



ADMINISTRATIVE TRIBUNAL
TRIBUNAL ADMINISTRATIF



THE ADMINISTRATIVE TRIBUNAL OF THE COUNCIL OF EUROPE AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

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“Ubi homo, ibi societas. Ubi societas, ibi ius. Ergo ubi homo, ibi ius “
Latin maxim

1. The Administrative Tribunal of the Council of Europe (“the Tribunal”) is the body responsible for settling labour disputes between the Organisation and its staff. When the Tribunal (known at the time as the Council of Europe Appeals Board) was reorganised in 1982, Vincent Berger was one of the lawyers considered for the post of registrar (at the time secretary), in addition to his work in the Registry of the European Court of Human Rights (“the Court”). Circumstances beyond his control – and totally unconnected with his legal skills and qualifications – prevented him from taking up this task. However, in subsequent years, he showed his interest in staff issues both by participating as an intervener in an appeal¹ – which ultimately did not concern him directly – and by getting involved in the Council of Europe Staff Committee, which, moreover, he chaired for two years.

2. This contribution therefore has a rightful place in this collection. Another good reason for it to be included is that the European Convention on Human Rights (“the Convention”) is cited more and more frequently in proceedings before the Tribunal, so it is quite fitting to take stock of this development.

3. To have a systematic approach, this article will be divided into two parts, dealing firstly with the Court’s case-law on the Tribunal (and, of course, similar bodies), then with the application of the Convention by the Tribunal. Ideally, it would also have dealt with the question of whether or not, in view of its role as a judicial mechanism for settling labour disputes within the Organisation, the Tribunal has jurisdiction to hear disputes arising

* Registrar of the Administrative Tribunal of the Council of Europe; former head of division in the Registry of the European Court of Human Rights. The opinions expressed herein are those of the author and do not necessarily reflect those of the Administrative Tribunal or its registry. This contribution obviously does not claim to provide an exhaustive view of the case-law or of the relevant legal arguments.

¹ Appeals Nos. 158, 159 and 161/1990, *Cagnolati-Staveris and others v. Secretary General*, Decision of 27 September 1990. An intervener is a kind of *amicus curiae* who intervenes in support of one of the parties. In theory, this may be the appellant or the Secretary General; however, in practice, up until now, such interventions have only ever been in favour of the appellant (on one occasion a request for intervention in support of the defendant was rejected).

between the Court's judges² and the Organisation. However, owing to a lack of space, this subject – on which there is no case-law – will be dealt with on another occasion³.

I. THE CASE-LAW OF THE EUROPEAN COURT ON THE ADMINISTRATIVE TRIBUNAL AND SIMILAR BODIES

The principles

4. As the administrative tribunals of international organisations are fully-fledged judicial bodies, two questions need to be addressed at the outset: firstly, do the principles enshrined in Article 6 of the European Convention (right to a fair trial) apply to them?; secondly, what decisions has the Court taken on them?

5. However, before proceeding any further, we should point out that the Court makes a distinction between the application of the Convention to international organisations and its application to their judicial bodies. This is because international organisations are “emanations” of the states which are responsible for them whereas their judicial bodies are set up not by states but by the organisations. This is clear from the case-law established by the *Bosphorus Airways v. Ireland* judgment (confirmed by the decisions in *Behrami v. France* and *Saramati v. Germany, France and Norway*)⁴, as read in the light of appeals relating to proceedings before the administrative tribunals of international organisations.

