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**TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL**

Appeal No. 650/2020

(Youlia LEVERTOVA v. Governor of the Council of Europe Development Bank)

The Administrative Tribunal, composed of:

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

assisted by:

Mme Christina OLSEN, Registrar,
Ms Eva HUBALKOVA, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant, Ms Youlia LEVERTOVA, lodged her appeal on 28 April 2020. It was registered the same day under No. 650/2020.
2. On 30 July 2020, the Governor of the Bank forwarded his observations on the appeal.
3. On 18 September 2020, the appellant submitted observations in reply.
4. The hearing on the appeal took place by videoconference on 27 October 2020. The appellant was represented by Mr Cohen Solal, lawyer practising in Strasbourg, while the Governor was represented by Mr Andrea Buccomino, Deputy Director of Legal Affairs of the Bank, assisted by Mr Jan De Bel, Director of Legal Affairs of the Bank, and by Ms Laura Guiard, staff member of the same directorate.

5. Following statements made by the parties during the hearing which indicated that the conflictual situation complained of by the appellant had eased in the meantime, on 3 November 2020 the Tribunal decided to grant the parties a period of three weeks to attempt to reach an agreement on the appeal.

6. On 13 November 2020, the Governor informed the Tribunal that after the lodging of the appeal, negotiations had taken place between the appellant and the Bank, but the parties had not been able to reach an agreement. The parties had nevertheless taken up the Tribunal's invitation to re-establish contact but had concluded that their respective positions were such as to prevent their reaching a friendly settlement. This information was confirmed by the appellant on 30 November 2020.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The appellant is a permanent staff member of the Council of Europe Development Bank. She holds a post of grade A3, step 7, in the Market Risk Unit of the Financial Risks Division (Risk and Control Directorate).

8. On 22 November 2018, the appellant was informed by the Bank's Directorate responsible for Human Resources (DHR) of the launch of the process of performance and development interviews under the appraisal exercise for the year 2018.

9. Not having received the appraisal form to be filled out by the completion date of 1 February 2019 set for the appraisal exercise, the appellant took the initiative of starting the exercise by sending her N+1 an email dated 15 February 2019, copied to her N+2, containing the form in French with the completed section 1 on "objectives".

10. On 22 February 2019, the appellant had her appraisal interview with her N+1. He sent her the completed appraisal form by email the same day.

11. By email dated 4 March 2019, the appellant expressed her differing opinion on the form by means of written observations sent to her N+1.

12. On 2 April 2019, the appellant had a fresh interview with her N+1 to discuss the issues raised.

13. By email dated 8 April 2019, as she still believed that the difference of opinion had not been adequately resolved, the appellant requested an interview with her appraiser's hierarchical superior (her N+2). This interview took place on 12 April 2019.

14. On 25 April 2019, the DHR notified the appellant of a memorandum on "bonuses – appraisal exercise for 2018" of 18 April 2019, informing her of her appraisal ranking of

“partially unsatisfactory”. The appellant disputed this ranking by email dated the same day to the Director of DHR.

15. On 10 May 2019, the appellant received her performance appraisal form.

16. On 13 May 2019, the appellant lodged an administrative complaint challenging the regularity of her appraisal for 2018 under Article 59, paragraph 2, of the Staff Regulations and requesting that it be annulled and reviewed. In accordance with Article 59, paragraph 5, of the Staff Regulations, the appellant submitted her complaint to the Advisory Committee on Disputes.

17. On 24 January 2020, the Advisory Committee on Disputes, by three votes to one, gave its opinion, the conclusion of which (paragraph 25 of the opinion) was worded as follows:

“[The Committee believes], in view of the documents and arguments submitted by the parties, that the appellant’s appraisal exercise for 2018 shows managerial shortcomings and that the appellant is justified in seeking the annulment of her appraisal for the year 2018;

Takes the view that active measures are required on the part of those involved in the appraisal exercise, namely the N+2 and the Directorate of HR, to put an end to the conflictual situation between the appellant and her appraiser and to ensure that the appraisal process involves a genuine dialogue between the two parties.”

