

# CONSEIL DE L'EUROPE

# COUNCIL OF EUROPE

## TRIBUNAL ADMINISTRATIF

## ADMINISTRATIVE TRIBUNAL

**Appeals Nos. 561-564/2015 (Gyorgyi KACSANDI (I, II, III and IV)  
v. Governor of the Council of Europe Development Bank)**

The Administrative Tribunal, composed of:

Mr Christos ROZAKIS, Chair,  
Ms Mireille HEERS, Judge,  
Ms Lenia SAMUEL Deputy Judge,

assisted by:

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

has delivered the following decision after due deliberation.

### **PROCEEDINGS**

1. The appellant, Gyorgyi Kacsandi, lodged her appeals on 16 March and 11 May 2015 respectively. The appeals were registered on the same dates under Nos. 561-564/2015. The appellant asked to be granted anonymity when lodging the appeals, but the Chair decided that there was no reason to grant anonymity in this case nor to reconsider his conclusion.
2. The appellant's counsel filed supplementary pleadings on 13 April and 11 and 12 June 2015 respectively.
3. The Governor submitted his observations on the four appeals on 21 May and 31 July 2015. The appellant subsequently filed submissions in reply.
4. The public hearing took place in the Tribunal's hearing room in Strasbourg on 21 June 2015. The appellant was assisted by Maître Dániel Karsai, lawyer practising in Budapest (Hungary). The Governor was represented by Mr Jonas Amnéus, assisted by Ms Laura Guard, from the Office of the General Counsel of the Council of Europe Development Bank.

During the proceedings, Ms Lenia Samuel, deputy judge, replaced Mr Ömer Faruk Ateş, who was unable to be present (Article 2 of the Statute of the Administrative Tribunal – Appendix XI to the Staff Regulations).

The Tribunal considered that it was unnecessary to recommence the part of the proceedings preceding this replacement (Rule 33 of the Tribunal’s Rules of Procedure).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The appellant began work as a Country Manager at the Council of Europe Development Bank (hereinafter “the CEB”) on 2 January 2012 on a grade A3 permanent post. Confirmation in post was subject to the successful completion of a probationary period of three years. Otherwise, her contract would end on 31 December 2014.

#### A. Appeals Nos. 561/2015, 562/2015 and 564/2015

6. On 12 December 2011 the appellant signed a fixed-term contract with the Bank, which stipulated *inter alia* that [original version]:

“Je soussignée, Gyorgyi Kacsandi, (...), m’engage à servir la Banque de Développement du Conseil de l’Europe en qualité d’Agent, pour une durée de trois ans qui correspond à la période probatoire, sur un poste permanent du groupe II, selon termes définis ci-dessous et les conditions d’emploi annexées au présent contrat.

Cet engagement commencera le 01/01/2012 au grade A3/1 et viendra à expiration le 31/12/2015, l’engagement est effectué sous réserve d’une visite médicale auprès du Médecin de l’Organisation confirmant l’aptitude de l’Agent au travail.

(...)

Ce contrat pourra être résilié par chacune des parties moyennant un préavis de deux mois pendant la première année ; passé ce délai, le préavis est de trois mois. (...)”

7. The appellant received three favourable appraisals after 6, 12 and 20 months respectively.

8. The Governor produced a memorandum sent to the appellant by the Director of Human Resources on 25 June 2013, entitled “*Prime – exercice d’appréciation pour l’année 2012*”, which contained the following passage [original version]:

“Les Ressources Humaines vous confirment que, sur proposition de votre Directeur et après arbitrage de Monsieur le Gouverneur, une prime de 1 324 € (soit 19,0% de votre rémunération de base au 1er janvier 2013) vous a été attribuée au titre de l’exercice d’appréciation 2012. Le versement de cette prime, correspondant au niveau d’appréciation « C », sera effectué le 28 juin 2013, par le biais du virement de la paie de juillet 2013. ...”

9. On 28 January 2014 the appellant received an email from her Director containing the following passage [original version]:

“Je fais suite à la nomination, (...), de M. [L.] en tant que Responsable Pays Principal au sein de la Direction générale des Prêts et du Développement Social à compter du 1<sup>er</sup> janvier 2014. Dans ce contexte, il est envisagé de vous maintenir au sein du département des projets sur vos fonctions actuelles de responsable pays et de vous rattacher à M. [L.]. L’exercice d’évaluation annuel ayant démarré au sein de la Banque, je précise que votre évaluation au titre de l’exercice 2013 sera assurée par le directeur du département des projets, M.[T.], et que M.[L.] devrait participer à l’entretien dans le cadre de la définition de vos objectifs pour 2014. (...)”

10. The Governor produced a memorandum sent to the appellant by the Director of Human Resources on 25 June 2013, entitled “*Prime – exercice d’appréciation pour l’année 2013*”, which contained the following passage [original version]:

“Les Ressources Humaines vous confirment que, sur proposition de votre Directeur et après arbitrage de Monsieur le Gouverneur, une prime de 1 316 € (soit 19,0% de votre rémunération de base au 1er janvier 2014) vous a été attribuée au titre de l’exercice d’appréciation 2013. Le versement de cette prime, correspondant au niveau d’appréciation « C », sera effectué le 30 mai 2014, par le biais du virement de la paie de juin 2014...”

11. On 23 June 2014, at 7.28 pm, the appellant’s Director, having been reminded that the 30<sup>th</sup> month appraisal should take place during the 30<sup>th</sup> month of the appellant’s probationary period, informed the appellant that they should proceed with the appraisal interview before the end of the month and suggested the date of 26 June 2014. The appellant replied at 19.47 that the date suited her.

12. On Thursday 26 June 2014, the 30<sup>th</sup> month appraisal interview took place. According to the Governor, at 6.02 pm the appellant’s Director sent the appellant the electronic form with the first version of the appraisal report containing a number of sections for which further input was required, including the section entitled “Additional comments of the appraiser”. The copy of the appraisal form submitted by the Governor was not dated. The Governor further states that the interview was followed by oral and written exchanges from 26 June to 4 July 2014, including an exchange of versions of the appraisal report at different stages of completion.

13. According to the appellant, the appraisal report containing “positive assessments” was given to her by her Director on Tuesday 1 July 2014. According to the Governor, this was a hard copy of the second version of the appraisal report. The appellant states that two days later, on Thursday 3 July 2014, she received an email in which her Director confirmed the validity of the appraisal report and informed her that it would be sent to his superior and Human Resources (hereinafter “HR”). According to the Governor, it was an electronic version of the second version of the appraisal report which had not left her Director’s computer owing to problems with Outlook. The email was sent at 3.15 pm and contained the following text:

“Please find attached in electronic format the text submitted to you on Tue evening.  
The email never left my mailbox due to the Outlook problems.  
Please respond to me because I have to submit it to hierarchy and DRH.”

14. A copy of this version, dated 26 June 2014, was submitted by the appellant. It shows that the first objective was not graded, the second was not assessed, the third, fourth, fifth and sixth objectives were marked as achieved, the seventh and eight objectives were not graded and the last objective was marked as partially achieved together with a reference to the section “Additional comments of the appraiser”. As regards the appellant’s competencies, one

competency was rated “excellent”, none were rated “insufficient” and the others were rated either “good” or “acceptable”. In the section “Additional comments of the appraiser”, the appellant’s Director wrote as follows:

“Taking into account the issues identified during the previous periods, the evaluator expected from the staff member notable efforts in terms of quality of deliverables, respect of deadlines, planning and management of absences from office. As in the previous period, the FIPs/LDs were delivered at the very last moment; they required revision or even formatting and transformation from FIP to LD and elaboration of additional texts with gathering of information from different sources, unfortunately during the absence from office of the staff member, without preparatory measures take upfront. Meanwhile, limited efforts have been deployed to understand the CEB lending instruments and the novelties introduced by the new Development Plan.

On the positive side, as in the previous periods, the line manager appreciated [t]he staff member’s capacity to making new contacts, carry on missions on the field; expanding the network and identifying new business opportunities.

All in all after 30 months of probationary period, the evaluator considers that the staff member is a good business developer but essential competencies required from a Country Manager A3 as retro-planning and good writing skills are below the expected level. If engaged permanently as Country Manager, the staff member’s integration within DP would require important additional efforts both from her and from his managers, without a guaranteed success.”

15. On 3 July 2014, at 3.28 pm, the Roma Education Fund sent a letter of recommendation to the appellant’s Director and his superior supporting her confirmation in post. A similar email was sent to the Governor and Vice-Governor at 3.32 pm. Still on the same day, at 6.08 pm, the appellant asked her Director’s superior for an appointment to discuss her appraisal. He set the date at 7 July 2014.

16. On 4 July 2014, at 1.16 pm, the appellant replied to her Director’s email of 3 July 2014, submitting the appraisal report with her comments. A copy of her email including the appraisal report was submitted to the Tribunal by the Governor. The appraisal report is dated 3 July 2014 and, in the section “Additional comments of the appraiser”, contains the following text:

“The staff member took over Albania from very senior staff member, this later took over management responsibilities in the team, therefore had only limited time to transfer the portfolio and explain the outstanding issues. Due to elections and the relatively long time for the Albanian government to be fully functional, development work and meetings could not start before October 2014. Knowing that Albania is one of the most difficult countries of L&D’s portfolio, and that the staff member is a junior country manager, she deployed outstanding efforts to develop contacts, learn about the different grant facilities managed by the bank and became rapidly operational in this new environment. Notable efforts in terms of quality of deliverables, respect of deadlines, planning and management of the absence from office has been deployed by the staff member over the reference period. The FIPs/LDs were delivered in time or even well in advance, such as 2 FIPs in Albania; meanwhile, considerable efforts have been deployed to understand CEB lending instruments and the novelties introduced by the new Development Plan. The staff member already registered FIPs in Hungary using the new facilities such as PFF and ECF.

The line manager appreciated the staff member’s capacity to making new contacts and work on the field, expanding the network and identifying new business opportunities. The staff member is an outstanding relationship manager who contributes to spread the good reputation and visibility of CEB.

