

# **CONSEIL DE L'EUROPE**————— —————**COUNCIL OF EUROPE**

## **TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL**

**Appeal No. 513/2011 (D. M. v. Governor of the Council of Europe Development Bank)**

The Administrative Tribunal, composed of:

Mr Georg RESS, Deputy Chair,  
Mr Angelo CLARIZIA  
Mr Hans G. KNITEL, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar,  
Ms Eva HUBALKOVA, Deputy Registrar,

has delivered the following decision after due deliberation.

### **PROCEDURE**

1. The appellant, D.M., lodged his appeal on 14 November 2011. On the same date the appeal was registered under No. 513/2011. On 30 January 2012, at the appellant's request, the Chair of the Tribunal granted anonymity.
2. On 10 November 2011, the appellant lodged a supplementary memorial.
3. On 14 December 2011, the Governor submitted his observations. The appellant submitted a memorial in reply on 13 February 2012.
4. The public hearing in this appeal was held in the Tribunal's hearing room in Strasbourg on 20 March 2012. The appellant was represented by Maître Pascale Faucon and the Governor by Maître Jean-Michel de Forges, both lawyers practising in Paris.

### **THE FACTS**

#### **I. FACTS OF THE CASE**

5. The appellant is a French national born in 1974. He is a permanent staff member of the Council of Europe Development Bank (hereinafter "the CEB") in Paris.

6. He joined the CEB in July 2000 as a grade B5 staff member. He was assigned to the Risk Management Department (“the Department”). On 21 April 2002, he signed an indefinite-term employment contract for a grade B5/B6 post at step 3.

7. The appellant’s immediate superiors from his recruitment until 2 May 2011 were Mr M.W. and Mr R.R. From that date on, he was provisionally placed under the authority of Mr A. V. of the Central Directorate for Information Systems and Control.

8. In August 2004, the appellant was promoted to grade B5, step 4, then in August 2009 to grade B6, step 4, and finally, in August 2010, he was promoted to grade A2, step 3.

9. On 10 March 2011, he was received by Mr J. de B. in his capacity as Chief Compliance Officer for consultation on a situation which he considered to be one of psychological harassment and discrimination. Mr J. de B. subsequently informed the Governor of his intention to make an inquiry.

10. On 31 March 2011, the appellant stated his complaints, one of which concerned racial discrimination.

11. On 6 April 2011, he was received by the Governor, who asked Mr J. de B. and Ms M.L.O. to pursue the inquiry.

12. On 9 May 2011, Mr de B. gave the appellant confirmation of the opening of the inquiry into the matters of which he complained, and told him that he should inform Mr M.W. and Mr R.R. of the accusations against them.

13. On 1 June 2011, the appellant submitted to the Governor a compensation claim, entitled “administrative complaint”.

14. On 5 July 2011, Mr M. de B. delivered his confidential report to the Governor, based on a summary of the interviews conducted by him between 10 May and 29 June 2011. He concluded that no allegation made by the appellant was sufficiently substantiated to be taken into consideration.

15. On 28 July 2011, Ms M.L.O. dismissed the appellant’s compensation claim. She explained to him verbally that his claim could not be regarded as an “administrative complaint” within the meaning of Article 59 of the Staff Regulations, since it was not directed against a decision of the Governor, but consisted solely in asking him for compensation in the context of friendly negotiations over the termination of his employment.

16. On 25 August 2011, the appellant lodged an administrative complaint, which was dismissed on 23 September 2011.

## II. THE RELEVANT LAW

### *CEB Staff Regulations*

17. Article 3 (Non-discrimination) provides as follows:

“1. Staff members shall be entitled to equal treatment under the Staff Regulations without direct or indirect discrimination, in particular on grounds of racial, ethnic or social origin, colour, nationality, disability, age, marital or parental status, sex or sexual orientation, and political, philosophical or religious opinions.

2. The principle of equal treatment and non-discrimination shall not prevent the Secretary General from maintaining or adopting, in the context of a predetermined policy, measures conferring specific advantages in order to promote full and effective equality and equal opportunities for everyone, provided that there is an objective and reasonable justification for those measures.”

18. Article 13 (Non-discrimination between candidates) provides as follows:

“1. Subject to Article 14 of the Staff Regulations and Article 6 of the Regulations on Appointments (Appendix II to the Staff Regulations), recruitment shall be carried out without direct or indirect discrimination, in particular on grounds of racial, ethnic or social origin, colour, nationality, disability, age, marital or parental status, sex or sexual orientation, and political, philosophical or religious opinions.