6. In these cases⁵, the Court pointed out that while states are not prohibited by the Convention from transferring sovereign powers to an international organisation in order to pursue cooperation in certain fields of activity, they remain responsible under Article 1 of the Convention for all acts and omissions of their organs, regardless of whether they were a consequence of the need to comply with international legal obligations. Article 1 makes no distinction as to the type of rule or measure concerned and does not exclude any part of a High Contracting Party's “jurisdiction” from scrutiny under the Convention. The Court went on, however, to hold that where such state action was taken in compliance with international legal obligations flowing from its membership of an international organisation and where the relevant organisation protected fundamental rights in a manner which could be considered at least equivalent to that which the Convention provides, a presumption arose that the state had

² Within the Organisation, judges enjoy the special status of Court judges but nothing is said as to how any dispute between a judge and the Organisation might be resolved. On the subject of the extent of the oversight which the Tribunal may exercise and in order to dispel any misunderstanding about this from the outset, we should draw attention to the Tribunal's case-law on the subject, according to which “there is no question of overseeing the conduct of the European Court of Human Rights, or by extension its President, as regards performance of their judicial functions, which it goes without saying are not subject to any supervision. However, this does not extend to the Court's internal organisation, with regard to which it certainly does not at present enjoy absolute autonomy. Evidence of this, for example, is provided by such a sensitive topic as its lack of financial independence, the Court's budget being financed by the Council of Europe, which has full discretion to set its level, after consulting the Court, and bears responsibility for it” (Appeal No. 255/1999, *Loria-Albanese v. the Secretary General*, decision of 27 March 2000, § 19).

³ This subject was dealt with briefly in an article entitled “The Administrative Tribunal of the Council of Europe” in *Current issues in the Law and Practice of International Administrative Tribunals: Promoting the effectiveness of the Decision-Making Process*, published in 2006 by the Organisation of American States on the occasion of the 35th anniversary of its Administrative Tribunal (p. 22).

⁴ *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi (Bosphorus Airways) v. Ireland* [GC], no. 45036/98, ECHR 2005-VI, and *Behrami v. France* and *Saramati v. Germany, France and Norway* (dec.) [GC], no. 71412/01, 31 May 2007.

⁵ This summary is taken from the section on applicable principles in the *Gasparini* decision cited in footnote 15.

not departed from the requirements of the Convention. Such presumption could be rebutted if, in the circumstances of a particular case, it was considered that the protection of Convention rights was manifestly deficient: in such a case, the interest of international cooperation would be outweighed by the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Airways*, case cited above, §§ 155 and 156; *Behrami and Saramati*, decision cited above, § 145).

In the *Bosphorus Airways* case, the Court noted that the impugned act (the impounding in Ireland of an aircraft leased by the applicant company on the basis of a Community regulation which was itself issued following a UN Security Council resolution) had been implemented by the authorities of the respondent state on its territory following a decision made by a minister of that state (para. 137). In these circumstances the Court did not consider that any question arose as to its competence, notably *ratione personae*, vis-à-vis the Irish state.

On the other hand, the Court considered that the later cases of *Behrami* and *Saramati* could be distinguished from the *Bosphorus Airways* case in terms both of the responsibility of the respondent states under Article 1 and of the Court's competence *ratione personae*. It considered that the respondent states could not incur liability because of the impugned acts of KFOR and UNMIK, which could be directly attributed to the United Nations as an organisation of universal jurisdiction fulfilling its imperative collective security objective. In these circumstances, the Court concluded that the applicants' complaints should be declared incompatible *ratione personae* with the provisions of the Convention (*Behrami and Saramati*, decision cited above, paras. 151 and 152).

The Court was also required to examine very similar questions to those raised in these cases in two other cases (*Boivin v. 34 member states of the Council of Europe* (dec.) and *Connolly v. 15 member states of the European Union* (dec.)), which related, as in these cases, to disputes between international civil servants and the international organisations by which they were employed. In these cases, it noted that at no time had the respondent states intervened directly or indirectly in the dispute and that there had been no action or omission of those states that could be considered to engage their responsibility under the Convention. Its conclusion was that the applicants had not been "within the jurisdiction" of the impugned states and therefore that their complaints were incompatible *ratione personae* with the provisions of the Convention.