All in all after 30 months of probationary period, the evaluator considers that the staff member is fully integrated in the bank. She has also good work relations with her peers and with other internal services. The line manager recommends that the staff member should be engaged permanently by the bank.”

17. The Governor refers to this appraisal report as the third version of the appraisal. The appellant's Director replied to the appellant at 2.13 pm, stating that "Your proposal is far from what was discussed on 26/6 and at the beginning of the week. We may talk, I am in office". At 2.48 pm, the appellant replied as follows:

"For a recall,

You told me, you do not have my contract (however, contract is given in the Governor and I still have 6 months to go before the end of the current one).

I told you I do not understand why, because never ever you told or wrote to me that my performance is not in line with your expectations to have a contract. I was therefore stupefied by learning that I will be kicked out (just like this' because you want it so. I went back to see you several times for clarification and you have me on every occasion a different reason without any coherence.

Then, I have asked you if you need my place for someone else, to which question you did not reply.

Then, understanding that this might be the real reason, I suggested to negotiate and find a solution with a good outcome for both of us. You GAVE ME YOUR WORD TWO TIMES that you will do an evaluation that will help me to get the job advertised in ESC. I have agreed to take that job, because I do not think problem creation is good for anyone in this institution. I have told you so several times, that I am for a peaceful solution that I acceptable for both of us. I went to talk to Luca about the open position, as if it is my own initiative and you promised me to help me with that. I even informed you about the date and hour of this meeting and also that my demand was considered favourably. It is a good position I am fully capable of doing if you want me out of here.

Then, all of sudden you send me the worst evaluation ever. From my point of view, you did not keep your word and what you have sent me earlier is far from what was discussed between us.

I am ready to talk, as always. I have a meeting at 3 pm, but will be in your office just after that. ..."

18. The Director reacted at 2.59 pm: "This is not true ... We'll talk".

19. The appellant's reaction at 3.42 pm was as follows:

"What is not true?? You are joking I hope ...

If you tell me things then you deny them, I think it is better to talk with the presence of a third person. I was informed by the 'délégué de personnel' that I have the right to invite someone to be present during my appraisal, so I would like to use my right to get assisted. Unfortunately this cannot take place immediately, so let's talk next week then I will leave me time to find a person and communicate his/her name to you before any meeting. ..."

20. On 4 July 2014 the appellant's Director signed the appraisal report, referred to by the Governor as the fourth version. In comparison with the second version which he sent to the appellant on 3 July 2014 (see paragraphs 13-14 above), he marked the first objective as partially achieved, the second objective was not assessed, the third objective was marked as not achieved "due to lack of interest from the Borrower", the fourth and fifth objectives were marked as achieved, the sixth objective was assessed as "achieved with support from line managers", and the last objective was marked as partially achieved together with a reference to the section "Additional comments of the appraiser". These comments were identical to those contained in the second version of the appraisal report (see paragraph 14 above). As for the appellant's competencies, one competency (ability to express oneself in one or several non-official languages of the Bank) was still rated "excellent", three competencies (knowledge enhancement, aptitude in writing skills and respect for deadlines) were assessed

as “insufficient”. The rest of the appellant’s competencies were still rated “good” or “acceptable”.

21. On 7 July 2014, at 11.41 am, prior to her interview with her Director’s superior (see paragraph 15 above), the appellant submitted her version of the appraisal report, i.e. the third version dated 3 July 2014, to him as the final version of her draft appraisal. She wrote in her email [original version]:

“En vue de notre réunion de ce midi et à titre d’information, je vous envoie en pièce jointe la dernière version du projet de mon évaluation. Pour être parfaitement transparent, c’est à [C.] de revenir vers moi là-dessus.”

22. A few minutes later, at 11.59 pm, the addressee sent the appellant’s Director the following email [original version]:

“J’ai reçu de la part de [la requérante] le message suivant. Je suis surpris par la date du rapport car tu m’avais indiqué que cet entretien avait eu lieu le 26 juin ainsi que le ton et l’appréciation plus positive que dans les précédents rapports. Peux-tu me confirmer la date de l’entretien et s’il s’agit de ton appréciation.”

23. Since the meeting with the appellant did not result in any substantial change of positions, her Director’s superior also signed the fourth version of the appraisal report later the same day with a note saying “Confirmation of the staff member as Country Manager on a permanent contract is not recommended”. It is not clear whether the difference between the third and fourth versions was raised during the meeting.

24. The appellant states that she never received the updated appraisal report in electronic form or by any other means and merely found it on her desk on 8 July 2014. She was never informed about the essential changes to the appraisal report and/or they were never discussed with her. According to the Governor, the appellant’s Director signed the fourth and final version of the appraisal report on 4 July 2014, following an exchange of emails which, in his opinion, (i) “... confirmed the staff member’s refusal to accept the appraiser’s conclusions ...”; (ii) the changes made unilaterally by the appellant to the third version (the grid and appraiser’s comments) “... violated the spirit of the procedure and proved that she was exclusively interested in the conclusion”, and “... the staff member did not produce any new evidence relevant to the reference period ...”, thus making the prospect of reaching a consensus after further exchanges appear fruitless. The Governor refers in this connection to the internal memo sent by the appellant’s Director to the Chairperson of the Appraisal Board on 17 October 2014, without submitting the text of the exchange of emails referred to.

25. The appellant further states that, on the same day, she was informed by her Director that he had given her two consecutive “C” assessments for the period 2012-2013. As the appellant had never been informed about this, she contacted HR asking them to review these assessments if they really existed and to delete them from her administrative file. She wrote in particular [original version]:

“J’ai l’honneur de porter à votre connaissance par voie de ce courriel que je dépose une requête en révision de mes notations au titre des années 2012 et 2013 qui ne m’ont jamais été notifiées par ma hiérarchie auparavant.

Selon les procédures internes de notre banque, que vous m'avez clarifié vendredi le 4 juillet 2014 lors d'un entretien que j'ai sollicité, chaque agent est noté une fois par an. La notation des agents doit être portée à leur connaissance par leur supérieure hiérarchique. L'agent doit signer sa feuille de notation et a le droit d'apporter ses commentaires. Cette procédure a été appliquée par ma hiérarchie aux autres agents du service.

Lors de notre entretien du 4 juillet 2014, et également par courriel en date du 30 juin 2014, je vous ai informé que mes notations au titre des années 2012 et 2013 ne m'ont jamais été communiquées par la hiérarchie. Ainsi je n'ai jamais eu la possibilité d'exercer mon droit de contestation ou demande de révision. (...)

J'ai seulement pu supposer ma notation de manière indirecte, au moment du paiement des primes, en faisant le lien entre le montant de prime reçu et la notation correspondante. Or, conformément à l'article 46 du Statut du personnel, 'le dossier administratif individuel ne peut contenir aucune pièce dont l'agent n'a pas eu connaissance'.

Au vu de ces éléments, je vous demande de bien vouloir reconsidérer ma notation rétroactivement pour les années 2012 et 2013 ainsi que d'enlever les feuilles de notation de mon dossier administratif individuel, s'il y en a, au motif que ces pièces ne m'ont jamais été communiquées. (...)"

26. On 9 July 2014, the appellant sent another email to the Director of HR asking for a meeting with her Director and a person from HR in order to clarify the assessment which had been given to her the previous day. She described her situation as follows [original version]:

"(...) Le premier entretien au sujet de mon évaluation avec M. [T.] a eu lieu le 26 juin 2014. A l'issue de cet entretien, il m'a adressé un premier projet d'évaluation. Sur cette version, aucun objectif pour l'année à venir et aucun commentaire de l'appréciateur n'ont été renseignés. Nous avons convenu d'en parler plus tard. Par la suite j'ai eu des discussions avec M. [T.], sans que ces discussions soient formalisées dans nos agendas. Puis le 3 juillet, il m'a adressé un nouveau projet d'appréciation, complété avec des objectifs et ses commentaires. ...

Depuis nous n'avons pas eu d'entretien avec M. [T.] concernant mon évaluation. Il m'a simplement informé, qu'une lettre de remerciements ou compliment a été adressée à la Banque par le Roma Education Fund avec lequel j'ai beaucoup travaillé ces dernières années. Par courriel en date du 4 juillet 2014, je demande à M. [T.] de pouvoir utiliser mon droit d'être accompagnée par un autre agent pour mon entretien d'évaluation.

Le 8 juillet 2014, je trouve, sur mon bureau, une feuille d'appréciation, signé par mon responsable et son supérieur, daté du 7 juillet 2014, contenant des notes 'insuffisant' ainsi que des remarques 'objectifs partiellement atteints', sans aucune explication ou commentaire justifiant ces insuffisances. Or ceci n'a pas été, jusqu'ici, reflété dans les projets d'évaluations précédents qui m'ont été adressés. Je ne comprends pas cette soudaine dégradation de l'appréciation de ma performance et j'aimerais comprendre ce qui s'est passé. (...)"

27. The Director of HR replied by email on 11 July 2014, noting that, apparently, the explanations given to the appellant by HR had not been sufficient and inviting her to read the rules on appraisal during the probationary period.

28. On 15 July 2014, the appellant emailed her comments on the 30<sup>th</sup> month appraisal to her Director and his superior. On 17 July 2014, she had a meeting with them, which did not lead to any change in the participants' positions. On 18 July 2014, she asked HR to inform her about Article 10 of Rule N° 2/2008, but received no reply to her email.

29. On 30 September 2014, the appellant received a memorandum concerning the end of her probationary period, which contained the following statement:

“Your three year probationary period will end at 31 December 2014.

Since your appraisal corresponding to the thirtieth month has not been finalised yet, a decision under article 15 of Appendix II of Staff Regulations will be taken later.”

30. After returning from six weeks’ sick leave, the appellant asked for a meeting with the head of the major administrative unit responsible for HR. Following this meeting, which took place on 16 September 2014, the appellant asked him to convene a meeting of the Appraisal Board. On 10 October 2014, he informed the appellant and her Director of the procedures before this body.

