

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

## TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

**Appeal No. 539/2013 (Merita ANDREA v. Secretary General)**

The Administrative Tribunal, composed of:

Mr Christos ROZAKIS, Chair,  
Mr Rocco Antonio CANGELOSI, Judge,  
Mr Serkan KIZILYEL, 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, Ms Merita Andrea, lodged her appeal on 1 July 2013. The appeal was registered the same day under number 539/2013.
2. On 30 July 2013, the Secretary General forwarded his observations on the appeal.
3. When lodging her appeal, the appellant made a request for anonymity. On 31 July the Chair ruled that there were no grounds for granting anonymity in this case.
4. The appellant submitted a memorial in reply on 2 September 2013. On that occasion she expressed the wish that the oral proceedings be held in camera.
5. On 3 September 2013, she asked for reconsideration of her request for anonymity and confidentiality.
6. By decision of 7 November 2013, the Tribunal dismissed the request submitted on 3 September 2013 for reconsideration of the Chair's refusal to grant anonymity

(paragraph 3 above); the Tribunal therefore upheld the Chair's aforementioned decision. The Tribunal also refused to grant the request for proceedings to be held in camera.

7. The public hearing in this appeal was held in the Administrative Tribunal's hearing room in Strasbourg on 7 November 2013. The appellant conducted her own defence while the Secretary General was represented by Ms Christina Olsen, from the Legal Advice Department in the Directorate of Legal Advice, assisted by Ms Maija Junker-Schreckenber and Ms Sania Ivedi, both from the same department.

8. After the hearing, on 12 November 2013, the appellant submitted a document reproducing an exchange of emails with her appraiser. Then, on 12 December 2013, the appellant asked that, "in accordance with the decision given on 7 November 2013 on the anonymity and confidentiality of the case, (...) no references to or quotations from the appraisal report relating to the two competencies, and no details of the appeal, should be made public or quoted in the Tribunal's decision and that these should be subject to the rule of confidentiality". On that occasion she submitted further documents, namely a memorandum from the Director of Human Resources and a medical certificate. The Secretary General was informed of all these documents and requests and, on 17 January 2013, objected to their being filed. The appellant was invited to state her position, but made no comment.

## **THE FACTS**

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

9. In accordance with the Tribunal's decision of 7 November 2013 and the appellant's request of 12 November 2013, the facts of this appeal can be summarised as follows.

10. The appellant is a permanent member of the Council of Europe's staff employed on an indefinite contract. When recruited, she was assigned to the Registry of the European Court of Human Rights and, at the time of the events at issue, she held grade B3.

11. In her appeal, the appellant challenges her 2012 appraisal. Under the Organisation's rules, three parties are involved in an appraisal procedure: the appraisee, the appraiser and the appraiser's appraiser (his or her immediate superior). In the instant case, a member of the Directorate of Human Resources was also involved owing to problems which arose during the appraisal.

12. The procedure began on 17 January 2013 and ended on 28 February 2013 when the appraisee signed her appraisal report after adding comments to explain the reasons why she disagreed with her appraisal. The appraiser's appraiser had previously given her comments.

13. On 2 April 2013, the appellant submitted an administrative complaint under Article 59, paragraph 2 of the Staff Regulations. She asked for a full review of her 2012 appraisal report.

14. On 2 May 2013, the Secretary General rejected the administrative complaint as being unfounded.

15. On 1 July 2013, the appellant lodged this appeal.

## II. RELEVANT LAW

16. Matters pertaining to appraisal are governed by the Secretary General's Rule No 1340 of 13 December 2011 on appraisal and performance enhancement. The relevant provisions read as follows:

### **Article 1 – General provisions**

“1. The appraisal process shall be a process of dialogue between Secretariat members and their hierarchical superiors. The main purpose of the appraisal process is to clarify the work of Secretariat members by establishing clear objectives, assess the results they have obtained towards the achievement of these objectives and help them develop the requisite competencies, thereby increasing the effectiveness and efficiency of Secretariat work. The appraisal is intended as an objective review of the past year's work; it also provides an opportunity for fixing objectives for the following year.

2. During appraisal interviews and throughout the appraisal process, the appraiser is responsible for providing guidance, assistance and reasonable managerial support to achieve the objectives. The appraisee is responsible for informing the appraiser about any difficulties s/he may encounter (or may reasonably foresee) in achieving the objectives.