2. Paragraph 1 does not prevent the Secretary General from setting certain conditions in terms of age and nationality in respect of specific posts/positions, provided that such limits have an objective and reasonable justification.

3. The Secretary General deciding not to recruit a person because s/he has expressed opinions that are incompatible with the fundamental principles enshrined in the Statute of the Organisation and the European Convention on Human Rights does not constitute discrimination under paragraph 1.

4. The Appointments Board shall consider applications in the first instance on the basis of qualifications, experience and competencies.”

*Instruction No. 44 of 7 March 2002 on the protection of human dignity at the Council of Europe (replaced on 1 October 2010 by Rule No. 1292 of 3 September 2010 with the same title. This instruction has the same substance with some minor formal changes.)*

19. Article 3 provided as follows:

“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 organisation methods which, intentionally or otherwise, is prejudicial to a person’s personality, dignity or physical or psychological integrity; which causes a deterioration in the working environment or endangers that person’s employment or creates a hostile, intimidating, degrading, humiliating or offensive environment.”

*CEB Code of Conduct (came into force on 1 January 2010)*

20. Article 3.3 deals with respect for diversity and non-tolerance of discrimination. It prohibits illicit discrimination based on sex, race, colour, ethnic or social origin, political, philosophical or religious convictions, membership of any national minority, property, birth,

disability, age or sexual orientation, nationality or, in general terms, the way in which the CEB's Appointed Officials, staff members and occasional contractual collaborators choose to conduct their private lives, insofar as this remains compatible with the principle set forth in Article 3 of the Staff Regulations.

21. Article 13 deals with internal relations and sets out the general principles to be observed in working relations with colleagues, behaviour towards superiors and subordinates, and sexual harassment and blackmail. The Chief Compliance Officer watches over observance of the Code.

## **THE LAW**

22. The appellant accuses his superiors of acts of unequal treatment, psychological harassment and racial slurs, which have had a negative impact on his physical and mental health.

23. The Governor for his part asks the Tribunal to dismiss the appeal.

### **I. SUBMISSIONS OF THE PARTIES**

#### **A. The appellant's unequal treatment within the CEB**

24. The appellant alleges that he was treated unequally by comparison with his colleagues in his career development. When taken on by the CEB, he was a risk management assistant, but regarded as having "potential" and being "definitely over-qualified". His duties quickly moved towards risk management analysis. His grade was therefore no longer in keeping with those duties.

25. Up to December 2010, the appellant stayed at grade B5/B6 despite his consistently satisfactory performance assessments and his annually reiterated requests for advancement to grade A1/A2. Not having received any objective reasons for his career being at a standstill over a period of eight years, the appellant considers himself to have been discriminated against compared to other candidates or staff members of the Department.

26. In fact, two analysts recruited to the Department following Vacancy No. 12/2010 were directly appointed at grade A2, step 1. Nonetheless, according to the appellant, they did not possess as much professional experience of risk management as he did, were not better qualified, and were less operational. Moreover, other colleagues who have discharged or discharge the same duties carrying the same responsibilities, with similar proficiency and experience and comparable results, have always been on a higher grade than the appellant.

27. The appellant did not succeed in obtaining promotion to grade A2, step 2 until December 2010 with effect from 1 August 2010. In his opinion, the promotion shows discrimination compared to other CEB staff members with the same duties and competencies, and did not have the effect of redressing the inequality between him and the other staff of the Department. Furthermore, he criticises his superiors for not having upgraded his post by way of Vacancy No. 04/2009 and for having given precedence to his colleague who had less seniority.

28. He finds that he was treated unequally compared to the other staff of the Department and suffered discrimination contrary to Articles 3 and 13 of the Staff Regulations, as well as to the principles laid down by the Council of Europe in the European Social Charter and Article 14 of the European Convention on Human Rights.

29. The Governor for his part notes that the post to which the appellant was recruited in 2000 was an administrative assistant's post classified B 5, step 1. All the other colleagues with whom he compares his position were recruited to posts classified at a higher grade, i.e. either B5, step 5 or category A. There can therefore be no entry-level discrimination since the starting grade and step simply depend on the classification of the post in the CEB's establishment table.

