CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeal No. 455/2008 (Przemysław MUSIAŁKOWSKI v. Secretary General)

The Administrative Tribunal, composed of:

Mr Luzius WILDHABER, Chair,
Mr Angelo CLARIZIA and
Mr Hans G. KNITEL, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant, Mr Przemysław Musiałkowski, lodged his appeal on 17 October 2008. It was registered the same day as case No. 455/2008.

2. The appellant submitted his grounds of appeal on 20 November 2008.

3. On 22 January 2009 the Secretary General forwarded his observations on the appeal. The appellant filed observations in reply on 27 February 2009.

4. The public hearing of the appeal took place in the Administrative Tribunal's hearing room in Strasbourg on 18 May 2009. The appellant represented himself and the Secretary General was represented by Ms Bridget O'Loughlin, Deputy Head of the Legal Advice Department, assisted by Ms Sania Ivedi from the same department.

5. After the hearing the parties submitted a number of documents and observations.

THE FACTS

6. The appellant is a temporary member of the Council of Europe's staff and a Polish national. He holds a grade A2 post in the Technical Co-operation Department of the Directorate-General of Human Rights and Legal Affairs.

7. The appellant applied to sit the general external competitive examination for the recruitment of administrative officers (grade A1/A2), open to nationals of all the Council of Europe member states (vacancy notice e84/2007). This competition specified four profiles (A, B, C and D). The appellant applied for profile C – Programme officer (project management).

On 31 October 2007, the pre-selected candidates (of whom the appellant was one) received an email from the Directorate of Human Resources containing a considerable quantity of information and asking them to confirm their participation in the written tests and to indicate "the language in which you will sit the tests I, II and III (English or French)".

All candidates had to sit four tests. Test I was an essay paper, test II a job simulation, test III an executive summary and test IV was a test of knowledge of the second language.

Subsequently, in an email dated 7 March 2008, the Directorate of Human Resources repeated this information in detail, together with the following information for candidates for profile C (of whom the appellant was one): "PROFILE C [General] – Project management specialist. This paper [I] will present a project which could hypothetically be implemented in the Council of Europe; the candidate will be responsible for the project. Candidates will be asked to reply to around 10 questions regarding the project's planning and implementation.."

8. The written tests were held on 4 April 2008.

9. On 24 June 2008 the appellant learned that he had not made it through to the interview stage. He was told that his overall average mark in the written tests was lower than the level set by the Appointments Board and that consequently he was not being called for interview.

10. On 24 July 2008 the appellant lodged an administrative complaint under Article 59 of the Staff Regulations.

11. The appellant was given a number of explanations concerning the criteria applied in marking the tests.

12. On 20 August 2008 the Secretary General deemed the administrative complaint to be ill-founded and rejected it.

13. On 17 October 2008 the appellant lodged the present appeal.

THE LAW

14. The appellant is asking in the first instance that the decision not to call him for interview be annulled. He is also asking for the annulment of any consequent acts or decisions that would adversely affect his "vital interests" and for compensation for any material damage which he might suffer as a consequence of the impugned decision and which could be substantiated.

15. The Secretary General, for his part, asks the Tribunal to declare one ground of appeal inadmissible and/or to declare the appeal ill-founded and to dismiss it.

I. SUBMISSIONS OF THE PARTIES

A) Admissibility of the appeal

16. The Secretary General argues that the appellant was late in making his claim of having been discriminated against compared with candidates of French or English mother tongue and that the claim in question should thus be declared inadmissible because it is out of time.

17. By 31 October 2007 at the latest, he says (paragraph 8 above), the appellant was fully aware that he would be taking the written tests in his choice of either French or English. If he believed that this procedure would be discriminatory he had the option – within 30 days of the date when he became aware of this fact and not once he learned that he had failed the test – of filing an administrative complaint against the alleged discrimination.

In the Secretary General's view the appeal is partially inadmissible as a result.

18. The appellant, for his part, states that it is for him to decide which act he wishes to complain or appeal against and that, furthermore, he is not obliged to monitor all acts of the Secretary General and check their legality. He chose to challenge the decision not to call him for interview because the assessment procedure which led to the Secretary General's decision was illegal owing to numerous breaches of the applicable rules and principles.

In conclusion, the appellant challenges the Secretary General's assertion and maintains that this part of the appeal is admissible.

