

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

Appeal No. 415/2008 – Maria ORESHKINA v. Secretary General

The Administrative Tribunal, composed of:

Ms Elisabeth PALM, Chair,
Mr Hans G. KNITEL, Judge,
Mr José da CRUZ RODRIGUES, Substitute Judge,

assisted by:

Mr Sergio SANSOTTA, Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant, Ms Maria Oreshkina, lodged her appeal on 3 July 2008. It was registered the same day under No. 415/2008.
2. The appellant filed a supplementary memorial on 26 September 2008.
3. On 16 October 2008, the Secretary General submitted his observations on the appeal. The appellant filed a memorial in reply on 5 November 2008.
4. The public hearing of the appeal, initially scheduled for 26 November 2008, was postponed at the request of the Secretary General. It took place finally in the Administrative Tribunal's hearing room in Strasbourg on 28 January 2009. The appellant was represented by Me Jean-Pierre Cuny and the Secretary General by Ms Bridget O'Loughlin, Deputy Head of the Legal Advice Department, Directorate of Legal Advice and Public International Law. The hearing also dealt with Appeal No. 413/2008 – *Nathalie Verneau* – which covered issues similar to those raised by the present case.
5. During the proceedings the Tribunal received from the Secretary General, without having requested it, the report of the Appointments Board meeting at which the rejection of the appellant's application had been reconsidered. As this document was classified as confidential

under Article 9, paragraph 1 of the Regulations on appointments (Appendix II to the Staff Regulations) the Tribunal, in line with its customary practice, did not disclose it to the appellant. In any event, the Tribunal did not take account of this document.

6. After the hearing the appellant gave the Tribunal information about her professional experience and the Secretary General submitted his comments

THE FACTS

A. *The circumstances of the case*

7. The appellant is a permanent staff member of the Council of Europe and a Russian national. Appointed on 1 January 2000, she currently holds the post of grade B2 assistant, newly created within the Department for the Execution of Judgments of the European Court of Human Rights.

8. In September 2007 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).

9. In an administrative complaint of 18 November 2007 the appellant challenged an initial decision, dated 13 November 2007, rejecting her application. After her application had been reconsidered, the appellant was told by the Directorate of Human Resources on 13 February 2008 that the Appointments Board had upheld its recommendation that her application should be rejected

10. On 19 February 2008 the appellant sent an e-mail to the Directorate of Human Resources specifically asking what criteria had been applied in drawing up a shortlist of candidates for the competitive examination in question.

11. The same day, the appellant received a reply in which the Directorate of Human Resources repeated that in the view of the Appointments Board her professional experience did not match that required of a staff member in category A.

12. On 12 March 2008 the appellant received a message from the Directorate of Human Resources informing her of the selection criteria which had been defined and applied.

13. On 25 March 2008 the appellant addressed an administrative complaint to the Secretary General against the decision of 13 February 2008 rejecting her application.

14. In a communication of 21 April 2008 the appellant was told that her administrative complaint had been rejected.

15. On 3 July 2008 she lodged the present appeal.

B. *Applicable provisions*

16. The power to lodge an administrative complaint is governed by Article 59 of the Staff Regulations. The relevant parts of it are as follows:

“1. 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 a request from a staff member inviting him or her to take a decision or measure which he or she is required to take, 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.

2. The complaint must be made in writing and lodged via the Head of the Human Resources Division

- a. within thirty days from the date of publication or notification of the act concerned; or
- b. if the act has not been published or notified, within thirty days from the date on which the person concerned learned thereof; or
- c. within thirty days from the date of the implicit decision rejecting the request as mentioned in paragraph 1.

The Head of the Human Resources Division shall acknowledge receipt of the complaint.

In exceptional cases and for duly justified reasons, the Secretary General may declare admissible a complaint lodged after the expiry of the periods laid down in this paragraph.
(...)

6. The complaints procedure set up by this article shall be open on the same conditions *mutatis mutandis*

- a. to former staff members;
- b. to persons claiming through staff members or former staff members, within two years from the date of the act complained of; in the event of individual notification, the normal time-limit of thirty days shall apply;
- c. to the Staff Committee, where the complaint relates to an act of which it is subject or to an act directly affecting its powers under the Staff Regulations;
- d. to candidates outside the Council, who have been allowed to sit a competitive recruitment examination, provided the complaint relates to an irregularity in the examination procedure. (...)"