18. On 27 February 2020, the Governor of the Bank rejected the administrative complaint on the ground that the claims submitted by the appellant concerning the procedural and substantive irregularity of the appraisal were unfounded.

19. The Governor also addressed the conflictual situation between the appellant and her appraiser referred to by the Advisory Committee on Disputes (paragraph 18 of the Committee’s opinion). In this connection, he noted that since the appellant’s complaint had been lodged, the atmosphere had improved because of the efforts made by the appellant and the involvement of her superiors and of Human Resources and that the appellant now came under another N+2, who in the appraisal exercise for 2019 had concluded that her performance had been good.

20. On 27 April 2020, the appellant lodged the present appeal.

II. RELEVANT LAW

21. Appraisals at the Council of Europe Development Bank, insofar as this is relevant to the case, are currently governed by Rule No. 02/2016 of the Governor of 23 November 2016 on staff appraisal.

22. Article 1 outlines the appraisal process and defines the role and responsibilities of the appraiser, the heads of the of the major administrative units and the Directorate responsible for Human Resources in the process. It reads as follows:

“(…) 2. The appraisal process shall be a process of dialogue between staff members and their appraisers and hierarchical superiors. The appraisal process consists of a performance review (see Part II of this Rule) and a development review (see Part III of this Rule) of the staff member.

(…)

4. Throughout the reference period, the appraiser is responsible for providing managerial support to achieve the objectives. The staff member being appraised (appraisee) is responsible for informing the appraiser about any difficulties he may encounter (or may reasonably foresee) in achieving the objectives.

5. Appraisers shall give staff members (appraisees) regular feedback about their performance, both in areas in which they are doing well, and in areas in which they can further develop during the reference period. They shall seek to help staff members (appraisees) to reach their objectives. Appraisees shall in turn be responsible for carrying out assigned duties and responsibilities to best meet performance requirements and shall seek to take feedback positively. Therefore, appraisees shall seek to acknowledge areas of improvement and try to take corrective actions to rectify weaknesses whenever necessary.

6. A Major Administrative Unit is a unit headed by a staff member reporting directly to the Governor. The Heads of Major Administrative Units shall ensure that the appraisal system functions properly and that it is applied in a consistent and harmonious manner within the respective unit. The Heads of Major Administrative Units shall also carry out the appraisal process in a timely manner in accordance with the schedule established by the Directorate responsible for Human Resources. Failure to complete the appraisal process adequately on time will be indicated to the Governor and may impact their own respective appraisals.

7. The Directorate responsible for Human Resources shall co-ordinate the implementation of the appraisal system throughout the CEB. To this effect, the Directorate will also set the process, the annual timeline and report on the result of the exercise to the Governor.

8. Staff members, both appraisees and appraisers, may request advice and assistance from the Directorate responsible for Human Resources during the appraisal process. In duly justified cases, a member of the staff of the Directorate responsible for Human Resources may, following an invitation of an appraisee or an appraiser, upon the decision of the Director responsible for Human Resources, participate in a review and other meeting under this Rule.”

23. Article 4, paragraphs 1 and 3, of Rule No. 02/2016 reads as follows:

“Article 4 - Common aspects of performance and development reviews

1. The date(s) of the performance and development reviews shall be agreed between the appraiser (n+1) and the appraisee, as far as practicable, in compliance with the process and annual timeline set by the Directorate responsible for Human Resources.

(…)

3. The appraisee shall sign or electronically validate the performance and development review form(s) after having, as the case may arise, included his observations in the form(s), and then return the form(s) to the appraisers (n+1) within five working days of receipt. The appraiser (n+1) shall sign or electronically validate the form(s) and the appraiser’s hierarchical superior (n+2) shall sign or electronically validate the form(s).”

24. Article 5, paragraph 1, of Rule No. 02/2016 defines the purpose and object of the performance interview and reads as follows:

“The performance review is intended to clarify the work of the staff member by establishing clear objectives, assess the results he has obtained towards the achievement of these objectives through various common criteria. It is intended as an objective review of the past reference period’s work (...).”

