

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

Appeal No. 673/2021
(C v. Governor of the Council of Europe Development Bank)

The Administrative Tribunal, composed of:

Ms Nina VAJIĆ, Chair,
Ms Lenia Samuel,
Mr Thomas LAKER, Judges,

assisted by:

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

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant (hereinafter “C”) lodged her appeal on 15 February 2021. It was registered the same day under No. 673/2021.
2. On 31 March 2021, the Governor submitted his observations on the appeal.
3. On 10 May 2021, the appellant filed submissions in reply in which she asked the Tribunal to exclude various written testimonies which the Governor had attached to his observations. In support of this request, the appellant alleged that there were reasons to doubt the authenticity of one of these testimonies, and that there had been a breach of confidentiality in the mediation procedure.
4. On 21 May 2021, the appellant requested, and was granted, anonymity.

5. On 4 June 2021, the respondent sought, and was granted, authorisation from the Chair of the Administrative Tribunal to file a rejoinder in view of the new information contained in the appellant's memorial in reply.

6. On 23 June 2021, the Governor filed his rejoinder.

7. On 8 July 2021, the appellant submitted observations in reply to the rejoinder in which she asked the Tribunal to declare inadmissible the medical opinion dated 4 September 2020 which the Governor had added as an appendix to his rejoinder without her consent. She justified this request on the ground that there had been a breach of medical confidentiality and a serious, unjustifiable and disproportionate interference with her right to respect for private life. The appellant further requested that the Tribunal order an external investigation by a specialised body designated by the Tribunal into the alleged harassment at her workplace. Lastly, the appellant asked the Tribunal to order the Governor to take steps to protect a Bank staff member whose testimony she had included with her appeal and who, she said, was at risk of retaliation and intimidation on the part of her employer.

8. On 3 August 2021, the appellant sought, and was granted, authorisation to add one last document to the case file.

9. On 7 September 2021, the Governor filed his observations on the last document submitted by the appellant.

10. By decision of the Tribunal, it was decided to reject the appellant's requests to exclude the written testimonies submitted by the Governor (see paragraph 3 above), with the exception of the request concerning the medical opinion dated 4 September 2020 (see paragraph 7 above), which was held to be inadmissible as it had been produced without the appellant's consent.

11. Owing to the precautionary measures implemented in Europe because of the pandemic, the hearing in this appeal took place by videoconference, on Tuesday 19 October 2021. The appellant was represented by counsel, Me Clémence MINET, barrister at the Strasbourg Bar. The Governor was represented by Me David JONIN, assisted by Me Astrid JALLADAUD, lawyers practising in Paris, and also by Mr Jan DE BEL, Director of Legal Affairs of the Bank, Mr Andrea BUCCOMINO, Deputy Director, and Ms Laura GUIARD, staff member in the same Directorate.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

12. The appellant became a permanent staff member in the Directorate of Human Resources (hereinafter "DHR") of the Council of Europe Development Bank (hereinafter "the Bank" or "CEB") on 1 July 2001. Prior to that, she had held a B3 post in the Bank under a temporary contract running from 1 May 2000 to 30 June 2001.

13. The appellant initially worked as an assistant at grade B4 until 2003 and then, from 1 February 2004, as an administrative manager at grade B5.

14. As of 1 November 2007, following a request for a transfer, the appellant was transferred from DHR to the Technical Advisory Directorate (hereinafter “DCT”), which in 2013 became the Technical Assessment and Monitoring Directorate (hereinafter “TAM”).

15. On 19 December 2011, as part of a restructuring, the Director of the DCT requested that the appellant’s post be upgraded from the grade III group (B5 to A2) to the grade II group (A1 to A5) and that she be promoted to Grade A2, step 5. Further to that request, the appellant was promoted to Grade A2, step 3, as from 1 April 2012, while remaining in the grade III group.

16. As of 1 January 2017, the appellant’s job description changed, with the result that she was assigned to the grade II group.

17. From 2015 until the beginning of January 2018, the appellant was off work on several occasions, alternating between periods of sick leave lasting several months and periods during which she worked part-time work for health reasons. On her return to work in TAM on 15 January 2018, a backlog of unused leave together with other types of absence meant that she was in the office for approximately one month before going off on sick leave again from 19 December 2018 to 4 January 2019.

18. On 17 November 2018, when she was on Grade A2, step 7, the appellant lodged an administrative complaint to have her post upgraded to Grade A2, step 5 with effect from 1 January 2012 and to obtain a promotion to Grade A3 with her post being reclassified from Group III to Group II, with effect from 1 January 2016. This complaint was dismissed on 17 December 2018.

19. On 26 March 2019, the appellant lodged a second administrative complaint against the rejection of her application for an A4/A5 post in DHR. On 15 April 2019, this administrative complaint was likewise dismissed.