THE LAW

17. The appellant asks the Tribunal to annul the decision to exclude her from participation in external competition e84/2007. She also asks to be awarded the sum of 5 000 euros in respect of expenses incurred for the present appeal.

18. The Secretary General, for his part, asks the Tribunal to declare the appeal wholly or partially inadmissible and/or unfounded and to dismiss it.

A. SUBMISSIONS OF THE PARTIES

1. Admissibility of the appeal

19. The Secretary General enters three pleas of inadmissibility.

Firstly, he claims that the appeal is inadmissible on two grounds: the administrative complaint was lodged late and the appellant did not have an interest in bringing proceedings. In the alternative, he argues that part of the appeal should be declared inadmissible on the ground that the appellant made new allegations in her appeal which did not feature in the administrative complaint.

20. Regarding the first plea (late lodging of the administrative complaint), the Secretary General states that the decision which the appellant is seeking to have annulled is not the decision allowing her to sit the written examination on a provisional basis but the decision to exclude her from the competitive examination advertised in vacancy notice e84/2007. According to the Secretary General the date of the act complained of is 13 February 2008 whereas that of the administrative complaint is 25 March 2008, ie more than thirty days after the act which the appellant is challenging. The Secretary General adds that the appellant was fully informed at the time of the reasons for the rejection of her application and he points, for proof of this, to the wording of a first complaint which she lodged on 18 November 2007. On this occasion the appellant had furnished details which – she claims – proved that her professional experience was of the requisite length and level to meet the criteria stipulated in the vacancy notice.

21. Regarding the second plea, the Secretary General argues that the appellant did not have an interest in bringing proceedings because, under Article 59, paragraph 6 d) of the Staff Regulations, the complaints procedure is open only

“d. to candidates outside the Council, who have been allowed to sit a competitive recruitment examination, provided the complaint relates to an irregularity in the examination procedure.”

22. The appellant had referred to the Tribunal’s decision in *Schmitt* (ATCE, Appeal No. 250/1999, decision of 9 June 1999), and the Secretary General notes that the Tribunal, in its decision on this case, made a number of important observations (paragraphs 14-16 of the decision).

The Secretary General acknowledges that it might seem unfortunate that nine years had elapsed without anything being done here. But he thinks there may have been good reasons for

not amending the Staff Regulations and, in any case, before any action is taken now, the question of candidates' interest in matters of external recruitment will need to be reconsidered in the light of the changed circumstances since the *Schmitt* decision. These changes were the scale of external competitive examinations and the increased number of Council of Europe member states. As a result there was a real risk of the Tribunal becoming inflated, indeed paralysed, and an even greater risk of this happening to the Administration, if the Tribunal had to handle appeals from all those who thought their applications should not have been rejected or were unhappy with the outcome of an examination.

Lastly the Secretary General argues that if, as in the case of Ms Schmitt, the Tribunal allows appeals from staff members excluded from external competitive examinations but does not give the same treatment to candidates from outside the Organisation, that creates discrimination, as the Tribunal itself recognised in the *Schmitt* case. But the only basis for that discrimination – the advancement of staff members' careers – was not in his view a sufficient reason to give advantages to this category of candidates.

23. For this reason the Secretary General asks the Tribunal not to highlight and, by so doing, worsen the inequality potentially created by the decision in the *Schmitt* case. He is convinced that the issue should not be dealt with on a case-by-case basis but should be the subject of a careful review and full revision of Article 59 of the Staff Regulations. There are ways of improving things to make it easier to get deserving cases brought before the Tribunal. It goes without saying that those who wish to show that they have suffered as a result of a basic defect in the recruitment procedure (discrimination or malice, for example) must not be denied the opportunity to appeal. But there too, changes on such a scale require a meticulously prepared reform of the Staff Regulations.

Lastly, the Secretary General thinks it is perhaps unfortunate that the matter has been somewhat neglected. But there is now an opportunity to resolve it in line with the principles laid down by the Tribunal and the ECHR, taking account of the realities of the Council's situation regarding recruitment and above all the growing need to hold large-scale competitive examinations on a regular basis.

