CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeal No. 603/2019
(Maria-Cristina ANA v. Secretary General of the Council of Europe)

The Administrative Tribunal, composed of:

Ms Nina VAJIĆ, Chair,
Ms Françoise TULKENS,
Mr Christos VASSILOPOULOS, Judges,

assisted by:

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

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant, Ms Maria-Cristina Ana, lodged her appeal on 21 January 2019. On 28 January 2019, the appeal was registered under No. 603/2019.

2. On 15 March 2019, the then Secretary General submitted his observations on the appellant's appeal. The latter filed submissions in reply on 2 May 2019.

3. The parties having agreed to waive oral proceedings, the Tribunal decided on 12 June 2019 that there was no need to hold a hearing. The appellant conducted her own defense. The Secretary General was represented by Mr Jörg Polakiewicz, Director of Legal Advice and Public International Law (Jurisconsult).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. On an unspecified date but not later than on 21 August 2017, the appellant applied for the post of Senior Project Officer (Grade B5) to be attached to the Council of Europe

(hereinafter "the CoE") Office in Bucharest (Romania). The vacant post was advertised in Vacancy Notice no. 031/2017 which specified, *inter alia*, that the recruitment concerned the post of Senior Project Officer, grade B5, and that the gross monthly salary would be 1,816.24 euros. The vacancy notice also indicated the key activities relevant for the post but noted that "the incumbent may be required to perform other duties not listed in [it]". Moreover, it made it clear that "[t]he conditions of recruitment and employment which apply are contained in Rule No. 1234 of 15 December 2005 laying down the conditions of recruitment and employment of locally recruited temporary staff members working in Council of Europe Duty Stations located outside of France".

5. Between 11 and 19 April 2018 the appellant was in email contact with a staff member in the Bucharest Office. In her email of 17 April 2018, she wrote the following:

> "If you have a slot in our agenda this week or next week ... please let me know if we can have a five minutes phone chat on the possibility of adding a couple of lines in the job description (and job title 'Senior Legal Officer') as to reflect the discussion we had during my last interview. The job description received is the generalist profile (no distinction is being made to reflect the additional law-related duties we discussed and I opted for as opposed to the generalist profile).
>
> I'm aware (and willing) of the project administration tasks I will do, no problem at all here, just that I would prefer the job description/title to reflect our discussion (and make it worth the wait)."

6. The staff member in the Bucharest Office replied later the same day saying, *inter alia*:

> "I would propose to have a meeting on Thursday here at C-PROC if that is fine for you, so as to also involve the Head of Operations and clarify any further doubt before finalizing the contract."

7. In the event, the proposed appointment could not take place, so it was suggested, on 18 April 2018, that the appellant meet directly with the Head of Operations. Later on, it was agreed with the Head of Operations that there would be a meeting with the other project manager of GLACY+ on 25 April 2018.

8. In the meantime, on 13 April 2018, the Directorate of Human Resources (hereinafter "DHR") informed the appellant that, *inter alia*, she would be appointed to grade B5 step 1, that her gross monthly salary and net monthly salary would be 1,816.24 euros and 1,578 euros respectively, and that the monthly allowance in respect of a dependent child would amount to 35.32 euros. A number of relevant documents, including a link to Rule No. 1234 laying down the conditions of recruitment and employment of locally recruited temporary staff members working in Council of Europe Duty Stations located outside of France, were also sent to her.

9. By email of 16 April 2018, the appellant received her job description.

10. On 23 April 2018, the appellant was offered a temporary employment contract at the Council of Europe Office in Bucharest, as a Senior Project Officer at grade B5, step 1, from 1 May 2018 to 30 April 2019. The written offer indicated, *inter alia*, that the basic gross monthly salary would be 1,816.24 euros plus "[a] supplement/allowance in respect of 1 dependent(s) of 35.32 EUR per child if no similar allowance is received from any other source".

