CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeal No. 462/2009 (Tobia FIORILLI v. Secretary General of the Council of Europe)

The Administrative Tribunal, composed of:

Mr Luzius WILDHABER, Chair,
Mr Angelo CLARIZIA,

Mr Hans G. KNITEL, judges,

assisted by:

Mr Sergio SANSOTTA, Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant, Mr Tobia Fiorilli, lodged his appeal on 13 October 2009. On the same day the appeal was registered under no. 462/2009.

2. On 6 November 2009 the appellant submitted a supplementary memorial.

3. On 10 December 2009 the Secretary General submitted his observations on the appeal. The appellant submitted observations in reply on 7 January 2010.

4. The public hearing in the present case took place in the Administrative Tribunal courtroom on 28 January 2010. The appellant was represented by Mr Jean-Pierre Cuny, barrister at Versailles, and the Secretary General was represented by Ms Bridget O'Loughlin, Deputy Head of the Legal Advice Department, assisted by Mrs Sania Ivedi and Mrs Maija Junker-Schreckenberg, assistants in the same department.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The appellant is a permanent Council of Europe official with a defined-duration contract. He is assigned to the Directorate of Strategic Planning on grade A2. The present appeal relates to the offer of employment made to him on recruitment.

6. The appellant has both Italian and French nationalities.

7. According to information supplied to the Tribunal by the appellant himself, he possesses French nationality through his mother, who is herself French but who has lived in Italy for over forty years (except for a period between 1981 and 1984 during which, for professional reasons, she was resident in France together with her children). Not only was the appellant born in Italy: he spent his childhood there, was educated there and chose to perform his military obligations there, but also married an Italian woman and both their families live in Italy. The appellant's children and his wife have Italian nationality only. The appellant has never taken the necessary steps for them to acquire French nationality. The appellant and his family have lived abroad since 2002 but return to Italy frequently, including for public and family holidays, and regard Milan as their "home". The appellant has no emotional ties with France.

8. The appellant applied to take part in a competitive examination to recruit Italian nationals to administrator posts at grade A1/A2 (vacancy notice no. 119/2006).

9. In a letter of 21 May 2008, he was informed that, on the basis of the Appointments Board's recommendation, the Secretary General had decided to include his name on the reserve list drawn up at the end of the competitive examination.

10. On 29 January 2009, the Directorate of Human Resources sent the appellant an offer of employment for the period 16 February 2009 to 31 August 2009. That offer mentioned all the conditions attaching to the appointment. With regard to the monthly remuneration, the offer restated the provision governing the expatriation allowance (Article 6 *bis* of the Regulations governing staff salaries and allowances - Appendix IV to the Staff Regulations, paragraph 20 below), but that allowance was not included in the salary calculation.

11. As provided for in the offer of employment, the appellant took up his duties on 16 February 2009.

12. Two days later, on 18 February 2009, the appellant signed the fixed-term contract of employment. On 2 April 2009 that document was countersigned on behalf of the Secretary General by the Director of Human Resources.

13. In the meantime, on 26 March 2009, the appellant had returned the offer dated 29 January 2009. He had signed it and added the following comment:

> "I reserve the possibility of submitting a request at a later stage, in accordance with Article 59 paragraph 1 *in fine* of the Staff Regulations, for the grant of an allowance not included in the present contract, having regard to the case-law of the ATCE (case of Kakaviatos [appeal no. 263/2001, decision of 28 February 2001])".

14. On 18 May 2009 the appellant sent the Secretary General a "request under Article 59 paragraph 1 of the Staff Regulations". He stated that he considered the application of Article 6 *bis* referred to was discriminatory, for the reasons he gave, and requested that the application of this rule to his particular case be reconsidered and that he be accorded the expatriation allowance and related benefits.

15. On 29 June 2009, the Director of Human Resources replied, confirming to the appellant that he could not receive the expatriation allowance and related benefits.

