

**CONSEIL DE L'EUROPE**—————

—————**COUNCIL OF EUROPE**

**TRIBUNAL ADMINISTRATIF**

**ADMINISTRATIVE TRIBUNAL**

**Appeal No. 566/2015 (Holger SEIFERT 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, Mr Holger Seifert, lodged his appeal on 9 July 2015. The appeal was registered on 10 July 2015 as no. 566/2015.
2. On 6 August 2015, the appellant filed a supplementary memorial.
3. On 7 August 2015, the Chair ruled that there were no grounds for granting the appellant's request for anonymity submitted on 13 July 2015.
4. On 25 September 2015, the Governor submitted his observations on the appeal.
5. On 26 October 2015, the appellant filed a memorial in reply.
6. The public hearing in this appeal was held in the Tribunal's hearing room in Strasbourg on 29 January 2016. The appellant was represented by Maître Cécile Gilbert, lawyer practising in Paris. The Governor was represented by Mr Jan De Bel, the Bank's Director of Legal Affairs, assisted by Ms Laura Guiard, of the same Directorate.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. The appellant is a permanent member of the staff of the Council of Europe Development Bank (“the CEB”), employed on an indefinite-term contract.

8. The appellant, who was recruited on 17 March 2008, is on grade A3/step 4 and holds an A2/A3 post. From the start he was assigned to the Projects Department in the Directorate of Loans and Social Development. He works as a “Country Manager”.

9. During the proceedings, the parties adduced facts which it is unnecessary to recapitulate for the purposes of this decision. The relevant points may be summarised as follows.

10. Up to the time when his department underwent an internal reorganisation, as mentioned below, the appellant’s immediate superior was the Director of the department, who reports to the Director General of Loans and Social Development.

11. Following a job classification exercise at the Bank, the appellant’s post remains classified as grade A2/A3.

12. Starting in 2012, a review of the division of responsibilities within the department was undertaken, focusing inter alia on the articulation of Country Managers’ levels of responsibility. On this point, the review resulted in the creation of two posts of “Principal Country Manager” with responsibility for co-ordinating and supervising a team of Country Managers. An internal competition was organised to fill these posts. The appellant did not apply.

13. After these posts of “Principal Country Manager” had been filled, believing that the reorganisation resulted in a downgrading of his job, the appellant sent an email to his Director General on 24 January 2014.

14. On 28 January 2014, the Director General informed the appellant that it was proposed to keep him on his Country Manager duties and to attach him to one of the “Principal Country Managers”. As the appellant had so far only expressed his position informally, the Director General invited him to submit his observations on the reorganisation.

15. On the same day, 28 January 2014, the appellant submitted a “*recours gracieux*” to his Director General, requesting him to reconsider his decision. First, he complained of the level assigned to him in the job classification, as he considered that he should have been classified as “Senior Country Manager” rather than “Country Manager”. Secondly, he stated that the restructuring would result in his being assigned to a lower-grade job and asked not to be placed, like four of his colleagues, under the responsibility of one of the new Principal Country Managers.

16. On 24 September 2014, the Director of Human Resources answered this letter. She stated firstly that the reorganisation did not affect the appellant's duties. She added that even if there was a change in his reporting line, his duties and responsibilities would not be changing. Secondly, regarding the level assigned to the appellant's post, she referred him to the relevant job description and reminded him that his professional situation was not fixed and could evolve.

17. Subsequently, the appellant had exchanges with the Directorate of Human Resources, an evaluation was made of the classification of his post and a meeting (paragraph 18 below) took place on 27 March 2015.

18. On 8 April 2015, the Director General sent the appellant the following email:

"Further to my message about the reorganisation of the projects department in L&D (see below), you sent a letter on 28 January 2014 (see attachment "*Contestation.pdf*") requesting a review of your current post within the department and challenging your new reporting line. The Directorate of Human Resources answered this letter on 24 September 2014 after your return from long-term sick leave (see attachment "*Lettre RH [au requérant] 24 09 2014.pdf*"). Following your exchanges with the DRH, it was agreed that the directorate would make a specific evaluation of the classification of your post. You were invited to a meeting on 27 March 2015 with MM [...], [your Director] and myself to discuss the results of this evaluation and provide a final answer on the classification of the post.

As was indicated at this meeting, I confirm that your current position of A2-A3, level A3/4, appears consistent with the job profile. The classification of the post, with career path A2-A3, is correct. Your grade is therefore in conformity. As regards, secondly, your reporting line, it was not considered possible to defer the reorganisation introduced in 2014, which has already been effective in respect of all your colleagues since January 2014. I therefore reconfirm that you report to [...] within the projects department in L&D, as mentioned in my email of 28 January 2014. As part of the ongoing performance appraisal exercise, I will ask [...] to organise an interview with you to set your objectives for 2014 as required under the current rules, given your long period of sick leave in 2014."