20. On 14 April 2019, the appellant lodged a third administrative complaint to contest a partially unsatisfactory appraisal rating for the year 2018 and her ineligibility for a bonus. This complaint was partially dismissed by a decision dated 9 May 2019, which awarded the appellant a bonus as a goodwill gesture due to an administrative error but did not alter the rating she had been given.

21. As of 16 April 2019, the appellant was again placed on sick leave.

22. On 10 October 2019, on receipt of the certificate from the appellant’s doctor authorising her to return to work on an 80% basis for health reasons, the Bank’s doctor told DHR that he could see no medical reason why the appellant should not return to work under a part-time arrangement which would allow for the “lingering frailty that made it inadvisable for her to return full-time”.

23. On 16 October 2019, the appellant was informed by DHR that she was excused from her duties while the Bank explored the possibilities for reassigning her. During this period, the appellant continued to receive her salary and allowances and to accrue leave entitlement.
24. On 29 November 2019, the appellant was offered a job in the General Services and Security Division of the Bank, which she declined.
25. On 5 December 2019, the appellant was again placed on sick leave.
26. On 11 January 2020, the Bank's medical officer informed the Director of Human Resources that he had seen the appellant, that her state of health was not compatible with a return to work and that a meeting of the Invalidity Board could therefore be called.
27. Following the lockdown that began in France on 17 March and the first gradual lifting of the measures, starting in May 2020, the Bank's medical officer commissioned an expert medical assessment in September 2020, which concluded that the appellant was permanently unfit for any job at the Bank. He notified the Director of Human Resources accordingly by e-mail on 6 September 2020, stating that the invalidity procedure could be initiated.
28. On 7 September 2020, the Bank referred the matter to the Invalidity Board.
29. On 9 November 2020, the Invalidity Board met and concluded that the appellant was suffering from permanent invalidity that totally prevented her from performing her duties at the Bank. The Commission's findings stated that this invalidity did not result from an *"incident recognised by the Organisation as falling within the scope of Article 14.2 of the Pension Scheme rules (invalidity arising from "an accident in the course of the performance of his duties, from an occupational disease, from a public-spirited act or from risking his life to save another human being") and mentioned in the staff member's administrative file"*, and did not fall *"within category 3 as defined by French Social Security (i.e. the inability to engage in any gainful occupation and the need for assistance from a third party in order to carry out essential everyday tasks)."*
30. On 17 November 2020, in accordance with the findings of the Invalidity Board, the Governor took the decision to award the appellant an invalidity pension with effect from 1 December 2020.
31. The appellant contested this decision by lodging an administrative complaint on 23 November 2020.
32. In a letter from the Director of Corporate Services dated 18 December 2020, the Governor rejected the claimant's administrative complaint, except for one point relating to her annual leave balance, which, on inspection, was found to have been miscalculated by 2.5 days.
33. On 15 February 2021, the appellant appealed against the decision to dismiss her administrative complaint.

II. RELEVANT LAW

34. The Council of Europe Development Bank – formerly the Social Development Bank and, before that, the Council of Europe Resettlement Fund – was set up in 1956 under a Council of Europe Partial Agreement.

35. Under the terms of Article XI, Section 1, para. d., of the Articles of Agreement of the Bank, the Council of Europe Staff Regulations apply to the staff of the Bank in any matter not covered by a specific decision of the Bank’s Administrative Council.

36. Article 59, paragraph 2, of the Staff Regulations concerns the complaints procedure and applies to the Bank. It reads as follows:

“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.”

37. Likewise, Article 60, paragraphs 1 and 2, of the Staff Regulations on lodging an appeal applies to the Bank. It reads as follows:

“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.”

38. Recognition as unfit for service is dealt with in chapter III (invalidity pension) of Appendix V (Pension Scheme rules) to the Staff Regulations. This text is supplemented by implementing instructions. The instructions for the implementation of the Council of Europe’s Pension Scheme rules apply to the pension scheme for members of the Bank’s staff, unless otherwise specifically provided by the Bank’s Administrative Council.

39. Article 13 of the Pension Scheme rules deals with conditions of entitlement to invalidity pension and reads as follows:

“1. Subject to the provisions of Article 2, an invalidity pension shall be payable to a staff member who is under the age limit laid down in the Staff Regulations and who, at any time during the period in which pension rights are accruing to him, is recognised by the Invalidity Board defined below to be suffering from permanent invalidity which totally prevents him from performing his job or any duties corresponding to his experience and qualifications which may have been proposed to him by the CEB.

2. The Invalidity Board shall consist of three medical practitioners, the first two being appointed by the CEB and the staff member concerned, respectively, and the third one selected jointly by the first two. Cases shall be submitted to it by the CEB either on its own initiative or at the request of the staff member.”

