CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeal No. 668/2020
(Tanja KALOVSKA ROUSSOU 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:

Ms Christina OLSEN, Registrar,
Mr Dmytro TRETYAKOV, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant, Ms Tanja Kalovska Roussou, lodged her appeal on 14 July 2020. The appeal was registered the same day under No. 668/2020.

2. On 7 October 2020, the Secretary General forwarded her observations on the appeal.

3. On 19 November 2020, the appellant filed her submissions in reply.

4. Owing to the precautionary measures in force because of the pandemic, the hearing in the appeal took place by videoconference, on 29 March 2021. The appellant conducted her own defence. The Secretary General was represented by Mr Jörg Polakiewicz, Director of Legal Advice and Public International Law (Jurisconsult), assisted by Ms Sania Ivedi and Ms Ine De Coninck, Administrators in the Legal Advice and Litigation Department.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

5. During the proceedings, the parties adduced facts the relevant parts of which can be summarised as follows.

6. The appellant, Ms Tanja Kalovska Roussou, was a temporary staff member who was regularly employed at the Council of Europe on the basis of temporary and fixed-term contracts (CDD) between 2005 and 2011.

7. On 1 February 2013, the appellant was recruited in Podgorica as a Principal Project Assistant at grade B5 for implementation of the Council of Europe – European Union joint programme "Promoting Human Rights and Minority Protection in South East Europe (the Project) under a fixed-term contract. The contract was subject to a one-year probationary period with the expiry date of 31 January 2014. Under the authority of the Project Supervisor, the appellant's main activities consisted of implementing the project activities in the seven beneficiary countries (Albania, Bosnia and Herzegovina, Croatia, North Macedonia, Kosovo[1], Montenegro and Serbia) and working directly with the beneficiaries, in close co-operation with the Project Co-ordinator based in Strasbourg, the Council of Europe external offices, the Local Project Officers and experts.

8. The first phase of the Project started on 29 November 2011 and ended on 30 November 2013.

9. Before the end of the first phase, the Project, fully funded by the European Union, raised serious issues regarding its design, management and implementation. In particular, the project implementation had met substantial delays and various essential project documents had not been submitted despite reminders by the European Commission.

10. Accordingly, some important changes were announced to the staff working on the Project, including the appellant, by an e-mail of 27 May 2013. It was thus decided to change the management team of the Project based in Strasbourg, in particular the Project Supervisor and the Project Co-ordinator. It was also announced, in that email, that a new project team would be recruited.

11. The concerns about the implementation of the Project were confirmed by the EU Result Oriented Monitoring (ROM) assessment, received on 24 June 2013, that recommended the following: "Based on the inefficiency and lack of any project results to date, the ROM experts recommend that the project be closed before the summer period and the remaining budget of 2,500,000 million euro be reallocated to another intervention that is likely to bear results".

12. Regarding the appellant, however, the ROM assessment report stated the following: "*Although the new Project Manager is noted to be highly committed, her appointment came very late as poor co-ordination and mismanagement have damaged the chances of the Contractor to implement the project in full. As of her appointment in February 2013, a series of events were organised such as field missions, expert missions, and national events but poor*

[1] All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with the United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

co-ordination and supervision on the part of the Project Co-ordinator and the Project Supervisor led to unsatisfactory outcomes." The appellant learned about the content of this report in 2019.

13. Eventually, following negotiations between the European Union and the Council of Europe, it was agreed that the Project would not be closed but suspended for a certain period, as of July 2013. The Council of Europe had to make proposals to rectify the situation. The Project had to be completely revised and a new project proposal had to be submitted to the European Commission in order to allow the resumption of co-operation between the Council of Europe and the European Union on a new basis. There were, at this stage, no guarantees from the European Union on the continuation of the Project which was subject to the Council of Europe's capacity to develop a completely new project that could bear tangible results. During the suspension period, the European Commission decided to freeze the funds allocated to the Project, including staff costs. As a consequence, it was decided to terminate the contracts of the staff working on the Project.

14. By a letter dated 15 July 2013, the appellant was informed that her employment contract would terminate on 30 September 2013 due to lack of financial resources.