31. On 6 October 2014, the appellant asked the head of the major administrative unit responsible for HR to refer her 30<sup>th</sup> month appraisal to the Appraisal Board. On 10 October 2014, he informed both the appellant and her Director that a meeting of the Appraisal Board would be convened, requested the names of the designated members by 17 October 2014 at the latest, indicated the timetable envisaged, with a first meeting no later than 5 November 2014, and drew both parties’ attention to the following points:

“i. This entire procedure is focusing on the 30<sup>th</sup> month Appraisal of [the appellant]. It therefore covers the 10 month period from September 2013 until June 2014. Consequently, the documentary evidence provided by you should focus on this time-frame.

ii. The role of the Appraisal Board is NOT and CANNOT be to express its own opinion on the performance of the appraised staff member in the said period. Its purpose is rather to analyse, whether the appraisal process has been conducted in the appropriate way foreseen by the existing rules and whether all relevant elements of the reference period [September 2013 until June 2014] have well been taken into account by the appraiser when establishing the appraisal.”

32. On 17 October 2014, the head of the major administrative unit responsible for HR informed all interested parties about the composition of the Appraisal Board which would be meeting under his chairmanship.

33. On the same day, the appellant’s Director submitted his observations on the appellant’s case to the Chairperson of the Appraisal Board. He stated *inter alia*:

“2. The 30m Appraisal Interview was held on 26/6/2014 ...

3. During the interview, the objectives of the reference period and the performance have been discussed in detail. At the end, in the light of the overall performance during the probationary period, the Staff Member was informed by the Appraiser that she will not receive his recommendation for the confirmation of the permanent contract. The Staff Member was provided with a draft Appraisal Report and encouraged to develop/modify elements regarding the performance during the reference period.

4. During days the Staff Member didn’t respond despite the Appraiser’s reminders and his submission of a revised, more complete, draft ...

5. The appraiser received the Staff Member’s response on 4/7/2014 ... The Form was Identical with the draft in Part I and completely modified in Part II. in both Chapter I the grid and Chapter II “Additional comments of the appraiser”. The Staff Member replaced the negative assessment previously made by the Appraiser and inserted, in the name of the Appraiser, a conclusion favourable for the confirmation of the permanent contract despite the conclusion of the interview held on 26/6/2014.

6. The Appraiser informed the same day the Staff Member that the ‘proposal is far from what was discussed’ during the Appraisal interview. This response was followed by two ‘non-sense’ emails sent by the staff Member which confirmed the refusal by the Staff Member of the conclusions expressed by the Appraiser regarding the confirmation of the permanent contract ...

7. As the Staff Member didn't communicate any element relevant for the reference period, the Appraiser finalized the Appraisal Form and submitted it to the attention of the Director of the Administrative Unit on 4/7/2014.

8. The same day the Staff Member requested on 4/7/2014 an interview with the Director of the administrative Unit. This interview was held on 7/7/2014. To be noticed that the Staff Member presented to the Director of the Administrative Unit her draft, as mentioned under 5. above, despite her Appraiser's disagreement with her modifications ... Upon request expressed by the Director, clarifications were provided by the Appraiser concerning the refusal of the Staff member to accept the conclusions of the Appraisal ...

9. The Director of the Administrative Unit signed the Appraisal Form on 7/7/2014 after the interview with the Staff Member ... The Appraisal Form was handed over to the Appraiser at the end of the same day.

10. The Appraisal Form was handed over to the Staff Member on 8/7/2014 ...”

34. On 3 November 2014, following the first meeting of the Appraisal Board, the appellant and her Director were informed that:

“Among other things the Board has decided:

- not to provide each party with the full set of documents provided by the respective other party,
- but to provide each of you with the key rationale of the other, as they are expressed by your introductory memoranda of 8 to 10 pages (see documents attached).

In doing so, the Board intends to increase the focus of its task as well as to allow both of you to better prepare for the interviews by the Appraisal Board. In that spirit, the Appraisal Board requests you to provide it in advance with written comments to the attached statements made by the other party. ...”

35. On the same day, the appellant wrote to the head of the major administrative unit responsible for HR as follows:

“... What happens if we pass 31 December 2014 (the contractual end of my probationary period) without any decision taken relative to my permanent contract?

...

In order to avoid confusion and misunderstanding, could you please confirm me by e-mail, that the calendar is suspended by the process under way (the Appraisal Board) and therefore the end of my probationary period will be postponed according to the end date of the procedure followed by the governor's decision? If this is not the case, I have to take immediate actions.”

36. On the same day, in reply to the appellant's email, the head of the major administrative unit responsible for HR stated that:

“I hereby confirm that your probationary period will be extended in the event that the procedures before the Appraisal Board and the subsequent decision of the Governor have not been taken before the end of the year.

Furthermore, even in the event that the Governor finally was to decide not to grant you an indefinite-term contract following your probationary period, you would still have either three months' notice or receive a compensation payment of an amount equal to the remuneration that you would have received during such notice period.”

37. On 12 November 2014, the appellant submitted her comments on her Director's written statement to the Appraisal Board. She stated in particular:

“A.II. 3. The statement “the Staff member was informed by the Appraiser that she will not receive his recommendation for the confirmation of the permanent contract” is false, as evidenced by material supplied by the Appraiser himself. The first draft of appraisal contains absolutely no element stating the above. The statement “the Staff member was encouraged to develop/modify elements regarding the performance during the reference period” is also false. I have never received any encouragement to comment on my appraisal; on the contrary, pressure was exercised toward my signing my appraisals without any comment.

A.II.4. “The Staff member did not respond despite the Appraiser’s reminders” is also not true. I was not asked for a response before receiving a completed version of my appraisal on July 1, 2014. My interview took place on a Thursday evening (June 26, 2014) and I was provided with an updated version of my appraisal on Tuesday July 1, 2014. Due to Outlook problems I only received the e-mail with the very same Appraisal submitted to me on July 1, 2014, as stated in the e-mail sent to me by the Appraiser on July 3, 2014, urging me to sign it so he can send it to [his superior] and Human Resources.

A.II.5. and 6. The Appraiser states in section A.II.3. that “the Staff member was encouraged to develop/modify element regarding the performance during the reference period”, and two paragraphs further he blames the Staff Member for commenting on her own Appraisal Form. I leave to the appreciation of the Appraisal Board the two e-mails qualified, in insulting manner, as “non-sense” by the Appraiser. I can only state that everything I have written in them is true.”

38. On 18 November 2014, the Appraisal Board studied and discussed both written statements provided by the parties.

39. On 20 November 2014, prior to her hearing before the Appraisal Board scheduled for 24 November 2014, and not having any experience in this matter, the appellant asked the major administrative unit responsible for HR for guidance and information. However, she received no reply to her email. On 25 November 2014, the Appraisal Board heard the appellant’s Director.

40. On 27 November 2014, the Appraisal Board heard the superior of the appellant’s Director. On the same day, the appellant sent a letter to the Governor informing him of her Director’s professional misconduct and asking him to consider her case.

41. On 3 November 2014, the Chairperson of the Appraisal Board wrote the following email to the appellant:

“I hereby confirm that your probationary period will be extended in the event that the procedures before the Appraisal Board and the subsequent decision of the Governor have not been taken before the end of the year.

Furthermore, even in the event that the Governor finally was to decide not to grant you and indefinite-term contract following your probationary period, you would still have either three months’ notice or receive a compensation payment of an amount equal to the remuneration that you would have received during such notice period. ...”

42. On 9 December 2014, the Appraisal Board held its final meeting, at which all members except one took the view that the existing rules and procedure had been materially respected. The appellant received the report on 11 December 2014. On the same day, she received a copy of the personal conclusion and recommendation of the dissenting member of the Appraisal Board, to be included in and/or appended to the Appraisal Board’s conclusion and recommendation. He recommended:

“Having in mind:

-That [the appellant] never received any unsatisfactory appraisal, while at least two were necessary to refuse a permanent contract.

- That the behaviour of [the appellant's director and his superior] and the underlying breach of existing rules and regulations is characterized by arbitrariness and may even be seen as dishonesty by staff at large.

- That the Management of L1D and HR were more examples of breakers of the 'law' than guardians of the 'law'.

- That it is difficult to tolerate the mentioned arbitrariness manifested most immediately by the behaviour of the L&D Management.

It is most urgently needed and recommended to remedy such failures by recommending in line with existing rules and regulations a permanent contract for [the appellant]."

43. The appellant states that, following her receipt of the report, the two Board members designated by her noted that their point of view had not been taken into account in the conclusions drafted by the Chairperson. The appellant therefore challenged the conclusive report as being arbitrary and biased.

44. On 17 December 2014, the Director of HR informed the appellant that she had recommended to the Governor that her appointment be terminated. The Director of HR added:

"Your presence at the Bank is not required during the notice period, but you will nevertheless, in application of Article 14, paragraph 3, of Appendix II to the Staff Regulations, receive a compensation payment equal to the remuneration that you would have received during the notice period, ending 31<sup>st</sup> March 2015."

45. On 26 December 2014, the appellant submitted her observations on the Director of HR's note to the Governor. She concluded as follows [original version]:

"Enfin, si vous deviez approuver la décision de Madame la Directrice des ressources humaines (...), je me permets de vous préciser que mon contrat de travail stipule que ma période probatoire, soit le 31 décembre 2015.

Ainsi, en tout état de cause, je vous demande de me maintenir au poste que j'occupe actuellement jusqu'à la fin de ma période probatoire, soit le 31 décembre 2015.

46. On 30 December 2014, she submitted further comments to the Governor concerning the recommendation that her appointment be terminated, the ending date of her notice period and the end of her probationary period.

47. On 2 January 2015, the appellant submitted to the Governor a request under Article 59, paragraph 1 of the Staff Regulations challenging the conclusions of the Appraisal Board. On 15 January 2015, the Governor replied as follows:

"Following your request, dated 2 January 2015, for final arbitration, I have carefully reviewed your position, as well as the position of your appraiser and the Head of your major administrative unit. I have, furthermore, diligently examined the Report of the Chairperson of the Appraisal Board, dated 11 December 2014, as well as comments made by members of the Appraisal Board, and, have been materially respected in conjunction with your thirtieth month appraisal."

