

# CONSEIL DE L'EUROPE ——— ————— COUNCIL OF EUROPE

## TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

**Appeals Nos. 542/2013 and 544/2014 (Carlo TANCREDI (I and II) v. Secretary General)**

The Administrative Tribunal, composed of:

Mr Giorgio MALINVERNI, Deputy Chair,  
Mr Jean WALINE,  
Mr Rocco Antonio CANGELOSI, Judges,

assisted by:

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

has delivered the following decision after due deliberation.

### **PROCEEDINGS**

1. The appellant, Carlo Tancredi, lodged his appeals on 20 December 2013 and 21 February 2014 respectively. On the same dates, the appeals were registered under numbers 542/2013 and 544/2014.
2. The appellant's counsel filed supplementary pleadings in the first appeal on 20 March 2014 and in the second appeal on 24 March 2014.
3. The Secretary General submitted his observations on the two appeals on 2 May 2014. The appellant filed submissions in reply on 2 June 2014.
4. The public hearing took place in the Tribunal's hearing room in Strasbourg on 27 June 2014. The appellant was assisted by Maître Carine Cohen-Solal, barrister practising in Strasbourg. The Secretary General was represented by Ms Ekaterina Zakovryashina of the Legal Advice Department, assisted by Ms Maija Junker-Schreckenber and Ms Sania Ivedi, administrative officers in the same department.

5. After the hearing, at the Tribunal's request, the Secretary General provided it with information which was communicated to the appellant. The latter was able to give his comments.

## **THE FACTS**

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

6. At the time of lodging his first appeal, the appellant, of Italian and French nationality, was a permanent member of staff employed on a fixed-term contract.

7. After participating in 2004 in a recruitment procedure for the post of Deputy Head of Buildings and Installations Department, the appellant joined the Organisation on 5 January 2009. Under the authority of the Head of Department, he held the grade A2 post of Deputy Head of Department and Head of Installations and Equipment Division. His job title and the description of his main duties as set out in the various appraisal forms for the period 2009-2013 were always the same, with the exception of a minor addition to his main duties in 2011-2012. The appellant was granted a three-year extension of the initial contract in January 2011; he left the Organisation on 31 December 2013.

8. In his first appeal, he challenges the decision not to renew his contract; in the second, he challenges the decision not to re-evaluate his grade during the period for which he was employed by the Organisation.

#### **A. Appeal No. 542/2013**

9. On 29 August 2013, the Director of Human Resources wrote as follows to the appellant:

“The Directorate of Logistics, to which you are assigned, is going to be re-organised and, in that context, the duties which you perform will not be maintained in their present form.

Article 23, paragraph 2, of the Staff Regulations stipulates that fixed-term contracts shall end on expiry unless they are renewed under the conditions laid down in the Regulations on appointments (Appendix II to the Staff Regulations).

Your fixed-term contract signed on 26 November 2010 is due to expire on 31 December 2013 and will therefore end on that date.

This letter constitutes notice. A memorandum on the formalities to be carried out upon leaving the Organisation and a list of contacts in the Directorate of Human Resources will be sent to you soon. I wish to inform you as of now that any leave not used before the end of your contract (including any leave accumulated on your leave savings account) will be lost without entitlement to financial compensation”.

10. On 30 September 2011, the appellant submitted an administrative complaint to the Secretary General, under Article 59, paragraph 2, of the Staff Regulations, against the decision of 29 August 2013 not to renew his contract of employment.

11. On 25 October 2013, the Secretary General rejected the administrative complaint on the grounds that it was unfounded. He noted that the appellant had been informed of the conditions of employment for fixed-term contracts and had accepted them. He added that the principles of legitimate trust and expectations had not been infringed either. Lastly, the decision not to offer him a new contract was not premature because, contrary to what the appellant claimed, the new structure of the Directorate of Logistics had already been decided.

12. On 20 December 2013, the appellant lodged this appeal.

**B. Appeal No. 544/2014**

13. On 30 September 2013, the appellant submitted an administrative request to the Secretary General under Article 59, paragraph 1, of the Staff Regulations, in which he requested the “upgrading of [his] grade A2 post to grade A4 and a corresponding salary adjustment backdated to 2009”.