40. Governor's Rule No. 2/2013 approves the instructions for the implementation of the Pension Scheme rules. The implementing instructions concerning Article 13, which are of relevance in the present case, as applicable to the Bank and communicated to the appellant, read as follows:

“Instruction 13/2 Invalidity Board

Tasks of the Invalidity Board

Subject to the provisions of Article 2, the tasks of the Invalidity Board are:

- a) to ascertain whether a staff member is suffering from invalidity within the meaning of Article 13, paragraph 1;
- b) when an incident is recognised by the CEB as falling within the scope of Article 14, paragraph 2 (work accident, occupational disease or public-spirited act), to decide to what extent the staff member's invalidity is the result thereof:

(...)

Convocation and composition of the Invalidity Board

- iv) When the Invalidity Board is to be convened at the request of the CEB, the Human Resources Department shall notify the staff member accordingly and ask him to make his observations, if any, and to nominate a medical practitioner to represent him on the Board, within 30 calendar days following receipt of the said notification.

This notification shall also state the name of the medical practitioner who will represent the CEB on the Invalidity Board.

The Human Resources Department shall ask the staff member to forward all medical documents concerning him to the medical practitioner representing the CEB.

(...)

- vi) The third medical practitioner shall be selected by the other two within 30 calendar days at the most following notification of their names to the parties (...).

Meeting of the Invalidity Board

- vii) The Invalidity Board shall meet at the latest within 60 calendar days following the appointment of the third medical practitioner.

viii) The Invalidity Board shall have at its disposal:

- a) an administrative file submitted by the Human Resources Department containing, in particular, an indication of the post occupied by the staff member in the CEB together with a description of his duties and of any duties proposed to him by the CEB corresponding to his experience and qualifications, so that the Board can give its opinion as to whether the staff member is incapable of carrying out those duties. This file shall also specify whether the application to be declared an invalid is likely to fall within the scope of Article 14, paragraph 2.

Before being forwarded to the Invalidity Board, the foregoing particulars shall be communicated to the staff member by the Human Resources Department for his written comments, if any, to be sent by him to the Human Resources Department within 15 calendar days following their receipt.

b) a medical file containing the report presented by the medical representative of the party – the CEB or the staff member – that has asked for the Board to be convened, and, if appropriate, the medical report presented by the other party, as well as any reports or certificates from the staff member’s medical practitioner or from practitioners whom the parties have consulted. This medical file shall also contain details of the length of absences of the staff member concerned which have provided grounds for the Board to be convened, as well as the nature of the disability on which the Board is asked to give a ruling.

All these reports, documents and certificates must be communicated to the three medical practitioners.

ix) The proceedings of the Invalidation Board shall be secret. The Board may ask to hear the staff member concerned. It may also ask him to undergo an additional medical examination by a medical practitioner appointed by the Board.

xi) The findings of the Invalidation Board shall be determined by a majority vote. They shall be final except in the case of obvious factual errors.

Findings under Article 13, paragraph 1 or Article 14, paragraph 2

xii) The findings of the Invalidation Board shall state:

- whether or not the staff member suffers from permanent invalidity which totally prevents him from performing his duties or any duties proposed to him by the CEB corresponding to his experience and qualifications;
- whether the invalidity results from an incident recognised by the CEB as falling within the scope of Article 14, paragraph 2 (work accident, occupational disease or public-spirited act);
- the date on which the disability became lasting; this date may be prior to the date of the meeting of the Invalidation Board.

(...)

Instruction 13/3 – Decision of the Governor

Decision under Article 13, paragraph 1, or Article 14, paragraph 2

i) In accordance with the findings of the Invalidation Board and without prejudice to the competence of the Administrative Tribunal of the Council of Europe, the Governor of the CEB shall decide either:

- a) to grant to the staff member concerned an invalidity pension under Article 13, paragraph 1, or Article 14, paragraph 2; this decision shall specify the date on which the pension takes effect; or,
- b) not to recognise the staff member as an invalid within the meaning of the Rules.

(...)

Notification of the decision of the Governor

iv) Within 30 calendar days of receipt of the findings of the Invalidation Board, the Governor shall notify his decision in writing, together with the findings of the Invalidation Board, to the staff member or former staff member.”

41. Rule No. 2/2015 of 18 May 2015 establishes the legal framework for the protection of dignity at work within the Bank. The relevant provisions of this rule for the purposes of the present dispute read as follows:

“2. Prohibited conduct

a. Any form of sexual and psychological harassment in the workplace and/or in connection with work at the CEB shall be prohibited as conduct infringing the dignity of women and men.