48. On 16 January 2015, the Director of HR conveyed the Governor's decision to terminate the appellant's appointment as of 30 April 2015. She stated *inter alia*:

"After careful examination by the Governor of your submissions, your complete administrative file, including the four appraisal reports, I regret to inform you that the Governor has decided to follow my recommendation, based on the opinion of the Head of your major administrative unit, and terminate your employment in compliance with the stipulated notice period.

The clerical error in your employment contract, dated 12 December 2011, is apparent from the first paragraph of the same, as well as Article 12.1 (a) of the Staff Regulations, and it is evident from your exchanges with [the major administrative unit responsible for HR] ... that you were fully aware of the correct end date.

Consequently, in line with the above, your employment contract is extended with the stipulated notice period and will expire on 30 April 2015 ..."

49. On 14 February 2015, the appellant submitted a new complaint (at the origin of Appeals Nos. 562/2015, 563/2015 and 564/2015) to the Governor under Article 59, paragraph 1 of the Staff Regulations challenging the Governor's decision to terminate her employment. She pointed out *inter alia* that:

"During my three years at the Bank, my internal stakeholders and external customers have all been satisfied with my work. ... I have never received any unfavourable appraisal report, two of which is necessary for not granting me with a permanent contract at the end of my probationary period (Staff regulation Appendix II, Art. 14).

In application of Article 15.2 of the Staff Regulation Appendix II, 'if the staff member's work is satisfactory, the Director Responsible for Human Resources shall recommend to the Governor the confirmation in post of the staff member'.

According to current rules and regulations, at the end of my probationary period, precisely on December 31, 2014, HR should have recommended to the Governor to provide me with a permanent contract. Therefore it is unclear to me, why HR recommends the termination of my current appointment instead of granting me with a permanent contract. ..."

50. The Governor rejected her complaint on 16 March 2015.

### **B. Appeal No. 563/2015**

51. On 11 and 15 January 2013 respectively, the appellant informed her Director that she would like to take part in two external professional events. She did not receive any reply.

52. On 16 August 2013, the appellant applied for a vacant post of Principal Country Manager. However, she was informed in an email of 15 November 2013 that she could not apply for the post as she was still in her probationary period, but that the vacancy notice was open to permanent staff members.

53. In an email sent on 20 September 2013 at 12.16 pm, the appellant informed her colleagues and Director that she had found on her desk a payment order for visa relating to "the fip ... Tirana regional landfill", but that she had no knowledge of this matter and that the amount was doubtful. In response to her email, her director replied at 1.42 pm: "Too bad that you are not talking to me first ..."

54. From 17 October 2013 to 11 June 2014 the appellant exchanged a number of work-related emails with her Director concerning organisational matters, including changes in respect of different professional events, sometimes made at the very last minute or in a way that the appellant did not expect.

55. On 19 November 2013 the appellant wrote to her Director asking him whether she should extend her mission in Albania or cancel a meeting for which the extension was needed. The Director asked her to return to Paris, pointing out that he had a “very poor image on what [was] going on [her files]”. The appellant considered this false criticism as a first sign of harassment.

56. In an email sent at 4.43 pm on 17 July 2014, the appellant submitted to her Director information concerning a professional event scheduled for 23 July 2014. The latter replied the next day at 11.10 pm, when the deadline for sending out documents for the event was 12 noon. She was not able to update the information and send it to the Director until 23 July 2014 at 2.18 pm.

57. On 27 November 2014 the appellant sent the Chief Compliance Officer on harassment the following message, to which she says she never received a reply:

“During our meeting on Monday 13 October I have informed you about my situation at L&D and that the misbehaviour from my superiors might be interpreted as psychological harassment.

After our meeting I have asked for an Appraisal Board, which is ongoing. For your information please find enclosed the documents I have sent to the Appraisal Board’s members as well as a copy of a letter I have sent to the Governor explaining my situation and the cheating on my last appraisal. ...”

58. On 12 November 2014 the appellant submitted her comments on the written statements submitted by her Director to the Appraisal Board. These comments included the following:

“As stated in my note to the Appraisal Board and my e-mail to HR on July 8, 2014, which has remained unanswered to this day, at no time during my entire probation period at the Bank have been informed of my note in person by the Appraiser or his superior. It was therefore materially impossible for me to express any agreement or disagreement with it or to make any comment on it. There has absolutely never been any kind of so-called ‘consensus’ between the Appraiser and myself as to the appropriateness of a C appraisal level, of which I was not aware. This unequal treatment is not only against all existing rules and regulations at CEB but also can be interpreted as psychological harassment, along the definition of the Council of Europe ...”

59. In a medical certificate dated 9 January 2015, the appellant’s psychiatrist stated as follows [original version]:

“Je soussigné, Docteur en Médecine, Médecin Psychiatre, certifie que l’état de santé de [la requérante] pourrait en cas d’amélioration lui permettre une reprise de travail, mais il serait fortement conseillé pour elle de bénéficier dans ce cas d’une modification de son environnement professionnel...”

60. In a letter dated 22 April 2015 the appellant informed the CEB that, on 25 July 2014, she had been declared as unfit for work and suffering from total invalidity and asked the Organisation under Article 13, paragraphs 1 and 2 of the Pension Scheme Rules to take the necessary steps to convene the Invalidity Board.

61. According to the appellant, she was discriminated against and subjected to psychological harassment by her Director. She was excluded from training, whereas her fellow Country Managers could attend any training course. She never received a reply from her Director to her training requests. Moreover, during her entire stay at the CEB, she never received any training, despite the fact that her Director claimed that her contract was terminated because of her inadequate writing skills and other supposed shortcomings. Accordingly, her exclusion from training should be considered as discriminatory treatment based on her gender and nationality, and also as psychological harassment.

62. The appellant states that since her Director has been in office, no Country Manager of Hungarian nationality has been confirmed in post at the CEB, despite the fact that Hungary represents one of the CEB's biggest portfolios. In fact, three Hungarian nationals have been appointed in the past few years: two of them stayed for less than two years and the appellant for three years, which corresponded to the respective probationary periods.

63. Moreover, in August 2013, when she applied for the post of Principal Country Manager in her department, the appellant informed her Director about her application. After that, her working conditions suddenly deteriorated and his attitude towards her changed considerably: he tried to push her into making mistakes in her work, made groundless accusations against her based on pure fabrications and put her under undue stress and pressure.

64. According to the appellant, the events concerning her 30<sup>th</sup> month appraisal can also be seen as psychological harassment.

## II. RELEVANT LAW

65. Article 22 (Appraisal) of the Staff Regulations of the CEB (hereinafter "the Staff Regulations") reads as follows:

- “1. Staff members of the Bank shall be the subjects of appraisal reports.
2. Appraisal shall take place at a uniform frequency throughout the Bank at the end of a given reference period.
3. Appraisal shall be based on objectives and other professional appraisal criteria established between the appraiser and the appraisee at the beginning of the reference period.
4. The principles of equal opportunities and non-discrimination must be taken into account during the appraisal procedure.
5. Appraisal reports shall be part of staff members' administrative files.
6. The Directorate responsible for Human Resources shall monitor the fair and homogeneous application of the system in the different departments.
7. The Governor shall lay down by rule the conditions governing the implementation of the appraisal system, and the Directorate responsible for Human Resources shall supervise the functioning of the system throughout the Bank.”

66. Article 23 (Termination of contract) of the Staff Regulations of the CEB provides as follows:

“...

2. Fixed-term contracts shall terminate on expiry, unless renewed in accordance with the Regulations on Appointments.

3. A contract for either a fixed or an indefinite period may be terminated at the end of a calendar month by.

...

b. the initiative of the Governor, on one of the following grounds:

...

iii. manifest unsuitability or unsatisfactory work on the part of the staff member;

termination for any of these reasons may occur unless the staff member has been formally asked to remedy his shortcomings during a trial period that may not be less than three months or more than nine months, and the trial period has not produced any positive results;

in the event of termination for any of these reasons, the staff member is entitled to refer to an advisory Joint Committee whose composition and functioning are set out in Appendix II, Part II (Guarantees granted to staff members upon termination of contract);

the decision concerning termination must carry a minimum three months' notice period. The provisions of paragraph 3-b-iii of this Article do not apply to the completion of the probationary period specified at Article 17."

67. The relevant provisions of Appendix II to the Staff Regulations of the CEB (Regulations on appointments) read as follows:

#### **Article 11 – Probation**

"1. Newly recruited staff shall be appointed provisionally on the basis of a contract, the length of which is that of the probationary period specified in Article 12.

2. During the first year, either side may terminate this contract at two months' notice; after the first year, three months' notice must be given. Should this notice period extend beyond the term of the initial contract, then that contract shall be extended accordingly.

3. The contract's termination on the initiative of the Governor shall be decided by him under the conditions laid out in Article 15."

#### **Article 12 - Probationary period**

"1. The probationary period is a trial and adaptation period and shall last:

a. three years where the purpose of the recruitment is to provide an appointment for indefinite term, subject to the special provisions concerning staff recruited to grade A7 or A6;

b. one year where the purpose of the recruitment is to provide an appointment for a fixed term, the length of which is defined in Article 15, paragraph 4.

2. Where the probationary period has been interrupted for reasons outside the staff member's control, the Governor may, on a joint proposal from the staff member's Director and the Director responsible for Human Resources, extend it by the length of the interruption."

3. During the probationary period, staff members cannot be promoted."

#### **Article 13 - Appraisal during the probationary period**

"1. During the probationary period, the staff members are appraised by their immediate superiors at the end of the sixth, twelfth, twentieth months and thirtieth months, where the probationary period is for three years, and at the end of the fifth and eighth months, where it is for one year.

2. The conditions governing the appraisal of staff members during their probationary period are laid down in a General Rule. The provisions of Article 22 of the Staff Regulations apply, *mutatis mutandis*, to the appraisal of staff members during their probationary period."

#### **Article 14 - The end of the probationary period**

“1. When the staff member’s work has not proved satisfactory during the probationary period and subject to the potential application of Article 12, paragraph 2, the appointment is terminated, in compliance with a notice period. The staff member concerned is notified of this decision immediately.