3. The heads of Major Administrative Entities shall ensure that the appraisal system functions properly and that it is applied in a consistent and harmonious manner within their own administrative entity.

4. The Directorate of Human Resources of the Directorate General of Administration shall coordinate and supervise the functioning of the appraisal system throughout the Council of Europe Secretariat.

5. The outcome of the appraisal exercise (objectives and appraisal) shall be consulted whenever decisions are taken on the career and training of the Secretariat members. The appraisal report shall be the basis for assessing exceptional performance and for setting up an individual performance-enhancement process (hereinafter referred to as 'IPEP') in cases of underperformance. It may be taken into consideration in disciplinary proceedings.

6. The principles of equality of opportunity and non-discrimination shall be taken into account during the appraisal procedure.

### **Article 2 - Scope**

1. This Rule lays down the conditions in which the Secretariat members shall be appraised.

(...)

### **Article 3 – The appraisal procedure**

1. The reference period for appraisal reports shall be the calendar year.

2. Other than in the cases covered by Articles 4-6 and 14 of this Rule, the appraisal cycle shall take place once a year according to a timetable for the Secretariat of the Council of Europe as a whole.

3. The appraisal exercise shall comprise two stages: the setting of objectives for the reference period and, at the end of the reference period, the appraisal of the results achieved in the light of the objectives set.

4. The appraisee has five working days (not counting days of official journeys or leave) to electronically acknowledge receipt of the objective setting form and to add any comments s/he may have.

5. Other than in the cases covered by Article 14, the appraisal relating to the preceding reference period and the setting of the objectives for the next period shall preferably take place at the same interview.

6. The appraiser and appraisee shall agree on the date of the appraisal interview at least five working days in advance, not counting days of official journeys or leave of the appraisee.

(...)

### **Article 8 – Appraisal reports**

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

2. The official language chosen by the appraisee shall be used for the appraisal exercise. However, with the appraisee's consent, the appraiser may draw up the report in the other official language.

3. Appraisal reports shall be countersigned by the appraiser's appraiser (n+2). Where the appraiser (n+1) is the head of a Major Administrative Entity, appraisal reports shall be countersigned by the Secretary General or Deputy Secretary General only if the appraisee so requests.

4. An appraisee who does not agree with the substance of the appraisal drawn up by the appraiser (n+1) may request an interview with the appraiser's appraiser (n+2). The appraisee shall inform his or her appraiser (n+1) of this.

5. Before signing the appraisal form, the appraisee shall make any comments within five working days (not counting days of official journeys or leave).

6. The n+1 has the duty to provide the Secretariat members s/he will appraise with clear information about performance expectations throughout the reference period. S/he should give Secretariat members regular feedback about their performance, both in areas in which they are doing well, and in areas in which they can further develop. In particular, the n+1 should make sure that Secretariat members are informed in writing when, during a reference period, their work shows significant shortcomings. The n+1 shall help Secretariat members to reach their objectives.

(...)

#### **Article 10 – Use of appraisal reports**

1. Until it is finalised, the appraisal report shall be confidential and may not be disclosed against the appraisee's will beyond the parties involved in the appraisal process.

2. Appraisal reports shall be part of Secretariat members' personal administrative files and may not be consulted against their will other than in the cases for which this article and the Rule on access to a staff member's personal administrative file provide.

3. Appraisal reports may be consulted by the Directorate of Human Resources and the managers concerned whenever a decision is to be taken about the appraisee's career or training.

4. The latest appraisal report available shall be used by the Appointments Board. However, the candidate or, in exceptional cases, the Appointments Board may request that a maximum of the last three available reports be consulted.”

17. A “Guide to appraisal” has been produced to provide basic information about appraisal. Both appraisers and appraisees are advised to take note of its contents.

## **THE LAW**

18. The appellant's aim in lodging this appeal was to obtain the annulment of the Secretary General's decision and to have her 2012 appraisal report reviewed by neutral and impartial outside parties.

19. The Secretary General asks the Tribunal to declare the appeal ill-founded and to dismiss it.

### **I. PRELIMINARY COMMENT ON CONFIDENTIALITY**

20. On 12 December 2013, the appellant asked the Tribunal that certain facts not be made public even though she had not been granted anonymity. On that occasion, she also submitted certain documents (paragraph 8 above). On 12 November 2013, she had done the same with a document she wished to file at the close of that day's hearing (*ibid*).