19. On 17 April 2015, the appellant submitted an administrative complaint to the Governor under Article 59, paragraph 2, of the Staff Regulations. He stated that he was challenging the decision to terminate his contract and that this decision must be declared null and void.

20. On 7 May 2015, the Governor dismissed the administrative complaint, which he considered unfounded. In his view, the Director General's email of 8 April 2015 was merely a "reconfirmation of [the] reorganisation [carried out in 2014] following the questions raised [by the appellant]".

21. On 9 July 2015, the appellant lodged this appeal.

## II. THE RELEVANT LAW

22. Administrative complaints are dealt with in Article 59 of the Staff Regulations of the Council of Europe Development Bank, paragraphs 2 and 3 of which read as follows:

"2. Staff members who have a direct and existing interest in so doing may submit to the Governor a complaint against an administrative act adversely affecting them, other than a matter relating to an external recruitment procedure. The expression "administrative act" shall mean any individual or general decision or measure taken by the Governor.

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

- a. within thirty days from the date of publication of the act concerned, in the case of a general measure; or
- b. within thirty days of the date of notification of the act to the person concerned, in the case of an individual measure; or
- c. if the act has been neither published nor notified, within thirty days from the date on which the complainant learned thereof; or
- d. within thirty days from the date of the implicit decision rejecting the request referred to in paragraph 1.

The Director of Human Resources shall acknowledge receipt of the complaint. In exceptional cases and for duly justified reasons, the Governor may declare admissible a complaint lodged after the expiry of the periods laid down in this paragraph.”

## **THE LAW**

23. In the form for lodging an appeal, the appellant asked the Tribunal to:

- a) annul the decision of 7 May 2015 rejecting his administrative complaint;
- b) declare unlawful the decision to reorganise the department in which he works;
- c) declare unlawful the creation of a hierarchical level (“Principal Country Manager”) which affected his situation;
- d) rule him to be the victim of psychological harassment and order the Bank to immediately put an end to this situation.

At the hearing on 29 January 2016, the appellant specified that his complaint of psychological harassment was not a ground of appeal but rather an argument in support of his other ground of appeal.

He claims 3 500 euros in respect of procedural costs.

24. For his part, the Governor objects that the appeal is inadmissible *ratione temporis* and that the allegations of psychological harassment are, at the very least, partially inadmissible. On the latter point, the Governor made no comment following the above clarification given by the appellant at the hearing.

As to the merits, the Governor asks for the appeal to be dismissed as unfounded because the reorganisation of the appellant’s department is a lawful measure and conditions of employment were not unlawfully modified.

The Governor leaves the matter of procedural costs to the Tribunal’s discretion.

### **I. THE PARTIES’ SUBMISSIONS**

#### **A. As to the admissibility of the appeal**

25. The Governor objects that the appeal is inadmissible in two respects. He submits that it is inadmissible *ratione temporis* in its entirety and partially inadmissible for failure to exhaust internal remedies with regard to psychological harassment, because no mention was made of this harassment in the administrative complaint.

26. The appellant contests the first objection and, where the second is concerned, he stated at the hearing on 29 January 2016 that his allegations of psychological harassment were not a separate ground of appeal but rather arguments in support of the ground of appeal concerning the reorganisation of his department and the creation of a new hierarchical level.

27. According to the Tribunal's case law, appellants are free to choose the arguments in support of their appeals and the manner of presenting them to the Tribunal.

28. Accordingly, the Tribunal need only rule on the Governor's first objection of inadmissibility, the second having ceased to apply following the appellant's above-mentioned statement.

29. The Governor emphasises that the administrative act contested by the appellant is the email of 8 April 2015 from M.P, which, however, merely confirms a decision of which he had been notified on 24 September 2014. It was therefore in October 2014 that the appellant should have submitted an administrative complaint. However, instead of contesting this initial decision, the appellant contested a confirmatory decision six months later, meaning that his appeal was out of time and, therefore, inadmissible.

30. For his part, the appellant states that the memorandum of 24 September 2014 from the Director of Human Resources does not mention any formal decision concerning the reorganisation of the appellant's department. He cites as evidence of this the fact that the Director used the future tense when stating that the appellant's duties and responsibilities would not change and the fact that the persons to whom the appellant was supposed to report were not clearly identified.

31. The appellant accordingly reaches the conclusion that the argument that the email in question merely confirmed an alleged decision of 24 September 2014 can only be rejected.

## **B. As to the merits of the appeal**

### *1. The departmental reorganisation*

32. The appellant submits that his professional situation was objectively affected by the departmental reorganisation, which, in his view, was unlawful for three reasons.