25. Article 11, paragraph 2, of Rule No. 02/2016 covers the issue of the language used in the electronic performance and development forms and reads as follows:

“One of the two official languages shall be used for the performance and development reviews. That language shall be the preferred language of the appraisee.”

26. Article 13 of Rule No. 02/2016 of the Governor of 23 November 2016 establishes a procedure to follow in cases where there is a difference of opinion on performance, stipulating that the appraisee may ultimately request an interview with the N+2, after which the N+2 informs the N+1 and the appraisee as to whether the differences of opinion have been resolved or not. The procedure is concluded with the signature or electronic validation by the N+2 of the form(s) signed or electronically validated by the N+1.

27. The bonus system, insofar as this is relevant to the case, is governed by Rule No. 03/2016 of the Governor of 23 November 2016. Under Article 3, paragraph 5:

“Each performance review ranking level shall be allocated a bonus percentage.”

Paragraph 7 of that article stipulates that:

“The performance review ranking levels ‘partially unsatisfactory performance’ and ‘unsatisfactory performance’, as defined in Article 8, paragraph 1, of Rule No. 02/2016 on staff appraisal shall correspond to a zero percent bonus.”

THE LAW

28. The appellant is asking the Tribunal to annul her appraisal for 2018 as based on the notification from the DHR of 18 April 2019 and the appraisal report signed by her N+2 on 15 April 2019 and received on 10 May 2019, and to instruct the Governor of the Bank to correct the appraisal. She also asks for the payment of 6 000 euros by way of compensation for the damage suffered. Lastly, she asks for reimbursement of the costs of the proceedings, which she puts at 4 200 euros, plus 500 euros to cover any travel costs she incurs for the hearing.

29. The Governor invites the Tribunal to declare the appellant’s allegation of intent to harm inadmissible and to dismiss the appeal as unfounded. He also asks the Tribunal to dismiss the appellant’s claims for compensation for non-pecuniary damage and for reimbursement of the costs incurred in connection with the appeal.

I. THE PARTIES' SUBMISSIONS

A. The appellant

30. In the submissions drawn up when the appeal was lodged, the appellant claims that the impugned appraisal decision must be considered in terms of both procedure and substance and she puts forward a whole set of arguments in support of her claim.

a) Arguments relating to procedure

31. Firstly, the appellant claims that the procedure was vitiated by partiality and bias on the part of the appraiser because of the existence of a conflictual situation between him and the appellant. In view of that conflict, the appellant maintains that the appraiser ought to have withdrawn and that CEB Administration, which was aware of the situation and had itself acknowledged the existence of the conflict in the response given to her administrative complaint, ought to have taken steps to ensure that the appellant received an unbiased appraisal from the appraiser.

32. The appellant further claims that the appraiser failed in his duty to provide the necessary managerial assistance to enable her to achieve her objectives, by failing to keep her regularly informed during the reference period regarding both the areas where she was performing well and those where she could still make progress.

33. The appellant also maintains that the appraisal was not conducted in line with the applicable schedule and deadlines. Although the deadline for completing the appraisal exercise had been set at 1 February 2019, the appellant's interview did not take place until 22 February 2019. The appellant further maintains that the appraisal disregarded the requirement that the language to be used was the appraisee's preferred language, given that her appraiser gave her a form in English which differed from the one she had initially submitted to him. She goes on to allege failure to comply with the procedure to be followed in the event of differences of opinion concerning appraisal forms. In this connection, she mentions, firstly, the fact that, contrary to her request, no representative from the DHR attended the interview with her N+2 which she asked for after having been unable to resolve her difference of opinion with her N+1 and, secondly, the fact that, after that interview, she was not informed as to whether the difference of opinion had been resolved.