For staff members mentioned in Article 12, paragraph 1, litt. a, two unfavourable reports will be required; for the others, a single unfavourable report will suffice.

2. Subject to the provisions of Article 11, paragraph 2, the notice period shall be three months in length.

3. The notice period may, at the Governor’s discretion, be replaced by a compensation payment of an amount equal to the remuneration that the staff member would have received during such notice period.”

#### **Article 15 - Confirmation in post for indefinite or fixed term**

“1. Before the expiration of the probationary period, the Director responsible for Human Resources shall make an examination of the staff member’s file and in particular of the appraisal report made about him, pursuant to the provisions of Article 13, above.

2. If the staff member’s work is satisfactory, the Director responsible for Human Resources, on an opinion from the Head of the Major Administrative Unit, shall recommend to the Governor the confirmation in post of the staff member in question with an indefinite-term contract or a fixed term contract, depending on the type of employment originally offered to the staff member. As appropriate, the Director responsible for Human Resources shall propose that paragraph 5 below be applied.”

68. The relevant provisions of Rule N° 2/2008 on Staff Appraisal read as follows:

#### **Article 5 – Appraisal Reports**

“1. Appraisal reports shall be drawn up by the appraisers, using the appropriate form, based on the appraisal interview.

2. Appraisal reports shall be countersigned by the appraiser’s hierarchical superior.

...

4. The heads of major administrative entities are responsible for proposing to each staff member, in collaboration with the appraiser, an overall level of appraisal that is coherent with the content and levels of appraisal described in Article 7 below.

5. An appraisee who does not agree with the substance of the appraisal may request an interview with the appraiser’s hierarchical superior, before the latter countersigns the report. If necessary, the staff member may refer to the Appraisal Board (Article 9 below).

6. Before dating and signing the appraisal form, the appraisee may give his opinion on the appraisal and formulate observations within five working days (not counting days of official journeys or leave) of receiving the appraisal form countersigned by his appraiser’s hierarchical superior.

7. When an appraisal report notes significant shortcomings, the appraisee must be invited to an interview with the head of the major administrative unit to which he is attached.”

#### **Article 9 – Role of the Directorate responsible for Human Resources**

“1. The Directorate responsible for Human Resources shall ensure that the appraisal system is appropriately implemented throughout the Bank. To this effect, it shall analyse the functioning and results of the system and, whenever necessary, may address recommendations to the Governor relating to such matters as:

- amendments needed to make the system more efficient and to correct any anomalies,
- the steps to be taken to guarantee fair and homogeneous use of the system,
- the training needs to be met and the actions to be carried out to disseminate information about the system.

2. The Governor shall then decide what action to take on these recommendations.”

### **Article 10 – Appraisal Board**

“1. In the event of a staff member disagreeing with all or part of the appraisal or wishing to contest the appraisal level attributed to him, he may request an interview with the appraiser’s hierarchical superior, before the latter countersigns the report.

2. If the disagreement persists, he may ask to speak to the Head of the major administrative unit responsible for Human Resources. If, at the outcome of this meeting, the staff member considers that he has not obtained a satisfactory answer, he can refer to an Appraisal Board within fifteen working days following that meeting.

3. The Appraisal Board shall be comprised as follows:

- the Head of the major administrative unit responsible for Human resources (Chairperson),
- a Head of a major administrative unit designated by the Governor with whom the staff member concerned has not previously worked directly,
- a maximum of two staff members designated by the appraisee,
- a maximum of two staff members designated by the appraiser.

4. The Board shall meet within the month following reception of the written request from the staff member concerned. This request shall be sent to the Head of the major administrative unit responsible for Human Resources.

5. The Board shall then have fifteen working days to hear, separately, an oral presentation of the affair by the staff member, by the appraiser and by the appraiser’s immediate superior and/or the Head of the major administrative unit.

6. Within fifteen days of the last meeting the Board, the Board’s Chairperson shall inform in writing about his conclusions and his recommendations.”

## **THE LAW**

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

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

### **II. THE PARTIES’ SUBMISSIONS**

#### **A. On Appeal No. 561/15**

70. The appellant states that the appraisal form sent to HR was never discussed with her. Following her appraisal interview on 26 June 2014, the appraisal form sent to her by her appraiser and confirmed via the email of 3 July 2014 included neither any “objective not achieved” or “partially achieved” assessment nor any “insufficient” grading. The final appraisal, signed by her appraiser and his superior, which was sent to HR and handed to the appellant on 8 July 2014, was a completely different document, including changes not discussed with her, as required by Article 5, paragraph 6 of Rule No. 2/2008. The final appraisal contained the recommendation not to confirm the appellant in post.

71. The appellant further states that deadlines were not respected. She notes in this connection that the date of her interview should have been agreed on at least five working days in advance, whereas she received an invitation three days before the interview, contrary to Article 2 of Rule No. 2/2008. Moreover, the evaluation did not cover the required ten-month period. Her 20<sup>th</sup> month appraisal was actually signed in December 2013, with a four-month delay, so that the 30<sup>th</sup> month appraisal does not cover some important work that she performed during those four months.

72. She maintains that she was not invited to an interview with the head of the major administrative unit she belonged to, as required by Article 5, paragraph 7 of Rule No. 2/2008. It was she who finally requested such an interview, which took place on 7 July 2014.

73. Moreover, the 30<sup>th</sup> month appraisal did not include any concrete examples of the points requiring improvement, or any precise indication of what was needed to reach the required level as provided for in Article 7 of Rule No. 2/2008. She was never formally asked to remedy her supposed shortcomings and no need for professional training was brought to her attention in order to improve her performance.

74. The appellant underlines that she did not receive the two unfavourable reports which are required for termination of the probationary period without the award of a permanent contract. Prior to the 30<sup>th</sup> month appraisal, she never received any “insufficient” grading nor had any “objective not achieved” assessment in her appraisal reports. Accordingly, the conclusion not to recommend her for permanent employment was unfounded and contrary to Article 14 of Appendix II to the Staff Regulations.

75. According to her, while both she and her Director had provided the Chairperson of the Appraisal Board with all relevant documents, she learnt that only a very small number of her documents were distributed to the Appraisal Board’s members. Moreover, the Appraisal Board decided to limit the scope of its review and did not examine the content of the appraisal report. Besides, the deadlines mentioned in Article 10, paragraph 5 of Rule No. 2/2008 were not respected. According to the appellant, the Chairperson of the Board acted partially and reached an arbitrary and biased conclusion without taking into consideration the opinion of the two members who had been designated by her. The hearing procedure before the Appraisal Board took place from 24 to 27 November 2014. According to the appellant, this was in violation of Article 10.5 of Rule N° 2/2008, since hearings should have taken place within fifteen working days after the first meeting, which, in her case, took place on 3 November 2014. Finally, the Appraisal Board decided not to comment on the recommendation by the appellant’s Director not to grant her a permanent contract.

76. The Governor maintains that the present appeal is inadmissible for four reasons. First, the appellant did not lodge a complaint against the final decision of 15 January 2015 regarding her 30<sup>th</sup> month appraisal report and did not, therefore, exhaust internal remedies. Secondly, the conclusions and recommendations of the Chairperson of the Appraisal Board do not constitute an administrative decision and cannot therefore be considered as appealable. Thirdly, the appellant did not lodge a complaint against the decisions concerning her “C” performance appraisal and, therefore, did not exhaust internal remedies. Finally, regarding her complaint against the decision to terminate her appointment, she did not wait for the Governor’s decision on the matter before lodging her appeal with the Tribunal and, therefore, did not exhaust internal remedies.

77. The Governor admits that the invitation for the appraisal interview was sent less than five working days in advance of the proposed date. Nevertheless, the appellant's Director clearly indicated that the interview could take place later, but the appellant agreed immediately, and without any pressure being put on her, that the interview would take place on 26 June 2014. Moreover, the interview was followed by oral and written exchanges between the appellant and her Director during the period from 26 June to 4 July 2014, including an exchange of four successive versions of the appraisal report.

78. In response to the appellant's attempts to introduce the notion of a "favourable appraisal report" that was subsequently "illegally changed", the Governor underlines that the first version of the report already contained documented criticism. Furthermore, in the first version, the section "Additional comments of the appraiser" had not been filled in, while in the second draft of 1 July 2014, the same points of criticism that had featured throughout the appellant's previous appraisals, i.e. "... quality of deliverables, respect for deadlines, planning and management of absences from office", had to be reiterated for the period of the appraisal.

79. As for the appellant's statement that she received a "favourable appraisal report", the Governor notes that she approached the Director of HR on 30 June 2014, i.e. her first working day after her appraisal interview. Moreover, she contacted her Director's superior on 3 July 2014 asking for an interview, thus seemingly pre-empting his request to discuss her shortcomings under Rule No. 2/2008. According to the Governor, it is difficult to understand why she would immediately have requested such meetings if the appraisal report was really as favourable as she claims.

80. The Governor further observes that the appellant submitted her version of the third draft of the appraisal report to her Director's superior on 4 July 2014. Her version contained substantial and unilateral changes to the appraisal report, both in the "Competencies" section and in the section "Additional comments of the appraiser", which she, as appraisee, was not entitled to change. The fact that she unilaterally changed her appraiser's comments raises doubts about the appellant's efforts to reach a consensual agreement in good faith. Accordingly, the appellant manipulated the appraisal form by unilaterally replacing an unfavourable assessment of her professional performance with a text recommending her confirmation in post.

81. In respect of the events of 4 July 2014, the Governor states that the appellant's Director informed the appellant that her proposal concerning the text of the appraisal report which she had sent to him by email earlier that day are "far from what was discussed on 26 June 2014 and at the beginning of the week". Following an exchange of emails with the appellant, her Director abandoned the attempt to reach a consensus and signed the fourth and final version of the 30<sup>th</sup> month appraisal report the same day.

82. The Governor states that the fact that the appellant did not agree with the substance or conclusions of the appraisal does not make it "illegal". Moreover, all the means of recourse to which an appraisee is entitled were exercised by the appellant.