24. Regarding his third plea of inadmissibility, the Secretary General says that the appellant makes allegations which do not feature in her administrative complaint: no reasons given for the decision to exclude her from the competitive examination, and breach of her legitimate expectations. He refers here to the Tribunal's decision in *Lobit-Jacquin* (ATCE, Appeal No. 284/2001, decision of 27 March 2002, paragraph 21).

25. The appellant, in reply to the first of the Secretary General's pleas, puts forward two arguments.

26. Firstly, she points out that the terms of the Regulations on appointments are not clear. The Appointments Board was supposed to refer the matter to the Secretary General – something she claims was not done in this case – and he should not rely on the fact that the relevant provisions of the Regulations on appointments are open to two interpretations in order to justify a plea that the administrative complaint was inadmissible.

The appellant also says that it was not until 1 March 2008 that she was in possession of all the facts she needed to challenge the decision to exclude her from sitting the competitive examination.

27. Regarding the second plea of inadmissibility, the appellant contends that the Secretary General, in claiming that her appeal is inadmissible *ratione materiae* and incompatible *ratione personae*, is arguing counter to the case-law established by the *Schmitt* decision. She says that the Secretary General is ill-advised to repeat this plea since he took no positive steps to remedy the discrimination between staff members and candidates from outside the Organisation subsequent to the *Schmitt* decision. In any event, she argues, assuming the difference in treatment did amount to discrimination, the remedy was certainly not to deprive staff members of a right under the Staff Regulations, but rather to consider broadening the jurisdiction of the Tribunal.

28. Regarding the Secretary General's third plea, the appellant refers, in her reply, to the Tribunal's ruling on the *Marchenkov* appeal, when it rejected a similar plea (ATCE, Appeal No. 294/2002, decision of 28 March 2003, paragraph 20). She also believes she has shown that the claims adduced in her administrative complaint encompass all the allegations made in the appeal.

2. Merits of the appeal

29. As to the merits, the appellant considers that the impugned decision is substantively defective and that the Secretary General did not provide reasons as he should have done. She also claims that there was a breach of her legitimate expectations.

30. Concerning the first ground, the appellant considers that the impugned decision a) did not take all the main facts into account and b) drew incorrect conclusions from the dossier. She notes that the message dated 12 March 2008 (paragraph 12 above) says that "B1-B3 staff members were not invited to sit written exams in principle except if they had previous relevant professional experience in one of the fields of the vacancy notice for at least a period of two years". The same document said that the appellant could not be invited to sit the written examination because she did not have this experience.

31. To the appellant, this message confirms that there are objective parameters which the Secretary General stated his intention of following, along the lines indicated. It also confirms that the appellant's experience was, incorrectly, deemed not to be enough or appropriate when measured against those parameters.

The appellant argues that such a conclusion is altogether incorrect. She claims that the Appointments Board looked no further than her current grade of B2, but neglected to take account of the three years of relevant professional experience which the appellant says she has.

The appellant adds that one of the objective parameters is two years' relevant experience; she, however, as has been pointed out on several occasions, had more than three years'; experience. Secondly, there is no denying that this experience was in one of the fields covered by the vacancy notice, namely responsibility for co-operative projects. The appellant points out that she specifically has the skills relevant to the profile she was applying for. She evidences this by means of her personal file and memoranda, copies of which she has supplied to the Tribunal.

The appellant ends by claiming that the Secretary General, in the face of this evidence and these facts, is simply hiding behind his discretionary power. But he did not take the opportunity of the decision to explain why and in what respect the appellant's application did not meet the criteria of the vacancy notice.

32. Concerning the second ground, the appellant points out that every administrative act must be properly substantiated.

In the impugned decision the Secretary General has, she alleges, used the existence of his discretionary power to assess professional experience as a way of evading the question of why the appellant's professional experience was not deemed such that she could be admitted to the competitive examination on the basis of the objective parameters set by the Appointments Board and notified to her in the aforementioned message of 12 March. The appellant thinks that there is here a quite extraordinary refusal to provide reasons for the decision taken, based on the idea that discretionary acts do not need to be substantiated. But that idea is incorrect. Discretionary acts are neither capricious nor arbitrary. They too must be explained. The appellant has sought, through her administrative complaint, to obtain an explanation of the reasons, but the Secretary General refuses to acquaint her with them.