30. As to the appellant's allegation that, in 2009, the application by one of his colleagues for an analyst's post classified A2/A3 had been accepted in preference to his own despite his greater seniority, the Governor submits that, regardless of the fact that the candidate in question was more senior by four years, it was not a promotion based on seniority but in fact an open competition. The appellant would only be able to complain of this outcome if he was in a position to prove that the competition took place under improper conditions. But that was not the case. Moreover, there were three other persons on the Selection Board apart from Mr R.R., and it ought not to be forgotten that the Staff Committee, which, at the appellant's request, verified and confirmed the proper conduct of the competition, is also a collegial body. Lastly, assuming Mr R.R. was opposed to the appellant's application, the appellant would still need to be able to prove that it was for non-professional reasons.

31. The Governor finally notes that the appellant had been requesting upgrading of his post to category A since 2003. Upgrading of posts in an international organisation is, however, a delicate and complex operation concerning the institution as a whole. That a staff member should request upgrading of his post without obtaining it does not suffice to establish that he was entitled to this upgrading. In the Governor's view, the choice of the year 2003 as the starting point of the period during which the appellant was allegedly less well treated than his colleagues is in any event completely arbitrary.

## **B. Psychological harassment**

32. The appellant alleges that for over six years he was a victim of psychological harassment by his superiors, taking the form of humiliation in connection with his work, in private or in front of the team of analysts, disparagement of his work without objective reason, and orders and countermanding orders on the same subject in the same day, all aggravated by an overload of work due to the suicide of two Department staff members in 2008 and 2010. Ms E.L., managerial assistant in the Department, testifies to certain "incidents".

33. According to the appellant, the exchange of emails demonstrates the bad atmosphere and climate of distrust and suspicion within the Department, and the state of mind of the persons running it. He refers to the email from Mr M.W. which he received on 18 February 2008:

*"[...] I assume that it will be a good opportunity to address your concerns/complaints regarding workload, over working and staffing as raised quite often in the past straight to [Mr A.V.]"*

and to the email sent by Mr R.R. to Mr M.W. on 7 May 2008:

*“After two days of the request he claims he is out next week. So you see how well it pays off to send people on holidays; ...”*

34. The appellant also criticises the tone used by his two superiors for giving him instructions. He cites the following correspondence:

- Mr R.R.’s email of 7 April 2005 finding fault with the appellant;

- Mr R.R.’s email of 28 November 2005:

*“(...) this is not a request, it’s an order (...)”;*

- Mr M.W.’s email of 14 November 2007 questioning the appellant’s senior management competencies;

- Mr M.W.’s email of 19 January 2011:

*“Would you please deliver the papers to Mr [A.V.]!!!!”*

35. The appellant finally refers to the orders and countermanding orders constantly received for about a year, particularly regarding internal Department procedures, which changed depending how Mr M.W. and Mr R.R. were disposed towards him.

36. He claims that, on the contrary, the CEB, the Governor and the Director of Human Resources permitted the development of a working environment which was deleterious to his health.

37. The Governor for his part notes that relations between the appellant and his superiors deteriorated at the end of 2010, and especially after the appellant was promoted to grade A2 with effect from August 2010. The appellant, however, had worked with Mr R.R. and Mr M.W. for ten years. Besides, the appellant’s conduct had changed since the resignation of a colleague in August 2010, and still more markedly since November-December 2010. What is more, from that period onwards he took care to retain written evidence of the slightest incident which some years earlier would only have prompted an oral exchange.

38. Moreover, the working atmosphere within the Department had been affected by the financial crisis since 2008, by the deaths of two staff members in 2008 and 2010, and by the resignation of another colleague in 2010. Despite the recruitment of two new analysts, the workload had grown heavier as a result and the pace of work had increased accordingly. The Governor acknowledges that while the working methods and behaviour of Mr M.W. and Mr R.R. were sometimes rather harsh, this was by no means confined to the appellant; all the Department’s staff were treated in the same way.

39. Plainly, the attitudes for which the appellant criticises Mr M.W. and Mr R.R. by no means tally with the appraisals he received, which, for ten years, were invariably favourable and even complimentary. The Governor adds that Mr M.W. consistently supported the request for upgrading to category A of the post held by the appellant. The Governor therefore asks

that the Tribunal dismiss the appellant's allegations concerning psychological harassment as insufficiently proven.

