

# CONSEIL DE L'EUROPE

---

# COUNCIL OF EUROPE

## TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

Appeal No. 730/2022  
(Olivia CONRAD (III) v. Secretary General of the Council of Europe)

The Administrative Tribunal, composed of:

Nina VAJIĆ, Chair,  
Lenia SAMUEL,  
Thomas LAKER, Judges,

assisted by:

Christina OLSEN, Registrar,  
Dmytro TRETYAKOV, Deputy Registrar,

has delivered the following decision after due deliberation.

### PROCEEDINGS

1. The appellant lodged the present appeal on 29 September 2022. It was registered the same day under No. 730/2022.
2. On 21 November 2022, after the time limit was extended by the Chair of the Tribunal, the appellant filed further pleadings.
3. On 22 December 2022, the Secretary General submitted her written observations.
4. On 24 January 2023, the Staff Committee submitted a request for authorisation to intervene, to which a memorandum was added on 21 March 2023. This request was forwarded to the parties who were given until 7 April 2023 to submit observations.
5. On 11 February 2023, after the time limit was extended by Chair of the Tribunal, the appellant filed a response to the Secretary General's observations.
6. On 6 April 2023 the Secretary General submitted her observations on the Staff Committee's request for authorisation to intervene. The appellant did not avail herself of the opportunity to submit comments on the request for authorisation to intervene.

7. On 17 April 2023, the Chair of the Tribunal issued an order finding the request for authorisation to intervene admissible and inviting the Staff Committee to file written observations in support of the submissions of one of the parties by 24 April 2023.

8. On 4 May 2023, the case file for the appeal was communicated to the Staff Committee and the time limit for it to submit observations was extended to 10 May 2023.

9. On 10 May 2023, the Staff Committee submitted its written observations on the appeal as an intervening third party and sought leave to intervene orally at the hearing. By letter from the Registry dated 12 May 2023, the Staff Committee was informed that, on the instructions of the Chair, its intervention would be in written form only, in view of the fact that the Chair's order of 17 April 2023 had already set out the terms on which the intervention would be authorised.

10. The public hearing was held in the Administrative Tribunal's hearing room in Strasbourg on 5 June 2023. The appellant was represented by Me Carine Cohen Solal, a barrister practising in Strasbourg. The Secretary General was represented by Sania Ivedi, legal adviser at the Legal Advice and Litigation Department of the Council of Europe, accompanied by Benno Kilian, head of that department.

## THE FACTS

### I. CIRCUMSTANCES OF THE CASE

11. The appellant is a permanent Council of Europe staff member, currently working as a communication officer (Grade B5) in the Directorate of Communication, and who applied to take part in external competition No. e11/2022 for the recruitment of communication/media officers (grade A1/A2). In an email from the Directorate of Human Resources (DHR) dated 5 May 2022, the appellant was invited to take part in the online professional test.

12. On 25 May 2022, the appellant took part in the online written test, under the supervision of TestReach, an independent company specialising in remote assessments. On 26 May 2022, the day after the written test, the appellant sent the following email to TestReach, putting the DHR recruitment department on copy:

*"I took part to the two tests of AV e11/2022 yesterday morning on the 25<sup>th</sup> of May and would like to **report a technical incident** which had blocked me during 10 to 15 minutes during the first part A.*

*After an hour of examination or so, the document scanned (the report) suddenly rotated 90 degrees clockwise, which prevented me from reading it and working for 10 to 15 minutes. I tried to reach out my supervisor by using the chat, sent 3 messages to her asking for technical help and also by asking for help through the microphone, but I got no answer.*

*As you can image during this gap of time my level of stress was tremendous.*

*I clicked on all options available on the screen of the TestReach application but could not find the technical solution to rotate the document again. After 10 to 15 minutes of intense searching and trying in vain I finally finished to find out how to go back to "portrait size".*

*My supervisor finally contacted me, maybe around 5-10 minutes after I found the solution. She did not ask me what went wrong, how she could help, and **she did not propose me to add the time I had lost to the total duration of my exam.***

*I would like to stress that I had watched your tutorial test twice at that I think you should give more technical advices on this tutorial video on how the Test Reach application is working and how to solve problems like this - it surely would help the future candidates who will experience this incident as it would avoid stress issues and save time for them. ”*

13. The same day, the appellant received the following email from TestReach Customer Support:

*“Thank you for contacting TestReach Customer Support.*

*I will pass this information on to relevant team.*

*I hope this is the information you require. Don’t hesitate to come back to us here if you need anything further.”*

14. On 6 July 2022, the appellant was informed by DHR that her performance in the eliminatory written test did not qualify her to be invited to the next stage of the selection process.