The appellant concludes that it hardly needs saying that it is essential, both for the staff member and for the administrative court, that an act should be substantiated. This allows both sides to assess, from the reasons given, whether the decision is lawful and whether the administrative authority took account of all the relevant factual and legal considerations.

33. Concerning the third ground about legitimate expectations, the appellant points out that the Appointments Board set objective parameters. It did so in order to adopt recommendations that were as objective as possible for the large number of Council of Europe staff members who applied to take part in the competitive examination. These parameters – listed in the aforementioned message of 12 March 2008 – constitute precise assurances which were given to all candidates including the appellant.

The appellant argues that failure to respect these assurances, namely the fact of not inviting the appellant to take part in the external competitive examination solely on the grounds that she is a permanent staff member of grade B2 and without taking into account her experience of over three years, is a serious breach of the assurances she was given.

34. In conclusion, the appellant asks the Tribunal to annul the decision excluding her from participation in the competitive examination in question.

35. The Secretary General, for his part, contends in reply to the appellant's first ground that the appellant's claim that the Appointments Board failed to take account of all the facts in her dossier, notably her professional experience, is incorrect because the Board had plenty of time, on two occasions, to consider her professional experience. On both occasions the Board deemed the appellant's professional experience to be insufficient. And there is no doubt, when it came specifically to determining whether the appellant's professional experience could be deemed appropriate within the meaning of vacancy notice e84/2007, that this decision was a matter for the Appointments Board.

The Secretary General adds that decisions deriving from the exercise of an international organisation's power of discretion are subject to only limited scrutiny: they can be overturned only if they were taken by a body not competent to take them, were formally or procedurally incorrect, were based on a factual or legal error, failed to consider material facts, entailed an abuse of power or drew conclusions from the case that were patently incorrect. Furthermore, it is not for an Administrative Tribunal is not to judge candidates' merits; the authority tasked with the selection process must retain full responsibility in making its choice.

36. The Secretary General states that it is for the Appointments Board alone to quantify the professional experience laid before it in order to assess whether or not that experience is of the requisite length and can be deemed to be "two years' appropriate professional experience in one of the fields mentioned", as stipulated in vacancy notice e84/2007.

He adds that the Appointments Board performed this assessment twice, once when the appellant's application was reconsidered, and it concluded that she did not satisfy the criteria mentioned in the vacancy notice.

37. In his view the fact that the Board decided against the appellant is no reason to conclude that the Board abused its authority or committed an error of judgement.

38. Concerning the second ground, the Secretary General accepts that all administrative decisions must be substantiated. In the present case this was done several times. A reading of the e-mails sent to the appellant by the Directorate of Human Resources prompts the inescapable conclusion that the appellant was properly informed of the reasons for the rejection of her application, even before she had formulated her administrative complaint.

39. The message of 13 November 2007, for example, says that her application was rejected because the Board did not think her professional experience could be considered as experience in an A-grade post. In its message of 13 February 2008 the Directorate of Human Resources informed the appellant that, after re-examining her application, the Board "considered that [she] did not meet all the criteria mentioned in the Vacancy Notice and therefore has confirmed its decision not to invite [her] to participate in the written examination." In a message to the appellant on 19 February 2008 the Directorate of Human Resources informed her that the Appointments Board had reconsidered her application and thought that neither her experience at the Council of Europe nor her experience outside it could be deemed of the level appropriate to admit her to the competitive examination. Likewise, in a message sent to the appellant on 12 March 2008 the Directorate of Human Resources explained that in principle all candidates who were staff members of grade A, B4 and B5 were invited to sit the examination, unless they did not have one of the profiles mentioned in the vacancy notice, whilst candidates who were staff members of grade C and grade B1 to B3 were not invited to sit the examination unless they had at least two years' relevant professional experience in one of the fields mentioned in the vacancy notice.