15. By an e-mail dated 26 July 2013, the appellant sought the advice of a representative of the Directorate of human resources (DRH) as to whether she should complain about her situation. In reply, the DRH representative informed her that it was "really a personal decision" and she could "hardly advise" her.

16. The Project was redefined in close consultation with the European Commission in order to ensure positive impact for minority communities in South East Europe. On 28 November 2013, the European Commission informed the Council of Europe that after the negotiation process and based on the new direction of the Project, the suspension was lifted, and the Project implementation would resume on 1 December 2013. This new phase of the Project (hereinafter "the follow-up project") was implemented in the period from 1 December 2013 to 29 December 2016. In terms of staffing, a new project team was appointed, based on the needs of the Project. According to the appellant, she learned about the follow-up project somewhere near the end of 2014.

17. On 12 February 2019, the appellant sent an email to a staff member, who forwarded it to the Directorate of Internal Oversight (hereinafter – "the DIO"), containing a request for the "reopening of the Montenegro case". In her email, the appellant alleged possible fraud, conflict of interest, and other breaches of internal rules relating to the implementation of the first phase of the Project. Having been contacted by the investigator to this effect, the appellant sent further information and documentation relating to the Project, its implementation and alleged irregularities. This led to the opening of an investigation in the course of which the appellant was interviewed as well as other persons involved in the implementation of the project.

18. On 27 April 2020, the appellant submitted an administrative complaint under Article 59 of the Staff Regulations "*regarding the treatment that [she] received during [her work engagement as a [Council of Europe] employee in 2013*". In her administrative complaint, she essentially referred to the problems and irregularities in the management and implementation of the Project that she had reported to the DIO. She indicated that she wished to "*complain about the way [she] and [her] team in Podgorica were treated as well as on the fact that [they]*

were not offered a position in the second phase of the project, despite the findings about [her] in the ROM report", without further specifying her claims (see para12 supra).

19. On 7 July 2020, the appellant was informed by the Director of the DIO of the following:

> "(…) based upon investigation results, I have decided that there is not sufficient evidence to substantiate a report on possible fraud and/or corruption. Therefore, in line with the provisions of Article 10, paragraph 2 and Article 14 of Instruction 65 on investigations, I have issued a closure report to the Secretary General which includes both the results of the investigation and recommendations addressing some internal control issues identified (bearing in mind that internal control procedures within the organisation have developed significantly since the period concerned)."

20. On 27 May 2020, the Secretary General rejected the appellant's complaint in its entirety on the grounds that it was inadmissible and, in the alternative, ill-founded.

II. RELEVANT LAW

21. The relevant provisions of the Staff Regulations read as follows:

> "**Article 59 – Complaints procedure**
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> 1. Staff members may submit to the Secretary General a request inviting him or her to take a decision or measure which s/he is required to take relating to them. If the Secretary General has not replied within sixty days to the staff member's request, such silence shall be deemed an implicit decision rejecting the request. The request must be made in writing and lodged via the Director of Human Resources. The sixty-day period shall run from the date of receipt of the request by the Secretariat, which shall acknowledge receipt thereof.
>
> 2. Staff members who have a direct and existing interest in so doing may submit to the Secretary General 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 Secretary General or any official acting by delegation from the Secretary General.
>
> 3. The complaint must be made in writing and lodged via 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
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> 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.
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> The Director of Human Resources shall acknowledge receipt of the complaint.
>
> In exceptional cases and for duly justified reasons, the Secretary General may declare admissible a complaint lodged after the expiry of the periods laid down in this paragraph.
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> 4. The Secretary General shall give a reasoned decision on the complaint as soon as possible and not later than thirty days from the date of its receipt and shall notify it to the complainant. If, despite this obligation, the Secretary General fails to reply to the complainant within that period, he or she shall be deemed to have given an implicit decision rejecting the complaint.
>
> (…)

Article 60 – Appeals procedure

1. In the event of either explicit rejection, in whole or part, or implicit rejection of a complaint lodged under Article 59, the complainant may appeal to the Administrative Tribunal set up by the Committee of Ministers.

2. The Administrative Tribunal, after establishing the facts, shall decide as to the law. In disputes of a pecuniary nature, it shall have unlimited jurisdiction. In other disputes, it may annul the act complained of. It may also order the Council to pay to the appellant compensation for damage resulting from the act complained of.