In his request, the appellant argued that the scope of his duties and responsibilities and his job description were clear from all his appraisals and objectives. His main objective was to “manage the Installations and Equipment Division and exercise leadership and authority over [his] colleagues”.

He added that, upon consulting the description for the reference job entitled “MGT 4”, which corresponded to his duties and was entitled “Head of Division”, he had realised that the post he held in fact came under grade A4, not A2.

14. On 29 November 2013, the Director of Human Resources informed the appellant that the Secretary General had asked him to answer the administrative request on his behalf, and that it was rejected. The Director pointed out that when the appellant had accepted the initial offer of a contract and the subsequent extensions, he had been fully informed that his post was classified as grade A2. Furthermore, the appellant’s case corresponded to none of the three cases where it would have been possible to re-evaluate his post under Article 2 of Rule No. 1310 of 29 January 2010 (paragraph 19 below). The administrative request therefore had to be rejected.

15. On 20 December 2013, the appellant submitted an administrative complaint to the Secretary General under Article 59, paragraph 2, of the Staff Regulations against the rejection of his administrative request of 30 September 2013.

16. On 22 January 2014, the Secretary General rejected the administrative complaint on the grounds that it was inadmissible and/or ill-founded. He noted that the appellant had no direct interest in classification of his position and therefore could not claim to have any interest in bringing proceedings within the meaning of Article 59, paragraph 2, of the Staff Regulations. The complaint was therefore inadmissible.

The Secretary General added that, since the appellant was challenging the grade assigned to him for the duties he had performed since his recruitment on 5 January 2009, the only act that could adversely affect him was the decision to appoint him to A2. Since the appellant had accepted the offer made to him, the complaint was inadmissible for lack of interest in bringing proceedings. The complaint was also out of time.

As to the merits of the administrative complaint, the Secretary General submitted that, despite the title “head of division” (French: *responsable de division*), the appellant’s duties nevertheless corresponded in practice to those of a head of section, not a head of division. Consequently, the appellant was not justified in using this as an argument for claiming that his duties were those of a head of division.

17. On 21 February 2014, the appellant lodged this appeal.

## II. RELEVANT LAW

18. Article 59 of the Staff Regulations reads as follows:

“1. Staff members may submit to the Secretary General a request inviting him or her to take a decision or measure which s/he is required to take relating to them. If the Secretary General has not replied within sixty days to the staff member's request, such silence shall be deemed an implicit decision rejecting the request. The request must be made in writing and lodged via the Director of Human Resources. The sixty-day period shall run from the date of receipt of the request by the Secretariat, which shall acknowledge receipt thereof.

2. Staff members who have a direct and existing interest in so doing may submit to the Secretary General a complaint against an administrative act adversely affecting them (...).

3. The complaint must be made in writing and lodged via the Director of Human Resources (...)

b. within thirty days of the date of notification of the act to the person concerned, in the case of an individual measure; or

c. if the act has been neither published nor notified, within thirty days from the date on which the complainant learned thereof; or

(...).”

19. Since 29 January 2010, job classification has been governed by Rule No. 1310 of the Secretary General. The relevant provisions are Articles 1 (Scope and general matters), 2 (Cases where an evaluation of a post or position shall be carried out) and 4 (Evaluation of posts due to a reorganisation).

Article 2 is worded as follows:

“1. Subject to the provisions in the following articles, the grade of a post or position shall be evaluated:

a. when a post or position is newly established (Article 3);

Furthermore, the grade of a post shall be evaluated:

b. when required by the Secretary General following a reorganisation (Article 4);

c. when required by an overall classification review (Article 5).

2. (...).”

## **THE LAW**

### **I. JOINDER OF THE APPEALS**

20. In view of the close connection between the two appeals, the Tribunal decided to join them pursuant to Rule 14 of its Rules of Procedure.