16. In a rider signed on behalf of the Secretary General by the Director of Human Resources on 16 July 2009, the contract signed on 18 January 2009 was extended until 15 February 2011.

17. On 23 July 2008, the appellant lodged an administrative complaint under Article 59 paragraph 1 of the Staff Regulations.

18. On 18 August 2009, the Secretary General found the administrative complaint inadmissible and/or unfounded and dismissed it.

19. On 13 October 2009, the appellant lodged the present appeal.

II. THE RELEVANT LAW

20. In the case of staff recruited after 1 January 1996, the expatriation allowance is governed by Article 6 *bis* of Appendix IV (Regulations governing staff salaries and allowances) to the Staff Regulations. That provision reads as follows:

> "1 i. The expatriation allowance shall be paid to staff in Categories A, L and B who at the time of their appointment were not nationals of the host state and had not been continuously resident on that state's territory for at least one year, no account being taken of previous service in their own country's administration or with other international organisations. In the event of an official who has been entitled to the expatriation allowance taking up duty in the country of which he or she is a national, he or she shall cease to be entitled to the expatriation allowance.
>
> ii. When any point on the frontier of the country of which the staff member is a national is within a radius of 50 km from the duty station, such a staff member shall not be entitled to the expatriation allowance unless he or she supplies proof that he or she has established his or her actual and habitual residence in the country of service or, exceptionally and subject to agreement by the Secretary General, in another country of which he or she is not a national, taking account of his or her family circumstances.
>
> 2. The expatriation allowance shall comprise:
>
> i. for all staff in the above three categories a sum equal to a percentage of basic salary, calculated as specified in paragraphs 3 and 4 of this Article;
>
> ii. a fixed monthly allowance, in accordance with the appended scale, in respect of each dependent child as defined in Article 5 above.
>
> The sum specified under sub-paragraph i above shall in no case be less than the sum payable under this head to a staff member in grade B3, step 1.
>
> 3. i. The rate of the allowance during the first ten years of service shall be:
>
> - 18% of basic salary for staff entitled to the household allowance;
> - 14% of basic salary for staff not entitled to the household allowance.
>
> The allowance shall be calculated on the first step in grade of recruitment or promotion irrespective of any increase in the official's basic salary by movement up the incremental scale and shall be adjusted in the same proportions and at the same date as basic salary.

ii. In years eleven, twelve and thirteen, the allowance at the rate of 18% shall be reduced by one percentage point per year to 15% and the allowance at the rate of 14% shall be reduced by one percentage point per year to 11%. During this period, and thereafter, the allowance shall be adjusted in the same proportions and at the same date as basic salary.

iii. In the event of an official who has been employed by one Co-ordinated Organisation taking up duty with the Council or in the event of an official of another international organisation or a member of the administration or armed forces of the country of origin taking up duty with the Council without changing country, the previous service in the host country will be taken into account in determining the application of sub-paragraphs i and ii of this Article.

....."

THE LAW

21. The appellant requests the cancellation of the Secretary General's decision to refuse him the expatriation allowance and related benefits. He also requests the sum of 6500 euros by way of reimbursement of the costs incurred in this appeal.

22. For his part, the Secretary General requests the Tribunal to declare the appeal inadmissible an/or unfounded and to dismiss it.

I. THE ARGUMENTS OF THE PARTIES

A) The admissibility of the appeal

23. The Secretary General argues two grounds for the inadmissibility of the appeal. In his opinion, the appellant had no interest in bringing the appeal and was late in challenging the contested decision.

24. Regarding the first ground of inadmissibility, the Secretary General considers that once the appellant had accepted the conditions of recruitment as offered to him - including the clause concerning the expatriation allowance - he could not claim a "direct and existing interest" within the meaning of Article 59 paragraph 1 of the Staff Regulations in order to contest the said conditions. He adds that the appellant's acceptance of the offer of recruitment, after making a handwritten addition, did not permit him to preserve his interest in bringing the appeal.