### **C. Racial slurs**

40. The appellant maintains that he was a victim of racial slurs on the part of Mr M.W., who on several occasions made racist remarks to him about his skin colour. He submits that during a mission to Cintra in Portugal, Mr M.W. told the appellant that his son had run away when he saw a "black" person in the United States, because where he lived before (Brazil), most criminals were black. Furthermore, at certain meetings of the Department where the appellant arrived a few minutes late, Mr M.W., in the presence of Mr R. R. and other staff members of the Department, greeted his arrival by saying, *"Next time, I will send you to Congo to plant bananas."*

41. In this connection the appellant has adduced written evidence from Ms E.L. who attended one of these meetings at which Mr M.W. allegedly uttered a racist remark. However, the CEB considers in its reply to the appellant's administrative complaint that Ms E.L.'s deposition does not suffice to prove that Mr M.W. made these racist remarks.

42. In the Governor's view, this ground of appeal is actually complementary to the appellant's first ground of appeal, concerning unequal treatment by management, since the appellant specifies that this actual or presumed inequality was due to his racial origin. In fact, according to the Governor, given that the appellant was not a victim of unequal treatment, there is no need to consider the "racial" basis of non-existent discrimination.

43. The appellant requests a finding of "racial slurs on the part of Mr M.W." and asks that the CEB be ordered to redress the non-pecuniary damage which they allegedly caused him. The Governor observes, however, that this is a new element in relation to the appellant's administrative complaint, and raises several legal questions. The first is the admissibility of the appeal in that regard, its basis being appreciably different from that of the administrative complaint. According to the Governor, "discrimination" directly engages the whole institution's responsibility whereas "slurs" are primarily a matter of relations between individuals. Besides, the shift from the concept of racial discrimination to that of racial slurs is not inconsequential. The Tribunal will therefore need to consider whether a change of legal basis is possible between the administrative complaint and the appeal. The Governor leaves this point to the discretion of the Tribunal.

44. The Governor notes that the appellant could at least have asked him to take disciplinary proceedings against Mr M.W. and, in the event of a dismissal, he could have asked the Tribunal to annul the dismissal and order the CEB to compensate him for non-pecuniary damage. In any event, the racial slurs are not proven, as may be seen from the thorough inquiry conducted by Mr J. de B.

45. As to the conversation reported to have taken place in Portugal in 2006 between the appellant and Mr M.W. concerning alleged black crime in Brazil and the United States, the Governor maintains that, assuming the conversation did take place and that Mr M.W. did make the very shocking remarks attributed to him by the appellant, these could not constitute a racial slur since they did not concern the appellant. Anyway, as the latter states, nobody witnessed the conversation, and he has waited five years to report it without having asked the DHR or the Governor to intervene at the time, whereas he could reasonably have assumed

that they would wish at the very least to call Mr M.W. to order. So, where this point is concerned, it is not possible to rely solely on the report of the incident given by the appellant in 2011.

46. As to the remarks which Mr M.W. is said to have made publicly to censure the appellant's late arrival at a meeting, the Governor notes that Mr M.W. denies having made such remarks. Above all, none of the persons questioned by Mr de B. has the least recollection of having heard them. The only person to have "heard about" them is Mr A.V., but only from the appellant and not someone else who might have heard the remarks. Consequently, the Governor does not think it is possible to consider this act proven. The appellant has produced a written witness statement by Ms E.L. according to which Mr M.W. twice commented on the appellant's absence from a meeting by referring to a trade in bananas. But she is the only one to have heard such remarks. Everyone said that Mr M.W. tended to make "humorous" remarks of questionable taste, or even to be sarcastic, but none remembers having heard the xenophobic remarks that Ms E.L. attributes to Mr M.W., or even having heard the word "banana". There is no proof of racial discrimination or racial slurs, and the appellant's appeal can only be dismissed with regard to this point.

**D. The impact of the appellant's professional situation on his physical and mental health**

47. The appellant claims that the unequal treatment which he suffers in the Department, the racial slurs directed at him, and the harassment which he has suffered for years have serious implications for his physical and mental health. He has accordingly been placed on sick leave by his doctor on several occasions for low blood pressure and anxiety, and has been prescribed an anxiolytic. The occupational health doctor also found that his work situation was having a negative impact on his physical and mental health, and alerted the DHR.

48. The appellant's situation has not changed to date. Indeed, though provisionally removed from the authority of Mr M.W. and Mr R.R., he has remained in the same office in the Department, daily crossing the path of his former superiors. He has received no work from the CEB, and has had no missions assigned to him, since May 2011. This has had the effect of cutting him off from his colleagues and all working relationships, and thus of isolating him.