3. An appeal shall be lodged in writing within sixty days from the date of notification of the Secretary General's decision on the complaint or from the expiry of the time-limit referred to in Article 59, paragraph 4. Nevertheless, in exceptional cases and for duly justified reasons, the Administrative Tribunal may declare admissible an appeal lodged after the expiry of these periods. (…)"

THE LAW

22. In her appeal, the appellant requests the Tribunal to award her compensation for discrimination, as well as for non-inclusion in the follow-up Project.

23. For her part, the Secretary General asks the Tribunal to declare the appeal inadmissible and/or ill-founded and to dismiss it.

AS TO THE ADMISSIBILITY

A. The parties' submissions

1. *The Secretary General*

24. The Secretary General submits that the appellant's complaints are difficult to identify. On one hand, it could be understood that she complains about discriminatory treatment during her work for the Project in 2013 and on the other hand, she contests the decision not to recruit her for the second phase of the Project.

25. The Secretary General considers the appeal inadmissible because the appellant does not direct her appeal against a challengeable administrative act and does not demonstrate to have a "direct and existing interest" in lodging a complaint and an appeal. The appellant does not contest the lawfulness of the termination of her contract and no promise or indication was made to her regarding a possibility of being employed for the new phase of the Project after the suspension period. The decision concerning the recruitment of the new project was an act of management based on the needs of the Project and not "*an administrative act adversely affecting*", directly, personally and effectively, the appellant.

26. As the appellant does not direct her appeal against a challengeable administrative act withing the meaning of Article 59, paragraph 2, of the Staff Regulations, it is not possible to determine any precise time-limit which should have applied to her case. In any case, the Secretary General notes that the appellant's complaint and appeal concern the facts which occurred in 2013. They are thus manifestly inadmissible on the grounds that they have been brought out of time.

27. In order to sustain her objection, the Secretary General refers to the thirty-day time limit set out in Article 59, paragraph 3, of the Staff Regulations, the need for stability in legal situations and the case law of the Tribunal (Appeal No. 312/2003 David Schmidt v. Secretary General, decision of 5 December 2003, paragraph 33), the International Labour Oorganization (ILO) Administrative Tribunal (Judgments No. 1106 of 3 July 1991, No. 995 of 27 June 1989, No. 752 of 12 June 1986 and No. 612 of 5 June 1983), the European Court of Human Rights with regard to compliance with the time limit of six months from the final domestic decision, and the Community judicature (Order of the Court of First Instance of the European Communities of 7 June 1991, Georges Weyrich v. Commission of European Communities).

28. The Secretary General considers that despite the appellant's claims that she has recently been informed of the elements which determined her to bring the present action, this does not have any consequences on the inadmissibility of her appeal pursuant to the relevant case-law. Moreover, she does not substantiate her claim in that regard and does not provide any information capable of establishing the date on which she became aware of the facts against which she is bringing an appeal.

29. As to the possibility for the Secretary General to declare admissible a complaint lodged after the expiry of the thirty-days period laid down in paragraph 3 of Article 59 "in exceptional cases and for duly justified reasons", no circumstances appear to justify the application of such derogation to the appellant's situation. In the Secretary General's opinion, none of the reasons invoked by the appellant in her complaint justified an exception in the light of the above criteria.

30. The Secretary General refers, *inter alia*, to Judgment 3651 of 6 July 2016 of the Administrative Tribunal of the ILO, which stated the following:

> "5. In Judgment 3311, considerations 5 and 6, the Tribunal reiterated that the time limits for internal appeal procedures serve the important purposes of ensuring that disputes are dealt with in a timely way and the rights of parties are known to be settled at a particular point of time. The Tribunal relevantly rationalized this approach in the following terms: time limits 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 Judgment 2722, consideration 3). However, there are some exceptions to this general approach, which have been expressed in the Tribunal's case law.
>
> Additionally, however, Manual paragraph 331.3.31 provides that the Appeals Committee may consider an appeal that has been filed out of time to be receivable if it finds that the failure to abide by the time-limit was for a reason that was outside of the complainant's control and the length of the delay in filing was reasonable in the circumstances of the case."