### **II. THE PARTIES' SUBMISSIONS**

#### **A. On Appeal No. 542/2013**

21. After making some preliminary observations on the ground relied on by the Director of Human Resources in his decision of 29 August 2013, the appellant submits that this decision involves a misuse of authority and violates the principles of equal treatment and good faith, as well as the principles of legitimate trust and expectations.

22. The appellant stresses that the reasons for not renewing his contract were clearly specified to him by the Director of Human Resources. Indeed, he was told that his duties would not be maintained in their present form. The appellant points out that, in his administrative complaint, he challenged that argument without claiming a right to renewal of his contract. In his opinion, it is therefore necessary to analyse the reality of the reason mentioned and not merely discuss the nature of the contract of employment.

After making this point, the appellant challenges the Secretary General's argument based on the existence of a five-year limit on fixed-term contracts and asserts that, following the suspension of that limit, he could have continued to be employed beyond the five-year period. He also adds that he could have legitimately claimed to be entitled to an indefinite contract at the end of his probationary period based on the information given in the vacancy notice which led to his recruitment. In his view, it is therefore necessary to analyse the reality of the reason given, and he points out that it is established case law that an appeal can be brought against the non-renewal of a fixed-term contract. In this connection he cites an advisory opinion delivered by the International Court of Justice on 23 October 1956 concerning

judgments of the Administrative Tribunal of the International Labour Organisation on fixed-term appointments at UNESCO.

23. As regards misuse of authority, the appellant points out that the reason given for not renewing his contract was that his duties would not be maintained in the new organisation of the Directorate of Logistics. He infers from this that if his duties had been maintained in the new organisation of the Directorate, the Director of Human Resources would have offered him a renewal of his contract. He argues that the Organisation used the end of his contract as an excuse for terminating his employment, whereas, given the range of duties he actually performed in the Directorate and his professional competences, it would have been legitimate for him to continue working in the new set-up. As evidence of this, he cites the fact that a post of Head of Procurement had been created and that he possessed all the qualities and qualifications required. On this last point, the appellant refers to his positive appraisals, the support he had always received from his managers – who were in favour of his being offered an indefinite contract within the Organisation – and, lastly, the fact that he had dealt with procurement operations which had resulted in savings for the Organisation.

The appellant comes to the conclusion that the Secretary General's bad faith is manifest and that every means was employed to remove him from the Organisation. He alleges that the Director of Human Resources therefore committed a misuse of authority in informing him that his contract would end on 31 December 2013 on fallacious grounds.

24. As to the infringement of the principles of equal treatment and good faith, the appellant points out that 14 staff members who worked under him were all redeployed to various departments of the same Directorate. After dwelling on the manner in which these redeployments were carried out, he submits that the impugned decision infringed the principle of equal treatment because there was no justification for his being the only staff member to have his contract terminated.

In his view, the unfairness is all the more blatant in that one of his colleagues, whose fixed-term contract was due to end, was offered training to join the new set-up. He argues that the Administration should have done everything possible to keep him on the staff. In this respect, therefore, it did not act in good faith.

25. Regarding the infringement of the principles of legitimate trust and expectations, the appellant considers that the impugned decision was also contrary to these principles in view of his dedication to his job and the duties he had actually performed since 2009. He says that his post was classified A2 although the duties he performed were unquestionably those of an A4. The fact that he was given responsibilities of a higher level than those mentioned in vacancy notice 101/2004 led him to entertain real, legitimate hopes as to his future in the Organisation and it would therefore have been legitimate for him to continue his career.

26. In conclusion, the appellant believes that he is justified in maintaining that the decision of 29 August 2013 must be annulled.

27. For his part, the Secretary General notes that the appellant does not dispute the fact that his contract was due to end. He then puts forward a series of arguments in reply to the appellant's contention that the probationary period should not be taken into account in the five-year limit for fixed-term contracts. These arguments also deal with the appellant's assertion that he had a legitimate claim to an indefinite contract.

28. Regarding misuse of authority, the Secretary General notes that a decision only amounts to a misuse of authority if it appears, on the basis of objective, relevant and consistent evidence, to have been taken for purposes other than those stated. Since the appellant claims that he could have held the post of Head of Procurement in the new set-up, the Secretary General submits that, contrary to what the appellant claims, his qualities and qualifications did not make him suitable for that post.