83. He concludes that there has been no breach of regulations, general principles of law or practice and no substantive or serious procedural defect. All relevant elements have been

taken into account, no erroneous conclusions have been drawn from the file and, lastly, there has been no misuse of authority on the part of the Bank.

84. In response to the Governor's description of the successive versions of the appraisal report, the appellant maintains that neither Rule No. 2/2008 on Staff Appraisal nor the Staff Regulations and its Appendices contain any provision allowing several successive versions of the same appraisal report to be issued several days after the one and only appraisal interview. Indeed, her Director issued several versions of the appraisal after the appraisal interview which took place on 26 June 2014. She states that both the favourable version and the unfavourable version refer to the date of 26 June 2014. Issuing several versions of an appraisal with very different levels of assessment based on the same interview is not consistent with the rules and regulations of the Bank and is in violation of Article 1 of Rule No. 2/2008, which guarantees observance of the principles of equal opportunities and non-discrimination in the appraisal procedure.

85. The appellant denies that the first version was sent to her "in order for her to be able to submit her comments", as any comments are to be submitted by the appraisee on the appraisal form countersigned by the appraiser's hierarchical superior. She claims that her Director acted abruptly and disproportionately and that, after he received her comments about discussing her performance, his reaction was out of all proportion and vindictive: he suddenly introduced radical changes in the appellant's appraisal report, giving it a negative slant, signed it and secretly sent it to his superior for signature and then to HR to be put in the appellant's administrative file. According to her, it was probably at this point that he decided not to recommend her confirmation on a permanent contract at the Bank. The fact that she expressed her views cannot justify her appraiser's actions and cannot be an excuse for radically and illegally changing her appraisal report in a negative direction just one day after he had confirmed her favourable appraisal report to her by email.

#### **B. On Appeals Nos. 562/15 and 564/15**

86. The appellant points out that, under Article 23.2 of the Staff Regulations, "fixed-term contracts shall terminate on expiry, unless renewed in accordance with the Regulations on Appointments". She was employed on a fixed-term contract which was due to expire on 31 December 2015. Consequently, there was no reason to terminate her contract before its expiry date, since none of the grounds for termination of contract specified in Article 23.3.b applied.

87. Referring to the recruitment procedure, which involved a number of persons, and to the fact that her employment contract was included in her administrative file and consulted at least on the occasion of her appraisals, she disputes that there was a clerical error regarding the end of her contract and insists that it was concluded for four years. Everybody working at the Bank was aware of this, including the Governor, who signed it.

88. The appellant concludes that the Governor's decision to terminate her appointment eight months before its expiry was not in compliance with the existing rules and regulations.

89. The appellant also considers that the Governor's decision not to grant her a permanent contract was not taken on the basis of any objective grounds or facts. The decision is not explained and no reasons are given for it. According to her, no information was given to her

justifying the Governor's decision not to award her a permanent contract. She states that her consistent and overall good performance was evidenced by her good appraisal. She considers that she carried out her duties appropriately and achieved the objectives assigned by her Director, always showing full loyalty to the Bank and its management. She never received an unfavourable appraisal report, two of which would have been necessary to justify not granting her a permanent contract at the end of her probationary period, as provided for in Article 14 of Appendix II to the Staff Regulations.

90. She states that her Director at no time indicated to her that her appraisals were to be seen as inadequate or that they could result in her not obtaining a permanent contract. Her Director never indicated or mentioned any criticism of her work or any shortcoming which might lead him and the Governor to decide not to grant her a permanent contract. Regarding her appraisals, in the "Appraisal of Competencies" table in Part II she received an overwhelming majority of "excellent" and "good" ratings.

91. The Governor dismisses the appellant's arguments regarding the clerical error in the expiry date of her initial contract. He also denies that she was the holder of a fixed-term contract of four years' duration, including a three-year probationary period, based on an agreement with HR. According to him, the appellant does not provide any rationale for or any evidence of such an agreement. The Governor further states that offering a fixed-term contract for four years, including a probationary period of three years, would be a nonsense and contrary to the Bank's rules and regulations. In any event, if the purpose of the recruitment had been to provide the appellant with a fixed-term appointment, the probationary period would have been one year only, with appraisals at the end of the fifth and eight months. Moreover, the Bank's practice is to offer staff members appointed on posts a three-year fixed-term contract, which can be converted into an indefinite-term contract upon confirmation in post.

92. The Governor also disputes the appellant's argument that the Bank can refer neither to the vacancy notice nor to the offer of employment since they have no contractual value. In point of fact, the relevance of pre-contractual documentation, such as the vacancy notice or the offer of employment, showing the common intent of the parties before reaching an agreement, is a common principle in the interpretation of contracts.

93. With respect to the appellant's argument that she should have received two unfavourable appraisal reports as per Article 14, paragraph 1 of Appendix II to the Staff Regulations to allow her appointment to be terminated, the Governor notes that the Bank has already explained, in connection with Appeal No. 561/2015, that Article 14 was only applicable in respect of early termination of appointment before the end of the probationary period, while Article 15 of Appendix II to the Staff Regulations was applicable in the present case, i.e. the termination of appointment at the end of the probationary period.

94. The Governor also disputes the appellant's argument that Article 14 would be applicable since the Bank, in lieu of the notice period, paid her an amount equal to the remuneration that she was entitled to receive on the basis of the third paragraph of this provision. He maintains that although the possibility of receiving remuneration in lieu of the applicable three months' notice period is explicitly provided for in Article 15, paragraph 3 of Appendix II to the Staff Regulations, she was entitled to a notice period before the decision of

the Governor to terminate the appointment could take effect. Such decision was delayed owing to the length of the proceedings before the Appraisal Board.

**C. On Appeal No. 563/2015**

95. The appellant states that she was excluded from training while her fellow Country Managers were able to attend any training course simply on request. She never received any reply from her Director to her training requests. During her entire stay at the Bank, she never received any training, as evidenced by her appraisals, where no training was suggested by her Director, despite the fact that he claimed after the 30<sup>th</sup> month appraisal that her contract was being terminated because of her inadequate writing skills and other supposed shortcomings.

96. The appellant points out that since her Director has been in office, no Country Manager of Hungarian nationality has been confirmed in post at the Bank, despite the fact that Hungary represents one of the Bank's biggest portfolios. Three Hungarian nationals have been appointed as Country Managers in the past few years: two of them stayed for less than two years and the appellant for three years, which corresponded to the respective probationary periods (two years in the first two cases and three years in hers). According to her, this is in contradiction with Article 12, paragraph 1 of the Staff Regulations, requiring a "fair geographical distribution of posts and positions".

97. The appellant further alleges that she was discriminated against on the basis of her gender. She maintains in this connection that there was a great discrepancy in grades between Country Managers, based on their gender. At the time when she left the Bank, there was in fact significant inequality between male and female Country Managers at the higher grades (A4-A5). Four of these senior staff members were male and only one female. Moreover, since her Director was appointed, only men have been promoted to senior grades, which is not in compliance with Article 12, paragraph 1 of the Staff Regulations and Article 17, paragraph 2 of Appendix II to the Staff Regulations.

98. The appellant also states that, starting in August 2013, when she applied for the post of Principal Country Manager, her working conditions suddenly deteriorated and her Director considerably changed his attitude towards her, trying to push her into making mistakes in her work and making groundless accusations against her based on pure fabrications. Moreover, he constantly gave the appellant contradictory orders, especially when she had to see public authorities or was organising her missions, with the possible intention of making her look unprofessional to external stakeholders. The fact that he claimed that he had twice given the appellant a "C" appraisal, corresponding to "acceptable" performance, can, according to her, also be interpreted as psychological harassment. The same can be said of the 30<sup>th</sup> month appraisal.

99. The Governor first maintains that the appellant's claim of harassment is inadmissible. He states that several new allegations of harassment are raised for the first time in the appeal and were thus not included in the complaint filed under Article 59 of the Staff Regulations. Moreover, the appellant did not follow the procedure under the Bank's Compliance Policy both with respect to the allegations of harassment included in the complaint and with respect to the new allegations raised in the present appeal.

100. Were the Tribunal to declare the present appeal admissible, the appellant's allegations of harassment against her Director should, in any event, be considered as unfounded. Indeed, the appellant does not provide any evidence in support of her claims of harassment by her Director, or by any other staff member.

101. The Governor states that the appellant does not provide any evidence showing that her Director put her under "undue stress and pressure", notably by exercising "overbearing supervision" and giving her "contradictory orders".

102. The Governor denies the alleged "overbearing supervision" by the appellant's Director in that, having previously worked as Country Manager for Albania, he acted as Country Manager himself without informing her of the agreements reached with the Albanian counterparts. He states that the exchange of emails in which her Director "asked [her] to cancel the entire mission" and then changed his mind show that her Director suggested two options to her in order to ensure the effectiveness of the potential mission.

103. The Governor further states that the appellant fails to provide evidence that she was "excluded from training". In fact, she went on several linguistic and managerial training courses. Furthermore, contrary to her assertion regarding a conference held in Brussels on 18 February 2013, she participated in this event, as appears from the mission authorisation approved by her Director.

104. The Governor adds that the appellant does not provide any evidence that the harassment she claims to have suffered is at the origin of, or has any objective bearing on, her medical situation. Moreover, regarding her alleged total incapacity for work since 25 July 2014, the Bank points out that total invalidity can only be assessed and declared following a procedure before the Invalidity Board. Furthermore, the Bank fails to understand how the appellant could have been in a state of total invalidity since the above-mentioned date, as she worked at the Bank after that date. According to the Bank's records, the appellant worked between 8 September and 4 December 2014, with the exception of 10 September, 31 October and 10, 13 and 14 November 2014.

105. The Governor also points out the appellant's own contradictions when she claims to be in a state of total invalidity and at the same time requests her reinstatement at the Bank. Moreover, she refers to the urgent need to look for a new job as the reason for her anonymity request to the Tribunal. He draws the Tribunal's attention to the fact that, following her request of 22 April 2015, the Bank informed her of the procedure for convening the Invalidity Board in its reply dated 29 May 2015.

106. The Governor finally observes that the appellant makes several unfounded statements in her appeal which she does not even attempt to substantiate.