B) Merits of the appeal

19. The appellant complains that the Secretary General failed in his duty of ensuring that the recruitment procedure – which was on an unprecedented scale – was organised objectively and fairly. He makes three allegations: candidates were not all treated equally; the procedure was arbitrary; and the procedure was mismanaged.

20. Concerning the first ground, the appellant complains that candidates who do not have English or French as their mother tongue are discriminated against compared with candidates who do because the tests were held in one of those two languages. He develops a number of arguments on this point, amongst them that of an "inherent inequality", and concludes that one

solution would have been to hold two separate competitions. The appellant also argues that candidates for profiles C and D were treated differently.

21. In his second ground, the appellant accepts that the Secretary General has a discretionary power in choosing how a recruitment procedure is to be organised and conducted. In this case, however, he claims that this discretionary power was exceeded and that certain in-house Council rules and general principles of law were breached.

In support of his claim the appellant says that the examiners had been given four criteria. But the marks awarded do not refer to those criteria and it is impossible to know how many points a candidate gained for each one.

The appellant further argues that the marking of test I suggests that greater importance had been attached to theoretical knowledge than to relevant experience. Candidates should, he says, have been informed that this would be the case. Otherwise, this might distort the results. Since the vacancy notice said that experience of project management was required it was natural that candidates with experience should adopt a practical approach, and this made it hard for them to achieve good marks – unlike candidates who lacked experience.

The appellant also claims that the information to candidates provided on the website was very vague and sketchy, particularly regarding the skills and qualifications required.

Lastly, he asks whether the Appointments Board, as stipulated in the Regulations on Appointments (Appendix II to the Staff Regulations) included a representative of the administrative entity where the position was to be filled (Article 10, paragraph 1 of the Regulations) and whether the questions in the written tests, approved by the Board's chairman, were prepared in consultation with the departments concerned (Article 15, paragraph 5 of the Regulations).

The provisions on which the appellant relies read as follows:

"Article 10 – Composition of the Board

1. The Board shall comprise the following members with voting rights:

- the Director of Human Resources or a staff member designated to this end by the Director of Human Resources;

- a staff member of grade A5 at least appointed to this end for two years by the Secretary General (or his or her alternate);

- a representative of the administrative entity where the post or position is to be filled, of at least the same grade as that of the post or position to be filled;

- a staff member designated by the Staff Committee.

(…)"

"Article 15 – Competitive examination

(…)

5. The Chair of the Board may take the following decisions concerning the conduct of competitive examinations without consulting the Board members:

- approve question papers and tests for written examinations prepared in consultation with the department concerned; the questions must be selected in such a way that candidates are treated equally;

(…)"

In support of this part of the ground of appeal, the appellant writes as follows in his further pleadings:

"d) The Secretary General claims that tests were approved by the Appointments Board which included the Staff Committee representative (Art 10 of Staff Regulations and Art 15 of the Regulations on Appointments - ROA). What he does not make clear is whether the Appointments Board included a representative of the administrative entity in which the position was to be filled (Art 10.1 bullet 4 of ROA) and whether the question papers and tests were approved by the Chair of the Board in consultation with the department concerned (Art 15.5 bullet 1 of the ROA). As no particular position was being filled through this competition, all administrative entities in need for project managers should in principle have been considered as concerned by profile C-general. It cannot be questioned that the Directorate of Cooperation, as the one managing 75% of extra-budgetary resources, implementing the largest number of projects and thus being the most in need for project managers should have been involved in the first place. The fact that the Directorate of Cooperation was apparently not consulted would explain why the professional test paper ignored some very important phases of the project management cycle and referred to a situation which was rather typical to administration of a program of activities than to a project implementation.

e) The Secretary General should provide evidence of having ensured proper representation of the departments concerned in the Appointments Board and of having consulted them regarding [about] the questions and tests."

22. In his third ground of appeal, the appellant refers to certain aspects concerning implementation of the New Contractual Policy, in the context of which vacancy notice e84/2007 was situated. He claims that the transitional measures for temporary staff, his own category, were mismanaged. According to him the Secretary General wasted three years and did not offer everyone concerned a fair chance to prove their abilities, one of the principles of the New Contractual Policy. In addition, the Secretary General failed in his obligation to ensure continuity

in project management and placed some staff members – the appellant included – at a particular disadvantage**.**

23. In conclusion, the appellant asks that his appeal be accepted.

24. The Secretary General, for his part, states – concerning the first ground alleging discrimination compared to candidates whose mother tongue is French or English – that whilst such a situation may give a slight advantage to candidates whose mother tongue is French or English, this minor problem, which is moreover inevitable, is accepted by international courts (UNAT and the courts of the European Union). Their case-law indicates that the appellant cannot validly argue that there was discrimination here or that candidates were not treated equally. As for the relevance of a decision by the European Ombudsman which the appellant quotes in his administrative complaint, concluding from it that candidates had been treated unequally, the Secretary General points out that the facts of the case in question are entirely different from those of the present appeal. In addition, the Ombudsman's decisions and recommendations, albeit interesting and helpful in ensuring better relations between organisations and their staff, are not binding. As a result, the legal value of such a decision is not such as to call into question a consistent body of case-law in which a different conclusion was reached.