(...)

c. For the purposes of this Rule, psychological harassment is any sustained, repetitive and/or systematic abusive conduct in the workplace or in connection with work in the form of behaviour, actions, gestures, spoken or written words, threats or working organization methods which, intentionally or unintentionally, is prejudicial to a person's personality, dignity or physical or psychological integrity or causes a deterioration in the working environment or endangers that person's employment or creates a hostile, intimidating, degrading, humiliating or offensive environment. Psychological harassment may be the result of the behaviour of one or several persons.

(...)

f. It is clarified here that constructive professional feedback, commentaries with respect to underperformance, job related criticism, professional advice, refusal of career advancement, disagreements on staff work performance or annual staff appraisals will not be considered as actions against integrity and dignity and cannot, when performed in good faith, be raised as such.

3. CEB staff and management responsibilities

- a. The CEB fosters an environment of dignity and integrity at work, where harassment and bullying are known to be unacceptable and not tolerated.
- b. All staff members have a role to play in preventing, recognising and tackling bullying and harassment. In particular, all staff members have a responsibility to communicate clearly about behaviour that they find offensive or intimidating.
- c. Notwithstanding the above, the CEB's managers and supervisors have a particularly influential role to play in supporting the present Rule by being a role model for their subordinates and encouraging a positive working environment; therefore, they shall exercise their managerial competences to eliminate behaviour and/or actions that do not reveal a professional ethos or that undermine a staff member's personality.

4. Procedure

- a. The Chief Compliance Officer (CCO) is responsible for mitigating risks of non-compliance with the present Rule. The CCO will therefore primarily encourage the informal resolution of complaints and will, when necessary, conduct investigations in connection with prohibited conduct under this Rule4.
- b. Any complaint under this Rule shall therefore be addressed in writing to the CCO (by duly signed letter or email)."

THE LAW

42. In her appeal, the appellant challenges the Governor's decision of 17 November 2020, notifying her of the Invalidation Board's decision, on the ground that her invalidity came about through the fault of the Administration as she had been subjected to serious psychological harassment, that there had been irregularities in the manner in which the matter was referred to the Board and that the effects attached to the decision were erroneous.

43. The appellant asks the Tribunal to:

- a) set aside the Governor's decision of 17 November 2020;
- b) award compensation in the amount of EUR 582 487.73 for pecuniary damage, EUR 160 572.36 for non-pecuniary damage and EUR 20 000 for the non-pecuniary damage suffered by each of her two underage children;
- c) order the Governor to pay the amounts due in respect of the uprating of her monthly invalidity pension and also the invalidity capital sum based on grade A5, step 7;

- d) order the Governor to pay the sum of EUR 26 346.07 in respect of 54.5 days of unpaid leave;
- e) order the Governor to award the appellant a professional counselling allowance to help her find a job;
- f) award EUR 6 962.50 in costs.

44. The Governor invites the Tribunal to declare inadmissible the appellant's claims (1) based on the allegation that she was subjected to psychological harassment, (2) to have her post upgraded (3) and to have the Governor's decision of 17 November 2020 to award her an invalidity pension set aside and all claims made in this connection dismissed on the merits. In the unlikely event that the Tribunal should find the impugned decision null and void, the Governor submits that, because of the retroactive effect of any such decision, the Tribunal should order that any sums received by the appellant on the basis of her invalidity be returned.

I. PRELIMINARY CONSIDERATIONS

45. Before the Tribunal can rule on the admissibility of the appeal and examine the merits of the case, it must respond to two requests made by the appellant.

46. First, the appellant requests that an external investigation be conducted by a specialised body designated by the Tribunal in order to determine whether she has been subjected to harassment in the workplace. The appellant justifies this request on the ground that the task of the doctors who sit on the Invalidity Board was solely to give their opinion on whether or not the appellant was fit to hold a post at the Bank and not to investigate the alleged harassment.

47. The Tribunal points out that under Article 60 of the Staff Regulations, it is empowered only to set aside the act complained of. The case law of this Tribunal is clear as to the impossibility of obtaining a judgment directed at an object other than that one (ATCE, [Appeal No. 179/1994 – Fuchs v. Secretary General](#), decision of 12 December 1994) and/or of imposing behaviour on the Governor of the Development Bank ([Appeal No. 474/2011 and No. 475/2011 Françoise PRINZ \(I\) and Alfonso ZARDI \(I\) v. Secretary General](#), decision of 8 December 2011).

48. Accordingly, the appellant's request that the Tribunal order an external investigation into the alleged harassment is to be rejected as inadmissible, as the Tribunal is not competent to deal with requests of that kind.

49. Secondly, the appellant asks the Tribunal to order the Governor to put in place measures for the protection, at her workplace, of the Bank staff member whose written testimony was added to the case file in support of her appeal. According to the appellant, as a result of her testimony, the staff member concerned was at risk of retaliation and intimidation. In support of her request, the appellant refers to a letter dated 11 June 2021 which was allegedly sent to the staff member because she had come forward as a witness, and which criticised her for having testified without the prior approval of the Governor.