The Secretary General asked the Tribunal not to admit the requests and documents submitted by the appellant on her own initiative after the hearing.

21. As regards the request for confidentiality, the Tribunal does not consider that the nature of the factual elements for which confidentiality is sought is such as to cause prejudice to her in her work or private life. However that may be, the Tribunal decides not to mention them in its decision because a knowledge of them is unnecessary for the purposes of its decision.

22. As regards the filing of the documents to which the Secretary General objects, the Tribunal notes that there is nothing to stop documents being filed after the close of the hearing provided the Tribunal authorises their filing and, as in the instant case, there is no breach of the adversarial principle. Furthermore, it is obvious that parties who belatedly file a document must accept the risk of its not being taken into consideration owing to its late filing.

In the instant case, the Tribunal considers that there is no objection to the filing of these documents and therefore agrees to their inclusion in the file.

### **II. SUBMISSIONS OF THE PARTIES**

#### **A. The appellant**

23. The appellant claims to have suffered two types of violation, relating to the appraisal procedure and the merits.

24. In the first category, she alleges six violations: prejudiced procedure, lack of constructive dialogue, lack of transparency, right of response, non-compliance with

time periods and, lastly, the language used. In the second category, she complains of a radical change and a lack of objectivity.

**1) *Procedural violations***

a. Prejudiced procedure

25. The appellant argues firstly that the procedure was prejudiced in that her appraiser wrote a first appraisal report directly on the appraisal form without having interviewed her. Even if this was only a rough draft, every section was filled in and even if a draft of this kind is not authoritative and is not included in the staff member's personal file, this fact nevertheless constitutes irrefutable proof that the appraisal procedure was prejudiced and defective from the outset. The appellant cites as evidence of this the nature of the comments made by the appraiser. In her view, the sole purpose of the report was to disparage her and harm her career. The procedure was accordingly compromised from the outset by the appraiser's preconceived personal opinions on her work and efforts. All this came out at the ensuing interview stage, which, again, was marked by a lack of constructive dialogue and a lack of transparency.

b. Constructive dialogue

26. The appellant alleges a lack of constructive dialogue because the appraiser sought at no time to assess her work and, still less, express her gratitude, given that she had performed extra duties attaching to a higher grade. In her view, all the evidence supports her claim that the appropriate procedure was not followed.

c. Lack of transparency

27. The appellant argues next that the procedure was lacking in transparency because the appraiser had refused in the course of the year to record the frequent changes in her objectives and the extra tasks which were not part of her duties. This was in addition to the fact that, at the first interview, the appraiser showed her a Word document rather than the completed draft appraisal, and consulted other members of the department in her case only.

d. Right of response

28. The appellant points out that the right of response, referred to in the good practice guide (paragraph 17 above), was granted to her only after much resistance both from the appraiser and from the appraiser's appraiser, and only after an interview with the latter. She contends, however, that the exercise of this right was ineffective because the report was validated barely an hour after she had exercised her right of response, with only a few minor points having been taken into account.

e. Five-day period

29. As regards the period of five working days available to her to add her comments to the appraisal report, the appellant points out that she was in fact only given four days, instead of the five provided for in Rule No. 1340, in order to meet the deadline set by the Directorate of Human Resources for finalising the appraisal procedure.

f. Choice of language

30. As regards the choice of language, the appellant, after reiterating the wording of Article 8, paragraph 2 of Rule No. 1340 (paragraph 16 above), states that the appraiser automatically drafted the report in English without taking account of her wishes. She adds that, “having been presented with a fait accompli”, she “had to write her comments in English”, whereas she wrote her comments on the 2013 objectives in French.

31. The appellant notes that, during her interview with her appraiser’s appraiser, she requested the use of French rather than English, but no account was taken of this request. In support of her claim, the appellant emphasises first that the aforementioned Article 8, paragraph 2 leaves the choice of language to the appraisee and, secondly, that under international case law the admissibility of a complaint does not depend on proving certain injury: it is sufficient that the impugned decision should be liable to violate the rights or safeguards that international civil servants enjoy under the rules and regulations applicable to them or the terms of their employment contract. On this point, the appellant refers to ILOAT judgment no. 3118, which dealt with this legal issue following the dismissal of the defendant’s complaint before he had set out his arguments on the merits of the case.

