Staff Rule on entry into service adopted by the Secretary General on 30 December 2022

4120. PROBATIONARY PERIOD
4120.1 The probationary period shall be of one year, regardless of the staff member's working time.
4120.2 The probationary period is a trial period aimed at evaluating a staff member's suitability for the job and the international civil service.
(…)
4120.4 During the probationary period, either side may terminate the employment contract with one month's notice.
4120.5 A period of justified absence in excess of one month shall result in the extension of the probationary period for a length of time corresponding to the absence.
(…)

4130. ASSESSMENT PROCEDURE DURING THE PROBATIONARY PERIOD
4130.1 At least two assessment reports shall be made over the course of the probationary period. The first report shall cover the period up to the end of the fourth month of appointment. The final report shall cover the period up to the end of the eighth month of appointment.
4130.2 The final report shall contain one of the following recommendations made by the Head of the Major Administrative Entity or by their delegated authority:
4130.2.1 to confirm the staff member's appointment;

4130.2.2 not to confirm the staff member's appointment, or;
4130.2.3 to extend the probationary period for six months, where it has not been possible to determine the staff member's suitability for the job and international civil service.
4130.3 The Secretary General shall then decide whether to confirm or not confirm the staff member's appointment or extend their probationary period. The decision shall be duly reasoned, and the staff member shall be notified of it at least one month before the end of their probationary period.

- as regards the Appointments Review Committee:

Staff Regulations
Article XIII – Staff Participation

(…)
13.8 The Secretary General shall establish standing joint advisory committees, composed of staff members nominated by the Secretary General and other staff members nominated by the Staff Committee, and consult them, in particular on the following matters:
13.8.1 staff appointments, with the exception of appointments at A6 and A7 level; promotions; and termination of service;
(…)

Staff Rule on staff participation adopted by the Secretary General on 30 December 2022

1350. APPOINTMENTS REVIEW COMMITTEE
Chair
1350.1 The Chair of the Appointments Review Committee shall be the Director of Human Resources or their representative.
Composition
1350.2 The Secretary General and the Staff Committee shall each create a list of members of the Appointments Review Committee comprising no fewer than ten staff members.
1350.3 Each time the opinion of the Appointments Review Committee is required, the composition of the Committee shall be determined based on members' availability and, as far as possible, the relevance of their expertise. This shall be done by selecting one staff member from each of the above-mentioned lists. The selection from the Secretary General's list shall be done by the Chair of the Committee and the selection from the Staff Committee's list shall be done by the Staff Committee.
Mandate
1350.4 The opinion of the Committee on Appointments Review shall be sought regarding:
(…)
1350.4.2 the non-confirmation of a staff member's appointment following a probationary period or the prolongation of a probationary period within the meaning of paragraph 4130.3 of the Staff Rule on entry into service;
(…)

- as regards the temporary assignment and secondment of staff:

Staff Regulations
Article V – Career development

(…)
5.6 The Secretary General may transfer a staff member to another job, including in a different duty station, classified in the same category and grade, having first invited the staff member concerned to express their views.
5.7 Staff members shall be encouraged and supported to acquire experience in different sectors (…)
5.9 In the interest of the Organisation and subject to their agreement, staff members may be seconded to another international organisation or an institution in a member State, under conditions established by the Secretary General.

Staff Rule on career development adopted by the Secretary General on 30 December 2022

(…)
570. TRANSFER WITHOUT COMPETITION

570.1 The Secretary General may transfer a staff member to another job, including in a different duty station, having first invited them to express their views.
(…)
580. TEMPORARY ASSIGNMENT WITHOUT COMPETITION
580.1 The Secretary General may temporarily assign a staff member to cover an absence or to meet a need for increased staffing in the entity concerned, having first invited the staff member concerned to express their views.
580.2 The Secretary General may temporarily assign a staff member at the same category and grade for a maximum period of three years, or to the immediately higher grade for a maximum period of one year, having first invited them to express their views.
580.3 Staff members temporarily assigned to a grade immediately above their own shall be paid an extra duties allowance in accordance with Article 780.2 of the Staff Rule on salaries and allowances.
(…)
5110. SECONDMENT FROM THE ORGANISATION
5110.1 Staff members holding an open-ended or indefinite-term contract may be seconded to another international organisation or a national, local or regional administration, with or without maintenance of their remuneration, for a limited period and in the interests of the Council of Europe.
5110.2 The maximum period of secondment shall not exceed three years throughout the career of a staff member. In exceptional cases, this period may be extended by a maximum period of three years by decision of the Secretary General.

- as regards the applicable procedure in the case of a harassment complaint:

Policy on Respect and Dignity in the Council of Europe
adopted by the Secretary General on 21 December 2022

Procedure following a formal complaint
7.4.5. Where an allegation of harassment reaches the Director of Human Resources, either directly by way of a formal complaint from the alleged victim, or via another person where the alleged victim has confirmed to the Director of Human Resources their wish to pursue a formal complaint, the Director of Human Resources will consider whether the allegations justify and require ordering an investigation to be carried out. Where the allegation is of sexual harassment or harassment by the victim's hierarchical superior, then the Director of Human Resources does not have discretion and must order an investigation.
(…)
7.4.6. Where an investigation is ordered, it will be conducted by investigators external to the Organisation with relevant experience and expertise. Allegations will be investigated in an impartial, thorough, and timely manner, which is fair to all parties concerned and in which the rights of all parties are fully protected, in particular the due process rights of the accused person. Investigations will be conducted in line with the Organisation's legal framework governing the conduct of investigations; the Council of Europe Regulations on the Protection of Personal Data; and all other relevant confidentiality requirements.
7.4.7. The investigation report, once complete, will be transmitted to the Director of Human Resources, who will redact it if necessary and then transmit it to the accused person to enable them to provide their comments. If the investigation report does not disclose any disrespectful behaviour, both the person who made the complaint and the accused person will be notified of the Director of Human Resources' decision not to pursue the matter further. (…)

Protective measures
7.4.9. In cases of alleged harassment, where the alleged victim opts to lodge a formal complaint, there is the possibility of protective measures. Such measures aim to protect the alleged victim and prevent them from suffering further harm, whether as a result of further harassment; the stress involved in having to interact with their alleged harasser; or the risk of detrimental action in retaliation for having made a complaint. Protective measures can include (but are not limited to) paid leave for the victim; transfer of the victim to a different service; and monitoring of the victim's situation by a Human Resources Advisor.
(…)
7.4.10. Protective measures may be ordered by the Director of Human Resources, if appropriate, at the request of the victim; the suggestion of one of the persons listed above under "Available support"; or on the Director of Human Resources' own initiative, where there is *prima facie* evidence of harassment.
7.4.11. No protective measure which impacts upon the alleged victim will be imposed without first seeking their views.

Rule on investigations adopted by the Secretary General on 22 December 2022

(…)
Testimonial evidence
61. The primary means of collecting testimonial evidence is through interviews. (…)
62. To the extent possible, interviews should be conducted by two persons; only one interviewee at a time should be interviewed. An interviewee who is a Secretariat member may be accompanied by a Secretariat member of their choice, provided that the latter is not directly concerned by the investigation and/or there is no conflict of interest.