7. To return to the first question (the application of the principles enshrined in Article 6 of the Convention), we have to start with the *Waite and Kennedy v. Germany* judgment of 18 February 1999⁶. In this judgment, the applicants complained that their case had not been heard fairly (Article 6 § 1 of the Convention) because the German courts had declared their actions inadmissible on grounds of immunity from jurisdiction. The subject of the dispute was combined with the problem of the immunity of international organisations. In its judgment, the Court laid down the following principle:

"... Article 6 § 1 required a judicial body, but not necessarily a national court. The remedies available to the applicants were in particular an appeal to the ESA [European Space Agency] Appeals Board if they wished to assert contractual rights, their years of membership of the ESA staff and their integration into the operation of ESA. According to the Government, the applicants were also left with other possibilities, such as claiming compensation from the foreign firm which had hired them out" (§ 65).

⁶ *Waite and Kennedy v. Germany* [GC], no. 26083/94, ECHR 1999-I.

8. Reference should also be made to the *Boivin* decision cited above⁷, in which the Court examined an application brought against 34 member states⁸ of the Council of Europe complaining about a judgment⁹ of the International Labour Organisation's Administrative Tribunal (ILOAT). Having noted that "in reality, the applicant's complaints were directed essentially against the relevant judgment of the ILOAT concerning his individual labour dispute with Eurocontrol", the Court continued as follows:

"The Court would point out that the impugned decision thus emanated from an international tribunal outside the jurisdiction of the respondent States, in the context of a labour dispute that lay entirely within the internal legal order of Eurocontrol, an international organisation that has a legal personality separate from that of its member States. At no time did France or Belgium intervene directly or indirectly in the dispute, and no action or omission of those States or their authorities can be considered to engage their responsibility under the Convention. In this respect the instant case is to be distinguished from previous cases where the international responsibility of the respondent States has been in issue, for example that of the United Kingdom in *Matthews v. the United Kingdom* ([GC], no. 24833/94, ECHR 1999-I – decision not to register the applicant as a voter on the basis of an EC treaty), that of France in *Cantoni v. France* (15 November 1996, Reports of Judgments and Decisions 1996-V – enforcement against the applicant of a French law implementing an EC directive), that of Germany in *Beer and Regan v. Germany* and *Waite and Kennedy v. Germany* ([GC], no. 28934/95, 18 February 1999, and [GC], no. 26083/94, ECHR 1999-I – denial of access to the German courts) or that of Ireland in the above-mentioned *Bosphorus* case. Unlike those cases, in all of which the State or States concerned had been involved directly or indirectly, in the present case the applicant cannot be said to have been "within the jurisdiction" of the respondent States for the purposes of Article 1 of the Convention.

The Court finds that the alleged violations of the Convention cannot therefore be attributed to France and Belgium. As regards the possible responsibility of Eurocontrol in this connection, the Court points out that since this international organisation is not a party to the Convention its responsibility cannot be engaged under the Convention (compare, among other authorities, *Matthews*, cited above, § 32, and *Behrami and Saramati*, cited above, § 144).

In the light of the foregoing, the Court concludes that the applicant's complaints must be declared incompatible *ratione personae* with the provisions of the Convention (see, *mutatis mutandis*, *Behrami and Saramati*, § 149)."

9. Having reached this conclusion, the Court was not required to examine the merits of the complaints made under Articles 6 § 1, 13 and 14 of the Convention and Article 1 of Protocol No. 1.

10. Subsequently in its judgment on the *Connolly* case¹⁰, the Court confirmed the position established in the above-mentioned *Boivin* case. In this application, the applicant complained of numerous breaches of the guarantees of a fair trial, particularly the adversarial principle and the principle of equality of arms, both before the internal bodies of the European

⁷ *Boivin v. 34 member states of the Council of Europe* (dec.), no. 73250/01, ECHR 2008, decision of 9 September 2008.

⁸ At the outset, the application was declared inadmissible in respect of 32 of the states for failure to comply with the six-month time-limit, with the result that it was only examined with regard to France and Belgium.

⁹ *Boivin* cases (nos. 3 and 4), judgment no. 2034, delivered on 31 January 2001.

¹⁰ *Connolly v. 15 member states of the European Union* (dec.), no. 73274/01, 9 December 2008.