50. The Tribunal notes that the appellant has provided no proof of the existence of the letter evidencing the alleged risk of retaliation and intimidation. In those circumstances and in the absence of any other evidence, the appellant's request for protection against such acts must be dismissed as it is not supported by the facts.

II. ADMISSIBILITY OF THE APPEAL

A. The parties' submissions

51. The Governor argues that the appeal is inadmissible on grounds of failure to exhaust internal remedies insofar as it concerns the appellant's requests for the invalidity decision to be set aside, for a finding of harassment and for her post to be upgraded to grade A5, step 7, since these claims were made for the first time in the appeal.

52. The appellant refutes the plea of inadmissibility, pointing out that in her administrative complaint of 23 November 2020, she complains unequivocally about having suffered psychological harassment through the fault of the respondent Organisation and, at the same time, she challenges the invalidity decision, maintaining that it was taken in an irregular manner.

B. The Tribunal's assessment

53. The Tribunal begins with a reminder of its case law as regards the exhaustion of internal remedies.

54. In its decision of 26 September 2012 in [Appeal No. 521/2011 \(R. V. \(II\) v. Governor of the Council of Europe Development Bank\)](#), the Tribunal stated that "before bringing an appeal before the Tribunal an appellant must make an administrative complaint to the Governor so that he may redress it if the grievances prove founded. Under the terms of Article 59, paragraph 2 of the Staff Regulations, the complaint must be made against an administrative act – which term, as specified in the same provision, refers to any individual or general decision or measure. This presupposes that the act is clearly identified in the administrative complaint, otherwise it would be impossible for the Governor to redress. Nor may the administrative complaint be supplemented or amplified by raising grievances that concern other acts than the one originally complained of" (paragraph 58 of the decision).

55. In its decision of 20 June 2019 concerning [Appeal No. 593/2018 \(Luca SCHIO v. Governor of the Council of Europe Development Bank\)](#) referring to pre-2002 case law in [Appeal No. 258/2000 – Ballester v. Secretary General](#), the Tribunal ruled that the appellant was time-barred from raising a grievance that was "entirely different and stands apart from the claims made in the administrative complaint" (paragraphs 76 to 78 of the decision).

56. The fact that the appellant did not voice "any doubts or criticism" (paragraph 77 of the decision of 20 June 2019 concerning Appeal No. 593/2018) or had made comments that were "not clear enough – or even succinctly elaborated on" (paragraph 59 of the decision of 26 September 2012 on Appeal No. 521/2011), prevents the Tribunal from concluding that a grievance had been raised before, at the administrative complaint stage.

57. In the light of that case law, it is for the Tribunal, therefore, to determine whether, in the instant case, first, the act whose annulment the appellant seeks in her appeal – namely the Governor's decision of 17 November 2020 to grant her invalidity – was clearly identified in her administrative complaint and, second, whether, at that stage, the appellant was already relying – if only in the form of doubts, criticisms or comments which were sufficiently clear and succinctly elaborated on – on the grievances set out in the present appeal.

58. On the first point, the Tribunal notes that, in her administrative complaint of 23 November 2020, the appellant referred several times to having submitted it for the purpose of “contesting [the decision of 17 November 2020 to award her an invalidity pension with effect from 1 December 2020] insofar as, firstly, [her] invalidity came about as a result of wrongful conduct on the part of the Organisation and, secondly, the invalidity pension that is to be awarded has been calculated on an erroneous basis”.

59. In the Tribunal’s view, the wording used by the appellant in her administrative complaint is sufficient to show that she was already seeking at that stage to challenge the decision declaring her an invalid, even though what was being challenged was not so much recognition of the invalidity per se, as the grounds on which that recognition was based and the manner in which the invalidity pension had been calculated.

60. The Governor’s first plea, alleging that the request to set aside the invalidity decision is inadmissible, must be dismissed therefore.

61. On the second point, as to whether harassment had already been mentioned at the administrative complaint stage, the Tribunal notes that, although the term “harassment” does not appear therein, the administrative complaint of 23 November 2020 does refer to “wrongful conduct on the part of the Organisation” and to “very significant psychological and professional harm”. In addition, the misconduct of which the appellant complains is described through references to circumstances such as “being marginalised from the Bank and [her] colleagues”, being “without a post or assignment”, and “the lack of recognition of the work” done over the years. In the light of the case law cited in paragraph 56 above, the Tribunal is of the opinion that such references represent a sufficiently clear and elaborated basis for concluding that the appellant was already complaining at the administrative complaint stage of a situation which could be deemed to constitute harassment.

62. The Governor’s second plea of inadmissibility concerning the appellant’s request for a finding of harassment is not well-founded either, therefore, and must also be dismissed.