(…)
Completion of an investigation
73. The investigation, including the preparation of the investigation report, must be concluded without undue delay and within the time-limit set for its completion.
74. Any investigation report shall include a summary of the facts established by the investigation, and conclusions as to whether it has been established to the relevant standard of proof that there has been wrongdoing as defined by the Organisation, as well as the nature of the wrongdoing or misconduct and the person(s) responsible.
(…)
76.
The investigation report shall set out: the investigation activities; the evidence; an analysis of the evidence; any relevant information provided by the investigation subject; fact-based conclusions as to the existence or otherwise of wrongdoing, as defined by the Organisation, or any other established breaches of the internal legal framework; and any financial loss suffered by the Organisation or any other person or body.
(…)

THE LAW

I. JOINDER OF APPEALS

37. Given the connection between the two appeals, the Administrative Tribunal orders their joinder pursuant to Rule 6 of its Rules of Procedure.

II. EXAMINATION OF APPEAL No. 761/2024

38. In her Appeal No. 761/2024, the appellant asks the Tribunal to annul the decision to terminate her employment with the Organisation, and also the decision to dismiss her administrative complaint challenging that decision. The appellant is also seeking payment of an amount corresponding to 21.5 days of unused leave, a sum of €128 868.84 corresponding to three years' salary for pecuniary damage, and a sum of €20 000 for non-pecuniary damage. In addition, she is seeking €7 900 in costs.

39. The Secretary General, for his part, invites the Tribunal to declare Appeal No. 761/2024 partially inadmissible, and in any case ill-founded, and to dismiss it. He observes, with regard to the appellant's claim for payment in respect of 21.5 days of unused annual leave, that it is inadmissible for non-exhaustion of internal remedies, as the appellant failed to file an administrative complaint challenging the denial of her request on 5 July 2024. With regard to the appellant's claims for compensation for pecuniary and non-pecuniary damage, the Secretary General denies having committed any irregularity that could incur the Organisation's liability. He adds that, in any event, the appellant's claims for compensation are neither founded nor substantiated. In particular, he observes that, with regard to the

alleged pecuniary damage, the substantial amounts sought are not warranted in the light of the fact that the appellant had no right to have her contract renewed, and as to the non-pecuniary damage, that the appellant's claim is essentially based on allegations of harassment that have not been proven. The Secretary General also asks that the appellant's claim for reimbursement of costs be dismissed insofar as her appeal is unfounded.

A. The parties' submissions

1. The appellant

40. The appellant considers that the version of events given by the respondent in their written submissions is marred by numerous inaccuracies, which she highlights, in particular, in her submissions in reply. She considers that the decision to terminate her employment during her probationary period is flawed in multiple respects.

a. Error of law

41. Firstly, the appellant contends that the Secretary General erred in law when, to justify the failure to renew her appointment, he relied in the decision dismissing her administrative complaint of 6 May 2024 (paragraph 26) on a reason that was not included in the contested memorandum of 30 April 2024 (paragraph 25). More specifically, whereas the only reason given in the memorandum of 30 April 2024 is the appellant's unsatisfactory performance, the decision of 6 May 2024 to dismiss her administrative complaint also refers to shortcomings in her conduct, mentioning a lack of professionalism and respect, due to the appellant's tendency to question instructions issued by her managers. According to the appellant, not only are these new reasons unsubstantiated, but the fact that they were added later casts doubt on the veracity and validity of the reason given for not confirming her in her employment. This, it is argued, shows that the official reason given for terminating her employment was merely a smokescreen for the real reason, namely "the meeting with the Section Registrar which sparked a conflict between the appellant and her direct manager" (see paragraph 11). The appellant also complains that she was not given the opportunity to express her views on these new reasons before her contract ended.

b. Compliance with the principle of patere legem quam ipse fecisti

42. The appellant goes on to argue that the Organisation changed the qualifications initially required with regard to the working language for the job for which she had been recruited, in breach of the rules which the Organisation itself had laid down. The appellant refers here to the requirement placed on her to have a high level of proficiency in the two official languages of the Council of Europe, English and French, contrary to the Organisation's standards and in the absence of any stipulation to this effect in the vacancy notice. In support of this argument, the appellant cites the job description corresponding to her offer of employment, as well as the standard objectives for assistant lawyers in the Registry of the Court, for which a very good knowledge of only one of the two official languages of the Council of Europe is sufficient.

43. The appellant also complains that she was prohibited from working in French, even though her tests were conducted exclusively in French and that in her conversations with DHR when she was recruited, she indicated her preference for French as a working language. She maintains that this requirement to work in English was imposed on her not, as the Secretary General claims, for the sake of the department, but rather for the sake of her N+1 who was

unable to correct her written work in French. The appellant adds that, contrary to what the Secretary General maintains, she never refused to work in English and indeed carried out more than 80% of her work in English as that was what her managers wanted. Quite apart from the fact that the ban on working in French is discriminatory and violates the principle of equal opportunities for French-speaking candidates, the appellant argues that these circumstances led to a deterioration in her working conditions, creating a tense and hostile atmosphere.

c. Compliance with the principle of good faith

44. The appellant alleges that the version of events presented by the then Secretary General in the response to her administrative complaint concerning the discussions about her objective setting for the second reference period (from 1 September 2023 to 31 December 2023) is incorrect and amounts to a breach of the principle of good faith and a violation of her dignity. The appellant states that the interview on 5 October 2023 was solely for the purposes of assessment, and that the instruction to work exclusively in English that was issued to her on that occasion cannot be said to amount to an objective-setting interview. No such interview took place, therefore, and throughout September and October 2023 she was left without any objectives. It was not until 31 October that they were finally set, when her N+1 sent them to her by e-mail and she accepted them without objection, including the requirement to increase the portion of her work done in English. The appellant also denies the Secretary General's assertions aimed at justifying this delay, citing the lengthy discussions required to reach a compromise on her objectives.

d. Time allowed to the appellant to improve her performance

45. The appellant maintains that she was not informed in time, either through her assessment reports or oral and/or written exchanges with her managers, that her performance was not considered satisfactory, in breach of paragraph 510.12 of the Staff Rule on career development. Since she had not received adequate managerial supervision, it was impossible for her to take the necessary steps to remedy the situation. The appellant points to the disregard for deadlines when finalising her first assessment report and also setting objectives for her second reference period. According to the appellant, by leaving her in limbo with regard to her tasks, the intention was to undermine her, preventing her from successfully completing her probationary period.

46. The appellant further claims that she was not warned, in specific terms, that her appointment might not be confirmed if her work did not improve and failed to meet the requirements set.

e. Objectivity of the appellant's direct manager

47. The appellant alleges that her direct manager lacked objectivity in assessing and supervising her work because of the strained, even hostile, nature of their relationship. She cites several pieces of evidence in support of this allegation, including the references, in a preliminary version of her second assessment report, to the conflictual relations with her N+1 and the fact that her direct manager validated her second assessment on 22 March 2024, when in fact the appellant had filed a complaint for psychological harassment against her on 19 February 2024 and was on sick leave. The appellant points out that she had alerted several contacts within the Organisation, namely the head of the "Performance and Well-being" section of DHR and the Chair of the Staff Committee, to the deterioration in her working conditions.