### III. THE TRIBUNAL'S ASSESSMENT

#### A. Appeal No. 561/2015

107. On her original appeal form of 13 March 2015, the appellant asks the Tribunal to find that i. the conclusions of the Chairperson of the Appraisal Board were not formulated in accordance with the existing rules because they did not take into account the conclusions of

the two Appraisal Board members designated by the appellant; ii. her 30<sup>th</sup> month appraisal report is not in compliance with the current rules and regulations of the Bank and is, therefore, null and void.

108. In her supplementary pleadings of 13 April 2015 she asks the Tribunal to find that i. her 30<sup>th</sup> month appraisal report is not in compliance with the current rules and regulations of the Bank and is, therefore, null and void; ii. in terms of its scope and observance of deadlines, the review conducted by the Appraisal Board was not in compliance with the existing rules and regulations of the Bank; iii. the conclusions of the Chairperson of the Appraisal Board were not formulated in accordance with the existing rules and regulations and are, therefore, null and void; iv. the supposed “C” performance appraisal mentioned by the appellant’s Director in his memo was never communicated to her and never confirmed by the HR and is null and void.

**a) As to admissibility**

109. The Tribunal notes that, under Article 60, paragraphs 1 and 3 of the Staff Regulations of the Bank, when a complaint under Article 59 is rejected either explicitly in whole or part, or implicitly, the complainant may appeal to the Administrative Tribunal; he or she shall do so in writing within sixty days from the date of notification of the Governor’s decision on the complaint or from the expiry of the time-limit referred to in Article 59, paragraph 4.

110. The Tribunal notes that the supplementary memorial which elaborated on the appellant’s original submissions and arguments but, at the same time, extended the scope of her appeal was submitted on 13 April 2015, which was after the expiry of the sixty-day time-limit provided for in Article 60, paragraph 3 of the Staff Regulations of the Bank. Accordingly, the appellant’s complaints concerning the alleged deficiencies in the Appraisal Board’s review and the alleged failure of the Bank to inform her of the “C” performance appraisal are inadmissible for being out of time. The Tribunal does not, therefore, need to examine the Governor’s preliminary objections concerning these complaints.

111. Furthermore, the Tribunal subscribes to the Governor’s argument that the conclusions of the Chairperson of the Appraisal Board do not constitute an administrative decision and cannot be considered as appealable. The Tribunal notes in this connection that those conclusions constitute only one step in the proceedings before the Appraisal Board, which takes them as the Chairperson’s recommendation for its conclusive report. Accordingly, this complaint is inadmissible and must be rejected. For similar reasons, the appellant’s complaint that the opinions of the two members of the Appraisal Board designated by her were not taken into account must also be rejected. Moreover, this last complaint is also unfounded, as it is clear from the conclusive report that the opinions of all members of the Appraisal Board were taken into account (see paragraph 42 above).

112. As to the Governor’s preliminary objection that the appellant did not lodge a complaint against the final decision of 15 January 2015 regarding her 30<sup>th</sup> month appraisal report and did not, therefore, exhaust internal remedies (see paragraph 76 above), the Tribunal considers that, as in human rights cases, the rationale for the exhaustion rule in administrative law disputes involving the Organisation is to afford the Secretary General of the Council of Europe or the Governor of the Council of Europe Development Bank the opportunity to prevent or put right the violations for which the Organisation is allegedly responsible.

113. The subject matter of the present appeal is the procedure leading up to the appellant's 30<sup>th</sup> month appraisal. It was first submitted for adjudication to the Appraisal Board and then to the Governor. The Tribunal observes that the Governor considered the appellant's complaint under Article 59, paragraph 1 of the Staff Regulations as "final arbitrage" and "diligently examined the Report of the Chairperson of the Appraisal Board [...] as well as comments made by members of the Appraisal Board" and came to the conclusion that "the existing rules and procedures governing appraisals have been materially respected" (see paragraph 47 above). In these circumstances, the Tribunal finds that the appellant properly submitted her complaint regarding the 30<sup>th</sup> month appraisal to the competent bodies. The Tribunal therefore dismisses the Governor's objection regarding the non-exhaustion of remedies in respect of the appraisal report at issue. It finally notes that the Governor's fourth preliminary objection concerns Appeal No. 562/2015 and does not need to be dealt with at this stage.

114. The Tribunal concludes that the present appeal is admissible insofar as it concerns the appellant's 30<sup>th</sup> month appraisal. It rejects the remaining complaints as inadmissible.

**b) As to the merits**

115. The Tribunal notes from the outset that, in general terms, the periodical appraisal is a method of evaluating employees' work performance. Its purpose is to obtain and analyse information concerning employees' professional accomplishments and personal qualities. There are certain principles and requirements that must be complied with during the appraisal procedure, including, in particular, transparency, effective and sufficient communication of information and mutual respect between the appraiser and the appraisee. Compliance with these requirements is particularly important for an appraisee who is in the probationary period and uncertain as to his or her final appointment. The Tribunal emphasises that the appraisal process must take the form of a constructive dialogue between the appraiser and the appraisee.

116. The Tribunal notes that the parties dispute certain facts concerning the conduct of the appraisal procedure at issue. It will therefore proceed to evaluate the evidence in order to establish the factual situation.

117. The 30<sup>th</sup> month appraisal process started with the appraisal interview on 26 June 2014. On the same day, the appellant's appraiser sent her the draft appraisal dated 26 June 2014, which did not contain the "Additional comments of the appraiser" (see paragraph 12 above). On 3 July 2014 the appellant's appraiser sent her an updated appraisal dated 26 June 2014 which included the "Additional comments of the appraiser". These reflected some hesitations as to her permanent appointment as a Country Manager (see paragraphs 13-14 above). The appellant, replying to her appraiser's email of 3 July 2014, sent him the appraisal form dated 3 July 2014 containing "Additional comments of the appraiser" which were very positive and which recommended her permanent appointment (see paragraph 16 above). While she referred in her email to "the appraisal with [her] comments", those comments were missing from the appraisal form (see paragraph 16 above).

118. The appellant's appraiser promptly replied that the content of the appraisal was not what had previously been discussed and suggested having a talk. However, the appellant preferred to continue the discussion by email and sent a reply criticising her appraiser's behaviour (see paragraph 17 above). In response to her appraiser's repeated suggestion that

they have a talk (see paragraph 18 above), the appellant asked for a meeting with a third person present (see paragraph 19 above). Still on the same day, without reacting in any way to her request, the appraiser signed the appraisal, having marked the first objective as partially achieved and three competencies as “insufficient” and reinstated the previous “Additional comments of the appraiser” (see paragraphs 14 and 20 above). This appraisal was signed by the superior of the appellant’s appraiser on 7 July 2014, after an interview with the appellant, when he had been briefed about the different versions of the appraisal. He did not recommend confirming the appellant in post (see paragraph 23 above).

119. In this connection, the Tribunal refers to the principles it has established in respect of the decision-making process (see ATCE no. 226/1996, *Zimmerman v. Secretary General*, decision of 24 April 1997, paragraph 37; ATCE no. 539/213, *Andrea v. Secretary General*, decision of 30 April 2014, paragraph 50):

“The Administrative Tribunal points out that in staff management matters the Secretary General, who holds the authority to make appointments (Article 36 c of the Statute of the Council of Europe and Article 11 of the Staff Regulations), has wide ranging discretionary powers under which he is qualified to ascertain and assess the Organisation’s operational needs and the staff’s professional abilities. However those discretionary powers must always be lawfully exercised. Where a decision is challenged, an international court naturally cannot substitute its judgment for that of the Administration. However, it must ascertain whether the decision challenged was taken in compliance with the Organisation’s regulations and the general principles of law, to which the legal systems of international organisations are subject. It 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 ATCE, No. 147-148/1986, *Bartsch and Peukert v. Secretary General*, Decision of 30 March 1987, paragraphs 51-53; No. 173/1994, *Ferriozzi-Kleijssen v. Secretary General*, Decision of 25 March 1994, paragraph 29; ATCE, Nos. 216, 218 and 221/96, *Palmieri III, IV and V. v. Secretary General*, Decision of 27 January 1997, paragraph 41).”

120. The Tribunal has already stated that these principles also apply to staff appraisal, while bearing in mind, however, that staff appraisal is not a field in which discretionary power can be exercised with the latitude which the Organisation enjoys in other areas. Indeed, the very nature of the appraisal exercise demands that the Organisation should be as objective as possible and, therefore, that it should remain as objective as possible in the appraisal process. Scrutiny of substantive legality should therefore be stricter than in other fields (see *Andrea*, cited above, paragraph 51).

121. At the same time, the Tribunal does not lose sight of the fact that certain ethical principles have to be respected in the conduct of the appraisal process, such as transparency and constructive dialogue between the stakeholders involved in the process (see paragraph 115 above).

122. Turning to the present case, the Tribunal is not convinced that the appraisal process did meet these requirements. Admittedly, the appellant’s appraiser may have been taken aback by her behaviour when she substantially modified his additional comments in the appraisal form. However, as an experienced manager, he should not have been negatively influenced by this incident and should have maintained a professional attitude towards her. The Tribunal is of the opinion that there was nothing to prevent him from continuing the appraisal process in a transparent and calm way in order to avoid any misunderstanding,

conflict and feeling of disrespect or personal prejudice. However, instead of trying to resolve the conflict situation and take proactive steps to discuss the matter with the appellant and, therefore, comply with Article 5, paragraph 1 of Rule No. 2/2008 on staff appraisal (see paragraph 68 above), he simply signed the appraisal report after having put in a number of negative changes. Moreover, the appraiser's hierarchical superior, who was aware that there were two versions of the appraisal report (see paragraphs 21-23 above), approved the appraisal form previously signed by the appellant's appraiser without giving the appellant the opportunity to avail herself of her right under Article 5, paragraph 5 of Rule No. 2/2008 on staff appraisal (see paragraph 68 above).

123. Under these circumstances, the Tribunal finds that the appeal is well founded and that the act complained of must be declared null and void.