25. In the opinion of the Secretary General, by taking up his duties on 16 February 2009 without entering a reservation, the appellant - who became an official of the Organisation as from 16 February 2009 - tacitly accepted all the conditions explained to him in the offer of employment, in accordance with Article 15 of the Staff Regulations. He then reiterated his acceptance by unreservedly signing his fixed-term contract of employment on 18 February 2009. If he wished to contest the conditions of employment which, in his opinion, were prejudicial to him, he could have refused to take up his duties and then refused to sign the contract or tried to negotiate its conditions, and this he did not do. On the contrary, he took up his duties, thus confirming his tacit acceptance of the offer of employment, and then signed and accepted the contract.

26. Basing himself on international case-law, the Secretary General emphasises that the condition on which the appellant could become a member of the Organisation's staff was acceptance of the offer of employment or conclusion of the contract.

According to the Secretary General, as a consequence of the appellant's acceptance of the conditions of employment offered to him - including the clause on the expatriation allowance - he does not have a "direct and existing interest" within the meaning of Article 59 paragraph 1 of the Staff Regulations in order to contest the said conditions. In his opinion, the appellant cannot challenge one of the clauses in the contract he has accepted. Consequently, the appeal is inadmissible for lack of standing because the appellant gave his agreement in a free and informed manner to the act which might have caused him prejudice. On this point, the Secretary General refers to international case-law and to that of the Tribunal, which expressed the following opinion in a similar case:

> "*40. The Tribunal concludes that the appellant no longer had an interest to bring a case within the meaning of Article 59 paragraph 1 of the Staff Regulations, from the point in time when she accepted the offer of a fixed-term contract on 28 December 2006. Furthermore, she reiterated her agreement by signing her contract of employment on 1 February 2007, which document again stated that she was indeed recruited at grade A1."*(ATCE, appeal no. 392/2007 - *Dagalita v. Secretary General*, decision of 29 February 2008, paragraph 40).

27. It follows that, once he accepted the Council of Europe's offer and the contract of employment stating that he would take up his duties on 16 February 2009, the contract between him and the Council of Europe was concluded no later than that date. If he had wished to contest the decision which, in his opinion, was prejudicial to him (absence of an expatriation allowance), he could have refused to sign the offer and tried to negotiate its conditions, and this he did not do. On the contrary, he signed it and thus accepted it as it stood.

28. Regarding the second ground of inadmissibility, the Secretary General maintains that if the appellant wished to challenge the conditions of the offer of employment dated 29 January 2009, it was open to him to lodge an administrative complaint within thirty days of taking up his duties (on 16 February 2009).

29. In the opinion of the Secretary General, the fact must be stressed that the decision which might have affected the appellant adversely was the offer of employment of 29 January 2009, not the decision of 29 June 2009 dismissing his request of 18 May 2009. He adds that the appellant, once having taken up his duties on 16 February 2009 without at any time having challenged the conditions of employment offered to him, had accepted from that point in time all the employment conditions set out in the offer. In his view, the need to guarantee the stability of legal situations requires that a challenge to an administrative decision be made within a reasonable time. The length of such time has been set at 30 days in the Staff Regulations; beyond that time-limit, it is no longer possible, in accordance with the principle of legal certainty, to call a final decision into question.

30. The Secretary General emphasises that the decision of 29 June 2009 to dismiss the appellant's request merely confirms the terms of his offer of employment. In his opinion, a decision which merely confirms an earlier final decision may in no circumstances be regarded as a new decision which triggers a new time-limit for lodging an administrative complaint.