11. On 30 April 2018, the appellant signed the contractual offer without any reservation.

12. On 8 May 2018, the appellant requested DHR to provide her with "the official internal Regulation/Decision of the CoE which stipulates/details the derogation of the local staff child allowance from the general staff child allowance ... and the official documents showing the way it is calculated". On 17 May 2018, she was informed that "salaries in Field Offices are based on UN scales and the child allowance is calculated according to those scales". The appellant was further informed, in another email sent the same day, that:

> "There is no such thing as a 'general staff child allowance': each scale has its own basic salaries, allowances (child allowance *inter alia)*, pensions etc. determined annually by the Co-ordinated Organisations. For countries where those scales do not exist, UN scales apply – as you already know;
>
> The scales (incl. child allowances) adjusted and published each year by UN obey to a complex method of calculation, based on varied elements in force in each country, in the same way as the method used by the Co-ordinated Organisations.
>
> Just to mention that in case UN scales decrease, reductions are not applied so that staff in field offices are not impacted. Only increases are applied."

13. In her reply sent later the same day, the appellant stated:

> "I had to ask as it is impossible for a candidate (local agent) to a position with the CoE to know what you just said before the contract/offer (as the staff regulations only provide algorithm for calculating the other allowances, the child allowance is just noted with a certain sum (345 euro approximately)) no algorithm for its calculation is being provided, one is tempted to think this is 350 and consider it for anticipating the future income. The Regulation 1234 doesn't mention that child allowance is different for local staff either. It would probably be helpful, as to avoid this confusion in the future, to recommend to your local offices to provide these details in the job advertisement, so that people know what to expect.
>
> However, in case the UN scale applies for Romania, there must be some mistake, as the only thing that is the same is the child allowance – 35 euro per month per child. The salaries, however, are very different from the UN scale for Romania, that you can find here: http://www.un.org/depts/OHRM/salaries_allowances/salariess/romania.htm
>
> For my level – Senior Project Officer, for e.g. the gross salary first step (no work experience recognized) is a minimum of 4.344,20/month and not 1800 euro/month – that is what CoE pays. UN increased the salaries for Romania in 2016, it seems CoE doesn't apply the increase (contrary to what you just explained to me)".

14. The head of the payroll unit stated in his email:

> "As head of payroll unit, I can confirm that you were hired as B5/1 and your current salary (1816.24 €) is correct. If you think that you are not at the good level, please see that with your hierarchy."

15. On 18 May 2018, in reply to the head of the payroll unit, the appellant wrote:

> "In the link I sent, you refer to the wrong scale, I'm afraid, I wasn't hired as a senior assistant (no 7 on the UN scale, but as a senior project office – NO-D). I'm project staff, not administrative staff. This is reflected in both the job advertisement and the job description.
>
> For NO-D (this is the UN grading Senior Project Officer, NO-D is the equivalent of B5/1) the monthly salary is 234587 ... That is 4.344,20 euro."

16. Later the same day, the appellant was given the following explanation:

> "- UN scale 'General Service Category' actually corresponds to our B and C category (= **administrative and technical** staff)
>
> - whereas UN scale 'National Officer Category' corresponds to our A category (= managers).
>
> To sum up, denominations of categories / jobs etc. differ from one organisation to another and this can lead to confusion ..."

17. On 7 September 2018, the appellant contacted the Head of Operations at the Council of Europe Office in Bucharest to ask that her salary be corrected. She claimed that her position as Senior Project Officer, grade B5 had been wrongly assimilated to level 7 of the United Nations salary scale for the General Services Category and that it should have been deemed equivalent to level NO-D of the United Nation salary scale for the National Office Category. She requested that the correction be backdated to the start of her employment with the Council of Europe.

18. On 14 September 2018, the Head of Operations, having met the appellant, replied stating in particular:

> "I took note of the points raised in your message and I want to remind you that we were fully transparent during the recruitment process and all the expectations and tasks related to this job were presented to you before you accepted the position.
>
> I assume that DHR also provided you with all the relevant information regarding the salary and other matters before you signed the contract.
>
> This position as Senior Project Officer was created based on the need of the GLACY+ project to have someone to better coordinate activities on legislation. It is foreseen and budgeted in our agreement with the European Commission at the B5 level. At this stage, we are not in the position to upgrade the position which is foreseen as such in the Addendum signed with the European Commission earlier this year.
>
> In your mail and in our discussion, you referred to the discrepancies between the CoE grid and UN salary scales. You also mentioned that you may address yourself to the Administrative Tribunal. However, it may be useful to not only look at the titles of positions but also the job descriptions. You will note that UN GS-6 positions (similar to COE B4 or B5) also refer to research and work on substance and not only to purely administrative tasks. The clear distinction between core staff and project staff stressed by you, does not exist as such in the UN (with exceptions).
>
> Please be advised that with respect to your current work on the two reports you are not expected to produce these reports without close guidance and supervision. This is why we have already had detailed discussions regarding the structure and content of these reports. Please be also advised that administrative and organisational matters related to project activities may play a stronger role in your job in the future."