In these circumstances, the appellant considers that her direct manager should have declined to participate in the assessment process.

f. Termination of the appellant's employment without waiting for the outcome of her harassment complaint

48. The appellant considers that it was incumbent on the Organisation to stay the decision to terminate her employment pending the outcome of her formal harassment complaint. Consequently, the contested decision is, in the appellant's opinion, vitiated by an error of law.

g. Respect for the appellant's dignity

49. The appellant contends that the Organisation failed in its obligation to treat her with dignity. She points to the fact that, in breach of "the statutory obligations in terms of human resources management" and to her distress, she first learned of the formal decision to terminate her employment during an interview with the head of the Recruitment and Employment Management Division of DHR. The appellant further mentions the fact that this decision was made on the last day of her CDD, in violation of the statutory rules on notice. She also claims to have been the victim of institutional harassment because she was denied access to her computer account and her computer when she took up her duties in connection with her temporary assignment. As she was still under contract until 30 April 2024, there was no reason to place her in a position of forced inactivity by applying procedures intended for staff members whose contract had expired. Based on information received from a "staff member responsible for surveillance", she alleges that her computer was taken away without notice in order to check its contents as part of an investigation.

h. Regularity of the procedure following the harassment complaint

50. The appellant questions the regularity of the harassment procedure on the ground that, in the investigation into her complaint, the investigation report was not communicated to her immediately and she was not given the opportunity to be assisted by a lawyer when being interviewed by the investigators. According to the appellant, these circumstances constitute a violation of the adversarial principle in the investigation of her harassment complaint.

51. The appellant also claims to have been the victim of institutional harassment because her N+2 and the head of the Court's Administration failed in their duty to ensure compliance with the applicable rules during the probationary period, thus compromising the objectivity of the assessment. Despite being aware of the situation, the individuals in question also deliberately omitted important facts in their submissions, thus co-operating with the appellant's N+1 in not recommending that she be confirmed in her employment. The appellant further argues that the Director of Human Resources lacked the objectivity required to sit on the Appointments Review Committee, given her sole competence in matters relating to harassment complaints.

52. In her submissions in reply, the appellant maintains that her grievances in this regard are admissible because she filed an administrative complaint on 19 September 2024 against the decision to take no further action on her harassment complaint.

i. Refusal to extend the probationary period

53. Lastly, the appellant maintains that, because she had been on sick leave, the Organisation should have extended her probationary period by a period equivalent to her absence, which would have enabled her to demonstrate her skills in her new job more fully.

54. In her submissions in reply, she challenges the Secretary General's plea of inadmissibility in this regard, arguing that her request for an extension of the probationary period, as well as her request for payment in respect of 21.5 days of unused annual leave, are related to her application to have the contested decision annulled and, as such, did not have to be the subject of a separate administrative complaint.

2. The Secretary General

55. After pointing out that the appellant's status as the holder of a CDD did not confer any entitlement to have her contract renewed, the Secretary General maintains that none of the appellant's arguments is such as to call into question the decision not to confirm her appointment at the end of her probationary period.

a. Error of law

56. The Secretary General maintains that the deficiencies in the appellant's professional and technical skills were in fact what prompted the decision to terminate her employment. This being the most important factor in concluding that the appellant's probationary period had been unsuccessful, it constituted a sufficient reason for the decision in question.

57. The Secretary General points out that the conduct of staff members is an integral part of the competences taken into account when assessing their performance. Insofar as the appellant's behaviour was a problem, it was legitimate and necessary, in the Secretary General's opinion, to mention it in the response given on 5 June 2024 to her administrative complaint. The Secretary General refers here to the concerns that had been raised in the appellant's assessment reports about her conduct in terms of professionalism and respect.

b. Compliance with the principle of patere legem quam ipse fecisti

58. The Secretary General maintains that it was legitimate for the Organisation to ask the appellant to prioritise the use of English as the working language of the Court Registry unit to which she had been assigned. He explains that the choice of working language for the Registry's lawyers is primarily dictated by the interests of the service, based on criteria such as the working language of the Government Agent of the state in question and of the judge or judges working on cases. Accordingly, the fact that the job description or vacancy notice does not specify the working language of the recruiting entity does not mean that staff may choose their main working language according to their personal preferences.

59. The Secretary General adds that the appellant herself indicated in her job application that she had an excellent command of both of the Organisation's official languages (level C2) and that she was recruited on that basis. He states that the information provided by the appellant in the information sheet regarding her preference for French as a working language merely referred to the language in which the staff member preferred to communicate with the Administration. The arrangement put in place after the meeting of 11 May 2023 (paragraph

11) was a compromise intended to facilitate the appellant's onboarding process, even if it created difficulties for the Armenian team in the Registry of the Court.

c. Respect for the principle of good faith

60. The Secretary General maintains that the appellant rejected the suggestion made by her direct manager on 5 October 2023 that she increase the portion of her work done in English, during the interview to assess the first reference period, which also served as an interview for setting objectives for the second reference period. After this refusal, it took lengthy discussions between the appellant and her managers, involving DHR, to reach an agreement, which is why the objectives for this second reference period were not able to be finalised until 31 October 2023.

d. Time allowed to the appellant to improve her performance

61. In the opinion of the Secretary General, it is clear from the evidence that the appellant was informed by her managers of the need to improve the quality of her work and her conduct, in particular the need to adopt a more constructive attitude in order to achieve the required level of quality, from as early as her first assessment report, as well as in conversations with her managers as her probationary period progressed. The requests for advice which the appellant sent to DHR and the Staff Committee show that she was fully aware of these difficulties.

62. As to the time taken to set the objectives for the second reference period, the Secretary General notes that not only did the appellant's objectives change very little between the first and second reference periods, but also the delay of which she complains was largely due to her repeated refusal to do a greater share of her work in English. The appellant was therefore aware of her objectives throughout her probationary period, the only outstanding issue in the month of October 2023 being the portion of work to be done in English, because of her refusal to follow her managers' instructions in this respect.

63. The Secretary General goes on to explain how, because of the way in which the Court's Registry operates, the appellant received adequate support to enable her to carry out her tasks and reach the expected level of performance.

64. The Secretary General states that paragraph 510.12 of the Staff Rule on career development, as relied on by the appellant, did not apply in her case since it concerns underperformance by staff members who have been confirmed in their employment and aims to ensure that managers act on concerns without waiting for the annual assessment interview. The appellant's situation was therefore entirely governed by the relevant provisions of the Staff Rule on entry into service, which were complied with in this case. In any event, maintains the Secretary General, none of the irregularities alleged by the appellant constitutes a substantial defect that could affect the validity of the assessments conducted during her probationary period.

e. Objectivity of the appellant's direct manager

65. The Secretary General cites evidence in the case file to support the assertion that at no stage during her probationary period did the appellant mention being on hostile terms with her

direct manager. The appellant's complaints related to difficulties during her probationary period which in themselves are not sufficient to cast doubt on the manager's objectivity.

