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v.

Energy Charter Conference

141st Session

Judgment No. 5111

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A. Ç. against the Energy Charter Conference (“the organisation”) on 13 April 2023, the organisation’s reply of 3 May 2023, the complainant’s rejoinder of 18 July 2023 and the organisation’s surrejoinder of 5 October 2023;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant contests the decision not to renew his appointment.

The complainant joined the Energy Charter Secretariat, the secretariat of the Energy Charter Conference, on 1 January 2021, as an Investment Coordinator (later renamed “Investment Official”) at grade C-4. He was granted a one-year temporary appointment as a temporary officer which was subsequently renewed from 1 January to 31 December 2022 at which point he was separated from service following a decision not to further renew his appointment.

By an email dated 3 October 2022, the complainant was invited to complete his Performance Appraisal Report (PAR) and to discuss it with his immediate superior by 31 October 2022. On that same day, he sent an email to the Deputy Secretary-General, his immediate superior,

attaching a draft of his PAR and indicating that he had completed the section relating to his assigned tasks.

On 28 October 2022, the complainant received a draft version of his PAR completed by the Deputy Secretary-General. In the section of the PAR entitled “Immediate Superior’s Review of Performance”, the Deputy Secretary-General made several positive comments on the complainant’s performance for the period under review. However, in the section entitled “Immediate Superior’s General Assessment”, she indicated that “[...] given the tight budgetary situation of the Secretariat, which is not expected to improve, [the complainant’s] tasks could be potentially be [sic] carried out by a consultant in lieu of a full-time official”. In the section of the PAR entitled “Proposals”, the Deputy Secretary-General recommended the non-renewal of the complainant’s contract. On that same date, a meeting was held between the complainant and the Deputy Secretary-General to discuss the content of his PAR.

By an email dated 31 October 2022, the Deputy Secretary-General informed the complainant that, as she “[would] not change the entries [she] made in [his] PAR” following their meeting, she would sign the PAR’s “signature block as of 28 October, when [she] return[ed] to the office [on 2 November]”. She also asked the complainant to complete “[the PAR’s] Staff Comments section as [he] [saw] fit, and then submit [it] for [the Secretary-General]’s signature” on the following day.

The complainant provided his comments and signed his PAR on that same day. He disagreed with the Deputy Secretary-General’s proposal not to renew his appointment arguing, in essence, that the budgetary constraints cited as justification for such proposal were unfounded as the organisation’s budget for the year 2023 had already been discussed by the Budget Committee – the body responsible for advising the Conference on matters relating to the financial administration of the Secretariat, which gives its opinion on the Secretariat budget before it is submitted to the Conference for adoption – and that the Committee’s budget proposal reflected funding for Investment Officials at grade C-4 such as himself. The complainant also argued that neither the budget proposed by the Budget Committee for 2023 nor the organisation’s

“Program of Work 2023” provided for hiring consultants to perform duties allocated to temporary officials.

During a meeting held on 8 November 2022, the complainant was informed of the Secretary-General’s decision to endorse the Deputy Secretary-General’s proposal not to renew his contract. Later that same day, the complainant received, by email, his PAR, completed and signed by the Secretary-General, confirming acceptance of the Deputy Secretary-General’s proposal. The Secretary-General erroneously dated his signature as 8 December 2022 instead of the correct date, 8 November 2022.

By a memorandum dated 15 November 2022, the Secretary-General informed the complainant of his intention to issue a written warning for his conduct during the meeting which took place in the Secretary-General’s office on 8 November 2022. He stated that the complainant had an “outrageous” attitude towards him, “shouting, threatening [and] ordering [him] to put things in writing, and not showing any respect to the head of the organisation”. The complainant was invited to “state [his] case” either in writing or in person. He responded by a letter dated 29 November 2022 denying all allegations.

By a letter dated 30 November 2022, the Secretary-General informed the complainant that, following his recent performance appraisal and after consultation with Senior Management, he had decided “not to grant [him] a new short term appointment”.