19. On 24 September 2018, the appellant submitted an administrative complaint to the Secretary General; in it, she complained of the decision contained in the email of 14 September 2018 and challenged the grade level on which her salary was based according to the United Nations salary scales for staff in Romania. She maintained in particular:

> "The current appeal ... aims to challenge the decision ... issued on 14 September 2018 ... which ... denies the correct placement of the Complainant's position on the UN Salary Scale for Romania at position 11 (No-D – Senior Project Officer) instead of position 7-Senior Administrative Assistant/Senior Finance Assistant – where the placement was wrongfully made, as per Article 18 and 19b of CoE's Rule 1234, art. 3 of the CoE Staff Regulation [providing for non-discrimination].

...

Before accepting the job offer, the Complainant inquired the representative of the human resources department sending the job offer about the calculation of remuneration ... .

The Rule 1234 stipulates in … Article 18 that 'The salaries of locally recruited temporary staff members shall be based on the scales of the Co-ordinated Organisations. Where such scales do not exist, salaries shall be based on UN scales for the General Service Category in the country concerned …'However, the job offer and its accompanying documents did not specify if such a scale of a Co-ordinated Organisations exists in Romania, or if the Romanian national/local staff remuneration is based on the UN Salary Scale for Romania. This information was not provided by the CoE at any stage of the recruitment process.

...

The Complainant's reply received from the Human Resources department states that the algorithm/scale cannot be presented at the recruitment stage, and therefore it remained unknown if the calculation of remuneration is done according to a scale of a Co-ordinated Organisations or the UN Salary Scale for Romania. The Complainant accepted to sign the contract, trusting that the employer, the CoE, would not allow for a possible irregularity related to calculations allowance or remuneration, and asked to see the internal algorithm/scale on which the calculation of remuneration and allowances are made after started working for the CoE – May 1st 2018. The complainant accepted to sign the employment contract and see the documents/algorithm for calculating remuneration and allowances after signing the employment contract only because the employer is the Council of Europe, … , it was finally stated in a correspondence with the representatives of the Human Resources Department on May 17th, that the applicable scale is the UN Salary Scale for Romania.

Moreover, the complainant had a preliminary correspondence and asked for a meeting with the C-PROC management staff after being selected for the job and before the beginning of the contract with the CoE, on the inconsistencies between the job title and the job description as discussed during the recruitment interview …

...

The Complainant is a Senior Project Officer on Legislation in the CoE Bucharest office, and, in terms of salary, is placed on the UN Scale for Core/General Staff at position 7 as a Senior Financial Assistant – with a gross salary of 98361 RON (around 21,000 euro) gross salary per year, and not as a Senior Project Officer – position 11 (NO-D) on the UN Scale, position with the same functions, tasks, and denomination as the Complainant, with a gross salary of 234587 RON (around 50,000 euro) gross salary per year.

...

[T]he Complainant respectfully asks the Secretary General to:

...

B. Invalidate the contested decision, and consequently rule that the salary rights of the Complainant, as Senior Project Officer (on Legislation) ... are at the level of the UN Salary Scale for Romania, for a Senior Project Officer (and not Senior Administrative/Financial Assistant), as per Rule 1234. ..."

20. On 7 November 2018, the Secretary General rejected the appellant's administrative complaint. He stated, in particular:

"[I]t must be noted that the only decision in your case against which you would have grounds to complain is the offer of employment addressed to you on 23 April 2018 and accepted by you on 30 April 2018, which constitutes the contract of employment.

> The offer of employment formally and definitively established the amount of your salary. This offer is, therefore, the only act which could be considered as an administrative act adversely affecting you within the meaning of Article 59, paragraph 2, of the Staff Regulations. It is thus against the employment contract, which you signed on 30 April 2018, that you should have lodged an administrative complaint.
>
> You were duly informed prior to your signature of the contract of the amount of the salary offered to you, and if you considered that the determination of your salary was prejudicial to you, it was from the date on which you became aware of it that you were required to contest it, and in any event, you cannot contest it any later than thirty days after signing the contract on 30 April 2018. Consequently, the employment contract offered at the indicated salary has become definitive, since you did not contest it in the prescribed form and within the required time-limits.
>
> The email of the Head of Operation dated 14 September 2018 was a simple confirmation of the terms and conditions of the employment contract.
>
> It must be noted that a decision which merely confirms an earlier final decision may in no circumstances be regarded as a new decision which triggers the running of a new time-limit for lodging an administrative complaint."