**2) *Violations relating to the merits***

32. The appellant submits that this type of violation is reflected in a sudden radical change in her appraisal and the fact that this marks a clear backward step in relation to the previous three reports. She further argues that the appraisal report was marked by a lack of objectivity, with the result that she was penalised disproportionately.

33. Regarding the first allegation, the appellant points out that the change in question took place over a very short period of time and that her managers had overburdened her with tasks and forced her to work with colleagues with whom other staff members were unwilling to work.

34. Regarding the second allegation, she stresses that her appraiser focused on isolated instances without taking into account the overall quantity of work performed by the appellant and the objective and subjective difficulties she had encountered during the appraisal period. The appellant concludes that her appraiser committed an error of law and showed bad faith.

## **B. The Secretary General**

### ***1) Procedural violations***

#### **a. Prejudiced procedure**

35. The Secretary General notes first of all that the document which the appellant describes as the “first appraisal report” was in fact merely a preparatory document which had, and will have, no effect on her situation. He adds that this document was for the appraiser’s use only and was not intended to be read or used by anyone else, being merely a “rough draft”, and the appraiser was free to write whatever she wanted in it.

After explaining the appraisal application, the Secretary General says that the appraiser had opened the electronic appraisal form and begun to fill it in. He argues that work was in progress on the form and that it was common for an appraiser to write draft comments which he or she subsequently amended in the process of reflecting on and actually writing an appraisal. He says that this document has no legal value and that the same applies to the document which the appellant calls the “second appraisal report”. These forms in the process of being completed did not commit the appraiser and it would be inappropriate to complain about them because they were for her personal use.

The Secretary General further notes that, in the instant case, the appraisal procedure was applied in accordance with the rules on appraisal contained in the Staff Regulations and with Rule No. 1340 (paragraph 16 above).

36. Commenting on the appellant’s reference to the Guide to Appraisal (paragraph 17 above), and in particular section VI thereof (“Transcription into the form”), the Secretary General submits that the appellant sees the advice contained in this section as proof that the procedure was defective and prejudiced because she considers that the form should remain blank until after the appraisal interview.

The Secretary General acknowledges that appraisers are advised to transcribe the appraisal “off HCMS” (*Human Capital Management System*) if it is problematic, and it is regrettable that the appellant’s appraiser failed to do so. If the N+1 had written her initial comments “off HCMS”, the appellant would have been unable to read them or print them and would not have been as offended as she appears to be. It is true that the appraiser would have done better not to write her provisional comments in the form, but given that they were not intended to be seen or used by anyone other than herself and did not reflect her final appraisal, they cannot cause any prejudice to the appellant.

#### **b. Constructive dialogue**

37. On this point, the Secretary General emphasises that the appraisal report was drawn up following a meeting between the appellant, a representative of the Directorate of Human Resources and the appraiser. Prior to the meeting of 21 February 2013, there

had also been several discussions between the appellant and her appraiser concerning her appraisal. Furthermore, the appellant had already had an appraisal interview on 30 January 2013, which had not been finalised owing to disagreements over the appraisal, followed by another interview on 4 February 2013 to give her another opportunity to state her views. She also had an interview with the appraiser's appraiser on 12 February 2013. Consequently, it cannot legitimately be argued that there was no dialogue and that the appellant did not have the opportunity to submit her comments both orally and in writing.

Hence, according to the Secretary General, the appellant was able to give her observations on the assessments made by both her line managers before countersigning the form. However, it is not for the appellant to substitute her own assessment for that of the persons responsible for evaluating her work or to write her appraisal report in their place.

#### c. Five-day period

38. The Secretary General acknowledges that the appraiser invited the appellant to sign her appraisal before the end of February in order to meet the deadline for the end of the appraisal cycle set by the Directorate of Human Resources at 28 February 2013 for the whole of the Council of Europe. However, the appellant had both the time and the opportunity to add her comments to the report and was not pressured into signing it on 28 February 2013, four working days after it had been signed by her N+2 (22 February 2013). The Directorate of Human Resources also points out that it would in any case have been possible for the appellant to sign it on 1 March 2013, especially as the process had been delayed by the holding of the appraisal interview on 21 February 2013, a fact which had been brought to the attention of the Directorate of Human Resources.