15. On 8 July 2022, the appellant lodged an administrative complaint against the decision of 6 July 2022 not to invite her to take part in the next stage of the selection process in connection with vacancy notice No. e11/2022.

16. By a decision notified on 4 August 2022, the Secretary General dismissed the appellant’s administrative complaint as unfounded.

17. On 29 September 2022, the appellant lodged the present appeal.

## II. THE RELEVANT LAW

18. Article 59, paragraph 2, of the Staff Regulations<sup>1</sup> concerns the administrative complaints procedure and 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.”*

19. Article 60, paragraph 1, of the Staff Regulations concerns the appeals procedure and 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.”*

---

<sup>1</sup> The Staff Regulations which applied at the time of the facts of the present case are those which were adopted by [Resolution Res\(81\)20](#) of the Committee of Ministers of the Council of Europe on 25 September 1981. These 1981 Staff Regulations, with further amendments, were replaced on 1 January 2023 by the new Staff Regulations, adopted by [Resolution CM/Res\(2021\)6](#) of the Committee of Ministers of the Council of Europe on 22 September 2021. All references in the present judgment to the Staff Regulations are therefore to be understood as references to the 1981 Staff Regulations.

20. Article 12 of the Regulations on appointments (Appendix II to the Staff Regulations) specifies the functions of the Director of Human Resources with regard to recruitment, transfers and promotions:

“The Director of Human Resources shall be responsible for managing recruitment and internal competition procedures, for ensuring that the selection process is appropriate and consistent with the needs of the Organisation and for taking the necessary decisions in this regard. In the case of a procedure to fill a vacancy in a specific Major Administrative Entity, the Director of Human Resources shall work in close co-operation with the Major Administrative Entity concerned.”

21. Article 15 of the Regulations on appointments (Appendix II to the Staff Regulations) describes the different stages of the recruitment procedure as follows:

“1. Recruitment procedures shall consist of shortlisting of applications, assessments, and interviews:

shortlisting shall be based on the eligibility criteria detailed in the vacancy notice. Candidates who best match the requirements shall be invited to the next stage of the selection process;

assessments can include written papers, ability tests, knowledge tests, simulation exercises, situational judgement exercises, assessment centres, questionnaires, or any other type of assessment deemed appropriate for the recruitment needs; at least one assessment must be eliminatory;

interviews shall be conducted by the Appointments Board. (...).”

## **THE LAW**

22. The appellant seeks the annulment of DHR’s decision informing her that her performance in the written test for competition No. e11/2022 did not qualify her to be invited to the next stage of the selection process.

23. The appellant then asks for compensation for non-pecuniary and professional damage amounting to €15 000 and to be awarded a further €5 000 to cover costs incurred in the proceedings.

24. The Secretary General, for her part, argues that the claim for compensation for non-pecuniary and professional damage is inadmissible because the appellant makes this claim for the first time in her appeal and did not mention it in her administrative complaint. With regard to the merits, the Secretary General asks the Tribunal to declare the appeal ill-founded and, consequently, to dismiss the appellant’s request for annulment, together with her claim for compensation, without prejudice to the inadmissibility of that claim. In the event that the Tribunal should find the appeal to be well founded, the Secretary General requests that the appellant’s claims for compensation in any case be dismissed as unsubstantiated. The Secretary General also asks the Tribunal to dismiss the appellant’s claim for reimbursement of the costs of the proceedings, since it is unjustified.

### **I. THE PARTIES’ SUBMISSIONS**

#### **A. The appellant**

25. The appellant considers, firstly, that the decision not to invite her to the oral test in external competition No e11/2022 is unacceptable in that the decision was made as a result of the competition being held in an irregular and unfair manner.