34. In her observations in reply, the appellant considers the circumstances of the transfer which led to her being placed under the supervision of her N+1 to show that she had no choice but to accept the transfer in spite of the difficulties which she had had in the past with that manager, thereby disputing the Governor's claim that she had been transferred on her own initiative. She makes other points to illustrate the existence since 2017 of a conflictual situation with her N+1, which was not solely linked to the conduct of the appraisal exercise for 2018. She further substantiates the complaint of bias or partiality on the part of the appraiser by stating that because of her N+1, her working conditions and the duties assigned to her were not in line with her post. She reiterates the complaint relating to the lack of managerial support during the appraisal exercise and denies that the exchanges with her N+1, which the Governor cited in claiming the

opposite, had alerted her to the issue of poor performance. Lastly, the appellant stresses the need to analyse the overall procedural irregularities so as to assess the difficult and unfair context in which she was placed in relation to her colleagues.

b) Arguments concerning the well-foundedness of the appraisal

35. As to the complaints concerning the well-foundedness of the appraisal, the appellant maintains that the appraisal was factually incorrect. In support of this claim, she sets out several arguments seeking essentially to show (1) that her appraisal for 2018 did not mention all the work she had done during the reference period, (2) that the tasks performed were conflated so as artificially to hide the level attained in the tasks and (3) that the appraiser disregarded the relevant guidelines by making major changes to the appraisal form.

36. With regard to the various irregularities alleged, the appellant lastly maintains that her N+1 acted with intent to harm her from a professional point of view and that the appraisal should be deemed null and void on that ground as well. The appraisal had a negative impact on her career in the Bank and also deprived her of the relevant bonus.

37. In her observations in reply, the appellant also mentions, in support of her complaint regarding the factual error, her appraiser's withdrawal of a number of negative comments. In her view, this circumstance justified changing the level of her performance and proved the intent to harm. As to the plea of inadmissibility entered by the Governor concerning the intent to harm, the appellant points out that this is not a new argument in the strict sense of the term but one directly related to the bias already referred to by the appellant. With reference to CEB Administration's discretionary power regarding appraisal, the appellant states that the description of the facts that she provides is intended to apprise the Tribunal fully of the facts and does not amount to asking the Tribunal to substitute its own assessment for that of Administration. In conclusion, she maintains that the non-pecuniary damage she suffered was real and should be compensated for by the Bank, regardless of the fact that she made no such request in her administrative complaint.

38. The appellant therefore maintains the conclusions of her appeal.

B. The Governor of the Bank

a) Plea of inadmissibility

39. Firstly, the Governor argues that the appellant's complaint concerning the intent to harm is inadmissible because it is first made in her appeal and was not mentioned in her administrative complaint. It being a completely new complaint that stands apart from the claims made in the administrative complaint, the Governor draws on the Tribunal's case law (ATCE, decision of 20 June 2019 in appeal No. 593/2018, Luca Schio v. Governor of the Council of Europe Development Bank) in considering it inadmissible. The Governor also underlines the fact that in her administrative complaint, the appellant did not mention

the non-pecuniary damage, for which she seeks compensation in her appeal, but the existence of financial harm, on the basis of the non-payment of a bonus.

b) Arguments relating to procedure

40. After setting out the facts to show that the appellant was placed under the supervision of the manager responsible for the appraisal at dispute in this case after being consulted and of her own free will, the Governor of the Bank maintains that the appraisal procedure was conducted in line with the relevant regulations, their spirit and usual practice.

41. With regard to the alleged procedural error relating to failure to comply with the timeline set by the DHR, the Governor points out that the timeline provides a guideline for managing the various stages in the appraisal process but is not in itself a rule that gives rise to a breach if it is not complied with. Consequently, the fact that the appraisal interview with the appellant took place on 22 February 2019 whereas the DHR timeline indicated the period from 3 December 2018 to 1 February did not give rise to any breach of a legal obligation. Nor, in the Governor's view, was there any failing concerning the timely completion of the process insofar as the appellant's appraisal report was finalised on time, before the deadline of 30 April 2019 for informing staff members and payment of the bonus to eligible staff.