25. The Secretary General then points out that the number of points awarded for language quality was low compared to the other marking criteria, and the appellant cannot blame his failure on the fact of having written his tests in one of the Council's two official languages.

26. Concerning the second ground, that the procedure was arbitrary, the Secretary General points out that international case-law is consistent in saying that competent authorities have wide discretion in determining how written tests in an examination are conducted and managed, but also how they are assessed. He adds that this discretion, which must be exercised on the basis of objective criteria, is not, however, exempt from judicial review, the purpose of which is to ascertain whether a manifest error or misuse of powers occurred in the exercise of the discretion or whether the limits of the discretion have been manifestly exceeded (cf. ATCE, No. 172/93, *Feriozzi-Kleijssen v. Secretary General*, decision of 25 March1994, paragraph 31; cf. also CJEC, case 40/86, *George Kolivas v. Commission* [1987], paragraph 11).

27. The Secretary General states that no irregularities were found in the way in which the test papers were marked.

28. The Secretary General further states that the tests which the appellant sat were prepared by professionals in the areas of expertise required, who worked closely with the Directorate of Human Resources to tailor the tests to the requirements of the competitive examination and the Council of Europe's expectations.

Regarding the alleged inequality between candidates for profile C and candidates for profile D, the Secretary General contends that the appellant's allegation is ill-founded. The content of the tests for profiles C and D cannot be compared because the two situations are completely different; each of the examinations for profiles C and D is designed to satisfy different and quite separate recruitment needs.

Regarding the appellant's claim that the comments he obtained from the Directorate of Human Resources on his tests were vague and inadequate, the Secretary General states that the comments passed on to him were only a synopsis of the two examiners' comments. He adds that under Article 9 of the Regulations on Appointments the Appointments Board is free to divulge such parts as it sees fit to unsuccessful candidates and has no obligation to return their scripts or to provide them with all the comments made by the examiners. Moreover, the comments passed to him revealed no inconsistency in the examiners' marking of each test. Their assessment of the quality of his scripts was unanimous.

The Secretary General states that he does not have to provide details of the examiners and the assessment criteria to be applied to tests. The examiners who (specifically) marked the appellant's tests were perfectly at home in both official languages of the Council of Europe and competent in the fields in question.

He adds, drawing on international case-law, that he is not obliged to divulge these details either before or after a competitive examination is held.

Notwithstanding the fact that there is no obligation to tell candidates the criteria applied to the tests in an examination, it should be noted that the appellant *was* informed of these during his feedback interview with the Directorate of Human Resources on his results, as the appellant himself admits in paragraph 2. a) of his appeal, where he lists them.

Moreover, Article 9, paragraph 1 of the Regulations on Appointments empowers the Appointments Board to disclose to unsuccessful candidates such information as it sees fit to impart. The appellant received real feedback here from the Directorate of Human Resources, which gave him many pointers to the reasons why he had failed, though admittedly candidates are given only a synopsis of the examiners' comments and not their full comments.

29. Concerning the third ground, alleging mismanagement of the transitional measures for temporary staff, the Secretary General states that these measures were put in place in order to give temporary staff recruited to the Council of Europe in 2005 without sitting a competitive examination an opportunity to regularise their status under the new rules, through selection procedures in all categories. It had been decided that these competitive examinations would be external and would be held between 2005 and 2008. The Secretary General explains that the decision had been taken not to extend the measures, in order to avoid a repeat of the situations that had led to a "permanentisation competition" (in 2003) and allow temporary staff, who had been warned of this cut-off date in 2005, to make arrangements in the event of their failing the examinations offered.

The Secretary General notes that this allegation is in any event now without substance. Since unfortunately it was not possible to complete all the planned competitive examinations by 31 December 2008, the Secretary General decided to extend the transitional measures for a further six months; Rule No. 1298 allows temporary staff to take part in ongoing competitive examinations and await the results of those they have already sat.

