CONSEIL DE L'EUROPE
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TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeal No. 672/2020
(Irena Alicja KOWALCZYK-KĘDZIORA v. Secretary General)

The Administrative Tribunal, composed of:
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Ms Nina VAJIĆ, Chair,
Ms Lenia SAMUEL,
Mr Thomas LAKER, 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 Irena Alicja KOWALCZYK-KĘDZIORA, lodged her appeal on 30 November 2020. The appeal was registered the same day under No. 672/2020.

2. The Secretary General submitted her observations on the appeal on 5 February 2021.

3. On 9 March 2021, the appellant filed submissions in reply.

4. Owing to the precautionary measures implemented in Europe because of the pandemic, the hearing in this appeal took place by videoconference, on Thursday 24 June 2021. The appellant represented herself. The Secretary General was represented by Ms Sania Ivedi, administrative officer in the Legal Advice and Litigation Department.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

5. The appellant has been a permanent staff member of the Council of Europe since 1994.

6. On 11 June 2020, the appellant used the special form in the Multiservice Assistant online tool (hereinafter "MSA") to request an education allowance to reimburse educational costs for her son, M., for studies at University of the Arts London (UAL) – London College of Fashion (LCF) (hereinafter "UAL-LCF") in the United Kingdom for the 2020-2021 academic year.

7. On 25 June 2020, the appellant sent an email to the Directorate of Human Resources (hereinafter "DHR") in which she asked when the education allowance request that she had made in the MSA would be dealt with. On the same day, DHR sent her the following email in reply:

> "You have made a request for your son, M., who is going to be studying Fashion Design & Development at UAL in London from September 2020.
> According to the Staff Regulations (Appendix IV to the Regulations governing staff salaries and allowances, Article 7), educational costs are reimbursed for children undertaking post-secondary studies in the country of which the staff member is a national (Poland) or in the country of service (France).
>
> The only exceptions are:
>
> - for the purpose of continuing with an educational cycle: your son has completed his secondary education and is beginning a new educational cycle, so there is no continuity;
> - or if the educational costs are lower in a third country: the tuition fees in London are £9 250.
>
> Courses with lower tuition fees are available in France (e.g. at LISAA).
> The fact that the only institution listed on Parcoursup has not accepted your child and that the system is not currently offering him any post-secondary education that would interest him cannot be taken into account in deciding whether this allowance will be paid.
> I therefore regret to inform you that we cannot act on your request."

8. On 17 July 2020, the appellant contacted the Director of Human Resources by email and stated, among other things, that:

> "(…)
> Further to the query I emailed with regard to DHR's failure to act, I received a negative reply by email on 25 June… This reply has never been entered in the MSA, which raises the question of whether it is official and final. Furthermore, it does not appear to me to have been written after careful consideration of the file I submitted.
>
> This negative reply is based on financial considerations, with no account being taken of the standard of the course of education and its reputation, or of the unique nature of the highly selective education provided at University of the Arts London.
>
> My son is being offered a cut-price course at a French private school in Paris, LISAA, of whose existence we were unaware as it is so difficult to find in any league tables. I do not at all believe that the two courses are of equal merit, or that they are similar.
>
> In the light of this, please could you ask the staff of your Directorate to reconsider their reply and give it to me officially in the system as soon as possible. (…)"

9. On 27 July 2020, after entering the email sent to the appellant on 25 June 2020 in the MSA online tool (see paragraph 7 above), DHR closed the form through which the appellant had submitted her education allowance request.

10. On 28 July 2020, the Director of Human Resources sent the following reply to the appellant's email of 17 July 2020:

> "(…)
> I have now had an opportunity to hear my colleagues' explanations and can only endorse the reply [that you have been given].
>
> The instruction regarding education allowances provides that educational costs can be reimbursed for children undertaking post-secondary education in the country of which the staff member is a national or in the country of service.
>
> A reimbursement of educational costs incurred in a third country could be granted on an exceptional basis only if the cost of similar studies was, in your case, lower than in France or Poland.
>
> It turns out that the French education system offers courses in the subject chosen by your son with lower tuition fees. The instruction regarding education allowances does indeed only mention financial considerations as a justification for reimbursing costs incurred in a third country. The instruction regarding education allowances does not make provision for any assessment of the quality of different educational institutions, their reputation or the extent to which these institutions cater to the specific needs of each child.
>
> We recently received complaints from staff members in very similar situations which were referred to the Administrative Tribunal, and the Tribunal upheld the approach taken by the Administration. We have to abide by the applicable rules and treat our staff members equally, and for the reasons I have just mentioned, we will unfortunately be unable to grant your request. (…)"