66. The Secretary General observes that the appellant's allegations of harassment only emerged for the first time when she lodged her formal complaint on 19 February 2024, after she had been informed of the content of the second assessment report drawn up by her direct manager and of that manager's recommendation that she should not be confirmed in her employment at the end of her probationary period. By that time, the direct manager had already drafted the second assessment report and made her recommendation and on 22 March 2024, when she formally validated the report, she had not been informed of the appellant's complaint.

67. On this point, the Secretary General refers to the conclusions of the external investigators who, at the end of the investigation into the appellant's complaint, confirmed that her allegations of harassment were unfounded, as were her complaints about lack of adequate supervision and lack of objectivity in her assessment.

f. Termination of the appellant's employment without waiting for the outcome of her harassment complaint

68. The Secretary General maintains that he complied with the regulations governing both the handling of harassment complaints and probationary periods, which make no provision for a decision to terminate a staff member's contract to be suspended if a formal complaint of harassment is lodged. He reiterates that he had no reason to doubt the thorough and objective nature of the assessments made by the appellant's managers with respect to her performance and conduct and hence no reason to doubt the validity of the decision to terminate her employment.

g. Respect for the appellant's dignity

69. The Secretary General refers to the circumstances that led the Organisation to inform the appellant of the termination of her contract on the last day of her fixed-term contract, 30 April 2024. He begins by noting that the appellant was informed as early as 29 January 2024, during the interview concerning her second assessment report, that her direct manager had recommended terminating her employment within the framework of her probationary period, i.e. three months before her contract was due to end. Because of the appellant's absence on sick leave, however, the second assessment report was not validated until 22 March 2024, when the appellant returned to work. The Secretary General submits that this delay explains why the appellant could not be formally notified of the official decision to terminate her employment until 30 April 2024.

70. As to the interview that was held the same day to notify the appellant of the decision in question, the Secretary General explains that this is standard practice in such matters, and considered to be a humane and respectful approach as it provides an opportunity to explain in person the reasons for the decision to the staff members concerned and to answer any questions. The Secretary General also points out that the Organisation paid the appellant compensation equivalent to one month's salary in lieu of notice for the appropriate period beginning on the date on which the decision was notified.

71. The Secretary General refutes the allegation of institutional harassment, arguing that the deactivation of the appellant's computer account was carried out in accordance with the usual procedures that apply when a staff member leaves the Court's Registry. While acknowledging a slight delay in relation to the customary one-week time frame for deactivating an account, he denies that the modifications made to the appellant's computer accounts – which were necessary so that she could carry out her duties in the department to which she had been assigned - undermined her dignity.

h. Regularity of the procedure following the harassment complaint

72. Since the relevant decisions were not challenged by means of an administrative complaint, the Secretary General argues that this part of the appeal is inadmissible for failure to exhaust internal remedies. Without prejudice to this ground of inadmissibility, the Secretary General points out that the Organisation has complied, on the one hand, with the regulations that apply when a staff member is heard as a witness in an investigation, and which make no provision for the person to be assisted by a lawyer, and, with regard to the communication of the investigation report, with the relevant administrative case law relating to the preservation of the confidentiality of the testimonies collected.

73. The Secretary General rejects the complaints of institutional harassment as inadmissible on the grounds of failure to exhaust internal remedies, insofar as the appellant raised these complaints for the first time in her appeal before the Tribunal. The Secretary General also observes that the fact that all three persons involved in the appellant's assessment process – her N+1, her N+2 and the head of the Court's Administration – gave a negative assessment of her performance and conduct in no way detracts from the regular and compliant nature of these assessments. He adds that the mere fact that the Director of Human Resources had, by virtue of her duties, knowledge of the appellant's harassment complaint, did not call into question the ability of his representative to take part, in an impartial manner, in the examination of the appellant's file as Chair of the Appointments Review Committee.

i. Refusal to extend the probationary period

74. After submitting that this complaint is inadmissible for failure to exhaust internal remedies, the Secretary General observes that the appellant's sick leave from 30 January 2024 had no impact on the progress of her probationary period since her two assessment reports covering the periods up to the end of the fourth month (from 1 May 2023 to 31 August 2023) and the end of the eighth month (from 1 September 2023 to 31 December 2023) of her appointment respectively were able to be drawn up. The rule under which probationary periods may be extended, namely paragraph 4120.5 of the Staff Rule on entry into service, only applies when, because the staff member has been absent, their performance has not been able to be assessed in the normal way, which was not the case here. The Secretary General also points out that extending an employment contract is a separate matter from extending a probationary period, which is only automatically extended if the duration of the employment contract allows it.

B. The third-party intervener

1. Third-party comments

75. In support of the appellant's submissions in Appeals Nos. 761 and 762/2024, the Staff Committee, while reiterating its commitment to the principle of bilingualism as set out in Article 12 of the Statute of the Council of Europe, observes that the level of knowledge of the Organisation's two official languages required by the appellant's line manager was not in accordance with either the vacancy notice or the guide for assistant lawyers working in the Registry (which requires C1 and A1 knowledge of the two official languages). It considers that, given the circumstances in which the appellant was recruited, she could legitimately have expected to be required to work in French, and that if the Armenian unit of the Court's Registry prefers English, that should have been specified in the vacancy notice.

76. The Staff Committee has two observations to make regarding the conduct of the appellant's probationary period. Firstly, the unsupportive working environment should have been acknowledged as a reason for her underperformance, and her probationary period extended accordingly. In general, the Staff Committee suggests that in such cases, the staff member on probation should be temporarily assigned to another post or assigned another manager, without the need to file a harassment complaint. The Staff Committee goes on to observe that the appellant should have been informed of the decision not to confirm her appointment no later than one month before the end of her probationary period, as required by paragraph 4130.3 of the Staff Rule on entry into service. Having failed to comply with that deadline, the Organisation should compensate the appellant for the damage to her dignity and reputation, as well as for the 21.5 days of leave that she was unable to take between 25 March and 30 April 2024.

77. The Staff Committee advocates amending the Staff Regulations to include not only harassment by an individual, but also institutional harassment, which, in its view, appears to have occurred in this case. It points out that members of the Administration systematically sided with the manager tasked with assessing the appellant and notes the hasty manner in which her probationary period was terminated, without waiting for the outcome of the harassment proceedings.

78. Lastly, the Staff Committee submits that the appellant should not be penalised by the failure to give her one month's notice, with her claim for compensation being dismissed as inadmissible. It contends that if the notice period had been respected, the appellant would still have been a staff member at the time when she lodged her administrative complaint on 15 May 2024 (see paragraph 28).

2. Parties' comments on the third-party intervention

79. The appellant concurs with the Staff Committee's comments, insofar as they highlight issues within the Council of Europe as regards the application of bilingualism under Article 12 of the Council of Europe's Statute, shortcomings in the management of probationary periods, working conditions in a hostile work environment, the involvement of various actors from the Organisation in the gradual worsening of her working conditions, the failure to respect a statutory obligation to give notice and the harm she has suffered.