21. On 21 January 2019, the appellant lodged the present appeal.

22. According to an undated letter, the appellant resigned, her last day in the office being 22 March 2019 (paragraph 10 of Rule No. 1234/2015).

II. RELEVANT LAW

23. Rule No. 1234 of 15 December 2005 lays down the conditions of recruitment and employment of locally recruited temporary staff members working in Council of Europe Duty Stations located outside France.

24. Pursuant to Article 5, "[t]he employment contracts of locally recruited temporary staff members shall be concluded for specified periods of time. They may be renewed as long as the Duty Station exists, but renewal shall not confer entitlement to further renewal or to conversion into another type of contract".

Article 7 further provides that "[t]he employment contracts shall terminate without prior notice on the date stipulated therein".

Article 10 states that "[e]mployment contracts up to 12 months may be terminated by staff members with one month's prior notice. In the event of a contract being extended beyond a period of 12 months, the period of prior notice shall be three months."

25. Under Article 14, "[t]he offer of employment shall set out the various items of remuneration as well as any deductions for social insurance etc. It shall also specify the duration of the contract, the grade corresponding to the duties to be performed by the locally recruited temporary staff member (in accordance with the list of standard duties appearing in the Appendix [to the Rule]), the working hours and all other conditions of employment."

26. Article 18 states, *inter alia*, that "[t]he salaries of locally recruited temporary staff members shall be based on the scales of the Co-ordinated Organisations. Where such scales do not exist, salaries shall be based on UN scales for the General Service Category in the country concerned, or if not on any other equivalent scale."

Under Article 19 "[r]emuneration shall be paid a. in the currency of the applicable scale of the Co-ordinated Organisations; b. in Euro where it is based on a United Nations salary scale or equivalent. If the reference salary is in a currency other than the Euro, the relevant conversion rate shall be fixed by the Secretary General once a year in order to limit fluctuations in salaries. Should such conversion result in a reduction in remuneration, the Secretary General may decide to maintain the previous remuneration as long as is necessary."

THE LAW

27. The appellant is challenging the written decision issued by the Head of Operations on 14 September 2018 in response to her written request for a salary correction, as filed on 7 September 2018. She requests that the Tribunal rule, with retroactive effect, that her salary rights, as Senior Project Officer on Legislation within the CoE C-PROC Office in Bucharest, were equivalent to those of a Senior Project/Programme Officer (and not Senior Administrative/Financial Assistant), based on the UN Salary Scale for Romania, as per Rule No. 1234.

28. The Secretary General invites the Tribunal to declare the present appeal inadmissible.

I. THE PARTIES' SUBMISSIONS

A. The Secretary General

29. The Secretary General begins by noting that in order to submit an administrative complaint and subsequently an appeal before the Administrative Tribunal, the appellant must demonstrate that there is an administrative act that adversely affects her and, in view of the nature of the act complained of, that she has a "'direct and existing interest" in challenging the act in question. Also, the complaint must be lodged within thirty days of the date of notification of the act.

30. Moreover, an appellant does not have a direct interest, within the meaning of Article 59, paragraph 2, of the Staff Regulations, when the act in question is a management decision which does not concern the appellant directly.

31. In this respect, the Secretary General observes that the appellant claims that her position as Senior Project Officer, grade B5 was wrongly assimilated to level 7 of the United Nations (hereinafter "UN") salary scale for the general Services Category and that it should have been deemed equivalent to level NO-D of the UN salary scale for the National Officer category. Her appeal therefore amounts to contesting the Council of Europe's general decision to assign level 7 of the UN salary scale for the General Services category as the appropriate level for its positions classified at grade B5. Ultimately, the appellant is questioning the adequacy of the system of equivalence of grades established by the Council of Europe with the UN system.