63. As to the Governor’s argument that the appellant could not, in her appeal, complain of harassment without first having had recourse to the procedures provided for in Rule No. 2/2015 on the protection of dignity at work, the Tribunal notes that, while that Rule states that “all staff members have a responsibility to communicate clearly about behaviour that they find offensive or intimidating” (Article 3b), it does not establish a formal obligation to lodge a complaint with the Chief Compliance Officer (CCO). The Tribunal therefore considers that the fact that the procedures set out in Rule No. 2/2015 were not used at an earlier stage does not prevent an appellant from raising these issues at a later stage, when he or she challenges an administrative decision.

64. Lastly, as regards the appellant’s request for recognition of a post at Grade A5, step 7, the Tribunal notes that in her administrative complaint of 23 November 2020, the appellant sought “recognition of [her] professional responsibilities corresponding to a post at Grade A5, step 1” and, consequently, asked, *inter alia*, ‘for [her] monthly invalidity pension to be uprated on the basis of a post at Grade A5, step 1”.

65. There can be no doubt, therefore, that the appellant’s claim for payment of the sums due in respect of the uprating of her monthly invalidity pension and the invalidity capital sum based on grade A5 and the higher step 7 is new and inadmissible for failure to exhaust internal remedies

(see paragraph 94 below). It follows that the Governor's third plea of inadmissibility must be accepted. Consequently, in considering the merits of the present appeal, the Tribunal will be bound only by the appellant's ancillary claim for recognition of a post at grade A5, step 1.

III. MERITS OF THE APPEAL

A. The parties' submissions

1. *The decision recognising invalidity*

66. The appellant contests the decision to recognise her as an invalid, arguing that her invalidity is directly related to work, contrary to what the Invalidity Board maintained. She asserts that the deterioration in her health is linked to the deterioration in her working conditions and to the psychological harassment she suffered at work. She concludes that her invalidity came about as a direct result of wrongful conduct on the part of the Administration, which failed to provide her with a working environment in which human dignity was respected.

67. In support of her claims of harassment, the appellant recounts a series of acts of which she was the victim while working in various departments of the Bank from the year 2000 until her case was referred to the Invalidity Board. The acts complained of were repeated and occurred over time, against a backdrop of a deteriorating working environment and general dysfunction at the Bank. These acts led to repeated absences and work-related breakdowns, culminating in the appellant being declared permanently unfit for service.

68. The Administration's failure to take immediate, appropriate and sufficient action in response to the harassment, furthermore, led to a breach of its obligation to assist and protect. The appellant alleges that in October 2019, on returning from sick leave, she found herself without a post or assignment. She was placed on administrative leave, in the absence of a clear legal framework and in breach of the principle of security of tenure. The manner in which she was placed on administrative leave was improper, therefore, and demonstrates the Administration's intention to terminate her contract when in fact she was fit for work. The appellant considers that, consequently, the decision to terminate her contract by declaring her an invalid runs counter to the principle of good administration and the duty of care.

69. The appellant further maintains that the manner in which the matter was referred to the Invalidity Board was irregular, since her job description was not communicated to the Board at the time of the referral and the description on the basis of which the Board made its decision does not correspond to the last post she held at the Bank. As a result, the invalidity pension that she was awarded was calculated on the wrong basis.

70. The Governor, for his part, maintains that the findings of the Invalidity Board are perfectly regular, as is the decision taken by the Governor in accordance with those findings.

71. Firstly, the Governor considers that, in view of the appellant's long absences for health reasons since 2015 and the impossibility of finding her an appropriate assignment when she was due to return to work in October 2019, the Bank's action in referring the matter to the Invalidity Board in September 2020 on the basis of the medical officer's opinion was well founded. The Governor notes that, at the time of the events, the appellant raised no objections to the referral.

72. Secondly, the invalidity procedure is not vitiated by any irregularity. The appellant's administrative file and medical file were communicated to the Board in good time, before the day of the meeting, without any failure to comply with the time limit for submitting information. In addition, the Bank forwarded the description of the post last held by the appellant and, in any event, the members of the Board received a copy of the appellant's comments in that regard.

73. Lastly, the Invalidity Board explicitly and unanimously ruled out any causal link between the appellant being recognised as an invalid and her duties at the Bank. The Governor took the decision to award the appellant an invalidity pension in accordance with the findings of the Board, by which he was bound to abide.

74. As to the harassment alleged by the appellant, the Governor observes that there had never been any reports to this effect before the appeal was lodged and that the appellant has provided no evidence of the alleged harassment. The Governor denies that the Bank failed in its duty of care. On the contrary, he considers that the Bank has been especially kind, citing in particular the endeavours made to enable the appellant to continue working despite her frail health.