31. The Secretary General does not deny that the appellant had the option of lodging an administrative request, but in order for the time-limits for appeal to be respected, it was incumbent on him to lodge it no later than 30 days from 16 February 2009, the consequence of which would have been to suspend the time-limit for lodging an administrative appeal. The appellant submitted his administrative request on 18 May 2009, almost four months after receiving the offer of employment, and more than three months after taking up his duties, the date on which he tacitly accepted all the conditions of his contract of employment. It is revealing to observe that the handwritten comment made on his offer of employment refers both to Article 59 of the Staff

Regulations and to the Administrative Tribunal's *Kakaviatos* decision. This indicates that he was aware not only of the time-limits applicable to contentious proceedings, but also of the imperative nature of those time-limits. There is nothing in the present case to absolve the appellant of the obligation to respect the time-limits in contentious proceedings. The offer of employment not having been contested within the time-limits, the provisions of the Staff Regulations and the requirement of legal certainty cannot permit the lodging of a complaint against the dismissal of his administrative request directed at that very offer of employment (see, in this connection, the above-cited decision in *Panos Kakaviatos v. Secretary General,* paragraphs 39 and 40).

32. In the opinion of the Secretary General, it follows that the present appeal is also inadmissible as being out of time.

33. In the opinion of the Secretary General, it follows that the appeal is inadmissible.

34. For his part, the appellant maintains that he did have an interest in bringing his case. He states that he entered an explicit "reservation" in his contract of employment. Then, on the basis of the Tribunal's Kakaviatos decision, he adds that the rules in force as interpreted by the Tribunal permit him to submit his request for the granting of the expatriation allowance at any time.

The appellant goes on to argue that the case-law cited by the Secretary General is not pertinent in so far as the decisions cited concern cases in which the interested party did not enter a reservation. In particular, the appellant sees a difference as compared with the Dagalita appeal in that, unlike that appellant, he had entered a reservation and had thus accepted the offer of employment subject to an explicit reservation.

The appellant also considers that the arguments of the Secretary General are based on selective, ineffectual references to case-law. The Secretary General disregards the essence of the ATCE's Kakaviatos decision and seeks to deny a staff member the statutory right to lodge a request in accordance with Article 59 paragraph 1 *in fine* of the Staff Regulations, in defiance of commonsense and of the ATCE's case-law in the Kakaviatos case.

For all these reasons, the appellant requests the Tribunal to recognise his interest and his right to lodge an administrative request.

35. Regarding the second ground of inadmissibility, after putting forward a number of considerations in response to the arguments of the Secretary General, the appellant reaffirms that he relied on a statutory right and submitted his request within the time-limits, because according to the Tribunal's Kakaviatos precedent no time-limit exists for lodging requests. In the appellant's opinion, the request was intended to enable the Secretary General to reflect on his arguments. He adds that he was surprised to note that the reply was almost exclusively concerned with procedure - the rules governing which have constantly been interpreted subjectively - and very little with the merits. In his view, the respondent party's assertion that the appellant could not be unaware of the outcome of his "request" on the merits is wholly unfounded. On the contrary, the appellant hoped to instigate a process of judicial reflection leading to advantages for himself and - indirectly - for present and future staff members in a situation similar to his own.

Lastly, the appellant denies that he acted in bad faith.

In his opinion, it follows that, contrary to what the Secretary General says, the time-limits in contentious proceedings laid down in Article 59 *et seq* are to be calculated from the dismissal of the

administrative complaint, that decision being dated 18 August 2009. There is no question of failure to respect the time-limits in relation to that decision.

36. In conclusion, the appellant requests that the two grounds of inadmissibility argued by the Secretary General be rejected.

B) The merits of the appeal

37. The appellant adduces two grounds of appeal: violation of the general principle of law prohibiting all discrimination, and an interpretation of the concept of "nationality" at variance with the principles of international law.

38. Regarding the first ground of appeal, the appellant stresses that the provision for an expatriation allowance in the Coordinated Organisations, as well as in the European Union, has its origins in the need to respect the general principle of law which prohibits all discrimination. As the case-law of the European Court of Human Rights demonstrates, there is discrimination where different situations are dealt with in the same way, for example when staff who have their homes in the host country and those who do not are treated alike.