11. On 26 August 2020, the appellant lodged an administrative complaint (Article 59, paragraph 2, of the Staff Regulations) against the decision not to grant her an education allowance for her son. This complaint sought to explain how the education allowance request was justified in fact and in law by the suitability of the chosen course in the third country for the appellant's son's intended studies, including because of the unavailability of identical courses in the parents' country of nationality (Poland) and the country of service of the parent who is a Council of Europe staff member (France), and due to the lower cost of education in the United Kingdom.

12. On 31 August 2020, the appellant contacted the mediators, whom she met on 8 September 2020. On 11 September 2020, the mediators told the appellant that they had passed on her concerns to the Director of Human Resources. They also informed her that since the administrative complaint was pending, a reply would be communicated to her within that framework and that their involvement could not go any further than that.

13. On 30 September 2020, the appellant was notified of the decision to dismiss her administrative complaint of 26 August 2020.

14. In her decision to dismiss the appellant's administrative complaint, the Secretary General stated that the complaint was inadmissible on the grounds of late submission as the appellant had been informed by email on 25 June that her request had been rejected, so she only had until 27 July

to submit a complaint, which she did not do until 26 August. The decision stated that what DHR had done in the MSA online tool, i.e. recording information and closing the form, had made no difference in terms of identifying the act that might affect the appellant adversely and had therefore not affected the amount of time available to her. It was pointed out in the decision that a decision confirming an earlier, final decision could not be regarded as a new decision that would cause the time limits to start running afresh.

15. As to the merits, after mentioning that decisions to grant reimbursements of educational costs incurred in a third country are discretionary, the decision to dismiss the administrative complaint stated that the appellant had not met the eligibility criteria set out in Article 7, paragraph 1.b., of the Regulations governing staff salaries and allowances (Appendix IV to the Staff Regulations) for a reimbursement of educational costs for post-secondary studies in a third country because the appellant had not demonstrated that there was any continuity in her son's educational cycle or that the educational costs in the third country concerned were lower.

16. On 30 November, the appellant lodged the present appeal.

II. RELEVANT LAW

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

> **"Article 59 – Complaints procedure**
>
> (…) 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.
>
> (…)
>
> b. within thirty days of the date of notification of the act to the person concerned, in the case of an individual measure;
>
> (…)
>
> **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(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. (...)"

18. At the time when the impugned decision was taken, i.e. prior to the adoption of Resolution CM/Res(2021)5 of 7 July 2021 of the Committee of Ministers, Article 7 of the Regulations governing staff salaries and allowances (Annex IV to the Staff Regulations) concerning education allowances was worded as follows:

> "1. Staff members entitled to the expatriation allowance with dependent children as defined according to the Staff Regulations, regularly attending on a full-time basis an educational establishment, may request the reimbursement of educational costs under the following conditions:
> (…)
>
> b. in respect of children at post-secondary level of education for studies carried out in the country of which the staff member or the child's other parent is a national or in the duty country. If duly justified by the staff member, for reasons of continuity in following an educational cycle or if educational costs are lower in a third country, an exception to this rule can be granted by the Secretary General.
>
> 2. By way of exception, staff members not qualifying under the terms of paragraph 1 above may request payment for education in the case of transfer or recruitment from another international organisation where they were entitled to the education allowance, and a dependent child must, for imperative educational reasons, continue an educational cycle commenced prior to the date of transfer or recruitment other than for post-secondary level education and which is not part of the national educational system of the host country. Entitlement to the education allowance resulting from the application of this paragraph may not exceed the duration of the educational cycle.
> (…)
>
> 5. The following items of expenditure shall be taken into account for the reimbursement of educational costs:
>
> a. school or university registration fees;
>
> b. general fees for schooling and education charged by the educational establishment;
>
> Expenses of special courses and activities (including equipment) that are not normally part of the child's basic course of studies shall not be taken into account,
>
> c. examination fees;
>
> d. tuition fees for private lessons on condition that:
>
> - tuition is given in subjects which are not contained in the child's syllabus but are part of the compulsory national education programme of the country of which the staff member is a national; or
>
> - tuition is required to enable the child to adjust to the educational curriculum of the institution attended, or to enable the child to become familiar with the language spoken in the area in which the child lives if the education is given in another language;
>
> In all these cases, tuition fees may be taken into account for an adjustment period of not more than two years;
>
> e. daily expenses on travel between the educational institution and home, by public transport or school bus. Reduced fares shall be used where possible. Where a private car is used or when no public transport or school bus is available, an amount equal to 10% of the annual dependent child allowance shall be taken into account;
>
> f. where the child does not live at the staff member's home, expenditure on board and lodging;
>
> g. purchase of school books as required by the curriculum, and compulsory school uniforms. (...)"