49. The Governor for his part observes that it is not for him to pronounce on the appellant's state of health or on the links between his state of health and his professional situation. As to the accusation of having isolated the appellant and thereby aggravated the non-material prejudice caused to him, the Governor points out that this provisional measure was taken on the recommendation of the occupational health doctor and with the appellant's consent. Furthermore, a protective measure of this kind is recommended by specialists dealing with psychological harassment, so that pending the conclusions of the inquiry by Mr de B., the CEB has not sought to cut the appellant off from his colleagues, but has done its utmost to protect him. The Governor adds that, since 2 May 2011, the appellant has been concerned solely with securing a "negotiated" termination of his employment with the CEB and that when invited by the DHR to discuss the possibility of a permanent change of post within the CEB, he was unable to attend the interview on the date to which he had agreed.

**E. The pecuniary and non-pecuniary prejudice sustained by the appellant**



50. The appellant claims pecuniary damages of 88 073 euros, as well as non-pecuniary damages amounting to 150 000 euros. He also requests early termination of his employment at the CEB with compensation for loss of job and payment in lieu of notice in accordance with Appendix VI to the Staff Regulations, totalling 79 589.70 euros gross.

51. The Governor for his part notes that the appellant is in fact making a set of claims, not all of which come within the Tribunal's jurisdiction. Firstly, the Staff Regulations do not provide for the possibility of "negotiated termination of employment", and it is not for the Tribunal to create a mechanism of this kind. Secondly, the appellant is free to resign from the CEB, the Tribunal having no jurisdiction to authorise termination of his employment. Thirdly, contrary to what the appellant suggests, there can be no analogy between a "loss of job" imposed by the CEB and a resignation, even if it is the result of a situation deemed "intolerable" by the staff member. Lastly, the Governor notes that while the Tribunal can order the CEB to compensate the appellant for any pecuniary and non-pecuniary damage found, it cannot award compensation for non-existent prejudice.

52. The Governor therefore asks the Tribunal to declare inadmissible the part of the appellant's claim corresponding to the concept of indemnity for loss of job within the meaning of Appendix VI to the Staff Regulations.

53. In the alternative, the Governor considers the appellant's claims to be unfounded.

## II. THE TRIBUNAL'S ASSESSMENT

### A. Alleged unequal treatment

54. The appellant's allegations of unequal treatment are based on his slower career advancement than that enjoyed by his colleagues in the Department, or new staff members.

55. The Tribunal considers that equality of treatment must be guaranteed in provisions and practices relating to conditions of access, selection, including selection criteria, and duties, whatever the sector and the activity, at every level of the professional hierarchy.

56. It would be contrary to the principle of equal treatment for the Organisation or other staff to refer to the staff member's skin colour in vacancy notices and to specify or refer in any way to this physical characteristic in the conditions of access, the selection and the selection criteria for jobs or posts, whatever the sector or branch of activity, or to use in applying these conditions or criteria any elements which, even without explicit reference, would result in a rejection or impede access to a job or to career advancement for reasons based, whether or not explicitly, directly or indirectly, on the staff member's skin colour.

57. In the instant case, the Tribunal observes that the appellant has not been subject to such treatment. It is true that he entered internal competitions unsuccessfully on several occasions. However, it emerges from the parties' observations that these competitions were organised and conducted in a perfectly fair manner, the decision on the choice of candidate having been taken by the collective body. Although the appellant may have been the sole coloured candidate, the Tribunal finds no indication that this fact would have influenced the selection body's choice, even partially.

58. The Tribunal can agree that the appellant might have deserved – having regard to the content of his professional activities, and by comparison with similar posts classified grade A – to be upgraded when the upgrading of these similar posts to grade A was announced. In so far as the CEB’s policy and action may be open to criticism in this respect, it cannot be concluded that the CEB treated the appellant in a discriminatory manner for the reasons he invokes.

59. Consequently, the Tribunal dismisses this ground of appeal.

## **B. Alleged psychological harassment**

60. The appellant claims that the way in which his superiors have treated him for the last six years constitutes psychological harassment.

61. The Tribunal notes that, as indicated in the regulations currently in force (see paragraphs 19-21 above), psychological harassment is a form of violence in the workplace. It takes the form of repeated actions whose aim or effect is to bring about a deterioration of working conditions that may infringe the rights and the dignity of staff members at work, impair their physical or mental health or jeopardise their professional future. It follows that no upgrading, posting, qualification or promotion may be the subject of any measure of direct or indirect discrimination.

62. However, a staff member must unequivocally prove the existence of facts warranting a presumption of harassment, and the person accused of it must prove that his actions do not constitute harassment or are justified by reasons unrelated to any harassment.