29. Regarding the infringement of the principles of equal treatment and good faith, the Secretary General points out that the appellant was not the only person to have been affected by the re-organisation. Furthermore, the change of working methods in the Directorate of Logistics led to the abolition of the post of Head of Technical Installations, for which there was no need in the new set-up. In any event, given the specific, technical nature of his profile, it was inconceivable to redeploy the appellant. After commenting on the other redeployments, the Secretary General submits that these were different situations to which different solutions were found.

30. Regarding the violation of the principles of legitimate trust and expectations, the Secretary General stresses that the Organisation made no promises to the appellant. Neither did he receive any assurances which would have led him to entertain legitimate hopes of securing a renewal of his contract. Furthermore, the appellant knowingly accepted all the provisions relating to fixed-term contracts. As to the appellant's argument that he performed the duties of an A4, this question is the subject of Appeal No. 544/2014 and, therefore, in the Secretary General's opinion, there is no need to answer it here.

31. In conclusion, the Secretary General asks the Tribunal to declare the appeal unfounded and dismiss it.

## **B. Appeal No. 544/2014**

### *1. The admissibility of the appeal*

32. The Secretary General submits that the appeal is inadmissible in two respects: the appellant had no interest in bringing proceedings and the appeal was out of time.

33. Where the first objection is concerned, the Secretary General refers to the Tribunal's case-law on job classification (ATCE, Appeal No. 394/2007 – Sawyer v. Secretary General, decision of 3 July 2008) according to which this procedure is an organisational decision concerned not with management of an individual staff member's career but with the Organisation's job structure. In the Secretary General's view, the principles arising from this case-law apply in the same way whether the point at issue is the result of an overall review of job classification or an objection by an individual staff member to the classification of his or her post as determined by the overall job classification exercise. The latter situation does not alter the fact that job

classification is a general organisational decision which is not aimed at individuals but concerns the management and coherence of the Organisation's job structure.

34. The Secretary General adds that, in any event, and without prejudice to this first ground for inadmissibility, since the appellant complains of the grade to which he was assigned for the duties which he performed from the time of his appointment on 5 January 2009, the only act by which he might be adversely affected within the meaning of Article 59, paragraph 2, of the Staff Regulations is the decision to appoint him to grade A2. That decision was contained in the offer of employment made to him when he was recruited on 27 November 2008. The Secretary General notes that the appellant unconditionally accepted this offer, which stipulated clearly, in paragraph 3, that he would be appointed to grade A2, step 5. The appellant subsequently confirmed his acceptance by signing his fixed-term employment contract for the period 5 January 2009 - 4 January 2011, which once again specified his appointment to grade A2. He subsequently signed the renewal of his contract for the period 5 January 2011 - 31 December 2013, once again freely accepting his appointment to grade A2. Under international administrative case law, once an offer has been accepted, the contract is deemed to have been concluded.

35. Regarding the second objection, the Secretary General says that if the appellant had wanted to challenge the act by which he considers himself to be adversely affected – namely the decision in the offer of employment to appoint him to grade A2 – he should have submitted an administrative complaint within 30 days. In fact, he submitted his complaint much more than thirty days after receiving and signing his offer of employment. In reply to the appellant's contention that he could not have known the full extent of his duties when he accepted the offer of employment, the Secretary General notes that the appellant performed his duties for nearly five years before complaining of an alleged inconsistency between his duties and the grade held. He adds that the time-limit for challenging a decision is an imperative time-limit.

Consequently, the Secretary General concludes that this appeal is also inadmissible for being out of time.

36. With regard to the first ground for inadmissibility, the appellant, for his part, submits that there is no question of challenging a reclassification decision taken after an overall reclassification exercise or even of challenging a decision of a general nature, a management decision or, still less, the vacancy notice. He states that his appeal is directed against an administrative act adversely affecting him, namely the decision of 29 November 2013, which was the reply to his administrative request of 30 September 2013 under Article 59, paragraph 1, of the Staff Regulations (paragraphs 13-14 above). The appellant argues that since it was this administrative act which gave rise to the appeal, the Secretary General's arguments as to a lack of interest in bringing proceedings are legally unsound.