80. The Secretary General considers that the Staff Committee's comments go beyond the scope of the present appeals and the particular facts of the case when in fact, according to Article 11.4 of the Statute of the Tribunal, submissions from an intervening party must be limited to supporting the submission of one of the parties. Insofar as the Staff Committee's comments call into question the manner in which recruitment procedures are organised at the Council of Europe, the Secretary General observes that the possibility for candidates to sit written tests in the language of their choice is in their interest and cannot be presented as undermining bilingualism. He points out that the fact that candidates are offered this choice does not mean that they will be able to work in that language when they take up their duties, since the working language depends on the needs of the service. The Secretary General reiterates his position that the appellant's allegations about an unsupportive work environment are not based on any factual evidence and are purely speculative.

C. The Tribunal's assessment

a. The preliminary issue of the admissibility of the Secretary General's observations in reply

81. In her submissions in reply concerning Appeal No. 761, the appellant contests the admissibility of the Secretary General's observations, citing the failure to delegate signing authority to the head of the Litigation Division.

82. The Tribunal notes that, in signing the Secretary General's observations, the head of the Litigation Division did not give her name or specify in what capacity she was acting "by order" of the Jurisconsult. Under Article 1.k of Rule No. 1390 of 11 May 2017 defining the role of the Directorate of Legal Advice and Public International Law within the Secretariat General of the Council of Europe, however, the Directorate of Legal Advice and Public International Law (DLAPIL) is vested with the role of representing the Secretary General in internal litigation proceedings, in particular before the Administrative Tribunal. Even assuming that, under this provision, only the Jurisconsult may act on behalf of the DLAPIL, the Tribunal considers that it follows from the rejoinder concerning Appeal No. 761/2024 that the Jurisconsult has ratified the observations filed on his behalf.

83. It follows that the appellant's plea of inadmissibility must be dismissed.

b. Purpose of the appeal

84. In her submissions, as set out in her further pleadings, the appellant requests, in addition to the annulment of the "decision of 30 April 2024" (for which read: decision of 29 April 2024, as communicated by memorandum of 30 April 2024) by which the Organisation terminated her employment (see paragraphs 24 and 25), the annulment of the then Secretary General's decision of 5 June 2024, dismissing her administrative complaint (see paragraph 29).

85. Under the Staff Regulations, staff members who consider that an administrative decision is prejudicial to their interest and conflicts with their terms and conditions of appointment, or with any pertinent provisions of the regulatory framework, may initiate the process of management review, allowing for the correction of an improper decision or, where a decision was properly taken, its confirmation along with a reasoned explanation (Article 14.3 of the Staff Regulations). After pursuing management review, staff members who are not satisfied with the outcome thereof may lodge a formal complaint with the Secretary General against the contested

administrative decision adversely affecting them, provided that they have a direct and existing interest in doing so (Article 14.4 of the Staff Regulations). The Secretary General's decision on the complaint may be appealed to the Administrative Tribunal of the Council of Europe in accordance with the provisions of the Tribunal's Statute (Article 14.5 of the Staff Regulations).

86. The Tribunal notes that, in the present case, the decision to dismiss the administrative complaint in question is not purely confirmatory of the decision complained of by the appellant, as would be the case for an act that contains no new element in relation to an earlier act adversely affecting the appellant and which has therefore not replaced it. The decision of 5 June 2024, while reiterating the reasons given in the memorandum of 30 April 2024 relating to the inadequacy of the appellant's professional skills, adds to these reasons, making points relating to shortcomings in the appellant's conduct.

87. In this respect, the relevant case law has clarified that "an express decision rejecting a complaint may, in the light of its content, not be confirmatory of the measure contested by the applicant. That is the case where the decision rejecting the complaint contains a re-examination of the applicant's situation in the light of new elements of law or of fact, or where it changes or adds to the original decision. In such cases, the rejection of the complaint constitutes a measure subject to review by the court, which will take it into consideration when assessing the lawfulness of the contested measure, and may even regard it as an act adversely affecting the complainant and replacing the contested measure" (see General Court of the European Union, case T-51/24, judgment of 9 October 2024, CF v. Commission, paragraph 17).

88. Consequently, it must be held that the effect of the present appeal is to ask the Tribunal to set aside the decision of 29 April 2024, brought to the appellant's attention on 30 April 2024, by which the Organisation decided not to confirm her in her employment at the end of her probationary period, a decision supplemented by that of 5 June 2024 dismissing her administrative complaint. The decision thus supplemented is referred to below as "the contested decision".

89. In the present appeal, the appellant also raises complaints relating to the procedure following her harassment complaint. This procedure gave rise to a decision which the appellant challenged in Appeal No. 766/2024. The Tribunal is of the opinion that these complaints should be examined in the context of that appeal. It will therefore refrain from examining them in this one.

c. Admissibility

90. The Tribunal notes that the appellant did not lodge an administrative complaint challenging the decision of the Director of Human Resources of 17 April 2024 refusing to extend her probationary period (see paragraph 21). The same is true for the Administration's decision of 16 June 2024 refusing payment for 21.5 days of unused leave (see paragraph 30). As the requests relate to decisions that are separate from the contested decision and have a distinct purpose, the appellant's argument that they are related to her main application is unfounded. As the internal remedies have not been exhausted in the prescribed manner and within the applicable time limits, the claims which the appellant has made in this regard in the present appeal are inadmissible.

d. Merits

91. In her appeal, the appellant claims that the assessment of her performance during her probationary period is flawed in several respects and marred by procedural irregularities.

92. The Tribunal notes that, under paragraph 4120.2 of the Staff Rule on entry into service adopted by the Secretary General on 30 December 2022, "[t]he probationary period is a trial period aimed at evaluating a staff member's suitability for the job and the international civil service."

93. To this end, it is of the essence that during the probationary period, the Organisation be vested with the power both to define its own needs, requirements and interests, and to decide whether, judging by the staff member's performance during the probationary period, they have the abilities and qualities required to be confirmed in their employment at the Council of Europe. These determinations necessarily lie within the responsibility and discretion of the respondent (see World Bank Administrative Tribunal (WBAT), Decision No. 10 of 8 October 1982, Salle v. International Bank for Reconstruction and Development (IBRD), § 27).

94. At the same time, staff on probation enjoy the rights and guarantees recognised by the applicable regulations. Some of these guarantees may also be based on general principles of law. As the Tribunal has had occasion to point out, these principles include, in particular, "transparency, effective and sufficient communication of information and mutual respect between the appraiser and the appraisee" (Administrative Tribunal of the Council of Europe (ATCE), Appeals Nos. 561-564/2015, Kacsandi (I, II, III and IV) v. Governor of the Council of Europe Development Bank, decision of 26 April 2016, § 115). Compliance with these principles and conditions is all the more important given that the probationary period marks a difficult time in the professional career of the staff members concerned, both in terms of adapting to the needs and policies of the Organisation and because of the inherently precarious nature of their situation.