42. The Governor goes on to say that although it was proposed that the appraisal interview be held on the day of the invitation, the appellant's interview with her N+1 was in the end held on a date set in accordance with her wishes. He disputes the fact that the use of English was imposed on her on that occasion for her appraisal report, noting that the dedicated form had been completed in French, even though the standard English form was used as the basis. Moreover, the appellant's 2017 and 2015 appraisals had been conducted in English and she had not indicated any problems in that connection at the time. The Governor points out that, in any case, the relevant provision of Rule No. 02/2016 requires the use of the appraisee's chosen language for the reviews but does not mention the forms.

43. As to the alleged irregularities in the procedure laid down in the event of differences of opinion, the Governor notes that the procedure does not make specific provision for the presence of a staff member from Human Resources during the meeting with the N+2, so the absence of such a staff member from the meeting was not a procedural defect. The Governor further notes that the appellant's N+2 indicated to her at the meeting that he felt it was difficult to reconcile the appellant's opinion and that of her N+1 concerning her performance in 2018. Accordingly, the stage in the procedure requiring the appraisee to be informed of whether the differences of opinion had been resolved or not was complied with and the complaint concerning the omission of that stage was unfounded.

44. The Governor goes on to maintain that, contrary to the appellant's claims, there was dialogue between the appellant and her appraiser concerning her appraisal for 2018,

both before the appraisal procedure and during the exercise. In this connection, he refers to the exchanges between the appellant and her N+1 during 2018 and during the appraisal exercise, which testify to the advice and regular updates given on Ms Levertova's objectives. He adds that the appellant had already been made aware of the improvements expected in her performance in the course of the appraisal for 2017 and stresses the continuity between that exercise and the 2018 one.

45. As to the appellant's complaint concerning the alleged bias of her N+1, the Governor denies that the tensions and communication difficulties between them and their differences of opinions in their working relations amounted to a dispute or a conflictual situation such as to lead to bias on the part of Ms Levertova's supervisor. The Governor states that, in any case, alleging bias, as the appellant did, is not enough; it has to be proven by the person making the allegation. In the Governor's view, the appellant does not provide any evidence of bias towards her by her appraiser or of the lack of objectivity in the appraisal report she disputes.

c) Arguments concerning the well-foundedness of the appraisal

46. If the plea of inadmissibility concerning the complaint regarding the intent to harm is not allowed (see paragraph 39 above), the Governor asks that the complaint be dismissed as unsubstantiated and, consequently, that the appellant's request for the determination of non-pecuniary damage also be dismissed. The Governor takes the view that instead of presenting evidence or *prima facie* evidence of any intent to harm, the appellant puts forward claims of misconduct on the part of her appraiser, most of which are inaccurate while others are irrelevant.

47. The Governor then sets out a series of arguments to dispute the appellant's complaint concerning an alleged factual error. They include various points: firstly, he notes that the objectives which the appellant contested *a posteriori* were discussed with her during her appraisal interview for 2017 without giving rise to any questions from her; secondly, appraisal reports are not intended to list all the tasks and work performed by staff members during a given year; thirdly, the appellant's appraisal reflected her comments and did not disregard the guide for managers insofar as the latter – which, in any case, is not prescriptive – stipulates that where a manager does not provide any form before the interview, what matters is for the staff member to receive his or her completed form very promptly after the interview and that there remains enough scope for any discussions. Lastly, the Governor corrects the appellant's allegation that her supervisor changed her final ranking, pointing out that it was inserted by her N+2 after the form had been signed by her and her N+1.

48. In conclusion, the Governor points out that, firstly, as far as decisions on staff appraisal are concerned, the appraiser and the Governor have discretionary power subject to limited scrutiny by the Tribunal and, secondly, that the Governor is not under any obligation to comply with the opinion of the Advisory Committee on Disputes, provided that he considers the said opinion carefully and takes a decision based on law, which he believed he had done in the instant case. The Governor explains that although he did not

believe that he had to comply with the Committee's recommendation that the appellant's appraisal should be reviewed, he did respond positively to its recommendation that her N+2 and the DHR be actively involved to put an end to the conflictual situation between the appellant and her appraiser. In this connection, he refers to the appellant's appraisal for 2019, in which it is stated that "after a complicated year (...) efforts were observed to calm the atmosphere in the Market Risks Unit".