30. Finally**,** the Secretary General notes that it is apparent from the appellant's comments and from the object of his appeal (as stated in his form of appeal) that he is asking for annulment of

the decision not to call him for interview and that he wants the Tribunal to mark his papers and consider itself whether the assessments made by professionals trained to that end are correct or not. But it is obvious and normal that a candidate who has not attained the required average mark in the written tests cannot be called to take part in the later stages of a competitive examination and that it is not for the courts to assess his performance. Under no circumstances can his demands be accommodated.

31. The Secretary General concludes from all the above considerations that he has not breached the Staff Regulations or any related texts and that the impugned decision is in no way defective.

II. THE TRIBUNAL'S ASSESSMENT

A) Admissibility of the first claim

32. The Tribunal notes that under Article 59 of the Staff Regulations an administrative complaint is filed against an act which adversely affects a staff member. It is manifestly obvious in this case that the statement that the tests would be taken in French or English could not of itself be prejudicial to the appellant**.** Any prejudice would result not so much from the decision but rather from the outcome of marking the test in question (ATCE, Appeal No. 456/2008, Golubok v. Secretary General, decision of 13 May 2009, paragraph 56). And the appellant's appeal to the Tribunal concerns the marking and its consequences rather than the original decision to choose test I as the eliminatory test.

33. Consequently the Secretary General's objection must be rejected.

B) Merits

34. The Tribunal is required to examine the appellant's three claims separately. It will, however, examine his third ground before considering the second.

35. Concerning the first ground, the Tribunal points out that under Article 12 of the Council of Europe's Statute, "the official languages of the Council of Europe are French and English. The rules of procedure of the Committee of Ministers and of the Consultative Assembly shall determine in what circumstances and under what conditions other languages may be used."

36. Given the Council's status as an international organisation and the choice of languages made when it was established it is possible, in a recruitment procedure open to several nationalities, that candidates who have French or English as their mother tongue may have an advantage over other candidates. This is, however, a *de facto* situation constituting an "inherent inequality" which cannot be disregarded.

The Tribunal notes, furthermore, that in the event the appellant does not appear to have been adversely affected by this *de facto* situation. None of the comments passed on to the appellant – who has, moreover, worked for the Council since September 2000 – casts doubt on his linguistic abilities. The Tribunal also points out that the purpose of the recruitment procedure

in question was not to recruit a specific number of candidates but rather to draw up a reserve list from which the Council will appoint people in future. At this stage of the recruitment procedure the Council thus seeks to establish whether each candidate possesses the requisite knowledge and skills to work for the Council, without conducting a comparative examination of all the candidates' qualifications.

37. Consequently the appellant's ground is without merit.

Concerning the appellant's third ground, the Tribunal notes that in the context of the present litigation the appellant may not criticise the general implementation of measures under the New Contractual Policy but simply the way in which they were applied to him. Under Article 59, paragraph 1 of the Staff Regulations an appellant can only challenge an administrative act which adversely affects him. Admittedly, under the terms of that provision "administrative act" is also taken to mean any general decision or measure. But an appellant can only object to the influence which that act has on his legal position and not on its potential influence on the Council generally. However, this aspect of the appellant's allegations will be taken into account when the Tribunal examines his second ground, concerning a series of complaints which are interrelated by virtue of the allegation that the competitive examination was mismanaged.

Concerning that part of the ground of appeal which concerns the appellant directly, and independently of any other issue, the Tribunal notes that, as the Secretary General points out, the appellant benefitted from extensions to his contract which protected him from the adverse effects he refers to in this ground of appeal. Consequently, his claim is now without substance.

38. As a result, this ground must be rejected.

39. Concerning the second ground, the Tribunal notes that it has previously had occasion to look at the matter of the Secretary General's discretionary power in respect of recruitment (see ATCE, Appeal No. 250/1999, aforementioned decision in *Schmitt v. Secretary General*, paragraphs 25-27). The Tribunal held that the Secretary General, who has the authority to make appointments (Article 36 c of the Statute of the Council of Europe and Article 11 of the Staff Regulations), possesses a discretionary power. In matters of recruitment the scope of this power allows him to familiarise himself with and assess the requirements of the service and the professional aptitudes of candidates for a vacant post.