32. According the Secretary General, moreover, the decision to assign a certain level of the UN salary scale to positions classified at grade B5 is a procedure that applies to the Organisation as a whole, and hence a general decision not aimed directly at individual staff members. This decision does not relate to the management of the appellant's individual career but rather concerns the Council of Europe's job classification and the correspondence

established for the jobs concerned on the UN salary scale in order to apply Article 18 of Rule No.1234. Accordingly, her interest in the grade level on which her salary is based on the UN salary scale for staff in Romania is not an interest protected under Article 59 of the Staff Regulations. The Secretary General finds that the appeal is inadmissible in this regard.

33. Furthermore, the Secretary General points out that the only decision in the appellant's case against which she could have grounds to complain is the offer of employment made to her on 23 April 2018 and accepted by the appellant on 30 April 2018, which constitutes the contract of employment. In other words, this offer is the only act which could be considered as an administrative act adversely affecting her within the meaning of Article 59, paragraph 2, of the Staff Regulations, against which she should have submitted an administrative complaint.

34. The Secretary General notes in this respect that the appellant was duly informed before she signed the contract of the amount of the salary offered to her, and if she considered that the determination of her salary was prejudicial to her, it was from the date on which she became aware of this that she was required to contest it and in any event not later than thirty days after signing the contract on 30 April 2018. The email from the Head of Operations on 14 September 2018 was merely confirmation of the terms and conditions of the employment contract.

35. As from 30 April 2018 when the contract was signed, the appellant has accepted all the employment conditions set out therein, including the salary. The need for stability in legal situations requires that any challenge to an administrative decision be made within a reasonable time. The duration of this period has been set at 30 days in the Staff Regulations; beyond this period, it is no longer possible, in accordance with the principle of legal certainty, to challenge a final act.

36. In these circumstances, the Secretary General invites the Tribunal to find that the present appeal is inadmissible.

B. The appellant

37. The appellant maintains that she was under a misconception when she accepted the position and signed the employment contract. None of the documents relating to her employment with the Organisation which were published or sent to her mentioned the fact that the Council of Europe local Senior Project Officer position which the Appellant applied for and was offered was equivalent to the local UN core staff secretarial administrative-financial assistant position. Had the vacancy notice contained this essential information, the appellant would not have thought to apply as she lacked the necessary skills for such a job.

38. The appellant further contends that the error committed at the time of accepting the position was perpetuated by the C-PROC office management at the recruitment interview on 8 January 2018, through the information provided, when the appellant was offered a choice of two positions, in the event that her interview should prove successful (one involving a generalist profile, and the other focusing on legislation). The appellant opted for the position focusing on legislation.

39. When she received the job offer, however, there was no reference to "legislation" in her job title or contract, and barely any mention of it in the job description. The appellant states that she requested a meeting to clarify the omission before signing the employment contract. During this meeting, she was again misled into believing that the job description was merely a

formality and never reflected the job content, and that the reality of the job content would be better reflected in the job appraisal system. In actual fact, the appraisal did not reflect what was discussed during the interview either, and the appellant was again told that this was standard procedure. She was allowed, however, to keep the title as presented to her during the interview and reflected in the GLACY+ contract with the European Commission, i.e. "Senior Project Officer on Legislation", in her email signature. She points to the fact that, according to HR rules, as reflected in the Appendix to Rule No. 1234, the specialist positions come under B6 or A1/2 and not B4/5, meaning that there is an error in the GLAXY+ contract with the European Commission as amended by Addendum no. 1/2018, which was perpetuated at the time of concluding the employment contract.

40. The appellant argues that she was misled when she accepted the position with C-PROC. She refers to her job recruitment interview and her correspondence with DHR in which she expressed reservations about accepting the position, requiring additional explanations so as to understand how her salary was calculated and how equivalence between her position and a UN one was established. According to her, the fact that the contract was signed "without reservations" did not mean that at the follow-up meeting which she requested, she did not receive additional guarantees that the missing details in the job description discussed at the interview would be included in the appraisal.

The appellant accordingly asks the Tribunal to waive the deadline for contesting the decision to pay her a salary equivalent to that of a UN senior administrative/financial assistant.

41. The appellant states that she was far from being "in full knowledge" of the employment conditions she was signing up to. Indeed, she still does not know how the equivalence between her position on legislation and a UN administrative assistant position was established, because this information has never been forthcoming.

42. The fact that the C-PROC had wrongly budgeted for the position on legislation and indeed for the other senior officers' positions is not a valid argument. In the appellant's view, documents can be amended and the error could easily have been corrected with an addendum.