75. With regard to the appellant's administrative leave, the Governor points out that it was not a case of abolishing a post. The appellant had, moreover, agreed that she should be excused from her duties for the time needed to explore new ways in which she could be deployed. The Governor observes that on 29 November 2019, the appellant was offered a new assignment but that she declined it. Although not provided for in the texts in force at the time of the events, the possibility of placing a member of staff on administrative leave had been used by the Bank before, in at least one other case, and was, besides, based on the texts and practices of other international organisations.

76. In conclusion, the Governor submits that it is clear that the appellant has not been the victim of psychological harassment and that there was nothing improper about the manner in which she was placed on administrative leave.

2. *The damage suffered*

77. The appellant claims that she suffered pecuniary and non-pecuniary damage as a result of having been prevented from continuing to work because she was being harassed and as a consequence of the Bank's failure to fulfil its obligation to ensure safety in the workplace. She also claims to have suffered damage as a result of errors made by the Bank regarding the effects of her being recognised as unfit for service.

78. As regards the pecuniary damage, the appellant quantifies her claim for compensation primarily on the basis of the following: first, the payment of salary arrears from January 2018 because of the failure to upgrade her post to Grade A5, Step 7, even though from that date she was allegedly performing tasks which did not correspond to the Grade A2, Step 7 which she held at the time; second, the payment of damages by way of an indemnity for loss of job. The appellant also asks for her monthly invalidity pension and the invalidity capital sum to be uprated, taking grade A5, step 7 as a reference point. In the alternative, the appellant makes the same quantified claims, taking as a basis for calculation the basic salary not lower than that of a staff member on Grade A5, step 1.

79. With regard to non-pecuniary damage, the appellant claims payment of an amount equivalent to 12 months' salary for the harassment and its serious emotional and psychological repercussions, in addition to a sum of EUR 20 000 for each of her two children in consideration of the stress and anxiety suffered as a result of their mother's deteriorating health.

80. The Governor, for his part, rejects the appellant's claims for compensation for damage and denies that the appellant was subjected to psychological harassment, that the Bank failed in its duty of care and that the invalidity procedure was irregular.

81. As regards the claims for pecuniary damage, the Governor notes that the appellant has never held any positions or performed any duties above grade A2, that the claims for payment of an indemnity for loss of job and for an increase in the invalidity pension cannot be combined and that, in any event, the appellant is not eligible for an indemnity for loss of job as her post was never abolished.

82. With regard to the claims for non-pecuniary damage, the Governor contends that the amounts claimed for the alleged damage are not substantiated by any documentary proof.

83. Lastly, the Governor observes that the appellant's claim for payment of paid leave is unfounded and unsubstantiated, the balance due in this respect having been verified and settled following her administrative complaint of 23 November 2020. The Governor defers to the Tribunal concerning the costs and expenses.

B. The Tribunal's assessment

84. In her appeal, the appellant claims that the Governor's decision to recognise her as an invalid was erroneous in that, relying as it did on the findings of the Invalidity Board, it did not accept that her invalidity linked to the harassment she suffered was occupational in origin and did not take Grade A5, step 1, as the basis for calculating the pension. The appellant also challenges the decision on the ground of irregularities which occurred during the procedure before the Invalidity Board. Lastly, she alleges there was a breach of the duty of care, because of the failure to protect her from the alleged harassment.

85. The Tribunal notes that, faced with the findings of the specialised body mandated to rule on invalidity, the head of the Administration has no margin of discretion, and it is for the Invalidity Board to settle the issue of whether or not an illness is occupational.

86. In its decision of 6 December 2012 concerning [Appeals Nos. 523 and 524/2012 Laurent Lintermans \(I\) and \(II\) v. Secretary General](#), the Tribunal held that "(...) the assessment of whether a medical fact is linked to an employee's work can only be made by the Invalidity Board. To interpret the texts as allowing the Secretary General to adopt a different position from that of the Invalidity Board [...] would be to distort the spirit of these texts, which require medical matters to be decided by a medical body."

87. In this case, at the end of the meeting of the Invalidity Board on 9 November 2020, the three doctors sitting on the Board came to the unanimous conclusion that the appellant's permanent invalidity was "not the result of an incident recognised by the Organisation as falling within the scope of Article 14.2 of the Pension Scheme rules and mentioned in the staff member's

administrative file”. The Board thus unanimously ruled out the possibility that the invalidity had arisen from an accident in the course of the performance of duties or from an occupational disease.

88. In complying with this opinion, the Governor took a decision which was his to make and he cannot be accused of having committed any error of assessment.

89. With regard to the appellant’s argument that the Invalidity Board, and hence too the Governor, did not express an opinion on the harassment to which she had been subjected at work, the Tribunal considers that this argument can only be rejected for lack of evidence.