THE LAW

19. In her appeal, the appellant stands by the claims made in her administrative complaint of 26 August 2020 and asks the Tribunal to set aside the administrative decision to refuse her request for an education allowance to reimburse post-secondary educational costs for her son and to order the Secretary General to grant her the education allowance at the normal rate with default interest for the 2020-2021 academic year. The appellant also asks the Tribunal to order the Secretary General to pay the sum of EUR 2 000 in costs.

20. The Secretary General invites the Tribunal to declare the appeal inadmissible or, in the alternative, unfounded and to dismiss it.

ADMISSIBILITY OF THE APPEAL

A. The Secretary General

21. The Secretary General points out that Article 59, paragraph 3, of the Staff Regulations requires complaints to be lodged within thirty days following the date of notification of the adverse administrative act.

22. The Secretary General points out that the appellant was informed on 25 June 2020, formally and by email, that her education allowance request had been refused by DHR. She thus had until 27 July 2020 to lodge an administrative complaint. Because she only submitted her complaint on 26 August 2020, it was manifestly out of time. According to the Secretary General, the administrative actions carried out by DHR in the MSA application, including the closure of the appellant's form on 27 July 2020, cannot have any bearing in terms of identifying the act adversely affecting her within the meaning of Article 59, paragraph 3, of the Staff Regulations or the period within which she could lodge her complaint.

23. The Secretary General notes that the MSA is merely a management tool that enables DHR to centralise and manage requests from staff members and to reply to them directly in the MSA form. In the appellant's case, her request was replied to not through the MSA form but by way of the email that was sent to her on 25 June 2020. Since no regulatory provision stipulates that DHR's decisions can only be communicated through the MSA, the chosen method of replying to the appellant's request has no bearing on its officialness or finality.

24. According to the Secretary General, the decision of 25 June 2020 had all of the characteristics of an administrative act with legal effects in respect of the appellant because it clearly and unequivocally expressed DHR's refusal to grant the appellant the requested education allowance and the reasons for this refusal. When the appellant's MSA form was closed on 27 July 2020, DHR merely reproduced the contents of the email of 25 June 2020 verbatim. The closure of the MSA form one month after the impugned decision had been communicated to the appellant by email was nothing more than an administrative step that enabled the request to be archived and merely served, at most, as confirmation of a final decision that had already been communicated. Under no circumstances may such a decision that merely confirms an earlier, final

decision be regarded as a new decision that would cause the time limits for lodging a complaint to start running afresh.

25. In the Secretary General's view, this means that the appeal is inadmissible for failure to submit the administrative complaint within the time limit.

B. The appellant

26. The appellant considers that by way of its reply of 25 June 2020, DHR merely gave an informal response to her request for an allowance by informing her that the request was going to be refused. She remarks that the DHR staff member who sent this reply to her was not of the grade "from which decisions are formal and quasi-final". According to the appellant, email correspondence between staff members does not formally amount to an administrative decision. Otherwise, she should have been informed of it and the available remedies and the applicable time limits should have been specified to her.

27. The appellant notes that by requiring her to submit her request through the MSA application and reserving for itself the right to reply to it through another channel, the Administration treated her in an "arbitrary, unequal and demoralising" manner that places DHR in an advantageous position. She adds that health problems and the general context of Covid-19 during the summer of 2020 deprived her of "essential ways and means of taking action".