33. First, it does not appear to have been taken in accordance with the rules of jurisdiction laid down in Articles IX, Section 3, paragraph 3, and X of the Bank's Articles of Agreement, under which the power to take such measures is delegated by the Governing Board to the Administrative Council.

34. Secondly, he contends that the procedure was unlawful because of the lack of prior information and the failure to properly consult staff representatives, in particular the Staff Committee.

35. Lastly, the reorganisation measure at issue resulted in the creation of new posts which were filled by a procedure that failed to comply with the applicable regulations (Articles 5 ff. of Appendix II to the Staff Regulations). The appellant alleges a failure to comply with the rules on advertising of vacant or newly created posts, mobility, the internal competition

procedure and appointments. Since the new posts were not filled in the proper way, the reorganisation is unlawful.

36. The appellant infers from this that, as a consequence, the lawfulness of the resulting decisions as to his professional situation is itself affected and these should therefore be annulled.

37. For his part, the Governor submits that the impugned reorganisation measure was perfectly lawful.

38. First, he considers that, according to Article 1, paragraph 2, of Appendix III to the Staff Regulations, power in respect of internal reorganisation lies with him, and not the Administrative Council, provided the decisions on staffing are compatible with the Table of Posts. In the instant case, the reorganisation merely involved articulating the levels of responsibility of Country Managers in accordance with the job classification, formally establishing country groups and allocating two posts of Principal Country Manager.

39. Secondly, there was no requirement to consult the Staff Committee as the internal reorganisation did not relate to any provision for implementing the Staff Regulations and was not a measure of a general kind concerning the staff.

40. Lastly, he submits that the procedure for appointing the two Principal Country Managers was lawful because the two posts were created in accordance with the applicable rules, the Staff Committee was consulted and the vacancy notice was published within the Bank. On this last point, the Governor stresses that the appellant was aware of the publication of the vacancy notice.

2. *The changes to the appellant's conditions of employment and the detriment to his professional situation*

41. The appellant argues that his professional situation was changed by the creation of a new intermediate hierarchical level within the Projects Department, under which he was placed. In his view, this measure, which entailed a reduction of his responsibilities, resulted *de facto* in a substantial change – which was not allowed to be unilaterally imposed – in his contract of employment, according to which he should have come under the direct authority of the Director of the Projects Department.

42. The appellant adds that, to be lawful, the adoption of this measure would have had to be preceded by the provision of relevant information enabling him to apply, if appropriate, for the post in question, in accordance with the applicable regulations.

43. The appellant infers from this that, in the light of the new hierarchical setup, he cannot be regarded as having been placed in a contractual situation that complies with the requirements of the Staff Regulations.

44. The Governor contends that the changes in the appellant's direct reporting line and in his portfolio as a Country Manager are lawful and do not entail a unilateral change in his contract of employment. He points out that none of the elements contained in a staff member's contract is an acquired right. In any event, he argues, independently of the fact that there is no right to an "unchanged reporting line", the appellant remains under the direct

authority of the Director of the Projects Department. In the instant case, moreover, there was no change whatsoever in duties or responsibilities, his salary was not affected and, lastly, he had in fact been consulted. Consequently, there was no detriment to the appellant's professional situation.

### 3. *Psychological harassment*

45. The appellant maintains that, taken as a whole and in view of their adverse effects on his state of health, these circumstances constitute a situation of psychological harassment as defined in Instruction No. 44 of 7 March 2002 on the protection of human dignity at the Council of Europe (text adopted by the Secretary General of the Council of Europe and repealed by Rule No. 1292 of 3 September 2010 on the protection of human dignity at the Council of Europe, which replaces references to it in other instruments).

46. In his view, it is clear from a reading of all the documents on file that the constant deterioration in his working conditions, due in particular to the unlawfully adopted organisational measures, constitutes a situation of psychological harassment in total breach of the Instruction cited above, which prohibits all conduct prejudicial to human dignity in the workplace or in connection with work and guarantees everyone effective protection against such harassment, regardless of status or employment contract.

47. For his part, the Governor, after expressing doubts as to whether the facts alleged by the appellant (whether taken separately or as a whole) can be described as psychological harassment, submits that, in any event, the appellant furnishes no proof of any situation of psychological harassment allegedly suffered by him.

48. In particular, the Governor first of all denies that there was any agreement – which, incidentally, would have violated the rules in force at the Bank – concerning the appellant's advancement to grade A3, step 4, and denies that there was any disguised disciplinary sanction.

Next, he disputes the appellant's allegation of a downgrading of his position within the department and of a causal link between that situation and a long period of sick leave in 2014.

He also denies that any pressure was put on the appellant in connection with his telework request, saying that the Bank was unable to give an answer because of the behaviour of the appellant himself.