On 1 December 2022, the complainant requested the Secretary-General to modify his decision not to renew his appointment “by extending [his] contract for 2023” or to “withdraw [this] decision and provide a new decision to extend [his] contract for 2023”. Having received no reply to this request, the complainant submitted, on 15 December 2022, a request for advice to the Advisory Board contesting the decision not to renew his appointment.

The Advisory Board held an oral hearing on 2 March 2023. The complainant argued, during the hearing, that the Board had failed to provide its advice within the 30-day time limit set by the Staff Manual, calculated from the date the request for advice was received. He also raised concerns about a conflict of interest precluding, in his opinion,

the Chair and a member of the Board from acting in an impartial manner.

The Advisory Board adopted its report on 9 March 2023. At the outset, the Board noted that, at the time of the complainant's submission, the Advisory Board had no appointed Chair and was therefore not properly constituted. It explained that the organisation confirmed the appointment of the Chair on 29 January 2023 and the latter assumed duties on 8 February 2023. Therefore, the Board was in a position to consider the complainant's request for advice only as of that date. Concerning the Chair's conflict of interest alleged by the complainant during the oral hearing, it observed that based on the arguments put forward by the complainant "no real, perceived or potential conflict of interest exist[ed] that would prevent the Chair or the relevant member from being independent and impartial in the exercise of their respective duties".

The Advisory Board found that the complainant's PAR was not completed in accordance with the applicable provisions of the Staff Manual. After highlighting that the Staff Manual "require[d] the PAR to be finalised two months before contract expiration, which [in the complainant's case] would be 31 October 2022", the Board noted that the complainant's PAR was signed by the Deputy Secretary-General on 2 November 2022 and by the Secretary-General on 8 November 2022. It also noted that the Deputy Secretary-General failed to "conduct a discussion with the [c]omplainant before including the appraisal in the PAR". Moreover, the Advisory Board found that "the reason presented in the PAR and by the Secretary-General for the non-extension was not based on accurate facts, and that a budget for the [c]omplainant's position in 2023 was indeed available". It concluded that the Secretary-General's decision not to renew the complainant's contract "was taken in breach of procedure and rested on an error of fact" and advised the Secretary-General to provide the complainant with "monetary compensation" equivalent to four months' salary.

By a letter dated 16 March 2023, the Secretary-General informed the complainant of his decision, departing from the Advisory Board's advice, to confirm his decision not to renew his contract. The Secretary-

General highlighted, in particular, that the complainant was aware of the “short term nature of a Temporary Official contract” such as his, and that he was also aware of “the financial and economic difficulties the Secretariat was facing and the implications of that, which led to the decision not to renew [his] contract”. The Secretary-General further stated, in addition, that during the discussion concerning the non-renewal of his contract, the complainant had “displayed a violent and threatening attitude towards [him]”. This is the impugned decision.

The complainant requests the Tribunal to set aside the impugned decision as well as the decision not to renew his appointment, and to order his reinstatement with retroactive effect and “retroactive payment” as from January 2023. In the alternative, he asks the Tribunal to order the payment of 12 months’ salary, including “social security, household allowance, medical insurance, and pension fund (Terminal Allowance) benefits”, which he estimates at 65,000 euros. The complainant also seeks moral damages in the total sum of 40,000 euros as well as costs in the sum of 1,000 euros.

The organisation asks the Tribunal to dismiss the complaint as unfounded in its entirety.

CONSIDERATIONS

1. The complainant impugns the decision of 16 March 2023 by which the Secretary-General of the Energy Charter Conference refused to follow the Advisory Board’s advice and confirmed the initial decision not to renew his contract.

2. The complainant raises numerous pleas, which may be summarized as follows: (i) procedural flaws in the 2022 PAR; (ii) failure to consult Senior Management before taking the impugned decision; (iii) failure to provide reasons for departing from the Advisory Board’s advice; (iv) breach of due process, as the impugned decision introduced abruptly an allegation of misconduct that had been raised neither in the initial decision of non-renewal nor during the Advisory Board proceedings; (v) material error of fact concerning the 2023 budget;

(vi) undue delay in internal appeal proceedings and conflict of interest in the Advisory Board; and (vii) unequal treatment.