Commission and before the Court of First Instance of the European Communities (CFIEC) and the Court of Justice of the European Communities (CJEC). Having also found in this case that the alleged violations of the Convention could not be attributed to the impugned states, the Court considered the question of the potential responsibility of the European Union. Without making any distinction between the internal bodies of the European Commission and the CFIEC and the CJEC, because, ultimately, the applicant's allegations did not warrant separate consideration, the Court pointed out that the European Union had not acceded to the Convention and therefore could not incur responsibility under it¹¹. Consequently, the Court found that the applicant's complaints were incompatible *ratione personae* with the provisions of the Convention.

11. The next case was that of *Coöperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands* (dec.)¹². Although this application was lodged against the Netherlands, the applicant association considered that the CJEC's refusal to allow it to respond to the opinion of the Advocate General had breached its right to adversarial proceedings under Article 6 § 1 of the Convention. It complained of a violation of Article 6 § 1 of the Convention "by the Netherlands and by the European Communities [sic], more specifically the European Court of Justice in Luxembourg".

The Court noted that the European Community had separate legal personality as an international intergovernmental organisation (under Article 281 of the Treaty establishing the European Community). It was not currently a party to the Convention, nor indeed did the applicant association suggest otherwise. The application was therefore incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention, in so far as the applicant association's complaints were to be understood as directed against the European Community itself (see *Confédération française démocratique du travail v. the European Communities*, alternatively: their member states a) jointly and b) severally, no. 8030/77, Commission decision of 10 July 1978, Decisions and Reports 13, p. 236), and should be dismissed pursuant to Article 35 § 4 of the Convention.

The Court continued – although this does not concern us here – by stating that the fact that it was precluded from examining the proceedings before the CJEC in the light of Article 6§1 directly did not dispense it from considering whether the events complained of engaged the responsibility of the Kingdom of the Netherlands as a respondent party¹³.

12. Subsequently, the Court gave its ruling on the case of *Gasparini v. Italy and Belgium* (dec.)¹⁴. In this case, the applicant complained under Article 6 that the proceedings before the NATO Appeals Board had not met the requirements of a fair hearing. He specifically complained that the hearings had not been public, arguing that public proceedings were one of the "organic" safeguards that were necessary for proceedings to be fair. He also questioned the impartiality of the members of the Appeals Board, pointing out that they were appointed by the North Atlantic Council, the organisation's decision-making authority. In the applicant's view, although all appeals to the Appeals Board had formally to be lodged against the head of the relevant NATO body, they actually related in substance to an act which arose from a desire of the North Atlantic Council. Furthermore, the skills required by the relevant

¹¹ Matters will change of course once the European Union has acceded to the European Convention on Human Rights.

¹² *Coöperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands* (dec.), no. 13645/05, ECHR 2009.

¹³ For information, the Court found that the application should be dismissed as manifestly ill-founded.

¹⁴ *Gasparini v. Italy and Belgium* (dec.), no. 10750/03, 12 May 2009.

regulation were not in keeping with the level required by the judicial functions performed by the Appeals Board. Consequently, it was difficult to reconcile the procedure for the appointment of the Board's members with the notion of an independent and impartial tribunal.

Subsequently the applicant claimed in general that Belgium, as NATO's host state, and Italy, the country of which he was a national, had failed to ensure that an internal dispute resolution mechanism compatible with Convention requirements was set up by the Organisation at the time of its foundation.

Application

13. The Court case which most directly concerns the Tribunal is that of *Beygo v. 46 member States of the Council of Europe* (dec.)¹⁵, because it was brought by a former employee of the Council of Europe who applied to the Court following the decision on his appeal. Relying on Articles 6 § 1 and 14 of the Convention, the applicant argued that, on account of its composition and the fact that its members had been appointed by the executive authorities of the Council of Europe, the Administrative Tribunal had not provided the guarantees of independence and impartiality required by the Convention. The Court's decision, which was extremely short, found the application inadmissible and was worded as follows:

"The Court notes that the application arose from a dispute over the decision to dismiss the applicant, who was an employee of the Council of Europe.