28. In conclusion, the appellant maintains that the time limits for submitting her administrative complaint only ran from 27 July 2020, the date on which the MSA form was closed. She therefore disputes the Secretary General's assertion that her complaint of 26 August was out of time and maintains that her appeal is admissible.

C. The Tribunal's assessment

29. The Tribunal reiterates the importance of compliance with the prescribed time limits when lodging an administrative complaint in order to ensure observance of the principle of legal security in the interests of both the Organisation and its staff (see ATCE, Appeal No. 416/2008 – Švarca v. Secretary General, decision of 24 June 2009, paragraph 33 with further references).

30. The Tribunal also points out, with reference to the principles laid down by the European Court of Human Rights, that the primary purpose of the thirty-day time limit stipulated in Article 59, paragraph 3, of the Staff Regulations (and the sixty-day time limit under Article 60, paragraph 3, of the Staff Regulations) is to maintain legal certainty. It must be ensured that cases raising general points of law or concerning the regulations of an international organisation such as the Council of Europe are examined within a reasonable time and that the authorities of the Organisation and/or other persons concerned are not kept in a state of uncertainty for a long period of time (see, *mutatis mutandis*, European Court of Human Rights (ECHR), Case of Sabri Güneş v. Turkey [Grand Chamber], No. 27396/06, paragraph 39, 29 June 2012). These time limits also enable a potential appellant to consider submitting a complaint and, where applicable, lodging an appeal with the Tribunal.

31. The Tribunal further points out that it can hear a case only once a final internal decision has been adopted by the Organisation. It considers that the dates of final decisions for the purposes

of Article 59, paragraph 3, of the Staff Regulations (and, in parallel, of Article 60, 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 appellant wished to achieve (see ATCE, Appeals Nos. 661/2020 and 662/2020, Ulrich Bohner (VII) and Antonella Cagnolati v. Secretary General, decision of 26 April 2021, paragraph 71).

32. In this case, the appellant submitted an education allowance request by means of a special internal software program, MSA (Multiservice Assistant). Under the rules in force when the request was made, the type of allowance requested by the appellant was only granted subject to certain conditions. On 25 June 2020, the appellant was informed by DHR that these conditions were not met in her case and that as a result, her request could not be granted.

33. The Tribunal observes that the position expressed in the email of 25 June 2020 by DHR was clear and left no room for any confusion as to the officialness and finality of the position taken by the Administration on the appellant's request. This position remained unchanged throughout the subsequent contact between the appellant and the Administration, so the closure of the MSA form could not, in the absence of any new developments, reasonably be regarded as a new decision.

34. The Tribunal acknowledges that in her email of 17 July 2020 to the Director of Human Resources, the appellant expressed doubts as to whether the reply she had received on 25 June 2020 was formal and final. However, it observes that the appellant did not provide any justification for her doubts, and in this same email of 17 July, she explicitly asked the Administration to reconsider its position (see paragraph 8 above). The Tribunal notes in this regard that the appellant's expectations that her request would be reconsidered and that the outcome of this reconsideration would be communicated to her via the MSA application were bereft of any legal basis whatsoever.

35. It follows from the foregoing that the reply from DHR of 25 June 2020 is the act that adversely affects the appellant. The communication of this duly reasoned decision thus marked the beginning of the thirty-day time limit referred to in Article 59, paragraph 3.b, of the Staff Regulations within which she could submit a complaint to the Secretary General. The administrative complaint that was submitted on 26 August 2020 is therefore out of time.

36. As for the appellant's observations concerning the state of her health over the period in question (see paragraph 27 above), the Tribunal observes that the appellant does not rely on them in order to explain the late submission of her administrative complaint. Therefore, the Tribunal need not consider whether the exceptional admissibility clause at the end of Article 60, paragraph 3, of the Staff Regulations is applicable.

37. For all of the foregoing reasons, this appeal is inadmissible. The Tribunal therefore sees no need to consider the parties' other submissions as to the admissibility and merits of this appeal.

For these reasons,

The Administrative Tribunal:

Declares Appeal No. 672/2020 inadmissible and dismisses it;

Orders that each party shall bear its own costs.

Adopted by the Tribunal by videoconference on 18 October 2021 and delivered in writing pursuant to Rule 35, paragraph 1, of the Tribunal's Rules of Procedure on 21 October 2021, the French text being authentic.

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