3. The Secretary-General, in the impugned decision of 16 March 2023, stated the reasons for not renewing the complainant's contract as follows:

- “1. On signing your appointment letter with the Secretariat, you were aware of the short term nature of a Temporary Official contract;
2. Furthermore, you were also aware of the financial and economic difficulties the Secretariat was facing and the implications of that, which led to the decision not to renew your contract;
3. In addition, during our discussion on the non-renewal of your contract, you displayed a violent and threatening attitude towards me. This was also witnessed by [the] Deputy Secretary General, Ms. [H.].

In conclusion, I confirm my decision not to renew your Temporary Official contract.”

4. The Tribunal notes that the Advisory Board advised the Secretary-General to pay the complainant “monetary compensation” equivalent to four months' remuneration, based on several procedural and substantive irregularities. First, the organisation failed to finalize the PAR two months before the expiry of the contract, which in the complainant's case was 31 October 2022. Second, the Deputy Secretary-General, as the complainant's immediate superior, did not conduct the mandatory discussion with the complainant prior to completing the appraisal, she signed the PAR only on 2 November 2022 (after the deadline) and submitted it to the Secretary-General before it was properly signed. Moreover, the Secretary-General himself signed the PAR on 8 November 2022. Third, the reason presented in the PAR and by the Secretary-General for the non-extension “was not based on accurate facts, and that a budget for [the] [c]omplainant's position in 2023 was indeed available”.

5. Before turning to the merits, it is useful to recall the Tribunal's case law regarding the challenge to a non-renewal decision. According to the Tribunal's consistent case law, an international organization enjoys wide discretion in deciding whether or not to renew a fixed-term

appointment which is subject to only limited review as the Tribunal respects the organization's freedom to determine its own requirements and the career prospects of staff (see, for example, Judgment 4503, consideration 7). However, the discretion is not unfettered and the Tribunal will set aside such a decision if taken without authority; if in breach of a rule of form or of procedure; if the decision rested on an error of fact or of law; if some essential fact was overlooked; if there was abuse of authority, or if clearly mistaken conclusions were drawn from the evidence (see, for example, Judgments 4834, consideration 2, and 4503, consideration 7). The Tribunal's role in reviewing a decision not to renew a fixed-term contract for budgetary reasons is limited (see, for example, Judgment 4953, consideration 4).

The Tribunal's case law further states that an international organization has the duty to provide valid reasons for its non-renewal decision, as set out in Judgment 4877, consideration 2:

“[U]nder the Tribunal's case law applicable to contractual relationships in general, a non-renewal decision must also be based on objective, valid reasons, and not on arbitrary or irrational ones (see, in particular, Judgments 4809, consideration 10, 4654, consideration 16, 4495, consideration 15, 3769, consideration 7, 3353, consideration 15, 2708, consideration 12, 1154, consideration 4, and 1128, consideration 2). Those reasons must also be communicated to the staff member concerned (see, in particular, Judgments 4809, consideration 10, 3914, consideration 14, and 3444, consideration 8), although they need not necessarily appear in the decision itself (see, to that effect, Judgments 4368, consideration 15, 3914, consideration 15, and 1750, consideration 6).”

It is a firm principle established by the Tribunal's case law that the reason not to extend a fixed-term contract must be a valid one and not one that was given to conveniently get rid of a staff member (see, for example, Judgments 4917, consideration 12, and 3948, consideration 2).

6. Concerning the PAR procedure, Staff Circular to Rule 12.3 of the Staff Manual relevantly provides as follows:

- “1. A Performance Appraisal Report, covering the previous natural year, shall be completed for all officials using the attached form. [...] **For temporary officials, the performance appraisal reports should be finalised two months before the expiry of their contract.**

[...]

4. The contents of the reports, including recommendations, shall be signed by the official's immediate superior and by the official, who shall be entitled to attach such comments as he or she may consider relevant.
5. In accordance with Rule 12.3 (d), once completed, all Performance Appraisal Reports will be forwarded to the Assistant Secretary-General for submission to the Secretary-General." (Emphasis added.)