95. The Organisation's discretionary powers must always be exercised lawfully. Where a decision is challenged, the Tribunal naturally cannot substitute its judgment for that of the Administration. It does, however, have a duty to ascertain whether the decision taken is lawful. Accordingly, the Tribunal must "consider not only whether the decision was taken by a competent authority and whether it is legal in form, but also whether the correct procedure was followed and whether, from the standpoint of the Organisation's own rules, the administrative authority's decision took account of all the relevant facts, any conclusions were wrongly drawn from the evidence in the file, and there was any misuse of power" (see, in particular, ATCE, Appeal No. 226/1996, Zimmermann v. Secretary General of the Council of Europe, decision of 24 April 1997, § 37; ATCE, Appeal No. 539/2013, Andrea v. Secretary General of the Council of Europe, decision of 31 January 2014, § 50; ATCE, Appeal No. 671/2020, Nectoux v. Secretary General of the Council of Europe, decision of 21 October 2021, § 48).

96. In the light of the above, the Tribunal will now turn its attention to the arguments raised by the appellant in support of her appeal. Insofar as some of her complaints are connected, they may be examined jointly.

i. Error of law

97. With regard to the argument that there has been an error of law, it has been observed (see paragraph 86) that the reasoning in the contested decision is twofold in the sense that it is based as much on shortcomings in the appellant's professional skills as on shortcomings in her conduct. The fact that the shortcomings in her conduct were only mentioned for the first time in the response to the administrative complaint does not in itself constitute an error of law, since it is within the power of the Secretary General, when reviewing the complainant's situation, to take into account new legal or factual elements, or to amend or supplement the initial decision. It is, nevertheless, for the Tribunal to verify that, in so doing, the Organisation has not made inappropriate use of its discretionary power and that the rights of the staff member concerned have been respected.

98. In this case, the Tribunal observes that during her probationary period, the appellant was subject to an assessment process focusing on her professional and technical skills, as well as her conduct and attitude at work. This is clear from her assessment reports, which contain comments on her adherence to the core values of professionalism, integrity and respect, as well as on her capacity for teamwork and co-operation. The relevant case law has confirmed that deficiency in interpersonal skills may lawfully be taken into consideration in preparing the annual performance report (see Administrative Tribunal of the International Monetary Fund (IMFAT), Judgment No. 1997-1 of 22 August 1997, Ms "C" v. IMF, and cited case law).

99. From the appellant's first assessment report, the appellant had in fact been encouraged to improve her legal analysis skills, paying greater attention to detail, and to show greater flexibility in adapting to the demands of the job and the needs and priorities of the team. The criticisms levelled at the appellant's performance and conduct were reiterated, more sternly this time, in the second assessment report. The latter stressed that the progress expected from the appellant, particularly with regard to her ability to perform more complex tasks, had not been demonstrated during the second reference period, leading to the conclusion that improvements were either desirable or required in four of the five listed competences.

100. The Tribunal further notes that, before arriving at an opinion in support of a decision not to confirm the appellant's appointment, the Appointments Review Committee discussed the appellant's performance problems at length, both in terms of her legal analysis skills and her ability to form working relationships based on trust, respect for her superiors, teamwork and close co-operation.

101. In these circumstances, and taking into account the discretion enjoyed by the assessors in judging the work of the individuals they are responsible for assessing, the Tribunal concludes that the factual assessments relied on in support of the contested decision, and which relate to shortcomings in the appellant's professional skills and conduct, have been sufficiently substantiated. The fact that the issues with the appellant's conduct were not mentioned in the initial decision to terminate her employment does not, in itself, constitute proof to the contrary. In any case, that fact is not sufficient to demonstrate that the real reason for not confirming the appellant in her employment is unrelated to the reasons given in the contested decision.

102. The Tribunal also notes that, under certain conditions, additional reasons for a decision adversely affecting the appellant may be provided when the administrative complaint is dismissed, provided that the reasons given to the appellant in the context of the dispute

enabled them to exercise their rights, in particular their right to challenge the reasons on appeal and to defend their interests in full knowledge of the facts (ATCE, Appeal No. 743/2024, B. S. v. Governor of the Council of Europe Development Bank, judgment of 25 November 2024, § 56, and cited case law). Insofar as the appellant complains that she did not have the opportunity to express her views on the reasons mentioned for the first time when her administrative complaint was dismissed, the Tribunal finds not only that the appellant was in a position to express her views on this subject during her assessments, by entering detailed comments in the dedicated forms, but also that she had the opportunity to challenge them first in her administrative complaint and later, before the Tribunal, by raising a number of complaints in this regard.

103. In the light of the foregoing, the Tribunal concludes that the appellant's argument that there has been an error of law is unfounded.

ii. Good faith obligation and respect for the appellant's dignity

104. In her second ground of appeal, the appellant contends that the Organisation failed in its obligation to act in good faith and to respect the dignity of staff members. This argument consists of four parts.

Biased nature of the assessment

105. With regard to the appellant's allegation that her N+1 was biased, the Tribunal notes that it is clear from the assessment reports that the appellant and her manager were in disagreement over her performance assessment. The Tribunal also notes the tough tone in which the appellant's manager expressed some of her remarks. It appears from these reports that the appellant's N+1 criticised her for not recognising her authority, as evidenced for example by her inability to accept constructive criticism. The Tribunal points out, however, that the principle of impartiality does not go so far as to prevent a manager who has differences of opinion with a subordinate from assessing that person (International Labour Organization Administrative Tribunal (ILOAT), Judgment No.1444 of 6 July 1995, Moosai, consideration 11; ILOAT, Judgment No. 2077 of 12 July 2001, D'Arcangelo, consideration 15). While it cannot be ruled out that such differences may cause the manager some irritation, that does not, in itself, imply that the latter is no longer in a position to objectively assess the merits of the person concerned (European Union Civil Service Tribunal, case F-64/13, judgment of 30 June 2015, Z v. Court of Justice of the European Union, paragraph 71 and case law cited).

106. At the same time, the Tribunal notes that the appellant's N+1 tempered her negative opinions by recognising the efforts made by the appellant and the strengths of her performance. The Tribunal observes, in particular, that in the first assessment report the manager's comments made allowance for the fact that the appellant was still new to the role and that her mistakes could be considered "part of the normal learning process". The appellant herself made a point, in this report, of thanking her line manager for her willingness to help and for her sound advice, which, she said, had enabled her to better understand the Convention. The Tribunal also notes that the assessments made are based on specific and detailed evidence.

107. In any event, the Tribunal notes that the allegations of bias made by the appellant are essentially based on hypothesis, or mere suspicion. The appellant claims that she was

penalised because of her preference for French, as her line manager (N+1) was unable to correct her work in that language. These assertions, however, are not supported by any evidence in the file, which tends rather to demonstrate the appellant's reluctance to follow her managers' instructions in this regard. The Tribunal notes that the vacancy notice on the basis of which the appellant was recruited called for a very good knowledge of one of the two official languages of the Council of Europe, without going into further details. In her application, the appellant had indicated that she possessed the same level of linguistic knowledge for English and French. In those circumstances, the fact that no mention was made of a preference for a particular language in the aforementioned notice could not be construed as leaving it to the appellant to decide for herself which language to work in. The Tribunal also notes that the negative assessment of the appellant's performance related to a set of skills (see paragraph 99), and was not specifically confined to her language skills.