40. But the Tribunal further holds that this power must always be exercised lawfully. Undoubtedly, in the event of a challenge, the assessment of an international court cannot take precedence over that of the Administration. But it has a duty to check that the impugned decision was taken in accordance with the Organisation's rules and the general principles of law as laid down in the legal systems of international organisations. The Tribunal subsequently found (*ibid.*, paragraph 25) that:

> "It must consider not only whether the decision was taken by a competent authority and whether it is legal in form, but also whether the correct procedure was followed and whether, from the standpoint of the Organisation's own rules, the administrative

authority's decision took account of all the relevant facts, any conclusions were wrongly drawn from the evidence in the file, and there was any misuse of power."

41. The Tribunal also indicated that in assessing subjective qualifications the competent authority "naturally makes greater use of discretionary power than in assessing objective qualifications" (see, *a contrario*, ATCE, Appeals Nos. 216/1996, 218/1996 and 221/1996, *Palmieri* (III, IV and V), decision of 27 January 1997, paragraph 43).

42. The Tribunal notes that these rules also apply to the way in which tests are conducted and marked.

With regard to the criteria chosen, the decision to disclose these or not, and the choice of examination questions, there is nothing in the facts laid before the Tribunal to indicate that the Appointments Board failed to act in accordance with the requirements of the vacancy notice and the principles laid down by the Tribunal or that its assessment was arbitrary. There is no evidence either that the Appointments Board failed – before or after the written tests – to provide information on the conduct of the tests which was adequate and which allowed the appellant to understand the Board's decisions.

43. In taking the decisions in question the Secretary General did not breach the law by which he was bound and did not draw conclusions that were manifestly incorrect in relation to the vacancy notice or the rules of the Organisation, such as to incur the censure of the Tribunal.

44. Concerning the composition of the Appointments Board in this recruitment procedure, the Tribunal notes that under the Staff Regulations the Board must consist of four members, one of whom must be "a representative of the administrative entity where the post or position is to be filled, of at least the same grade as that of the post or position to be filled" (Article 10, paragraph 1 of the Regulations on Appointments – Appendix II to the Staff Regulations).

45. From the information which the Secretary General gave the Tribunal on 29 June 2009 (paragraph 5 above), it appears that in the event there were three members of the Board at the stage of selecting candidates and approving the tests and that there was indeed no representative from the relevant administrative entity.

The Secretary General commented on this as follows:

"It should be pointed out that the competitive examination held pursuant to vacancy notice e84/2007 is a general competition, divided into 4 quite separate profiles. Each of the profiles was potentially relevant to several administrative entities and clearly it was not possible to include on the Board a representative of each administrative entity of the Council of Europe in which there were posts or positions to be filled since potentially there were posts to be filled in all entities of the Organisation.

It is for this reason that, in general competitive examinations, the chairman of the Board does not approve the question papers for the written examinations in consultation with the departments concerned (as Article 15, paragraph 5, first indent of the Regulations on

Appointments requires), since the departments concerned by a general competition are *all* departments of the Council of Europe and it is simply not realistic or feasible to consult them all.

The procedure described in the aforementioned indent is in fact applied only in "specific" competitive examinations designed to fill one or more posts in a given administrative entity. This makes sense because when there is a post to be filled in an entity, that entity is the one best placed to know what skills and qualifications it needs. It is therefore consulted on the proposed question papers, designed to ascertain whether a given candidate possesses the skills required for the vacant post. And the number of candidates in such cases is relatively small since the vacancy notice asks for far more specific qualifications, experience and expertise than in a general competition where the aim is to recruit multi-skilled candidates who may be appointed to any one of the Council's administrative entities. As a result it is desirable for a representative of the entity in question to be consulted, and that exercise is not too time-consuming because the number of candidatures is small.

But as we have already demonstrated in our arguments, in the case of a general competitive examination, since the purpose of this is to recruit staff who may be of interest to many different entities, the chairman of the Board goes straight to the "higher level" and asks the Board itself to approve the written tests, to avoid multiple consultations and the red tape that slows everything down. It should be remembered that the Board is the body that advises the Secretary General on recruitment and appointments and as such it carries great weight in these matters. General competitive examinations, moreover, attract a very high number of applications (about 3 700 in this case, some 1 200 of which were pre-selected for the written tests). For this reason too it is not feasible to consult a representative of each administrative entity of the Organisation and allow each one to say which kind of test it wants for its area of activity, given that the aspirations of the candidates are so diverse and that successful candidates may be assigned to any administrative entity, regardless of whether they were successful in the test proposed by the representative of that or another entity.