43. The appellant submits that her appeal is admissible.

II. THE TRIBUNAL'S ASSESSMENT

44. The appellant directs her appeal against the email reply from the Head of Operations on 14 September 2018 regarding her written salary correction request filed on 7 September 2018, and the decision of 7 November 2018 by which the Secretary General rejected her administrative complaint. Her key issue is that as a Senior Project Officer on Legislation, she should have been placed on the UN Scale at position 11 instead of position 7, with corresponding salary rights (see also paragraph 17 above).

45. The Tribunal notes firstly that an act adversely affecting a person is an act that has an impact on the legal position of a person and may therefore be challenged in the form of an administrative complaint and eventually before the Tribunal under Articles 59 and 60 of the Staff Regulations, respectively.

46. Accordingly, in examining the two grounds of inadmissibility raised by the Secretary General, the Tribunal must first determine whether the email from the Head of Operations on

14 September 2018, denying the appellant's salary correction request, which was subsequently challenged in the administrative complaint dismissed by the Secretary General on 7 November 2018, constitutes such an act (see paragraphs 17-20 above).

47. The Tribunal notes that the running of the 30-day time-limit under Article 59, paragraph 3, of the Staff Regulations should be established with due regard being had to the subject matter of the case and the essential purpose which the applicant wished to achieve.

It notes at the same time that the time-limits for internal appeal procedures are an objective matter of fact and strict adherence to them is necessary, otherwise the efficacy of the whole system of administrative and judicial review of decisions potentially adversely affecting the staff of international organisations would be put at risk. Flexibility about time-limits should not intrude into the Tribunal's decision-making even if it might be thought to be equitable or fair in a particular case to allow some flexibility. To do otherwise would "impair the necessary stability of the parties' legal relations" (see A. v. the Food and Agriculture Organisation of the United Nations, ILOAT, judgment of 6 July 2016, point 5; as to compliance with time-limits see also ATCE, Appeal No. 392/2007 – A. D. v. the Secretary General, judgment of 29 February 2008, paragraphs 39-43; and Appeals Nos. 542/2013 and 544/2014, Carlo Tancredi v. the Secretary General (I. and II), judgment of 13 October 2014, paragraphs 54-58).

48. The Tribunal observes that the applicant was offered a temporary employment contract containing all the relevant details (see paragraph 10 above), following the previous clarification of the employment conditions by DHR (see paragraph 8 above). The Tribunal notes in this respect that the clarification given to the appellant by DHR actually confirmed the information already contained in Vacancy Notice no. 031/2017 with the closing date of 21 August 2017 which clearly indicated that the applicable conditions of recruitment and employment were contained in Rule No. 1234 to which a link had been provided (see paragraph 4 above).

49. The appellant signed the contractual offer after having received the job description (see paragraph 9 above) and without any objections on 30 April 2018 (see paragraph 11 above). The Tribunal therefore considers that it is from that moment, at the latest, that the appellant should have challenged the grade assigned to her as a Senior Project Officer, as well as the amount (and the calculation) of the salary offered, including the amount of the supplementary allowances. Alternatively, she could have decided not to sign the contract if, as she submitted in her administrative complaint and also in this appeal, she had doubts about her grade assignment and the calculation of her remuneration (see paragraph 19 and also paragraphs 5, 12 and 37-40 above).

50. The Tribunal accepts that the appellant, starting work for an organisation whose values she admired, might be reluctant to raise these issues at that time, hoping to clarify them further at a later stage. However, the Tribunal cannot draw from this fact any conclusion of a legal nature which would enable the appellant to change the running of the time-limit and file an administrative claim more than thirty days after signing her temporary employment contract. It notes in this respect that it became clear to the appellant on 17 May 2018 at the latest, so still within the thirty-day time-limit under Article 59, paragraph 3b, of the Staff Regulations, that the applicable salary scale was the UN Salary Scale for Romania (see paragraph 12 above). Moreover, as Article 18 of Rule No. 1234 was clear in referring to the General Service Category which was publicly accessible, the appellant could see that the grade B5 assigned to her corresponded to level 7 of the applicable UN salary scale. This also transpired from the appellant's email exchange with DHR on 18 May 2018 (see paragraphs 15-16 above).