The applicant does not dispute that the alleged violations of the Convention stem from the actions of the Secretary General (the decision to dismiss the applicant) and the decision of the Administrative Tribunal. However, he submits that the 46 states which were members of the Council of Europe at the time of the facts should be recognised as being jointly responsible for the alleged violations of the Convention deriving from that decision.

The Court considers that the applicant's complaints should be examined in the light of the principles it has evolved in cases in which it has been required to determine whether the responsibility of States Parties to the Convention can be engaged under the Convention because of acts or omissions connected with their membership of an international organisation. These principles were reiterated and elaborated upon in particular in the cases of *Bosphorus Airways* and *Behrami and Saramati*. They are also referred to in two recent Court decisions [*Boivin* and *Connolly*], which related, as in the instant case, to a dispute between an international civil servant and the organisation by which he was employed.

The Court notes that in the instant case only organs of the Council of Europe, namely the Secretary General and the Administrative Tribunal, were called on to deal with the dispute between the applicant and the organisation. It notes that at no time have any of the respondent states intervened directly or indirectly in the dispute, and that no action or

¹⁵ *Beygo v. 46 member States of the Council of Europe* (dec.), no. 36099/06, 16 June 2009. Another person expressed the intention of lodging an application with the Court following the Tribunal's decision, but no trace of any such application has been found in the published documents.

omission of those states or their authorities can be considered to engage their responsibility under the Convention. The applicant cannot therefore be said to be within the “jurisdiction” of the respondent states within the meaning of Article 1 of the Convention.

The Court also notes that the applicant does not claim that, in transferring their powers to the Administrative Tribunal, the member states of the Council of Europe failed to fulfil their obligations under the Convention by not providing an “equivalent” system of fundamental rights protection, within the meaning given to this term in the *Bosphorus* judgment.

Accordingly, the Court finds that the alleged violations of the Convention cannot be attributed to the states concerned by the present case.

In the light of the foregoing, it concludes that the applicants’ complaints are incompatible *ratione personae* with the provisions of the Convention.”¹⁶

14. In conclusion, if we try to infer certain principles from the case-law in question, it would seem that when member states are setting up an international organisation, they must establish a system that is compatible with the Convention or otherwise their responsibility as signatories to the Convention may be brought into play. However, once the system has been set up, given that its functioning cannot be deemed to be the responsibility of states as signatories to the Convention, they cannot be held responsible. Furthermore, since it has not signed the Convention, neither can the international organisation be held to account before the Court, until— as seems to be happening with the European Union — the international organisation in question actually signs the Convention. The question then is whether it is acceptable for an international organisation or court not to comply with the Convention. However that may be, when such a situation arises, nothing prevents the Organisation from bringing its internal regulations into line with the Convention and ensuring that its tribunal refers to or applies the Convention whenever possible.

II. APPLICATION OF THE CONVENTION BY THE TRIBUNAL

15. In the system of international courts, the general principles of law are one of the keys to examining appeals and interpreting the applicable regulations. It is therefore entirely reasonable for the parties to such cases — particularly the appellants — to refer to the European Convention on Human Rights¹⁷.

16. Several articles of the Convention — namely Articles 6, 8, 10, 12 and 14 — have been relied on by parties before the Tribunal or referred to by the Tribunal itself. The Convention

¹⁶ According to the Convention, in order to be admissible, an application must be lodged with the Court within a period of six months from the date on which the final decision was taken in the domestic courts. Between the dates of the final decision (12 December 2005) and the referral to the Court (13 July 2006) mentioned in this decision there was a longer period. However, there is nothing to indicate that the Court did not ascertain that this admissibility requirement had been satisfied before giving its ruling.

¹⁷ It is worth pointing out that, as mentioned in the above-mentioned *Waite and Kennedy* judgment, the Committee of Staff Representatives of the Co-ordinated Organisations, which was authorised to intervene in the proceedings, had stated in its written comments that it “considered that the statutory provisions concerning immunity had to be interpreted so as to satisfy the fundamental rights under Article 6 § 1 of the Convention” (§ 62).

and, above all, the case-law of the Court have also played a major role in two procedural questions: the exercise of remedies and the execution of the Tribunal's decisions. This second aspect will be dealt with first.