39. In support of these arguments, the appellant bases himself on the Tribunal's case-law and that of the Court of Justice of the European Union and the International Labour Organisation's Administrative Tribunal. He argues that the respondent party merely restates the main lines of case-law in a general way, without applying them to the appellant's actual situation. Consequently, he wonders whether there is any "objective and reasonable justification" for his being treated differently from another staff member who, few time after entering the service of the Organisation, has acquired the nationality of the host country - for example by marriage. In the latter case the concept of "home" prevails. Why should it not prevail in his case?

40. The appellant deduces from this that Article 6 *bis* is interpreted by the Organisation in a manner incompatible with the purpose of the expatriation allowance as it appears from the established case-law of the international courts, and thus violates the general principle of law which recognises equality of treatment.

41. In his second ground of appeal, the appellant points out that Article 6 *bis* is a regulatory rule within the internal legal order of the Council of Europe. The provisions constituting that order, starting with the statutory rules and regulations, must be interpreted in accordance with public international law. This applies not only to the interpretation criteria, in terms of the present Tribunal's established case-law, but also to the material provisions. Thus the concept of "nationality" cannot carry a different meaning in the framework of the internal legal order of the Council of Europe from that which it has in public international law.

42. He adds that in public international law, an individual's nationality is assessed on the basis of a criterion of effectiveness. For this reason, the United Nations and the World Trade Organisation (WTO) determine the official's nationality at the time of recruitment. The criterion of effective nationality is the principle used in the case of a person possessing dual nationality. This criterion is not unknown in the Council of Europe, far from it. The Parliamentary Assembly recently dealt with the question of dual nationality in connection with the appointment of members of the Committee for the Prevention of Torture (CPT), in Resolution 1540 (2007). The Assembly stated that "*in the case of dual nationality of a candidate, effective nationality for the purposes of the convention shall be that of the country in which the candidate exercises his or her political rights" (paragraph 7-3).* This Assembly position is based on the rules in force in several international courts (cf. the statutes

of the International Court of Justice, the International Criminal Court and the International Tribunal on the Law of the Sea).

43. In the appellant's opinion, it is not without interest to note that the Council of Europe administration counted the appellant's recruitment as part of the Italian quota. So the Organisation made a choice, so to speak, between the two nationalities and opted for Italian nationality. As he sees it, this is further reason for the Organisation to draw the full conclusions from the concept of effective nationality in international law by accepting the legal effects, with regard to the relevant allowances, of his only effective nationality, ie. Italian nationality.

44. For all these reasons the appellant is confident that the Tribunal will find that the Organisation is wrong to deny him the expatriation allowance by reason of (French) nationality which does not meet the effectiveness criterion recognised by public international law.

45. In conclusion, the appellant considers that the Organisation is wrong to deny him the expatriation allowance by reason of (French) nationality which does not meet the effectiveness criterion recognised by public international law. He requests the Tribunal to set aside the decision not to grant him that allowance.

46. In the opinion of the Secretary General, it follows from Article 6 *bis* of the Staff Regulations, whose conditions of application are cumulative, that only officials who do not have the nationality of the host state and who have not lived on the territory of that state for a continuous period of at least one year are entitled to the expatriation allowance.

After explaining the reasons behind the present wording of that article, the Secretary General asserts that, in exercising the broad discretionary power which it enjoys, the Committee of Ministers was perfectly entitled to limit the number of beneficiaries of the expatriation allowance through stringent conditions on the granting thereof.

The Secretary General adds that, however close the ties which the appellant has with Italy, he possesses French nationality and occupies a post in France; in fact, he does not satisfy the criteria for receipt of the expatriation allowance.

Furthermore, if the appellant really considered that he had no ties with France, he was free to renounce his French nationality. However, he did not exercise that option, thus deciding to assume that nationality and consequently still being able to enjoy the rights conferred by French nationality. In so far as the appellant argues that he was recruited "as part of the Italian quota", it should be noted that the conditions for granting the expatriation allowance are independent of the conditions in which staff careers develop.