II. THE TRIBUNAL'S ASSESSMENT

49. As to the plea of inadmissibility entered by the Governor, the Tribunal notes that the Governor actually relies in his arguments on assessments regarding the merits of the case on which the Tribunal is going to rule below.

50. The Tribunal refers from the outset to its case law (ATCE, decision of 31 January 2014, *Merita Andrea v. Secretary General of the Council of Europe*, paragraph 51) that the principles which govern the exercise of the Organisation's discretionary power also apply to appraisals, with the proviso 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."

51. In view of the said principles, it is for the Tribunal to consider not only whether the impugned decision was made by a competent body and was in due form but also whether the correct procedure was followed and, with regard to substantive legality, whether the administrative authority's assessment took account of all relevant facts, whether the wrong conclusions were drawn from the documents in the file or, finally, whether there was misuse of power (ABCE, No. 147-148/1986, decision in *Bartsch and Peukert v. Secretary General* of 30 March 1987, paragraphs 51-53; No. 173/1994, decision in *Ferriozzi-Kleijssen v. Secretary General* of 25 March 1994, paragraph 29; and, lastly, ATCE, No. 216, 218 and 221/1996, *Palmieri (III, IV and V) v. Secretary General* of 27 January 1997, paragraph 41).

52. Under the appraisal procedure, the designation of the person responsible for appraising a staff member is an important aspect, as it determines objectivity and impartiality. As a rule, appraisal is usually the responsibility of the staff member's immediate supervisor, who collaborates with them closely and continuously (ILOAT, [Judgment No. 197](#) of 13 November 1972, *Sternfield v. WHO*, BO 1973, 178). Nevertheless, the exercise of this power is usually subject to safeguards for the benefit of the staff member, with provision being made for the involvement of a number of individuals in addition to the appraiser in the appraisal process.

53. It is to this end that, in addition to the role of the direct supervisor as appraiser (N+1), the regulations applicable at the Council of Europe Development Bank (paragraphs 21 to 26 above) provide that the appraisers' hierarchical superiors (N+2) must supervise the process conducted by the appraisers for whom they are responsible and

ensure that it is harmonised. The heads of the major administrative units also have a role to play in that they are required to ensure that the appraisal system functions properly and that it is applied in a consistent and harmonious manner within their respective unit. The DHR co-ordinates the implementation of the appraisal system throughout the CEB and sets the process and the annual timeline and reports on the result of the exercise to the Governor. The DHR must also deal with any requests for advice and assistance concerning the procedure and may also be required to become directly involved in an appraisal procedure at the request of the appraisee or his or her superiors.

54. The active involvement of the various players in the appraisal process is all the more important since there may be difficulties in the direct working relations between the appraiser and the appraisee in given cases. International case law on the matter considers, for example, that objective appraisal of performance and professional conduct is not possible in the case of “hostile” relations between employees and their superiors (Administrative Tribunal of the United Nations, Judgment No. 1184 of 23 July 2004, Vidal v. Secretary General of the United Nations, and Judgment No. 1167 of 23 July 2004, Olenja v. Secretary General of the United Nations; Judgment No. 363 of 16 May 1986, De Franchis v. Secretary General of the International Maritime Organisation). In such circumstances, it may be justified to delegate appraisal to other persons more capable of completing the process in compliance with the necessary safeguards of objectivity and/or to support the manager concerned and back them up during the interviews so that they are not left to deal with a tricky situation on their own.

55. In the instant case, the Tribunal takes the view that it is established that the relations between the appellant and her appraiser were tense at the time when the appraisal was to be formalised by the holding of the review interview. The evidence in the file shows that the communication difficulties between the appellant and her manager predated this phase, regardless of the question as to whether the appellant’s transfer to the supervision of her N+1 took place of her own free will or under pressure for lack of any other option. According to the Advisory Committee on Disputes, the situation was a conflict that had “developed gradually on a lasting basis throughout 2018” and was “largely [reflected] in the appraisal exercise”. Although the Governor categorically denies the existence of such a conflict in his observations to the Tribunal, in his reply to the appellant’s administrative complaint he nevertheless did not deem it necessary to distance himself from such an analysis of the facts and referred to a “relatively tense situation” and relied on the “conflictual situation” in justification of the organisational measures taken to calm the relations between the appellant and her appraiser.