26. The appellant recounts a technical incident which occurred during the eliminatory written test, when the screen on which she was working suddenly rotated 90 degrees clockwise, preventing her from reading it properly. The appellant insists that she did not cause this rotation, which was the result of a malfunction on the TestReach platform. The appellant goes on to describe her – unsuccessful - efforts to get help from the invigilator, first by calling her through the microphone on the computer, and then by sending 3 messages through the chat function. With no response from the invigilator and in the absence of any useful information in the tutorial provided to candidates before the test, the appellant had to work out for herself how to resolve the issue. By the time the invigilator finally contacted her, more than 30 minutes after the incident occurred, the appellant had discovered how to rotate the screen back to its original position.

27. In view of these circumstances, the appellant considers that the manner in which the test was organised was marred by irregularities. Apart from the fact that the invigilator should have answered her call for help immediately, the appellant considers that it was incumbent on the organisers of the test to put in place a solution to remedy malfunctions of this kind, including by giving specific instructions to the invigilators. DHR and TestReach, she submits, should have taken steps to compensate for the time lost because of the incident, thus making it possible for the competition to proceed under normal and fair conditions.

28. The appellant contends that her case is not an isolated one. She states that, since 2020, the Staff Committee has been trying in vain to make the Council of Europe aware of the need to introduce specifications to remedy technical malfunctions in online testing and ensure that the conditions in which candidates sit competitions are regular and fair. She cites several initiatives taken by the Staff Committee and the trade union One Staff to that end (memorandum sent by the Staff Committee in July 2020 to the Senior Management Group, request sent by the Staff Committee in August 2020 to the Directorate of Internal Oversight to carry out an audit of recruitment procedures, vacancy notices published in September 2020 by the Staff Committee and One Staff on the Council of Europe’s intranet site). The appellant also added to the case file a memorandum which One Staff produced in support of her appeal, setting out the numerous technical issues reported in connection with the use of TestReach’s services in Council of Europe competitions. It is clear from this context that the Organisation knowingly failed to take steps to prevent the recurrence of such malfunctions, which makes the Organisation’s inaction in the appellant’s case all the more questionable.

29. The appellant concludes that she had between 10 and 25 minutes less time than the other candidates to complete her test. Insofar as she believes that this loss of time is attributable to a failure on the part of the Administration, she considers that the conditions in which the competition took place were irregular and unfair.

30. The appellant argues, secondly, that the decision not to invite her to the oral test in external competition No. e11/2022 is unacceptable because it fails to take account of some basic facts.

31. The appellant points out that the complaint of 26 May 2022 which she sent to DHR and TestReach, following the competition protocol to the letter, went unanswered. In the appellant’s view, the email from TestReach (see paragraph 13) was merely an acknowledgement of receipt of her complaint, on which she expected the relevant departments to act. No action was taken, however, as the technical incident which the appellant reported

was closed without any inquiry or investigation. In particular, the appellant complains that DHR did not view the video recording of the test in order to check the conditions in which it was conducted, before the period allowed for keeping the recording expired.

32. In the light of the foregoing, the appellant considers that DHR could not legitimately, and with full knowledge of the facts, have awarded her an eliminatory mark. She concludes that DHR's assessment of her test is manifestly erroneous because it failed to take account of the particular conditions she had to endure and the abnormal stress to which she was subjected.

## **B. The Secretary General**

33. The Secretary General puts forward a number of considerations to refute the appellant's allegation that the assessment in question was conducted in an irregular and unfair manner.

34. Firstly, the Secretary General notes that the difficulty encountered by the appellant during the test did not in itself constitute a technical incident. She explains that the rotation of the PDF document of which the appellant complains in theory required some action on her part since it was an option available to candidates. It was easy to find out how to rotate the document again in the desired direction, by accessing the "Tools" menu and clicking on the dedicated button - something the appellant managed to do by herself. The Secretary General points out that these are IT tools that Council of Europe staff use on a daily basis in their professional activities. The tools are used in examinations to simulate real-life conditions and test candidates' computer skills. In this case, moreover, the vacancy notice for competition No. e11/2022 required candidates to be proficient in the usual IT tools, such as PDF documents.