90. The Tribunal points out that a staff member who believes themselves to be harassed must “unequivocally prove the existence of facts warranting a presumption of harassment” (decisions in Appeals Nos. 513/2011 – D.M. v. Governor of the Council of Europe Development Bank, paragraph 62, and 593/2018 – Luca Schio v. Governor of the Council of Europe Development Bank, paragraph 100). In the instant case, none of the circumstances mentioned by the appellant – whether work-related comments made by her superiors, disagreements over her professional performance, comments made in the context of her annual appraisals or refusals to promote her – amount to harassment. The applicable legal framework, moreover, (see paragraph 41) explicitly precludes such actions from constituting a violation of the integrity and dignity of the staff member if they are carried out in good faith. And there is nothing in the file to suggest that, in the appellant’s case, such conduct was an expression of bad faith on the part of her superiors and/or the Administration, thus leading the Tribunal to conclude that the appellant has not provided evidence of the alleged harassment.

91. It follows from all of the foregoing that the appellant’s plea alleging a failure to recognise the occupational origin of her invalidity – as being a consequence of harassment – is unfounded and must be dismissed. The plea alleging a breach of the duty of care must also be rejected, since it is based on the claim that the appellant was not adequately protected in the face of an allegation of harassment which the Tribunal does not accept.

92. The appellant goes on to contend that the impugned decision is erroneous as it is based on a miscalculation. The Tribunal understands that, through this plea, the appellant is seeking to have her pension entitlements uprated on a calculation basis that she considers commensurate with the tasks and responsibilities she performed – Grade A5, step 1 – and which were of a level above that of the grade she held at the time when she left the Bank – Grade A2, step 7.

93. The Tribunal notes that promotion to a higher grade is a stage in the career of Bank staff which is strictly regulated by the relevant texts on promotion, reclassification and upgrading of posts.

94. The Tribunal observes that, throughout her career at the Bank, the appellant, on several occasions, sought to obtain a higher grade via these procedures. Some of those attempts were successful (see paragraphs 15 and 16); others were unsuccessful and the administrative complaints lodged in the wake of those failures were dismissed (see paragraphs 18 and 19), without the appellant later challenging the decisions in question by lodging an appeal with the Administrative Tribunal.

95. It follows that the appellant is debarred from claiming, in her appeal, that she was entitled to a higher grade and, *a fortiori*, that the invalidity decision taken without acknowledging that

higher grade was erroneous. The argument to the effect that, during the invalidity procedure, a job description was used which did not reflect such grade must be rejected therefore.

96. Lastly, the appellant puts forward arguments relating to the alleged abolition of her post and her placement on administrative leave which, she maintains, the Bank implemented with the aim of terminating her employment in a way that was irregular.

97. The Tribunal points out that it is settled case law that a procedure before an Invalidity Board is only null and void if it is established that irregularities influenced the findings of the Invalidity Board (see judgment of the Administrative Tribunal of the Organisation for Economic Co-operation and Development (OECD) of 10 February 1997, [case No. 18](#), Mrs S. v. Secretary General, last paragraph on page 5).

98. In the instant case, even assuming that the allegations made in this respect are true and that the appellant's post was in fact abolished, these arguments can only be rejected as they cannot have had any bearing on the findings of the Invalidity Board.

99. The Tribunal arrives at the same conclusion with regard to the appellant's argument that her job description was not communicated to the Invalidity Board at the time of the referral, on 7 September 2020. As such a circumstance cannot be classified as an irregularity under the applicable rules, it cannot have had any bearing on the findings of the Invalidity Board. The Tribunal notes in this connection that the Invalidity Board received the requisite information in good time for its meeting on 9 November 2020, since the appellant's job description reached it on 7 October 2020 and the appellant submitted her comments on 2 November 2020.

100. To sum up, no illegality is to be found.

101. Lastly, as regards the appellant's claims for damages, the Tribunal observes that where the damage relied on by an appellant originates in the adoption of a decision which is the subject of claims for annulment, as is the case here, the rejection of those claims for annulment entails, in principle, the rejection of the claims for damages, since the latter are closely connected.

102. In the instant case, since the appellant's claims for annulment were rejected as a whole, the claims for compensation and all the claims made by the appellant in her appeal must be rejected in their entirety.

IV. CONCLUSION

For these reasons,

The Administrative Tribunal:

- Dismisses the first and second plea of inadmissibility entered by the Governor;
- Accepts the Governor's third plea of inadmissibility and declares the request for the monthly invalidity pension and the invalidity capital sum paid to be uprated on the basis of grade A5, step 7 inadmissible;
- Declares the appeal partly inadmissible and partly unfounded and dismisses it;

- Orders that each party shall bear its own costs.

Adopted by the Tribunal by videoconference on 24 January 2022 and delivered in writing in accordance with Rule 35, paragraph 1, of the Tribunal's Rules of Procedure on 27 January 2022, the French text being authentic.

The Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

Christina OLSEN

Nina VAJIĆ