Lastly, the Governor denies that the appellant's hierarchical superior called on him to perform duties while he was on sick leave: he merely asked him to provide some straightforward data and the appellant preferred to act on this matter even though his hierarchical superior had undertaken to do the work himself.

49. In conclusion, there is no doubt in the Governor's mind that the appellant was not subjected to psychological harassment.

## II. THE TRIBUNAL'S ASSESSMENT

### A. **As to the inadmissibility of the appeal**

50. To decide whether the appeal was out of time, the Tribunal must establish whether the act complained of, namely the email of 8 April 2015, was, as the Governor maintains, an act confirming the decision communicated to the appellant on 24 September 2014 or an act which, independently of the email of 24 September 2014, contained a new decision which was itself able to adversely affect the appellant and, therefore, was itself open to challenge by way of an administrative complaint.

51. It may be seen from the information supplied by the parties that this email of 8 April was preceded, on 27 March 2015, by a meeting between the appellant and his superiors devoted not only to a specific evaluation of the appellant's post by the Directorate of Human Resources, but also to the question of his reporting line. In the above-mentioned email it was stated clearly that it had not been considered possible to defer the reorganisation introduced in 2014, which had been effective in respect of all the appellant's colleagues since January 2014. Accordingly, although this email contained a "reconfirmation" of the fact that the appellant would be reporting to a Principal Country Manager, the fact remains that, on that occasion, a new decision was taken in respect of the appellant and, consequently, the email of 8 April 2015 was not simply confirmation of an earlier decision. It follows that the appellant was indeed able to avail himself of the guarantees afforded by Article 59, paragraph 2, of the Staff Regulations.

52. The Governor's objection that the appeal was out of time must therefore be dismissed.

## **B. The merits of the appeal**

### *1. The departmental reorganisation*

53. As regards this first ground of appeal, the Tribunal finds that the arguments put forward by the appellant do not offer proof that he was the victim of a measure adversely affecting him.

54. The fact is that the Governor did have jurisdiction to carry out the reorganisation in question and that the procedure employed was not unlawful since there was no requirement under the regulations for the Governor to seek the Staff Committee's opinion.

55. Regarding the appointments to two posts of Principal Country Manager, the Tribunal notes that these were separate administrative decisions taken independently of the reorganisation, so that if the appellant had thought there to be irregularities, he should have challenged them at the time. Be that as it may, none of the evidence adduced by the appellant suggests that there were irregularities. On the contrary, the Governor has proved by producing the relevant information that the appellant's complaints are unfounded.

56. The Tribunal must in any case point out that, if the appellant's arguments had been founded, it would nevertheless have been unable to find the reorganisation to be unlawful, because the facts alleged postdate the reorganisation and it is well known that the unlawfulness of an act can affect the lawfulness of subsequent acts, but not the lawfulness of acts preceding it.

57. The Tribunal therefore comes to the conclusion that this ground of appeal is unfounded.



2. *The changes to the appellant's conditions of employment and the detriment to his professional situation*

58. The Tribunal notes first of all that, according to the terms of the contract between the Bank and the appellant, the latter came under the authority of the Director of the Projects Department, without it being specified that he was under the Director's direct authority. After the reorganisation, he remained so, even if an intermediate level was created between him and his Director. The Tribunal therefore considers that it has no need to ascertain whether a change occurred which altered the appellant's conditions of employment and whether or not that change could be imposed on the appellant.

59. Furthermore, the changes introduced cannot be regarded as detrimental to the appellant's professional situation since they were merely measures relating to the organisation of the Directorate's work and, moreover, were justified by the increase in its volume.

60. Consequently, this ground of appeal must also be rejected.

3. *Psychological harassment*

61. As regards this argument, which is intended to support the arguments put forward under the second ground of appeal, the Tribunal finds that the information provided by the appellant does not prove that he was subjected to any psychological harassment. Assuming that the facts reported by the appellant did affect his state of health, the fact remains that these facts cited by the applicant do not disclose any abusive and/or systematic conduct. Consequently, even if the Tribunal were to accept, as the appellant suggests, a shifting of the burden of proof in his favour, the Tribunal cannot find that any psychological harassment occurred.

62. Consequently, the consideration of these arguments cannot lead the Tribunal to change its finding on the second ground of appeal.

### III. CONCLUSION

63. The appeal is unfounded and must be rejected.

For these reasons,

The Administrative Tribunal:

Rejects the objection of inadmissibility raised by the Governor;

Declares the appeal unfounded;

Orders each party to bear its own costs.

Adopted by the Tribunal in Strasbourg, on 31 March 2016 and delivered in writing on the same date pursuant to Rule 35, paragraph 1, of the Tribunal's Rules of Procedure, the French text being authentic.

The Registrar of the  
Administrative Tribunal

S. SANSOTTA

The Chair of the  
Administrative Tribunal

C. ROZAKIS