In reply to the argument that Article 6 *bis* of the Staff Regulations is discriminatory because it bases itself on the criterion of nationality rather than on the "concept of home" in order to decide on the granting of the expatriation allowance, the Secretary General observes that the Coordinated Organisations have chosen to adopt an objective criterion, that of nationality, in order to determine the right to receive the expatriation allowance.

In the instant case, the appellant's situation cannot be considered identical to that of staff members who do not have the nationality of the host state and have not lived on the territory of that state for a continuous period of at least one year. Consequently, the difference is a reasonable, justified difference of treatment pursuing a legitimate aim.

It follows from these various elements that, contrary to what the appellant says, it cannot be argued that any discrimination took place in this case.

47. From all the foregoing considerations it follows, in the opinion of the Secretary General, that he has not violated any regulation or the practice or general principles of law. Nor, in his view, was there any misjudgment of relevant factors or erroneous conclusions or misuse of power.

II. THE TRIBUNAL'S ASSESSMENT

A) The admissibility of the appeal

48. The Tribunal points out firstly that, according to Article 59 paragraphs 1 and 2 of the Staff Regulations:

> "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. The expression "administrative act" shall mean any individual or general decision or measure taken by the Secretary General. If the Secretary General has not replied within sixty days to the staff member's request, such silence shall be deemed an implicit decision rejecting the request. The sixty-day period shall run from the date of receipt of the request by the Secretariat, which shall acknowledge receipt thereof."

49. In examining the two grounds of inadmissibility, the Tribunal must first determine what the administrative decision is which adversely affected the appellant between the reply of 29 June 2009 or an earlier decision. The Tribunal notes that from the reservation entered by the appellant on 26 March 2009 to the offer of employment (to be taken into consideration together with the wording of that offer), it appears that the Secretary General had clearly decided not to grant the appellant the expatriation allowance.

50. While it may be doubted whether the position taken by the Secretary General constitutes - in view of its implicit rather than explicit character - a decision within the meaning of Article 59 cited above, the fact remains that that position is to be regarded as an "individual...decision" within the meaning of Article 59. This is evident to the Tribunal from the fact that, in the offer of employment of 29 January 2009, the Organisation's rules on the two types of allowance - expatriation allowance and family allowances (allowances for dependent children and household allowance) were clearly stated. However, the statement of gross monthly remuneration took into account only the household allowance and the allowance in respect of dependent children, after stating that the said remuneration was calculated on the basis of the particulars supplied by the appellant himself. The Tribunal points out that the appellant, in his application, had clearly stated that he had dual nationality (Italian and French). Consequently, the Tribunal does not doubt that, when it sent the offer of employment, the Organisation had clearly and knowingly taken a measure which might affect the appellant's rights.

51. Consequently, the question arises whether the appellant ought to have lodged an administrative complaint at that stage - in accordance with the first part of Article 59 of the Staff Regulations - because he already had in his possession an administrative decision adversely affecting him, or whether he ought to have invited the Secretary General, as in fact he did, in accordance with the procedure set out in the second part of paragraph 1 of Article 59 cited above, to take a decision, or a new decision, as the case might be.

52. The Tribunal observes that this second procedure, referred to in this appeal as an administrative request, is a procedure designed to cause a decision or measure to be taken where none such exists, in order to enable the requesting party to obtain a decision - if only a silence implying rejection - which he may challenge through contentious proceedings if he considers that it affects him adversely. The very nature of that procedure designed to bring about a decision precludes the use of that procedure as a kind of appeal against an administrative decision before initiating contentious proceedings proper.

53. On the basis of these considerations, the Tribunal finds that the administrative complaint ought to have been lodged within thirty days from a point in time which could in no case be later than 2 April 2009 (when the contract was countersigned by the Director of Human Resources). The appellant having lodged his administrative complaint on 23 July 2009, it is out of time. The Tribunal further finds that, supposing the appellant had wished on 18 May 2009 to submit to the Secretary General an administrative complaint, not an administrative request, that action would nevertheless have been later than the time-limit to be complied with. It follows that his administrative complaint is in any event out of time. On this point the Tribunal refers to its Diebold (II) decision (ATCE, appeal no. 340/2004, decision of 17 June 2005, paragraphs 30-34).