108. While it is not for the Tribunal to substitute its assessment for that of the Organisation as to whether the appellant should be required to prioritise, in the interests of the service, one of the official languages of the Council of Europe over the other, it is nevertheless for the Tribunal to consider whether the Organisation has not exceeded the limits of its discretionary power in this matter. The preference among the appellant's managers for English cannot be considered arbitrary or unreasonable, given the fact – which is not denied by the appellant – that English was the working language used by the other members of the Armenian unit of the Court's Registry. Nor is there anything in the file to indicate that this power was misused to the detriment of the appellant. In any event, the latter's allegations do not, in themselves, constitute objective, relevant and consistent evidence of the existence of any malicious intent towards her (ILOAT, judgment No. 4891 of 8 July 2024, T. (No. 24) v. EPO, consideration 11).

109. The Tribunal points out that the fact that the direct manager was the subject of the appellant's harassment complaint cannot of itself, without more, call into question the impartiality of that manager (see, in this connection, European Union Civil Service Tribunal, Case F-81/11, judgment of 19 June 2013, BY v. European Aviation Safety Agency (EASA), paragraph 59). The Tribunal further notes that the appellant lodged her complaint on 19 February 2024, her N+1 having already informed her beforehand of her intention not to recommend confirming her in her employment during the interview on 29 January 2024.

110. As to the appellant's allegation that neither her N+1, nor her N+2, nor the head of the Court's Administration should have participated in her assessment process, the Tribunal considers that to accept such an argument, in the absence of any indication of bias on the part of the persons concerned, would be to compromise the guarantee of a proper assessment of the appellant's performance and conduct. Indeed, as pointed out by the relevant case law (Court of First Instance of the European Communities, Case T-285/04, judgment of 13 July 2006, Andrieu v. Commission, paragraph 68), it is only the involvement of the immediate superiors in the work of the officials placed under their authority which enables them to make the best possible assessment of the activities of the persons working under them.

111. In addition, the Tribunal does not see how the fact that the Director of Human Resources fulfilled her responsibilities in the course of her duties – by receiving the appellant's harassment complaint and, consequently, offering her a temporary assignment – could call into question her impartiality as a member of the Appointments Review Committee.

112. In the light of the foregoing, the allegation that the appellant's assessment was biased is unfounded, as is the allegation that there has been a violation of the principle *patere legem quam ipse fecisti*.

Management failures during the probationary period

113. As to the appellant's complaints regarding the time taken to inform her of the need to improve her performance, the Tribunal must first consider whether paragraph 510.12 of the Staff Rule on career development is applicable in the present case. The Tribunal notes that the assessment process during the probationary period is the subject of specific provisions set out in the Staff Rule on entry into service. These provisions differ from the general provisions on staff assessment set out in the Staff Rule on career development. As the *lex specialis* in this case must be considered to derogate from the *lex generalis*, the Tribunal will examine this grievance solely in the light of the provisions of the Staff Rule on entry into service.

114. The Tribunal notes from her first assessment report, which was discussed on 5 October 2023 and sent to the appellant on 18 October 2023, that the appellant was informed of her shortcomings, particularly in terms of knowledge of national law and legal analysis. This report also highlighted issues with her conduct, where improvement was desirable.

115. The objective setting for the appellant's second reference period took place on 31 October 2023, two months after the start of this period on 1 September 2023. In the absence of a rule requiring the Organisation to comply with a specific time limit, the question that the Tribunal must therefore consider is whether the 2-month time frame for setting objectives for the second reference period was reasonable and whether it could have adversely affected the appellant. In examining this question, the Tribunal takes into account any special circumstances that might justify the delays found (European Union Court of First Instance, Case T-281/01, judgment of 6 July 2004, Huygens v. Commission of the European Communities, paragraph 59).

116. It is clear from the file that during the interview on 5 October 2023, the objectives for the second reference period were discussed in the presence of the appellant, particularly with regard to the need for her to do a greater share of her work in English. The evidence in the file also indicates that during this interview, the appellant had difficulty committing to this, as evidenced by the e-mails she sent during the month of October to various contacts within the Organisation.

117. In this context, the Tribunal considers plausible the Secretary General's assertion that the delay in finalising the appellant's objectives for the second reference period was due to the time taken to reach a mutual understanding between the appellant and her managers. The Tribunal therefore considers that these particular circumstances may have justified the delay. It should also be noted that the appellant's objectives for this period remained essentially unchanged from the previous period and underwent only marginal adjustments. In these circumstances, the Tribunal considers that the appellant has not shown that she suffered any prejudice as a result of the delay in question.

118. The Tribunal notes that, from the finalisation of her objectives for the second reference period, the appellant had approximately two months to remedy her shortcomings in the areas for improvement identified in her first assessment report. The appellant acknowledges having received various forms of follow-up from her line manager (N+1) during this period, including

face-to-face meetings, e-mail exchanges and corrections to work accompanied by track changes explaining what the managers wanted. It is not disputed that a significant portion of the appellant's work ("70% of her output relating to single-judge cases and 100% of her reference notes on more complex cases") was revised before her second appraisal was finalised by her direct manager.

119. In view of the foregoing, there appears to be no basis to the appellant's claim that her superiors' concerns about her performance were not communicated to her in a timely manner. Given the follow-up she received, the appellant could not have been unaware of the risk of not being confirmed in her job in the event of persistent underperformance, regardless of the fact that no explicit warning had been issued to that effect. By its very nature, the probationary period implies uncertainty as to its outcome, which is directly conditioned by the level of performance achieved by the staff member concerned.

120. It follows that the appellant's complaint that she was denied the opportunity to improve her performance due to failings attributable to her managers during the probationary period must be dismissed, as must the complaint alleging a violation of the principle of good faith.

Contested decision made without waiting for the outcome of the harassment complaint

121. As to the appellant's allegation that the Organisation erred in law by terminating her employment without waiting for the outcome of her harassment complaint, the Tribunal notes that the appellant's allegations of harassment were such as to call into question the validity of her performance assessments during her probationary period, and the decision to terminate her contract based on those assessments.

122. The Tribunal also notes that the applicable regulatory framework makes no provision for the automatic suspension of the time limit for making a decision on the termination of a staff member's appointment when the basis for that decision is called into question by the filing of a harassment complaint. Furthermore, the Chair of the Tribunal has already noted that, under the regulations in force, he does not have the power to order any such suspension (ATCE, Chair's Order of 30 December 2024, C. V. v. Secretary General of the Council of Europe, § 35). As the regulations stand, therefore, the Secretary General was obliged to take a decision without waiting for the outcome of the harassment procedure.

123. For a harassment complaint to be effective, there must be a connection between the final outcome of the related procedure and the decision to continue or terminate the employment of the staff member concerned. In the present case, notwithstanding the fact that the Secretary General at the time had already taken the decision, on 5 June 2024, to dismiss the appellant's administrative complaint against the decision to terminate her appointment, she could have corrected that decision if the appellant's harassment complaint had been upheld. Similarly, if the Tribunal concludes that the appellant's Appeal No. 766/2024, directed against the Secretary General's decision notified on 21 October 2024 and dismissing the administrative complaint against the decision of the Director of Human Resources of 3 July 2024 to take no further action on the harassment complaint, is well-founded, it will be for the Secretary General to draw the appropriate conclusions. In that case, revising the decision of 5 June 2024 may be one possible means of redressing the damage suffered by the appellant (see aforementioned order, § 36).