37. In reply to the second objection of inadmissibility, the appellant argues that it is incompatible with the first objection because if the appeal was out of time, then the appellant was indeed entitled to challenge, as a matter of principle, his appointment to grade A2. To answer this objection, however, the appellant states that he could not have known the full extent of his duties when he accepted the initial offer of

employment. He complains of his grade in view of the duties which he actually performed and the responsibilities with which he was entrusted, which ultimately did not correspond to the duties mentioned in the vacancy notice under which he was recruited.

38. In conclusion, the appellant maintains that he did indeed have an interest in bringing proceedings against the decision of 29 November 2013 and that his appeal was submitted within the time-limit set in Article 59, paragraph 3.b., of the Staff Regulations.

## 2. *The merits of the appeal*

39. The appellant contends that his request for re-evaluation is well-founded, that the impugned decision is vitiated by a factual error and, lastly, that the principles of good faith and equality of treatment between staff members have been infringed.

40. He therefore asks the Tribunal to annul the decision of 29 November 2013 and award him the salary arrears due to him and the sum of 20 000 euros by way of compensation for the damage sustained, in accordance with Article 60, paragraph 2, of the Staff Regulations. He also claims 5 000 euros for costs and expenses.

41. For his part, the Secretary General submits that the Director of Human Resources was justified in rejecting the appellant's request of 30 September 2013 and that his decision of 29 November 2013 was consistent with the applicable regulations and not vitiated by any irregularity. In his view, this decision was therefore lawful, well-founded and perfectly consistent with the applicable regulations and general principles of law. Consequently, the request for annulment can under no circumstances be granted.

42. It follows from all of the foregoing that there has been no breach of the regulations, general principles of law and practice, that there have been no formal or procedural defects, that all the relevant evidence has been taken into account, that no erroneous conclusions have been drawn from the documents in the case-file and, lastly, that there has been no misuse of authority. Furthermore, the appellant cannot legitimately claim to have suffered any damage and the claim for reimbursement of costs and expenses should also be rejected.

43. The Secretary General concludes by asking the Tribunal to declare Appeal No. 544/2014 inadmissible and/or ill-founded and to dismiss it.

## III. THE TRIBUNAL'S ASSESSMENT

### A. **The merits of Appeal No. 542/2013**

44. The Tribunal notes first of all that the appellant has specified that the object of this appeal is to challenge not a violation of a right to contract renewal, but the lawfulness of the decision communicated to him on 29 August 2013.

The Tribunal must therefore examine the grounds of complaint raised by the appellant without having to rule on the question of whether or not there is a right to

renewal of a fixed-term contract, and if such a right exists, what the conditions are. This is, however, a question which is clearly taking on a growing importance in the Organisation given that it increasingly has recourse to fixed-term, rather than indefinite, contracts. The Tribunal considers that it must limit its review in this manner, even if it was vaguely mentioned in the vacancy notice for the recruitment procedure in which the appellant participated that, subject to the staff member's work giving satisfaction, he or she would be offered a "fixed-term or indefinite contract".

45. With regard to an alleged misuse of authority, the Tribunal notes that the appellant refers to a series of events as grounds for claiming that the "Secretary General's bad faith is therefore manifest". These events include first of all the fact that, in order to claim that there was no longer a place for the appellant in the new Directorate, the Secretary General deliberately confined himself to mentioning a department with two divisions, but made no mention of another department (the Conference and Procurement Department) to which two staff members working under the appellant had been moved. The appellant states that he was fully qualified to work in that department. He then refers to his positive appraisals and the support he enjoyed from his managers and to the fact that he was the staff member who had made the largest number of purchases for the Organisation.

46. The Tribunal notes that misuse of authority consists in using a power for purposes other than those for which that power was conferred. The appellant offers no evidence proving a misuse of authority, and although he alleges that the Organisation took advantage of his contract coming to an end to terminate his employment, he provides no proof of this; consequently, the facts mentioned above do not constitute proof of a misuse of authority.