54. The appellant having argued that he could quite well lodge an administrative request at any time - which the Secretary General accepts -, the Tribunal notes nevertheless that the purpose of the request of 18 May 2009 was to ask the Secretary General to "reconsider the application" of Article 6 *bis*, and not to seek to obtain the application of this provision for the first time or its reconsideration on the basis of new facts not previously known to the Organisation. Consequently, to attach to it a value which would restore to the appellant the time-limits for challenging his employment conditions would be tantamount to infringing the principle of legal certainty and depriving of all meaning the procedure set out in Article 59 paragraph 1 *in fine* of the Staff Regulations.

55. In his first ground of inadmissibility, the Secretary General argues that the appellant did not have an interest in bringing a complaint because he had accepted the offer of employment. The appellant, for his part, states that he still had such an interest, having entered an explicit reservation. The Tribunal having found that the appeal must in any event be declared inadmissible, it need not decide on this ground. However, it observes that, in view of the delicate negotiating stage at which the appellant found himself vis-à-vis the Organisation on a point which the appellant himself considers to be of slight importance, it is conceivable that a new member of staff might challenge some of the clauses after giving his agreement if the other conditions for initiating contentious proceedings are satisfied.

56. Finally, the Tribunal observes that the way in which some matters are handled - quite apart from the Tribunal's assessment of them for the purposes of the present appeal - is open to criticism in that they are not in keeping with good staff management. The Tribunal finds it hard to see how a person can take up his duties in the Organisation without having accepted its offer of employment, or at the very least having signed his contract which, however, does not set out all the conditions of employment. Furthermore, in the instant case the appellant's acceptance of the offer occurred one month after he took up his duties and followed, rather than preceded, his signing of the contract of employment, which was itself not complete until 2 April 2009 when it was signed by the Director of Human Resources. The Tribunal is of the opinion that the Secretary General should set a better framework for the offer of employment/taking up of duties/signature of contract procedure, especially where there is a situation like the present one in which the parties do not agree about all the conditions of employment.

57. It follows that the Secretary General's ground of inadmissibility concerning the lateness of the administrative complaint is well founded and must be accepted. Further, the Tribunal has no need to decide on the other ground of inadmissibility raised by the Secretary General.

B) The merits

58. Having found the appeal inadmissible, the Tribunal need not decide on its merits. However, the Tribunal considers it useful to point out that, in its opinion, both grounds of appeal should be rejected, since it should be borne in mind when examining this case that the appellant possesses full French nationality.

59. Consequently, the Tribunal fails to see how Article 6 *bis* could be interpreted on the basis of a concept of nationality, whether effective or not, and the existence of discrimination envisaged. The fact that the appellant had lived in France for only a relatively short period of time cannot be a factor. Furthermore, the examples adduced by the appellant in alleging that the Organisation's interpretation of the concept of nationality is at variance with the principles of public international law relate to the application of rules which, unlike what happens in the Council of Europe, take account of dual nationality.

60. It is possible that, when Article 6 *bis* was adopted, the Committee of Ministers did not have regard to the consequences of its decision for particular cases such as that of the appellant, ie. where a national of the host country has dual nationality and spends most if not the whole of his life in a country other than the host country, and who may therefore be subject to constraints occasioned by his resettlement in a country whose nationality he does nonetheless possess.

61. Consequently, it would be desirable for the Organisation to examine the question of regulating these cases, which may be increasingly numerous as compared with the past.

62. In conclusion, the appeal must be declared inadmissible, but must also be dismissed.

For these reasons, the Administrative Tribunal:

Declares the appeal unfounded and dismisses it;

Orders that each party bear its own costs.

Delivered in Strasbourg on 18 June 2010, the French text being authentic.

The Registrar of the Administrative Tribunal	The Chair of the Administrative Tribunal
S. SANSOTTA	L. WILDHABER