124. It follows that this complaint is unfounded.

Lack of respect for the appellant's dignity

125. With regard, firstly, to the complaint relating to the lack of respect for the appellant's dignity, the Tribunal notes that the delay in finalising the appellant's second assessment report due to the appellant being on sick leave had repercussions on the process of finalising the contested decision. As the report was not finalised until the appellant returned from sick leave, it was not examined by the Appointments Review Committee until 24 April 2024, and the Deputy Secretary General did not take his decision to terminate the appellant's appointment until 29 April 2024, i.e. the day before her contract was due to expire. DHR met with the appellant on 30 April 2024 to inform her of this decision in person. At the appellant's request, DHR informed her in advance of the substance of the decision by e-mail on 29 April 2024. As the conditions for respecting the one-month notice period provided for in paragraph 4130.3 of the Staff Rule on entry into service adopted by the Secretary General on 30 December 2022 were not met, the appellant received compensation in lieu of notice.

126. The Tribunal does not see how the sequence of events described above violated the appellant's dignity.

127. With regard, secondly, to the complaint concerning the circumstances surrounding the modification of her computer account, the Tribunal considers that there is no need to consider the question of whether irregularities in this context could give rise to the annulment of the contested decision. It finds that the closure of her computer account at the Court was a normal consequence of her being reassigned within the Organisation, and it sees nothing in the circumstances surrounding this closure that would have undermined her dignity.

128. This complaint is therefore unfounded.

III. EXAMINATION OF APPEAL No. 762/2024

129. In her Appeal No. 762/2024, the appellant asks the Tribunal to set aside ad personam decision No. 8805 concerning her secondment, as well as the decision dismissing the administrative complaint by which she contested that decision. The appellant is also claiming the sum of €128 868.84, corresponding to the amount of salary that she would have earned had her contract run its full term, i.e. until 25 March 2027, as compensation for the pecuniary damage suffered, and the sum of €10 000 as compensation for the non-pecuniary damage suffered. Lastly, she is seeking €4 200 in costs.

130. The Secretary General, for his part, invites the Tribunal to declare Appeal No. 762/2024 manifestly inadmissible and, in the alternative, unfounded. He argues that the claims for compensation submitted by the appellant in this appeal are inadmissible, on the ground that they were not made in the context of her administrative complaint. He adds that, in any case, the appellant's claims for compensation are neither well founded nor supported by evidence and requests that the appellant's claim for costs be dismissed.

A. The parties' submissions

1. The appellant

131. The appellant submits that the offer she accepted concerned her temporary assignment under paragraph 580 of the Staff Rule on career development adopted by the Secretary General

on 22 December 2022 and did not specify the duration of the assignment. Insofar as ad personam decision No. 8805 concerned a secondment, this decision necessarily had an adverse effect on her because, firstly, its legal basis, namely paragraph 5110 of the aforementioned Staff Rule, was not the same, and secondly, it specified the duration of the arrangement.

132. On the merits, the appellant firstly pleads lack of competence on the part of the author of ad personam decision No. 8805 of 15 April 2024. Secondly, she maintains that the decision is vitiated by a failure to provide reasons and also by an error of law, on the ground that the arrangement was in reality akin to a secondment, whereas the Policy on Respect and Dignity in the Council of Europe provides for a transfer to another department. Thirdly, the appellant argues that the decision in question was taken in breach of her right to be heard beforehand.

2. The Secretary General

133. The Secretary General contends that the appellant has not shown that she has a direct and existing interest in challenging the contested decision. As it is a case of a protective measure taken following her formal harassment complaint, to which the appellant expressly consented, opting to cut short her sick leave, the decision in question has not caused her any harm. The complaint that the appellant lodged against the decision, and also her appeal, are therefore inadmissible as she does not have a direct and existing interest.

134. In the opinion of the Secretary General, what the appellant is actually complaining of is the fact that her temporary assignment was not accompanied by an extension or renewal of her fixed-term contract, which was due to expire on 30 April 2024. The fact is, however, that the appellant challenged the decision to terminate her contract at the end of her fixed-term contract by lodging Appeal No. 761/2024, and it is in the context of this other appeal that any complaints in this regard should be examined.

135. As to the merits of the appeal, the Secretary General maintains that ad personam decision No. 8805 of 15 April 2024 was adopted in accordance with the applicable law and principles, as a protective measure following her formal harassment complaint.

136. The Secretary General submits that the list of protective measures that the Administration may apply under Article 7.4.9. of the Policy on Respect and Dignity in the Council of Europe is not exhaustive. The appellant’s transfer to another Council of Europe entity was discussed in the context of her harassment complaint, and the choice of terms in the decision of 14 April 2024 to describe her transfer is explained by the fact that she was to remain on the payroll of the Registry of the Court, since the department to which she was transferred did not have a vacancy that matched the profile required. The Secretary General also maintains that the Director General of Administration was competent to take the decision concerning the appellant’s transfer. As to the rationale for the decision and the opportunity that was afforded the appellant to express her views on the matter, following her discussion with the Director of Human Resources, it must have been clear to her what the legal basis and reasons for this decision were. She could also have put further questions to the Administration yet she did not avail herself of that possibility.

B. The Tribunal’s assessment

137. The Tribunal notes that, for an appeal to be admissible, it must be lodged by a person who has an interest in acting and must be directed against a decision that is subject to challenge.

In order to establish her interest in acting, the appellant must show that the contested decision is prejudicial to them, in the sense that it has a negative impact on their legal position (ATCE, Appeal No. 603/2019, Ana v. Secretary General of the Council of Europe, decision of 22 October 2019, § 45; ILOAT, Judgment No. 4296 of 24 June 2020, M. v OPCW, consideration 6).

138. In the present case, the Tribunal notes that, following the decision to assign her to another entity, the appellant was able to return to work after having been on sick leave and to continue her employment under her fixed-term contract until its expiry. The appellant thus benefited from a measure to which she had consented and which was intended to protect her following her harassment complaint.

139. The Tribunal further notes that the appellant has not shown how this decision allegedly caused her harm, whether financial or other, or how it affected her status in the Organisation. Nor has she argued, let alone established, that annulling the decision, as requested in her appeal, would confer some benefit on her. It is worth noting here that the annulment sought would not have the effect of extending her probationary period or renewing her CDD beyond its expiry date.

140. It follows that the appeal must be declared inadmissible for lack of standing.

For these reasons, the Administrative Tribunal:

Orders the joinder of the appeals;

Declares Appeal No. 761/2024 inadmissible in that it concerns the extension of the appellant's probationary period and the refusal to pay for 21.5 days of unused leave;

Declares the remainder of Appeal No. 761/2024 admissible but unfounded;

Declares Appeal No. 762/2024 inadmissible;

Orders each party to bear its own costs.

Delivered by the Tribunal on 25 March 2025, the French text being authentic.

The Registrar of the Administrative Tribunal	The Chair of the Administrative Tribunal
Christina Olsen	Paul Lemmens