39. On this point, the Secretary General refers to the Tribunal's case law (ATCE, appeal no. 312/2003 - David SCHMIDT v. Secretary General, decision of 5 December 2003, paragraphs 57-58). According to this case law, the fact of asking an appraisee to sign an appraisal form before the expiration of a period of reflection does not render the procedure unlawful and cannot cause prejudice to a staff member, even though, in the case in question, the appellant had not had time to enter his comments in the report.

#### d. Use of English

40. The Secretary General finds it regrettable that the appraiser did not ask the appellant for her agreement to the use of English, even though the latter is French-speaking. He feels that it should be pointed out, however, that the appellant, as she herself mentions, complained about this only to the appraiser's appraiser – who was also required to sign the appraisal – during her interview with her. However that may be, the Secretary General observes that the appellant has a perfect command of English and used this language for all her comments appearing in the appraisal report.

41. The Secretary General concludes that, in any event, even assuming that the appraisal report is vitiated by an irregularity such as to render it invalid, which is

disputed, international administrative case law is clear on this point: in staff appraisal, the existence of a substantive irregularity rendering the appraisal invalid requires proof by the staff member in question that, in the absence of that irregularity, the substance of his or her final report might have been different. In the case in point, however, assuming the irregularities cited by the appellant were proved, none of them is such as to call into question the substance of her appraisal report.

## ***2) Violations relating to the merits***

42. The Secretary General submits that the appellant's appraisal by her appraiser was based on an overall analysis of her work and performance in the reference period (2012). In his view, it should be considered that the appellant's managers, exercising the wide discretionary power vested in them in this field, came to the fully informed conclusion that she had fully satisfied the requirements of the post while pointing out certain areas in which there was room for improvement.

In this connection, the Secretary General expresses surprise at the appellant's complaints about her appraisal report given that it is positive and complimentary and highlights the appellant's actual, and satisfactory, abilities and competencies.

An examination of the appraisal report shows that the appraisal was based on a detailed analysis of the appellant's performance during the reference period.

Regarding the appellant's complaint concerning the alleged failure to give reasons for the appraisal, the Secretary General notes that she was fully informed about the reasons on which the appraisal was based, before the appraisal interview, during that interview and in the appraisal report.

He submits that the appraisal report in no way marks a "sudden radical change" and a "clear backward step". The report's conclusion is admittedly a little less favourable than that of previous reports, but it is still positive and supported by reasons.

The Secretary General further notes that, according to international case law relating to discretionary decisions, decisions of this kind can only be subject to limited scrutiny and can only be annulled if they have been taken by an authority without jurisdiction, show a substantive or procedural defect, fail to take account of key facts, are vitiated by a misuse of authority or draw manifestly erroneous conclusions from the file. The Administrative Tribunal's function, however, is not to substitute its assessment for that of the Administration, which is the only body qualified to assess staff members' professional skills.

All the evidence shows that, contrary to what the appellant claims, her 2012 appraisal report is based on objective elements and suffers from no legal defect. It was drawn up in accordance with the normal practice, the applicable regulations and general principles of law. Likewise, there is no evidence that the authorities responsible exceeded

the limits of their discretionary power in any way or committed any manifest error by pursuing any aim other than the performance of their duty.

On this basis, the Secretary General concludes that there has been no breach of regulations, general principles of law or practice and no substantive or procedural defect, that all relevant elements have been taken into account, that no erroneous conclusion has been drawn from the documents in the file and, lastly, that there has been no misuse of authority.

In the light of all these elements, the Secretary General asks the Tribunal to declare the appeal ill-founded and to reject it.

### **C. The Tribunal's assessment**

#### ***1) Procedural violations***

43. The Tribunal considers that the first four grounds of complaint should be jointly examined. These are: prejudiced procedure, lack of constructive dialogue, lack of transparency and the right of response.

44. Regarding the Guide to Appraisal, it notes first of all that, according to its case law, this is not a set of mandatory rules but rather a set of guidelines designed to guide and facilitate the work of appraisers and the participation of appraisees in the appraisal process. Consequently, it cannot be regarded as a source of law, non-compliance with which would engender a separate violation in relation to any reference texts which may have been violated.