7. In the present case, the record shows that the PAR report for the complainant, a temporary official, was not finalized two months before the expiry date of his contract (31 December 2022), as required by paragraph 1 of Staff Circular to Rule 12.3. Instead, the complainant's immediate supervisor, the Deputy Secretary-General, signed his PAR only on 2 November 2022, after the 31 October 2022 deadline. The PAR was submitted to the Secretary-General on 31 October 2022 before it was signed by the Deputy Secretary-General, and the Secretary-General signed the PAR on 8 November 2022. The record further shows that the Deputy Secretary-General indicated to the complainant, in her communication of 31 October 2022, that she would sign the PAR's "signature block as of 28 October", even before the complainant's comments and signature of 31 October. Such back-dated signing breached not only paragraph 1 of the Staff Circular to Rule 12.3, by evading the time limit requirement, but also paragraphs 4 and 5 of Staff Circular to Rule 12.3, which read together, require that, before submission to the Secretary-General, the report must be completed and include the comments from the complainant.

The Tribunal recalls its case law that an organisation may not decide to terminate or not renew a contract for unsatisfactory performance unless it has properly followed its appraisal procedures and given the staff member a fair opportunity to improve (see, for example, Judgment 4840, considerations 10 and 24). However, in the present case, the non-renewal was not based on unsatisfactory performance but rather on alleged budgetary constraints. Therefore, although the appraisal process was manifestly flawed, such irregularities do not render the non-renewal decision unlawful and do not warrant the setting aside of the decision insofar as it was not performance-related.

8. With regard to the third plea, the Tribunal has consistently held that an executive head who departs from the recommendation of an internal appeal body must state the reasons for disregarding it and must motivate the decision actually reached (see Judgments 5038, consideration 8, 4437, consideration 19, and 4062, consideration 3). In the present case, the Tribunal finds that the Secretary-General failed to provide adequate reasons for refusing to follow the Advisory Board's advice. The Advisory Board, based on the documents submitted by the complainant during the internal appeal, considered that according to the approved 2023 budget, non-extension was based on inaccurate facts and a budget for the complainant's position in 2023 was indeed available. The Secretary-General should have explicitly stated why he disagreed with the Advisory Board; he merely stated that the complainant was "also aware of the financial and economic difficulties the Secretariat was facing". He did not elaborate on how the budgetary constraints specifically affected the funding of the complainant's post or the possibility of extending his employment. This failure to motivate the departure renders the impugned decision unlawful.

The complainant's third plea is well founded.

9. The complainant's fourth plea is also well founded. In addition to the alleged budgetary constraints, the Secretary-General in the impugned decision referred to the complainant's alleged "violent and threatening attitude" towards him during their meeting of 8 November 2022. This element, unrelated to budgetary considerations, was taken into account as a contributing reason for the non-renewal. The record further shows that, on 15 November 2022, the Secretary-General had informed the complainant of his intention to issue a written warning in connection with the alleged conduct in accordance with Regulation 24 and Rule 24.1 of the Staff Manual. The Secretary-General thus relied, in part, on the complainant's alleged misconduct as the basis for his decision not to renew the contract. However, no disciplinary procedure was initiated, and no warning was ever issued.

10. The Tribunal has recognised in its case law that decisions adversely affecting a staff member can constitute a hidden disciplinary sanction and, if made without following due process requirements, may be unlawful (see, for example, Judgment 4613, consideration 18). The impugned decision, which conflated budgetary and misconduct considerations and thereby deprived the complainant of the guarantees inherent in a disciplinary process, constitutes a hidden disciplinary measure adopted without due process. Consequently, both the impugned decision and the decision not to renew the complainant's contract must be set aside, without it being necessary to further address the complainant's first and fifth pleas.