17. In the *Marchenkov* case¹⁸, the Secretary General referred to the case-law of the Court on exhaustion of domestic remedies when complaining that the appellant had failed to raise three of his grounds of appeal in the administrative complaint and had only done so in his observations to the Tribunal. The Tribunal dismissed this objection in the following terms, with particular reference to the case-law of the Court:

“The... Court... in fact considers it sufficient that an applicant has made use of a remedy – even without explicit reference to an article of the convention – in order to dispute a measure and for the central purpose of having the contravened right restored. The Court takes that line because in its view the very use of the remedy enables the petitioned court to remedy the alleged contravention (see, for example, *Couillard-Maugery v. France* (Judgment No 64791/01 of 29 August 2002).”¹⁹

On the subject of the execution of the Tribunal's decisions, reference should be made to its decisions on five appeals²⁰ in which the Tribunal dismissed the Secretary General's plea that the appellants did not have an interest in bringing proceedings; the aim of this plea was to cause the Tribunal to depart from the case-law established in an earlier decision which had not been followed by any general measures of execution to bring the Staff Regulations into line with that decision. Admittedly, in the relevant passage, the Court's case-law was referred to mainly from the viewpoint of the right of appeal to a court – which is a matter covered by Article 6 of the Convention, and one to which we will return later – but there is no doubt that the Court's case-law on the execution of judicial decisions provided the basis for these decisions, from which the following is an extract, taken from the *Golubok* decision:

“53. Regarding the first plea of inadmissibility, the Tribunal sees no reason to depart from the case-law established by the *Schmitt* decision, to which the appellant refers. Indeed the Tribunal has recently endorsed this in four decisions delivered on 31 March 2009 (ATCE, Appeals Nos. 408/2008, 409/2008, 413/2008 and 415/2008, *Pace Abu-Ghosh, Nikoghosyan, Verneau and Oreshkina*).

54. In the *Schmitt* decision the Tribunal clearly ruled that staff members taking part in an external recruitment procedure could lodge an administrative complaint against a decision not to admit them to the examination on the basis of an entitlement under paragraph 1 of Article 59, not paragraph 6 d. of that same article (aforementioned *Schmitt* decision, paragraph 14). At the time the Tribunal noted that a situation of discrimination existed between external and internal candidates. But it observed that this discrimination would not be removed by reducing the statutory rights of staff members. The Tribunal also pointed out that ‘[t]he governing bodies of the Council of Europe must take whatever positive steps are necessary’ (*ibid.*, paragraph 16) and, referring to the case-law of the

¹⁸ Appeal No. 294/2002, decision of 28 February 2003.

¹⁹ Paragraph 21 of the *Marchenkov* decision.

²⁰ Four appeals (Nos. 408/2008, 409/2008, 413/2008 and 415/2008, *Pace Abu-Ghosh, Nikoghosyan, Verneau and Oreshkina*), the decisions on which were delivered on 31 March 2009, and the *Golubok* appeal (No. 456/2008), the decision on which was delivered on 13 May 2009.

European Court of Human Rights, it reiterated that '[a]ny persons who consider themselves the victims of decisions adversely affecting them are entitled to initiate legal proceedings' (*ibid.*).

The Tribunal notes that a period of nine years has elapsed without the Organisation's governing bodies taking the necessary measures. Had this not been the case, the governing bodies could have remedied this *de facto* discrimination created by the Staff Regulations and related texts.

55. For these reasons this plea of inadmissibility must be rejected."

The last part of paragraph 54 is the key passage here.

18. The article of the Convention referred to most in proceedings before the Tribunal is Article 6, which has been taken into account from the viewpoint both of the right of access to a court and the right to appeal. The first point made was as follows:

"... According to the case-law of the European Court of Human Rights, the staff of international organisations are entitled to refer disputes concerning them to a judicial body. In a case concerning such staff, the Court took account of the fact that means of legal process were available to the applicants ..."²¹.