31. The Secretary General considers that a delay of almost 7 years cannot be considered reasonable. The appellant also did not provide any evidence in support of her complaint that would justify the existence of circumstances beyond her control for such a long period of time. The same applies to her appeal.

32. The Secretary General also points out that from the file it appears that the appellant considered submitting an administrative complaint concerning the underlying facts of the present case in July 2013.

33. Therefore, to the Secretary General it is clear that the appellant cannot invoke the existence of circumstances that would have justified the application of the derogation provided

for in paragraph 3 of Article 59 of the Staff Regulations. She concludes that the appellant has not complied with the prescribed time-limit and the present appeal is therefore manifestly inadmissible on the ground that the complaint has been lodged out of time.

2. *The appellant*

34. The appellant considers that her case sends an important message about the rights of the Council of Europe field office staff. Furthermore, she was not well guided in due time by Administration when she considered lodging an administrative complaint in July 2013.

35. According to the appellant, from the very beginning she was misled as the job she took in the Project was advertised as A1 grade job, but she was offered B5 grade. Furthermore, she was given the impression that it was a new project while in reality the project had been ongoing for more than a year. Despite her efforts, the Project did not work due to lack of co-operation from staff members at the Council of Europe headquarters in Strasbourg. The appellant also informed her hierarchy about irregularities and mistakes in the project implementation and it led to the situation that she and her team were ignored by everyone in Strasbourg. The appellant submits that, according to her information, other Council of Europe field offices were prohibited from contacts with her team.

36. The appellant further complains that she was not appointed as a project manager in the follow-up project, despite the positive evaluation of her work in the ROM report and her relevant background of a political scientist with specialisation in minority rights. She submits that her successor in the project had a less matching background.

37. The appellant alleges that there was a lobbying to prevent her from being employed by the Council of Europe again. She compares herself to another employee who, despite a negative background, succeeded in her career in the Organisation.

38. The appellant admits that her complaint and appeal were submitted late, and she provides several justifications to that:

- The appellant's health seriously deteriorated due to the stress that she had suffered during her work on the Project. It resulted in surgery in September 2013 and later she developed diabetes and had some other health complications;
- The appellant's contract was terminated in September 2013, but her complaint is not about the termination of her contract, yet about her non-inclusion in the follow-up project. When her contract was terminated it made no sense to complain since, at that time, she did not have any information about the potential follow-up and whether she would be part of it;
- At that time, she did not have a complete picture and only after years of private research, she has obtained the full picture of what was going on in the Project when she worked in it;
- The Council of Europe was hiding crucial information from her, she was not informed about the content of the ROM report, which gave her a positive evaluation.

B. The Tribunal's assessment

39. The Tribunal notes that the appellant submitted two distinct but related grievances about her discriminatory treatment during her work during the first phase of the Project and about the decision not to involve her during the second phase of the Project.

40. The first grievance relates to the appellant's work for the Project which ended on 30 September 2013.

41. The appellant's second grievance centres on the fact that she was not involved in the follow-up to the Project which started later that year, a circumstance which the appellant claims to have learned about not later than the end of 2014.

42. In this respect, the Tribunal recalls the importance of respecting the time limits for lodging an administrative complaint in order to ensure compliance with the principle of legal certainty in the interests of both the Organisation and the staff members (see TACE, Appeal No. 416/2008, Švarca v. Secretary General, Judgment of 24 June 2009, paragraph 33 with further reference).

43. The Tribunal also recalls, referring to the principles laid down by the European Court of Human Rights, that the main purpose of the thirty-day time-limit provided for in Article 59(3) of the Staff Regulations (as well as the sixty-day time-limit within the meaning of Article 60(3) of the Staff Regulations) is to maintain legal security. This is to ensure that cases which raise general questions of law or concern the regulations of an international organisation, including the Council of Europe, are examined within a reasonable time and to avoid the authorities of the Organisation and/or other persons concerned being kept in a state of uncertainty for a long period (see, *mutatis mutandis*, European Court of Human Rights (ECHR), Case of Sabri Güneş v. Turkey [GC], no. 27396/06, § 39, 29 June 2012). These time-limits also allow a potential applicant to consider whether to lodge a complaint and, if so, to lodge an appeal with the Tribunal.