35. The Secretary General then observes that it was for the appellant to request additional time during the test to make up for the time lost in trying to resolve the screen rotation issue. The TestReach invigilators could then have passed on this request to DHR staff, who could have decided at that point whether the appellant should be allowed extra time.

36. The Secretary General further observes that in the email she sent to TestReach the day after the test, the appellant did not ask for any particular action to be taken on the matter; she merely described the issue encountered while at the same time suggesting improvements to the tutorial on the TestReach platform. If the appellant felt that TestReach had not addressed the substance of her e-mail - something the Secretary General denies - it was incumbent on her to respond and ask for further action to be taken, rather than waiting until lodging her administrative complaint to do so, by which time the video recordings of her test had been destroyed.

37. The Secretary General further observes that it does not appear from the copy handed in by the appellant at the end of the test, or from the comments made by the markers, that the appellant had insufficient time.

38. In the Secretary General's view, it is clear from the foregoing that no irregularities occurred in the conduct of the competition procedure and that the appellant's application was dealt with in accordance with the applicable principles.

39. In response to the appellant's allegations concerning the malfunctioning of the TestReach platform (see paragraph 28), the Secretary General highlights the advantages of the platform. She points out that, apart from providing the platform and remote invigilation, all

other aspects of the competitions are within the remit of DHR, which can resolve any difficulties encountered by candidates at any time. The platform is a reliable, effective, more economical and more inclusive solution, since it makes it possible for a greater number of candidates to sit the tests. There have been very few technical problems with the platform, which has been the subject of ongoing improvements since it went live. While some incidents may have occurred around that time, these have now been resolved.

### C. The third-party intervenor

40. In its intervention in support of the appeal, the Staff Committee notes that the incidents of which the appellant complains are not unique. Having received numerous reports of malfunctions on the TestReach platform, the Staff Committee and the trade unions raised the matter with the Administration on several occasions but failed to obtain a satisfactory response. The third-party intervenor lists the technological and user-support failings that have been reported to it. In particular, it cites server breakdowns, connection problems, lack of responsiveness and competence on the part of invigilators, the unavailability of certain functions in the menus and problems with the screen display, such as the one encountered by the appellant. The remedial action taken by DHR to date has been inadequate, as demonstrated by the fact that the malfunctions which the appellant complained of had been reported before, by candidates in previous competitions. By intervening in support of the appellant, the Staff Committee aims to ensure that, in future, technical faults, documentation, user support and follow-up to complaints by DHR are handled diligently.

## II. THE TRIBUNAL'S ASSESSMENT

41. The Tribunal notes that, with regard to competitions, international case law is consistent in saying that competent authorities have wide discretion in determining how competitive examinations are conducted and managed, as well as how candidatures are assessed. This discretion must however be counterbalanced by scrupulous observance of the applicable rules and principles and is not exempt from judicial review, the purpose of which is to ascertain whether the challenged decision was taken without authority or in breach of a rule of form or of procedure, or if it rested on an error of fact or of law, or if some essential fact was overlooked, or if there was abuse of authority, or if clearly mistaken conclusions were drawn from the evidence (ATCE, Appeal No. 172/93, *Feriozzi-Kleijssen v. Secretary General*, [decision of 25 March 1994](#), paragraph 31; see also European Court of Justice (ECJ), case 40/86, *Georges Kolivas v. Commission of the European Communities* [1987], paragraph 11). It is not for the Tribunal to declare the test papers unlawful unless they exceed the limits set out in the notice of competition or conflict with the purpose of the tests or of the competition (Court of First Instance of the European Communities, Case T-173/99, Judgment of 25 May 2000, *Gilbert Elkaïm and Philippe Mazuel v. Commission of the European Communities*, paragraph 35).

42. The Tribunal likewise reiterates that at all stages of the competitive examination, whether that of its organisation or conducting or marking of the papers, all candidates must be treated on an equal footing and completely impartially (Appeals Board of the Council of Europe, Appeal No. 172/1993, *Feriozzi-Kleijssen v. Secretary General*, [decision of 25 March 1994](#), paragraph 31).