51. Admittedly, the appellant, having been advised to raise this issue with her managers (see paragraph 14 above), requested, on 7 September 2018, that her salary be corrected, by placing her on what she considered to be the appropriate level of the UN Salary Scale (see paragraph 17 above). On 14 September 2018, however, the Head of Operations denied her request. The appellant, indeed, has indicated in the present appeal that it is also directed against the decision of the Head of Operations of 14 September 2018. The Tribunal observes, however, that in his email, the Head of Operations merely confirmed that the position of Senior Project Officer was foreseen and budgeted for in the Organisation's agreement with the European Commission at the B5 level. He also stated that the Organisation was not in a position to upgrade it, noting that *"[t]he clear distinction between core staff and project staff stressed by you, does not exist as such in the UN (with exceptions)"* (see paragraph 18 above). Accordingly, the Tribunal notes that no new element occurred between the signing of the contractual offer on 30 April 2018 and the appellant's salary correction request of 7 September 2018.

52. In the light of these considerations, the Tribunal finds that the act adversely affecting the appellant in the present case, within the meaning of Article 59, paragraph 2, of the Staff Regulations, is the employment contract signed by her on 30 April 2018, and not the reply from the Head of Operations on 14 September 2018, denying the appellant's salary correction request, which was subsequently the subject of the appellant's administrative complaint rejected by the Secretary General on 7 November 2018. To attach to the Head of Operations' email a value which would restore to the appellant the time-limits for challenging her employment conditions would be tantamount to infringing the principle of legal certainty and depriving of all meaning the procedure set out in Article 59 paragraph 1 *in fine* of the Staff Regulations (see ATCE, Appeal No. 462/2009, Tobia Fiorilli v. the Secretary General, judgment of 18 June 2010; and also *mutatis mutandis*, ATCE, Appeal No. 416/2008, Švarca v. the Secretary General, judgment of 24 June 2009, Appeal No. 26/2000, Panos Kakaviatos v. the Secretary General, judgment of 28 February 2001 and Appeal No. 340/2004, Robert Diebold v. the Secretary General (II), judgment of 17 June 2006).

53. It follows that the Secretary General's plea to the effect that the administrative complaint and, subsequently, the present appeal are inadmissible because they were lodged out of time is well-founded and must be accepted. Further, the Tribunal has no need to decide on the other ground of inadmissibility raised by the Secretary General.

54. Having found the appeal inadmissible, the Tribunal need not decide on its merits. However, the Tribunal considers it useful to reply to the applicant's assertion that at the time of signing the contractual offer, she was unaware of the fact that the Council of Europe local Senior Project Officer position, for which she had applied and been recruited, was equivalent to the local UN core staff secretarial administrative/financial assistant position (see paragraph 37 above). Firstly, the Tribunal is of the opinion that the absence of this information until the signing of the employment contract does not constitute an element which would alter its finding that the present appeal is out of time. Secondly, the Organisation acted in a transparent manner from the very beginning of the recruitment proceedings, drawing the appellant's attention to all the points and conditions relevant for the advertised post including the applicable legal basis and the precise amount of the salary (see paragraph 4 above) and providing the applicant with further relevant details before offering her the employment contract in a clear and understandable manner (see paragraphs 8-9 above).

55. In addition, the Tribunal shares the Secretary General's view that the decision to assign a certain level of the UN Salary Scale to positions classified at grade B5 was concerned with the Organisation's job classification and the correspondence established for the jobs concerned on the UN Salary Scale in order to apply the relevant provisions of Rule No. 1234, rather than with the management of the appellant's individual career (see, *mutatis mutandis*, ATCE Appeal No. 397/2007, Patrick Buchmann v. the Secretary General, judgment of 3 July 2008, paragraph 34; ATCE Appeal No. 398/2007 Nadine Bolender v. the Secretary General, judgment of 3 July 2008, paragraph 30).

III. CONCLUSION

56. In conclusion, the appeal is inadmissible and must be rejected.

For these reasons, the Administrative Tribunal:

Declares appeal No. 603/2018 inadmissible and rejects it;

Orders each party to bear its own costs.

Adopted by the Tribunal in Strasbourg on 22 October 2019 and delivered in writing on 31 October 2019 pursuant to Rule 35, paragraph 1, of its Rules of Procedure, the English text being authentic.

The Registrar of the Administrative Tribunal	The Chair of the Administrative Tribunal
S. SANSOTTA	N. VAJIĆ