44. In this context, the Tribunal also recalls that it can only hear a case after the adoption of a final internal decision of the Organisation. It is of the opinion that the dates of final decisions for the purposes of Article 59(3) of the Staff Regulations (and, in parallel, Article 60(3) of the Staff Regulations) must be established having regard to the subject-matter of the case and the essential objective which the applicant intends to achieve (see TACE, Appeals No. 661/2020 and 662/2020, Ulrich BOHNER (VII) and Antonella CAGNOLATI, Judgment of 26 April 2021, paragraph 71).

45. The Tribunal notes that the appellant does not make any formal submissions against a specific act taken by the Administration. In general, she makes allegations that in the first phase of the project she was discriminated against and her contract was terminated, and then in the second phase of the project she was actually excluded from the process and not allowed to be part of the team chosen to continue the work. For her, at that time, she did not have the elements that would allow her to challenge first the decision concerning the end of her first contract and then the decision not to be part of the new team in the second phase of the project. It is in this context and for these reasons that the appellant now develops mainly compensation conclusions.

46. The absence of any precision as to the acts complained of and of proof of the date on which the appellant became cognisant of these acts, is irrelevant in the circumstances of the present appeal as, in any event, even assuming the date is established, it was more than five years prior to the administrative complaint submitted by the appellant under Article 59 of the Staff Regulations.

47. The Tribunal notes that both parties acknowledge that the present appeal was lodged outside the standard time limits laid down in articles 59 and 60 § 1 of the Staff Regulations. The Tribunal considers that this is precisely the case and therefore, on the basis of the arguments developed by the appellant, it is appropriate to examine whether the exceptional admissibility clause provided for in the last sentence of paragraph 3 of Article 60 of the Staff Regulations is applicable. In this respect, two conditions are provided for: the appeal may be declared admissible outside the prescribed deadlines in exceptional cases and for duly justified reasons.

48. In so far as the first requirement of the mentioned provision is concerned, namely the exceptional character of the present case, the Tribunal can accept that the appellant's allegations of possible fraud, conflict of interest, and other breaches of internal rules relating to the implementation of the first phase of the Project – that were serious enough to trigger the investigation by DIO –, and her allegations of her treatment for revealing the above irregularities, can cumulatively be considered as an exceptional situation for which article 60, paragraph 3 of the Staff Regulations applies.

49. As regards the duly justified reasons, the Tribunal considers that the appellant limits herself to imprecise assertions that do not give any convincing and plausible explanations as to why she did not act earlier or why she was unable to do so before. Moreover, the facts of the case date back to 2013. From that time and until 2019, when she started the proceedings, the appellant failed to take any relevant steps. In this respect, the Tribunal cannot but note a significant lapse of time between the events described by the appellant and the date of her administrative complaint. It appears that for several years the appellant took absolutely no actions and the reasons she gave provide no justification for such a long period of inactivity.

50. In addition, the Tribunal points out that according to the case-law of international administrative tribunals the length of the delay in filing should be reasonable in the circumstances of the case (International Labour Organization (ILO) Administrative Tribunal, Judgment 3651 of 6 July 2016).

51. The Tribunal further notes that the appellant, who is not legally represented, has submitted grievances and arguments that are not always fully consistent. For instance, she reproaches the Administration for not guiding her as to the possibility of lodging an administrative complaint in July 2013 and then submits that it made no sense for her to complain at that time as she did not have any information about the potential follow-up of the Project and whether she would be involved in it or not (see paragraphs 15 and 38 above).

52. In the light of these considerations, the Secretary General's objection regarding the belatedness of the present appeal is well-founded and must be accepted. In these circumstances, the Tribunal sees no reason to examine the other arguments of the parties as to the admissibility and merits of the present appeal.

For these reasons, the Administrative Tribunal:

Declares appeal No. 668/2020 inadmissible and rejects it.

Decides that each party will bear its own costs.

Adopted by the Tribunal by videoconference on 14 June 2021 and delivered in writing in accordance with Rule 35, paragraph 1, of the Tribunal's Rules of Procedure on 24 June 2021, the English text being authentic.

The Registrar of the Administrative Tribunal	The Chair of the Administrative Tribunal
Christina OLSEN	Nina VAJIĆ