43. Insofar as the appellant complains of irregularities relating to the operation of the TestReach online platform and the invigilation carried out by that company, the Tribunal must also clarify the following principle. Where, as in the case in point, the Administration has

recourse to an external service provider to assist it in the process of organising a test, it retains full responsibility for the proper conduct of that test. This point is not disputed - the Secretary General having acknowledged in her written submissions that all decisions of a procedural or substantive nature concerning tests on the TestReach platform are taken by DHR, which has control over the way in which online competitions are run. The Tribunal also points out, with regard to the appellant's arguments based on alleged irregularities and malfunctions on the online testing platform in general (see paragraph 28), that the Tribunal will examine those arguments only to the extent that they are liable to have had some impact in the appellant's particular case.

44. In this case, DHR provided candidates with all the information required in order to take part in the examination in question. That information included a "Protocol Document for Remote Invigilated Exams" and the tutorial to show candidates how the interface worked. Insofar as the appellant considers that the tutorial was incomplete, since it did not explain how to reposition documents displayed on the screen, the Tribunal emphasises that it was for the Administration, in the exercise of its discretion, to decide what information was indispensable and what information constituted general knowledge which the ordinary person was expected to have when participating in online examinations (ATCE, Appeal No. 712/2022, *Kirbas v. Secretary General*, [decision of 31 January 2023](#), paragraph 34).

45. It should be borne in mind that the vacancy notice for the test in question stated that candidates were expected to demonstrate professional and technical expertise in the form of "effective use of design, layout and graphics software applications". Irrespective of whether rotating a document on the platform is a functionality that is commonly used by Council of Europe staff, the Tribunal considers that the organisers' decision not to include information on the use of the screen rotation function in the tutorial was not unreasonable given the objective of the competition procedure. In taking the view that candidates could work out for themselves how to use the functions in the platform's toolbox and that it was not necessary to inform them about this beforehand, the Administration did not exceed the limits of its discretionary power. It should also be noted that the appellant was able to master the rotation function on her own and return the screen to its original position, unaided. It makes no difference here whether or not the initial rotation of the screen on which the appellant was working was caused by some action on her part.

46. In support of the argument that the recruitment procedure was marred by irregularities, the appellant next points to the fact that TestReach's customer support service did not come to her assistance until it was too late, some 30 minutes after she called for help. The Secretary General has acknowledged that this delay was not "ideal", although she also maintains that the response time was justified given that each TestReach invigilator was responsible for monitoring several candidates at once. According to the appellant, this delay placed her in an unequal position compared with the other candidates, causing her abnormal stress which was prejudicial to her.

47. The Tribunal notes that, according to the relevant case law, it is incumbent on the Administration to ensure that, for all candidates in a competition, the tests proceed in as calm and orderly a manner as possible. An irregularity occurring in the course of the competition tests will affect the lawfulness of those tests only if it is of a substantial nature and liable to distort the results of those tests, however. Where such an irregularity occurs, it is for the respondent institution to show that it did not affect the results of the tests (judgment of the



Court of First Instance (Fourth Chamber), 13 July 2005, Case T-5/04 [Carlo Scano v. Commission of the European Communities](#), paragraph 43 and the case law cited).

48. The Tribunal considers it regrettable that TestReach's support service took half an hour to respond to the appellant's request and did not come to her aid promptly. It was for the candidates themselves, however, to work out how to resolve difficulties of the kind experienced by the appellant (ATCE, Appeal No 712/2022, *Kirbas v Secretary General*, [decision of 31 January 2023](#), paragraph 34).

49. The Tribunal also notes that, after the appellant reported the incident on 6 July 2022, DHR checked the copy she had handed in and concluded from its clean appearance that the appellant had had time to complete the test without rushing. The appellant, too, stated that she had not run out of time as such, but that she had not been able to polish what she wrote, by reworking it. The Tribunal also notes that the markers' comments suggest not a lack of time, but rather an insufficient command of the subject.