63. The Tribunal observes that in accusing his superiors of actions creating a situation of harassment, the appellant alleges that he suffered humiliation in connection with his work, both in private and in front of the team of analysts, and constant disparagement of his work without any objective reason, and was given orders and countermanding orders on the same subject in the same day, all this being aggravated by an overload of work following the suicide of two staff members of the Department in 2008 and 2010. The appellant also mentions the bad atmosphere and climate of distrust and suspicion existing in the Department for several years, and the negative state of mind of the persons running it.

64. The Tribunal nevertheless reiterates that psychological harassment is any abusive conduct in the workplace consisting in gestures, words or repetitive or systematic behaviour or action intended to cause a deterioration in the working conditions of the staff member concerned. The fact that acts of psychological harassment can affect the workplace as well as the atmosphere and team spirit is only a secondary and collateral effect which does not in itself constitute “a phenomenon of psychological harassment”.

65. As to the specific actions mentioned by the appellant, the Tribunal concedes that they may – if consistent with the aforementioned conditions of harassment – show signs of harassment. It is still necessary, as the Tribunal has already pointed out, to establish facts warranting a presumption of harassment. In the instant case, the Tribunal only has a written declaration by a staff member testifying that certain incidents occurred over several months (see paragraph 32 above). But such a testimony, which does not contain sufficiently precise information, cannot be deemed to constitute irrefutable, irrevocable proof.

66. True, the appellant refers to the number of emails exchanged between his superiors (see paragraphs 33-34 above). However, despite a certain doubtless untoward jocularity likely to be perceived or interpreted unfavourably by certain staff members who are more vulnerable in one way or another, the Tribunal cannot regard these as acts constituting harassment directed at the appellant. As to the racist aspect, the Tribunal will return to this further on.

67. In the light of all these considerations, the Tribunal dismisses this ground of appeal.

### **C. Racial slurs**

68. The appellant accuses one of his superiors, Mr M.W., of having repeatedly made remarks of a racist nature directed at him and concerning his skin colour.

69. The Tribunal notes that a racial slur is an offensive remark made to a person with the aim of being intentionally hurtful to him or her, in a manner injurious to honour and dignity, on account of his or her particular ethnic, national, racial or religious origins or affiliations.

70. In the instant case, the Tribunal, without needing to rule on the question raised by the Governor of the different legal basis of the administrative complaint and the appeal (see paragraph 43 above), finds that the Mr M.W.'s remarks to the appellant contain a reference to the latter's skin colour. However, while they are completely inappropriate and out of place in the multicultural environment of the CEB, the Tribunal is not convinced that the intention was to injure the dignity and honour of the appellant, notwithstanding the latter's negative perception of them, which, in the eyes of the Tribunal, is legitimate.

71. The Tribunal is concerned at the fact that the heads of an establishment like the CEB, as well as all the staff working there, can tolerate such behaviour, which is hardly in keeping with the principles and values on which international organisations are built and which they have a duty to uphold.

72. The fact remains that, in the Tribunal's opinion, the remarks complained of by the appellant, however regrettable they may be, are not sufficiently proven or capable of being classed as racial slurs. This part of the appeal must therefore be dismissed too.

### **D. The impact of the appellant's professional situation on his physical and mental health**

73. The appellant contends that the treatment complained of above had adverse effects on his health.

74. The Tribunal, notwithstanding its foregoing observations concerning the objectionable atmosphere that surrounded the appellant in the CEB, refers to its findings dismissing the appellant's grounds of appeal. This part of the appeal must therefore be dismissed as well.

### **E. The pecuniary and non-pecuniary prejudice sustained by the appellant**

75. The appellant claims in pecuniary and non-pecuniary damages the sums of 88 073 euros and 150 000 euros. He also requests a sum of 79 589.70 euros gross for loss of job and payment in lieu of notice.

76. The Tribunal, like the Governor, considers this second claim inadmissible because it is not linked with the subject-matter of the appeal in that the appellant has not lost his job. As to his claiming pecuniary and non-pecuniary damages, the Tribunal notes that, having dismissed all grounds of appeal, it must also dismiss this claim.

77. In conclusion, the appeal must be dismissed.

For these reasons,

The Administrative Tribunal

Dismisses the appeal;

Decides that each party shall bear its own costs.

Delivered in Strasbourg on 11 June 2012, the French text being authentic.

The Registrar of the  
Administrative Tribunal

The Deputy Chair of the  
Administrative Tribunal

S. SANSOTTA

G. RESS