47. As regards the infringement of the principles of equal treatment and good faith, the Tribunal notes that the redeployment of the 14 staff members working under the appellant and the fact – disputed by the Secretary General – that he was the only member of his Directorate not to be redeployed cannot be regarded as constituting an infringement of the principle of equal treatment. Indeed, these staff members had different grades and duties from those of the appellant who, owing to his grade and duties, suffered the consequences of a re-organisation in which a department was organised into two divisions instead of three. The Tribunal is aware that two staff members of the same grade as the appellant were nevertheless kept on in the new set-up, but, here again, the appellant offers no evidence able to prove that his case was not dealt with according to the principles of equal treatment and good faith.

48. Lastly, with regard to the infringement of the principles of legitimate trust and expectations, the Tribunal notes that the appellant bases his reasoning on his dedication to his job and the duties which, according to him, although this is disputed by the Secretary General, he actually performed in the Organisation. He argues that the fact that he exercised responsibilities of a higher level than those mentioned in the vacancy notice for the competition in which he participated led him to entertain real, legitimate hopes for his future.

49. However, as rightly emphasised by the Secretary General, the Organisation at no time made any promise to extend the fixed-term contract or award an indefinite contract. Admittedly, the appellant's managers requested an indefinite contract, but

such a request does not create a responsibility on the part of the Organisation. Consequently, the fact that the appellant was dedicated to his job and discharged functions pertaining to a higher grade does not constitute decisive evidence that the principles of legitimate trust and expectations were infringed through the termination of his employment.

50. In the absence of any evidence pointing to an infringement of the appellant's rights, the Tribunal concludes that none of the grounds of appeal are well-founded.

51. Consequently, Appeal No. 542/2013 is unfounded and must be dismissed.

**B. The admissibility and merits of Appeal No. 544/2014**

52. The Tribunal must first consider the question of the admissibility of this appeal.

53. It believes that it should look first at the second objection of inadmissibility raised by the Secretary General, namely that the appeal was out of time.

54. The Tribunal notes that, in January 2011, the appellant was offered a new three-year contract with the same grade and duties. However, he did not contest the grade assigned to him. The Tribunal considers, therefore, that it was from that time on that he should have contested the grade assigned to him. Since he did not do so, he is now estopped from raising this matter again.

55. The Tribunal accepts that, because he was working on a fixed-term contract and wished ultimately to secure an indefinite contract, the appellant might have hesitated to raise this matter at that time; however, no conclusions of a legal nature can be drawn from this fact which would enable him to start the time-limit for submitting an administrative complaint at a later time.

56. Regarding the appellant's submission that his administrative complaint was directed only against the rejection decision of 29 November 2013, the Tribunal must observe that, in that decision, the Director of Human Resources pointed out that when his contract was renewed, the appellant was aware of his grade. Furthermore, the Tribunal notes that no new development occurred between the renewal of the contract and the administrative request of 30 September 2013. This was therefore a request which should have been submitted earlier. Consequently, the appeal must be dismissed for being out of time.

57. The appellant appears to claim that, when the contract was renewed, he was not aware of the description of his duties. The Tribunal considers, however, that this is not a factor which could lead it to reach a different conclusion.

58. Having reached this conclusion, the Tribunal has no need to consider the first objection of inadmissibility, concerning the lack of an interest in bringing proceedings, or, *a fortiori*, the merits of the appeal.

For these reasons, the Administrative Tribunal:

Orders the joinder of Appeals Nos. 542/2013 and 544/2014;

Declares Appeal No. 542/2013 unfounded and dismisses it;

Declares Appeal No. 544/2014 inadmissible;

Orders each party to bear its own costs.

Adopted by the Tribunal in Strasbourg on 2 October 2014 and delivered in writing on the same day pursuant to Rule 35, paragraph 1, of its Rules of Procedure, the French text being authentic.

The Registrar of the  
Administrative Tribunal

The Deputy Chair of the  
Administrative Tribunal

S. SANSOTTA

G. MALINVERNI