11. In his sixth plea, the complainant alleges that the internal appeal proceedings were tainted by two flaws. First, he claims that he submitted his request for advice to the Advisory Board in December 2022, yet the Board issued its report only in March 2023, exceeding the 30-day time limit prescribed by the applicable rules. He contends that this delay breached the organisation's duty of care to maintain a properly functioning internal appeal system. Second, he alleges a conflict of interest and bias, asserting that the Chair of the Advisory Board and the Deputy Secretary-General had previously worked closely together in another organization, that the Chair's nomination was proposed by the Deputy Secretary-General, and that she was the sole candidate in the selection process.

12. According to paragraph (a)(ii) of Rule 25.2 of the Staff Manual, entitled "The Advisory Board", such body "shall meet [...] within no more than 30 days of receipt of a properly documented written request from an official for its advice in respect of disputes [...]". The complainant's request was submitted on 15 December 2022. Due to the lack of a Chair at that time, the Advisory Board did not confirm receipt until 10 February 2023, after the Board was properly composed. This non-observance does not render the decision unlawful and may entitle the complainant to compensation only if he establishes the delay has caused him actual injury (see, for example, Judgment 4944, consideration 4). The complainant has not produced persuasive

evidence of such injury. The first ground of his sixth plea is therefore unfounded.

13. The second ground of this plea is also unfounded. The Tribunal's settled case law establishes that an allegation of conflict of interest or lack of impartiality must be substantiated and based on specific facts, not on mere suspicions or hypotheses. (see, for example, Judgments 4963, consideration 15, and 4915, consideration 5). The complainant did not discharge his burden of proving either conflict of interest or bias on the part of the Advisory Board.

14. In his seventh plea, the complainant contends that, given that the 2023 budget provided for the financing of all three Investment Officer positions, the fact that the contracts of his two colleagues, who held identical positions as Investment Officials and performed the same duties, were extended demonstrates unequal treatment towards him. The Tribunal's case law has established that allegations of discrimination and unequal treatment can lead to redress on condition that they are based on precise and proven facts, establishing that discrimination has occurred in the subject case. Discrimination cannot be established unless it is proven that staff members in identical situations were treated differently (see Judgments 4867, consideration 5, 4498, consideration 27, 4238, consideration 5, and 4101, consideration 9). In the present case, the organisation justified the extensions of the other two colleagues' contracts by establishing a reasonable distinction between their situations and that of the complainant. This plea accordingly fails.

Turning to the relief sought, the complainant requests reinstatement or, alternatively, material damages in the amount of 65,000 euros, corresponding to twelve months' salary, benefits and "terminal allowance". The Tribunal recalls that, according to its consistent case law, a temporary appointment carries no expectation of renewal (see, for example, Judgments 4916, consideration 8, 4588, consideration 19, 4587, consideration 19, and 3448, consideration 7). Even if the reasons for non-renewal had not been flawed, there would have been no guarantee that the complainant's contract would have been renewed. His request for reinstatement is therefore rejected. However, because

the complainant lost a valuable opportunity to have his contract renewed due to the defects established above, he is entitled to material damages to compensate for that loss of opportunity, which the Tribunal assesses at a lump sum of 30,000 euros. This amount represents full and fair compensation for the harm suffered by the complainant. The complainant is entitled to moral damages, as the flaws in the appraisal process referred to earlier constitute a breach of the principle prohibiting an organisation from breaching the rules which it has itself established as well as the organisation's duty of care, which the Tribunal assesses at 5,000 euros.

15. The complainant's additional claim for an extension of employment for the year 2023 at a higher grade falls outside of the scope of the present case and must be rejected.

16. The complainant's request for disclosure of documents is rejected.

17. As the complainant prevails in part, he is entitled to costs in the amount of 1,000 euros, as he claims.

DECISION

For the above reasons,

1. The impugned decision of 16 March 2023 as well as the decision of 30 November 2022 not to renew the complainant's employment are set aside.
2. The Energy Charter Conference shall pay the complainant 30,000 euros in material damages.
3. The Energy Charter Conference shall pay the complainant 5,000 euros in moral damages.
4. The Energy Charter Conference shall pay the complainant 1,000 euros in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 24 October 2025, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

RENÉ M. VARGAS M.