45. The Tribunal considers that, as argued by the Secretary General, the appraiser's decision to fill in the report form before her interview with the appraisee constitutes an act in preparation for the formal interview and may therefore be regarded as a summary of the position she intended to express during the interview. Admittedly, as recognised by the Organisation, this approach was inappropriate, but it does not violate the rules of the procedure. Furthermore, the complimentary terms used by the appraiser and the changes she made during the appraisal exercise disprove the appellant's claims that there was no constructive dialogue or effective right of response and that the whole procedure was marked by a lack of transparency.

46. In short, despite minor procedural lapses, the appellant suffered no real prejudice which would have rendered the procedure unlawful.

47. Regarding the failure to comply with the five-day period, the Tribunal observes that, even if, given the circumstances of the appraisal, the appraiser's request to the appraisee to sign the appraisal report without fully availing herself of the five-day period available to her under Rule No. 1340 was extremely inappropriate, the fact remains that the appellant could have objected to this, if necessary via the Directorate of Human Resources, but did not do so. However that may be, it does not appear that

the appellant was deprived of an effective opportunity to calmly write her comments; as evidence of this, the Tribunal cites the length and detail of the arguments submitted.

48. As to the complaint concerning the language used, the Tribunal notes that the appellant's previous appraisal reports had been written in English without her raising any objection. Furthermore, and above all, the appellant waited until the final stage of the appraisal process before requesting the use of French. Moreover, she used English to make her comments on the appraisal, and this does not appear to be a translation done by someone else. Neither does she claim that she was forced against her will to speak in English during the interviews. Consequently, it is established that she has an active, and not only passive, knowledge of English. Nevertheless, the fact remains that if the appellant wished to use her first working language, her request had to be granted. In the event, however, she suffered no prejudice.

49. In conclusion, there was a series of actions which were no doubt inappropriate, but that does not affect the lawfulness of the appraisal, even if those actions ran counter to the guidelines contained in the Guide. The Tribunal believes that the Organisation would no doubt benefit from improved efforts to encourage appraisers to comply scrupulously with the guidelines on appraisal.

## *2) Violations relating to the merits*

50. The Tribunal feels that it should first reiterate its case law relating to discretionary decisions (ATCE no. 226/1996, *Zimmermann v. Secretary General*, decision of 24 April 1997, paragraph 37) :

“37. 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 Organization'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 (ABCE, 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; and ATCE, Nos. 216, 218 and 221/96, *Palmieri III, IV and V v. Secretary General*, Decision of 27 January 1997, paragraph 41).”

51. The Tribunal believes that these principles should also apply to appraisal, while bearing in mind, however, that 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.

52. The Tribunal wonders about the correlation between the appraiser's assessment on certain points and her final assessment. Without going into detail, the Tribunal gives as an example of this the fact that, on one point, the appraiser stated that an improvement would be desirable, whereas, in the Tribunal's opinion, the factual evidence cited does not justify such a conclusion. Furthermore, on the same point, it was noted that the appellant had shared her ideas with her team and that the team had benefitted from this.

53. Contrary to what is claimed by the appellant, the Tribunal does not consider that in this case there was a "sudden radical change" or a focus on isolated instances resulting in a lack of objectivity. As already mentioned, however, it is not for the Tribunal to substitute its assessment for that of the appraiser if there are no major discrepancies and/or consequences causing real prejudice to the individual concerned.

54. Because the assessment made by the appraiser was positive on the whole, the Tribunal does not consider that substantive legality has been violated and, because it is not for the Tribunal to substitute its own assessment for that of the appraiser, it concludes that no violation can be found in the instant case.

55. In conclusion, these complaints are also unfounded.

#### **IV. CONCLUSION**

56. The appeal is unfounded and must be dismissed.

For these reasons, the Administrative Tribunal:

Declares the appeal unfounded and dismisses it;

Rules that each party will bear its own costs.

Adopted by the Tribunal in Strasbourg on 30 January 2014 and delivered in writing pursuant to Rule 35, paragraph 1 of the Tribunal's Rules of Procedure on 31 January 2014, the French text being authentic.

The Registrar of the  
Administrative Tribunal

S. SANSOTTA

The Chair of the  
Administrative Tribunal

C. ROZAKIS