56. In such a context, the Tribunal is of the view that it was all the more important for the stakeholders involved in the appraisal procedure, who were aware of the tense situation between the appellant and her N+1, to take care to ensure that it went smoothly and strictly to comply with the various stages.

57. However, the evidence in the file does not indicate that the appellant’s superiors intervened in the appraisal process to ensure that the applicable rules were complied with. In the Tribunal’s view, such intervention would have been necessary to make sure that the

appellant's N+1 was in a position to appraise her entirely impartially and with the necessary objectivity. In this connection, the Tribunal notes, in the light of the exchange of emails which took place, that the appellant had clearly called into question her appraiser's ability to appraise her work and informed her superiors of her concerns, but that no action was taken by her superiors to eliminate the cause for her concerns, which would have provided a guarantee of the objectivity of the process.

58. The Tribunal further believes that the participation of the DHR in the interview between the appellant and her N+2 would have avoided the procedural flaw which followed that interview. In this connection, the Tribunal notes that under the relevant rule (Article 13, paragraph 4, of Rule No. 02/2016), "the appraiser's hierarchical superior (N+2) will inform the appraiser (N+1) and the appraisee within five working days of the meeting whether the differences of opinion have been resolved or not", whereas in the instant case, the N+2 informed the appellant during the meeting of the failure of the attempt to resolve the differences. The Tribunal does not believe this circumstance to be insignificant from the point of view of the regularity of the procedure, as the purpose of the appraisal procedure being divided into a series of separate stages is to stagger the dialogue between the parties concerned and give them the necessary time for reflection. Insofar as no time was left between the holding of the meeting intended to resolve the differences of opinion, on the one hand, and the announcement of the failure of the attempt, on the other, there are legitimate grounds for believing that this stage in the procedure did not ensure the required dialogue between the appellant and her hierarchical superiors.

59. The Tribunal further believes that it is unfortunate that no steps were taken to avoid the delay in setting the date for the appellant's interview, to the extent that the appellant herself had to start the process, in view of her appraiser's passivity.

60. The Tribunal is not convinced by the Governor's argument that this delay did not result in a difference in treatment between the appellant and her colleagues. According to the information submitted by the Governor, her colleagues for whose appraisal her N+1 was responsible in the "Collateral" team all had their interviews by 1 February 2019, the only exceptions being the appellant and her N+1 himself.

61. The Tribunal acknowledges that the delay in holding the appellant's interview did not have an impact on the timely conclusion of the appraisal process insofar as the appellant received her finalised appraisal before the deadline of 30 April 2019. The Tribunal nevertheless believes that failure to comply with an intermediate deadline in the appraisal process does have an impact on the proper conduct of the process because it shortens the time allotted to the successive stages, which may harm the dialogue between appraisees and their superiors.

62. In the light of the above considerations, the Tribunal concludes that the appeal is well-founded and the impugned act must be annulled.

63. Having reached this conclusion, the Tribunal has no need to rule on the appellant's other grounds of appeal.

III. THE PREJUDICE

64. Having studied the arguments of the parties, the Tribunal considers that the appellant has suffered non-pecuniary damage and accordingly awards her the sum of 3 000 euros in compensation.

For these reasons,

The Administrative Tribunal:

Declares the appeal well-founded;

Annuls the impugned procedure, including the decision taken concerning the appellant's appraisal;

Decides that the Council of Europe Development Bank shall pay the appellant the sum of 3 000 euros in compensation for non-pecuniary damage and reimburse the sum of 3 000 euros in costs.

Adopted by the Tribunal by videoconference on 26 January 2021 and delivered in writing in accordance with Rule 35, paragraph 1, of the Tribunal's Rules of Procedure on 12 February 2021, the French text being authentic.

The Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

C. OLSEN

N. VAJIĆ