**B. Appeals Nos. 562/2015 and 564/2015**

124. In Appeal No. 562/2015 the appellant requests the Tribunal to declare the Governor's decision to terminate her employment null and void because it is against the current rules and regulations of the Bank and her employment could not have been terminated before 31 December 2015.

125. In Appeal No. 564/2015 she requests the Tribunal to declare the Governor's decision not to provide her with a permanent contract null and void and to hold that she is fully entitled to receive a permanent contract at the end of her probationary period.

**a) As to admissibility**

126. In reply to the Governor's objection that the appellant did not exhaust internal remedies as she did not wait for his decision on the matter before lodging her Appeal No. 562/2015, the Tribunal considers that the rational meaning of the rule on exhaustion of internal remedies is that those remedies must be exhausted before the Tribunal proceeds to examine an appeal. Accordingly, the Tribunal dismisses the objection raised by the Governor.

**b) As to the merits**

127. The Tribunal considers that the grounds of the present appeals, i.e. the termination of the appellant's fixed-term contract and the refusal to offer her a permanent contact at the end of her probationary period, should be jointly examined, being based on the same factual situation.

128. It further considers that both issues have consequences in terms of the appellant's professional situation.

129. With regard to the termination of her fixed-term contract, the Tribunal does not need to examine the relevant circumstances of this issue in detail, since the appellant's 30<sup>th</sup> month appraisal was the direct precondition for the termination of her contract. Nevertheless, it considers it necessary to point out that the appellant's complaint that her fixed-term contract should have ended on 31 December 2015 is purely speculative and almost amounts to an abuse of the right of application. It is clear from the text of the fixed-term contract which the appellant signed that she was hired for the period of three years corresponding to her

probationary period (see paragraph 6 above). Moreover, the three-year probationary period is in conformity with Article 12, paragraph 1a) of Appendix II to the Staff Regulations (see paragraph 67 above). Indeed, the contract contains an obvious clerical error which none of the persons involved – including the appellant, who undoubtedly read the content of the contract with the necessary attention – noticed. The speculative nature of the appellant's complaint is evidenced by her own written comments in which she refers to 31 December 2014 as the expiry date of the fixed-term contract (see paragraphs 35 and 49 above).

130. In the light of these circumstances and having regard to its previous finding that the appellant's 30<sup>th</sup> month appraisal is null and void, the Tribunal finds that, as a direct consequence of the annulment of this appraisal, the Governor's decision to terminate the appellant's fixed-term contract is null and void as well.

131. Regarding the Bank's decision not to confirm the appellant in post, the Tribunal considers that while the 30<sup>th</sup> month appraisal resulted directly in the termination of the appellant's fixed-term contract, the same does not apply to the refusal to give her a permanent contract as this decision resulted only indirectly from the 30<sup>th</sup> month appraisal. The Tribunal points out in this connection that its decision to declare the 30<sup>th</sup> month appraisal null and void is based on the Bank's failure to comply with the rules governing the appraisal process and with certain principles inherent the appraisal process. At the time when this appraisal was signed by the competent persons, which resulted in the termination of the appellant's fixed-term contract, she could not claim to have a legitimate expectation to obtain a permanent contract as she did not meet the statutory requirements. The Tribunal emphasises in this connection that it cannot take the place of the appellant's appraisers in assessing her professional performance over the relevant period. As far as the content of the appellant's 30<sup>th</sup> month appraisal is concerned, therefore, it cannot rule as to whether the relevant rules and principles were complied with.

132. In sum, the Tribunal declares Appeal No. 564/2015 unfounded.

### **C. Appeal No. 563/2015**

133. The Tribunal does not consider it necessary to make a detailed examination of the preliminary question of admissibility raised by the Governor since the appellant's claim is, in any event, inadmissible for the following reasons.

134. The Tribunal notes that "harassment and mobbing do not require malice or intent, but that behaviour cannot be considered as harassment or mobbing if there is a reasonable explanation for it" (see ILOA No. 3447 K.B. v. ILO, judgment of 8 February 2012, § 9).

135. The Tribunal further notes that an allegation of harassment must be borne out by specific facts, the burden of proof being on the party pleading harassment. It also notes that the Administration must respect staff members' dignity and reputation in its dealings with them, in other words, avoid putting them needlessly in a difficult personal position (see ATCE No. 285/2001, *Parienti v. Secretary General*, decision of 16 May 2003, paragraph 58 with further references).

136. In the instant case, the Tribunal considers that the situations and events that the appellant submits as examples of harassment cannot be considered as such because there is a

reasonable explanation for each example. It is clear from the observations of both parties that the situations which the appellant perceived as harassment were quite reasonably explained by the managerial needs of the Bank. Moreover, the appellant relies on speculation, hypotheses and her personal perceptions to substantiate her allegations of harassment. Admittedly, the appellant's Director sometimes made organisational changes at the very last minute which caused unnecessary difficulties and stressful situations for the appellant and, subsequently, increased tensions between her and her Director. However, the Tribunal is not convinced, based on the documents in its possession, that these practices were employed deliberately with the aim of harassing the appellant.

137. The Tribunal concludes that this appeal is unfounded and must be dismissed.

#### IV. CLAIMS FOR COMPENSATION AND REIMBURSEMENT OF PROCEDURAL COSTS

##### a) The parties' submissions

138. In respect of Appeal No. 561/2015, lodged on 13 March 2015 (see paragraphs 1 and 107 above), the appellant requested the Tribunal to order the Governor to award her a permanent post. However, she did not claim any compensation. In her supplementary memorial dated 13 April 2015, she claims the reimbursement of EUR 8 000 in respect of costs and fees incurred in connection with the appeal.

139. In respect of Appeal No. 562/2015 the appellant claims in her form of appeal submitted on 5 May 2015 the eight months' salary that she should have received until the end of her appointment, i.e. 31 December 2015. In her memorial submitted on 12 June 2015, she claims one year's salary, including eight months' salary that she should have received until the end of her appointment. She also claims EUR 3 000 in respect of her costs and expenses related to the appeal.

140. The Governor first maintains that the appellant did not submit any claim for compensation or reimbursement in her Appeal No. 561/2015. Moreover, he finds that the claims set out in her other appeals are unjustified and unfounded.

141. He observes that the appellant claims one year's salary without adequately justifying the grounds on which such compensation would be based. Moreover, even if the impugned decision to terminate her appointment is annulled by the Tribunal, her claim for compensation until she is "reinstated" at the Bank is groundless since the appellant, under such circumstances, would receive the salary she was entitled to, less any remuneration received from other sources. Finally, the Governor maintains that the appellant's claim for two years' salary for alleged harassment is not supported by any evidence.

142. Finally, the Governor defers the issue of legal costs and expenses to the discretion of the Tribunal, recalling however the very high amounts of costs claimed by the appellant. He notes that the appellant does not provide any justification for these amounts and that there is an arbitrary discrepancy between the amounts claimed for costs in the different appeals (3,000 euros claimed in Appeal No. 562/2015 and 8,000 euros each claimed in Appeals Nos. 561/2015, 563/2015 and 564/2015 respectively).

**b) The Tribunal's assessment**

143. The Tribunal considers that the damage claimed by the appellant in her Appeals Nos. 561/2015 and 562/2015 is of a pecuniary character. It notes in this connection that the principle underlying the provision of compensation for breach of internal procedural requirements, including those governing the appraisal process, is that the appellant should as far as possible be put in the position he or she would have enjoyed had the procedure complied with the internal procedural requirements. The Tribunal will award financial compensation only where it is satisfied that the loss or damage complained of was actually caused by the breach it has found, since the Bank cannot be required to pay damages for which is not responsible.

144. The Tribunal notes that under Article 60, paragraph 2, last sentence, of the Staff Regulations as applicable to the Bank, the Tribunal can “order the Bank to pay to the appellant compensation for damage resulting from the act complained of”.

145. In the present case, the basis of the Tribunal's decision to annul the appellant's 30<sup>th</sup> month appraisal and the decision to terminate her fixed-term contract was, in particular, that certain relevant provisions governing the appraisal process were not respected. This finding does not mean that the content of the appraisal report and the Governor's decision to terminate the appellant's fixed-term contract were not well-founded or that different appraisers, a differently constituted Appraisal Board or a different person acting as Governor would have found in favour of the appellant. Referring to its case-law, the Tribunal considers that the pecuniary damage will best be redressed through the execution of this decision annulling the appellant's 30<sup>th</sup> month appraisal and the decision to terminate her fixed-term contract.

146. Finally, in respect of the appellant's claims for reimbursement of costs incurred in connection with her Appeals Nos. 561/2015 and 562/2015, the appellant, who availed herself of the services of counsel, has requested 11 000 euros in respect of costs and expenses. The Tribunal considers it reasonable that the Governor should reimburse on that account the sum of 5 000 euros (Article 11, paragraph 2 of the Statute of the Tribunal – Appendix XI to the Staff Regulations).

**V. CONCLUSION**

147. In conclusion, Appeals Nos. 561/2015 and 562/2015 are admissible and the impugned act and decision must be annulled. Appeals Nos. 563/2015 and 564/2015 are unfounded and must be rejected. The appellant is also entitled to the reimbursement of 5 000 euros in respect of costs and expenses.

For these reasons, the Administrative Tribunal:

Orders the joinder of Appeals Nos. 561/201, 562/2015, 563/2015 and 564/2015;

Declares Appeals Nos. 561/2015 and 562/2015 admissible in respect of the appellant's claims concerning the 30<sup>th</sup> month appraisal and the Governor's decision to terminate her fixed-term contract, and annuls the impugned act and decision;

Declares the remainder of these appeals inadmissible;

Declares Appeals Nos. 563/2015 and 564/2015 unfounded and dismisses them;

Orders the Governor to reimburse the appellant the sum of 5 000 euros in costs and expenses.

Adopted by the Tribunal in Strasbourg on 31 March 2016 and delivered in writing on 26 April 2016 pursuant to Rule 35, paragraph 1, of its Rules of Procedure, the English text being authentic.

The Deputy Registrar of the  
Administrative Tribunal

The Chair of the  
Administrative Tribunal

E. HUBALKOVA

C. ROZAKIS