It should also be noted that the general competitive examination pursuant to vacancy notice e84/2007 was unprecedented in the number of candidates, the range of profiles which could be applied for and the large number of Council staff members applying. Because of this it was essential that the procedure should be fair. The aim of the competition was not to recruit the appellant, or Council staff members, but the best candidates, whether from in-house or from outside. To that end it was important that candidates should not be tested on work which some of them had been doing every day for years, which would been flagrantly discriminatory and advantageous to in-house candidates working in a department whose subject matter had been used and disadvantageous to in-house candidates in other departments and even more so to candidates from outside the Council. Thus it was to respect the need for fairness in the approval of examination topics that the number of Board members was limited to three (see below) and that representatives of administrative entities were not included, to avoid any pressure or outside influence, or even the hint of such pressure.

For this reason too, the identity of the Board members and the capacity in which they were sitting must remain confidential (see, in this connection, our email of 16 June 2009). We trust the Tribunal will, as in other cases in the past, take all the necessary measures to protect that confidentiality.

To sum up, in this case as in all general competitive examinations, it was the Board members who were consulted on the tests prepared by the Directorate of Human Resources in consultation with outside experts, and the Board members approved them.

Moreover, and again with a view to speed and efficiency, the number of Board members approving the tests was limited to three (see above). Whilst it is true that Article 10 of the Regulations on Appointments gives the number of members with voting rights as four, Article 11, on the validity of the Board's decisions, says that sessions of the Board are valid if at least 3 members are present, as was the case here.

These facts show that all provisions of the Staff Regulations and related rules were respected and that the procedure was at no time defective.

Whilst we did indeed make a mistake in saying that the Board had included a representative of DG-HL, an error for which we again apologise, the reason for this is that we did not ask the Directorate of Human Resources for enough detail about the composition of the Board and the procedure for general and "specific" competitions.

This mistake, however, in no way advances the appellant's cause, since he was not successful in the tests which were designed to assess his capabilities to be a project manager anywhere in the Council and not to check his ability to do the job he already does every day. Moreover, it should be pointed out that the appellant passed the test he is now disputing: it was the other written tests that he failed."

46. The Tribunal cannot accept these explanations. It is duty-bound to point out that the Board's composition is stipulated by the Staff Regulations and cannot be changed by the Secretary General himself. The Tribunal does not underestimate the fact that the competitive examination being organised here was one designed to meet the staffing requirements of multiple administrative entities and that Article 10 of the Regulations on Appointments was doubtless drafted with an eye to the classic case of a specific competition designed to meet the needs of just one administrative entity. But the terms of Article 10 are clear and the Secretary General's explanations do not justify the discrepancy. There was nothing to stop the Secretary General from asking the Committee of Ministers to amend the text in question so that it covered the circumstances of this competitive examination. A distinction must be made between the actual composition of the Board and the quorum needed in order for its sessions to be valid. In this case the fault was in its composition. As a result the Board was unlawfully constituted. Since the appellant objected to this irregularity within the required time limit, the lawfulness of the Board's composition must be taken into account in considering this ground. Since the lawfulness of the Appointments Board's composition is at issue here, no legal consequence may be drawn from the

fact that the appellant was successful in the essay test, because the question of the Board's composition reflects on the conduct of all the written tests.

47. The Tribunal further notes that the reasons which prompted the Secretary General to deviate from the aforementioned Article 10 in respect of the composition of the Appointments Board also led him not to consult the administrative entities concerned on approval of the examination topics. Here too the Secretary General failed to comply with the wording of Article 10 of the Regulations on Appointments.

48. The Tribunal comments in addition that the information which the appellant received from the Secretary General on the conduct of the competitive examination was inconsistent and did not enable him to safeguard his interests.

49. In conclusion, after an appraisal of all the facts, the Tribunal rules that this ground is well founded and must be accepted.

50. As a result the appeal is well founded and the impugned decision is unlawful.

51. In his form of appeal and at the hearing the appellant indicated that he would be seeking damages, but he has not substantiated his claim or put any value on the amount of compensation claimed. Consequently, there is no reason to award him damages. In any event the Tribunal is convinced, from the facts available to it, that the appellant has not suffered any material prejudice that would warrant pecuniary compensation.

For these reasons the Administrative Tribunal:

Rejects the Secretary General's plea of partial inadmissibility;

Declares the appeal admissible;

Declares it well founded;

Annuls the impugned decision.

Delivered by the Tribunal in Strasbourg on 30 October 2009, the French text being authentic.

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