Next, the Tribunal dealt with the right to a hearing, which is preceded by another, namely the right to be informed in detail of the nature of and grounds for the accusations made against the staff member, and is supplemented by a third, the right of reply, that is to say the right to give one's reasons for the alleged reprehensible acts, to explain them and to specify the circumstances surrounding them and which led to their commission²².

Lastly, the Tribunal reiterated the principle that reasons must be given for decisions, as asserted in the Court's case-law²³.

19. Where Article 8 is concerned, the appeals heard by the Tribunal related to respect for private life²⁴ and family life²⁵. The question of the right to family life was considered from the viewpoint of the refusal to award child allowance, the payment of a survivor's pension to a separated spouse rather than to the children, and the refusal to grant the household allowance and the benefits of the Pension Scheme Rules in the case of a "registered partnership"²⁶.

20. With regard to Article 10, the Tribunal was required to rule on a series of appeals

²¹ Appeal No. 255/1999, as cited above, § 22. See also the appeals referred to in footnote 20.

²² Appeal No. 353/2005, *C.G. v. Secretary General*.

²³ Appeal No. 413/2008, *Verneau v. Secretary General*, decision of 31 March 2009, § 37. It should be noted, however, that the appellant cited the rule that reasons must be given for legal decisions in the context of the substantiation of an administrative measure taken by an administrative body.

²⁴ Appeal No. 114/1985, *Sorinas Balfego*.

²⁵ The aforementioned *Sorinas Balfego* appeal, Appeal No. 321/2003, *Nyctelius*, and Appeal No. 339/2004, *N. and A. Siegel*.

²⁶ The Swedish equivalent of the "PACS" civil partnership in French law.

lodged by the same appellant alleging a violation of this article²⁷. However, in its first decision, the Tribunal did not address the issue of the application of this Convention article to the Organisation and, having just found that the impugned decision failed to give sufficient reasons, it did not reply to the appellant's arguments concerning the failure to comply with the conditions under which restrictions may be placed on freedom of expression, as set out in paragraph 2 of Article 10 of the Convention. These questions were dealt with in the other two cases. In the third case, there was also discussion of the balance to be struck between Article 10 of the Convention and Article 9 (freedom of thought, conscience and religion).

21. Article 12 of the Convention was dealt with in the aforementioned *Nyctelius* case concerning registered partnerships, which the appellant equated with marriage.

22. On the subject of non-discrimination, the Tribunal held in a very early ruling that "the principle of non-discrimination is one of the general principles of law which must be respected in the Council of Europe" (Article 14 of the European Convention on Human Rights)²⁸. Subsequently, it was pointed out that "persons in the same situation must be treated in the same manner"²⁹. Lastly, it should be said that this article has practically always been referred to when other substantive provisions of the Convention were discussed. It may be worth pointing out here that in Appeal No. 353/2007, the prohibition on discrimination was viewed not only as a requirement under Article 14 of the Convention but also as a general principle of law³⁰. Furthermore, the Court's case-law on Article 14 has been referred to not only by appellants complaining about a difference in treatment but also by the Secretary General to point out that, according to this case-law, the principle of non-discrimination applies to identical or comparable situations³¹.

23. In conclusion, it is clear that, irrespective of the Court's position on the applicability of Article 6 to judicial bodies such as the Tribunal, the Convention plays an ever increasing role in staff management in international organisations and will no doubt continue to be referred to by the bodies tasked with settling disputes.

"The ideal society does not need law."

²⁷ Appeals Nos. 316/2003, 345/2005 and 405/2008, *Kling* (I), (II) and (III), decisions of 7 May 2004, 22 December 2005 and 19 December 2008, respectively.

²⁸ Appeal No. 76/1981, *Pagani*, decision of 21 April 1982, § 31.

²⁹ Appeal No. 413/2008, *Verneau*, cited above, § 29.

³⁰ §§ 27 and 28 of the *C.G.* decision cited above.

³¹ See for example Appeal No. 340/2004, *Robert Diebold* (II), decision of 17 June 2005.