50. In these circumstances, the Tribunal concludes that, in the instant case, the Administration cannot be held responsible for the loss of time experienced by the appellant. Similarly, it cannot be concluded that the appellant was treated differently from the other candidates, since they were all expected to have the ability to perform tasks of this nature on their own.

51. With regard to the appellant's argument that the Administration did not show due diligence in taking remedial action after she reported the incident, the Tribunal notes that at no time did the appellant request additional time. She justifies her failure to request it during the test on the ground that she could not risk ruining the final stages of the test if her request was not granted immediately. In the incident report that she sent to TestReach and DHR on 6 July 2022, as in her written submissions to the Tribunal, the appellant submits that this additional time should have been offered to her at the time of the test, whether she had requested it or not.

52. As this Tribunal had pointed out in the past, however (see ATCE, Appeal No. 729/2022, *Ramazanova v. Secretary General*, [decision of 12 June 2023](#), paragraph 50, and the case law cited), if a staff member or other interested individual, such as a candidate in a recruitment procedure, considers that he or she has been wronged by conduct attributable to the Administration, he or she should raise this matter as soon as possible so that the Administration can palliate its shortcomings. This requirement reflects the general principle of good faith, which applies reciprocally in relations between an international organisation and its staff members. As the appellant had not, at the time of the test, made any complaint about not having enough time to complete the test, the Tribunal considers that she was not entitled to raise that complaint once the test was over, by which time it was impossible for the Administration to remedy the situation. Consequently, the Administration cannot be accused of any irregularity in this respect.

53. As to the appellant's argument that the assessment of her test was manifestly erroneous because, by not carrying out an investigation, the Administration failed to follow up her complaint properly, the Tribunal notes firstly that in her complaint of 26 May 2022, the appellant did admittedly describe the frustration she experienced during the test, but did not ask for any particular remedial action to be taken in her regard, such as viewing the video recording of her test. The only suggestion which the appellant made then was that the TestReach tutorial should be improved. The Tribunal further notes that the appellant had been

informed beforehand that the video recordings of the tests would be kept only for a period of six weeks from the end of the online assessment, since that information was in the protocol setting out the conditions under which tests were conducted and all the candidates received a copy of the protocol when they were invited to sit the written tests.

54. The Tribunal then notes that the appellant did not react and did not ask for any further action to be taken when TestReach Customer Support replied that it was forwarding her message to the relevant departments and that it hoped that this was the information she required. Insofar as there was nothing in the facts recounted by the appellant in her complaint to suggest that a technical incident in the proper sense of the term had occurred, TestReach's response to her complaint does not appear unreasonable.

55. In the light of the foregoing, the Tribunal concludes that the appellant's plea alleging a manifest error of assessment of her test must be dismissed as unfounded, as must the claims for annulment in toto.

56. Lastly, as regards the claims for damages submitted by the appellant, 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,

57. In the instant case, the appellant's claims for annulment having been dismissed in toto, the claims for damages must also be dismissed, with no need for the Tribunal to rule on the objection of inadmissibility raised by the Secretary General concerning the said claims for damages.

### III. CONCLUSION

58. It follows from the foregoing that the appeal is unfounded and must be dismissed.

For these reasons,

The Administrative Tribunal:

- Declares the appeal unfounded and dismisses it;
- Orders that each party shall bear its own costs.

Adopted by the Tribunal on 8 November 2023, and delivered in writing on 10 November 2023 pursuant to Rule 35, paragraph 1, of the Tribunal's Rules of Procedure,<sup>2</sup> the French text being authentic.

---

<sup>2</sup> The Rules of Procedure of the Tribunal which apply to the present case are the [Rules of Procedure adopted by the Tribunal on 1 September 1982](#) and amended on 27 October 1994, 30 January 2002 and 1 January 2014. The 1982 Rules of Procedure were replaced by the Rules of Procedure adopted on 26 January 2023. All references in the present judgment to the Tribunal's Rules of Procedure are therefore to be understood as references to the 1982 Rules of Procedure.

Registrar of the  
Administrative Tribunal

Christina OLSEN

Chair of the  
Administrative Tribunal

Nina VAJIĆ