40. The Secretary General also notes that from the point at which she launched her formal complaint, the appellant has shown herself to be fully aware of the reasons behind the decision to reject her application, and she sought to prove that she had the requisite several years of appropriate professional experience which would qualify her to take part in competitive

examination e84/2007. So it is rather surprising that she alleges, as one reason for her appeal, that she was not given any proper explanation, since she did not meet the criterion regarding professional experience and had been told so.

41. Regarding the supposed breach of her legitimate expectations, the Secretary General contends that this is incorrect since he fulfilled his obligation to invite applications for this competitive examination from staff members of grade B2 with at least two years' experience in one of the fields mentioned in vacancy notice n° e84/2007. The appellant was excluded because she did not have enough relevant professional experience in the required fields, not because of her grade. At no point did the Secretary General give her an assurance that she would be invited to take part in the examination. The Secretary General did undertake to ask for applications that had been rejected to be reconsidered. That undertaking was acted on and the Appointments Board did not deem the appellant's experience to be sufficient. It cannot therefore be argued that the principle of legitimate expectations was breached during the assessment of her application for the competitive examination held on the basis of vacancy notice e84/2007.

42. The Secretary General concludes from this that the impugned decision was substantiated and there is nothing to suggest that the appellant suffered any breach of legitimate expectations which the Secretary General has a duty to safeguard.

B. THE TRIBUNAL'S ASSESSMENT

1. Admissibility

43. Regarding the first plea, the Tribunal notes that it is quite correct that the administrative act complained of by the appellant is the decision communicated to her on 13 February 2008. However, it was only later that she learned the reasons for her exclusion, on 12 March 2008.

On 13 February 2008 the appellant was informed that the decision to exclude her had been upheld and she was told that she did not meet all the criteria listed in the vacancy notice. No details were given, however, of the criterion or criteria on which she had failed. Only on 12 March 2008 did she learn which criteria had been applied, allowing her to decide whether she should challenge the decision through an administrative complaint. The appellant was also told that the Appointments Board had considered her case again on 20 March and had upheld its earlier decision.

The Tribunal points out that a claimant needs at least a minimum of evidence in order to mount an effective challenge to an impugned decision. But it is clear in this case that on 13 February 2008 the appellant could not have supplied the facts she deemed relevant in support of her administrative complaint to prove that she satisfied all the required criteria.

Given these facts the Tribunal considers that 12 March 2008 is an appropriate starting date for the period during which an administrative complaint must be lodged, and that the complaint can thus be deemed to have been lodged in accordance with the Staff Regulations. Consequently the plea must be rejected.

44. Regarding the second plea, the Tribunal sees no reason to depart from the case-law established by the *Schmitt* decision.

45. In that 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 curtailing 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 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.

Proper account could then have been taken of the fact referred to by the Secretary General (namely the increase in the number of potential appellants) and the Organisation’s governing bodies could have remedied this *de facto* situation. The fact that no change has been decided on makes the Tribunal disinclined to curtail the rights of staff members in order to ensure equality of treatment with external candidates. Consequently this argument of the Secretary General’s is not sufficiently weighty to persuade the Tribunal to depart from its earlier rulings.

46. For these reasons the plea of inadmissibility must be rejected.

47. Regarding the third and final plea concerning certain grounds of the appeal, the Tribunal accepts that at the stage of the administrative complaint the appellant mentioned at least the essence of the arguments she outlined in her appeal. An examination of the different passages of the administrative complaint quoted by the appellant shows that it was clearly her intention, right from the stage of the administrative complaint, to allege an irregularity in the examination procedure. In any event, the charge made in the administrative complaint was the same as that laid before the Tribunal.

48. Consequently this plea too must be rejected.

49. In conclusion, the three pleas must be rejected.

2) *Merits of the appeal*

50. The appellant claims as her first ground that the impugned decision a) did not take all the major elements into account and b) drew incorrect conclusions from the dossier

51. 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), holds 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.

52. As may be inferred from the *Schmitt* decision, this power also covers scrutiny of the competences required by the vacancy notice. 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.”

53. The Tribunal indicated that “in assessing objective qualifications the competent authority naturally makes less use of discretionary power than in assessing subjective qualifications” (ATCE, Appeals Nos. 216/1996, 218/1996 and 221/1996, *Palmieri* (III, IV and V), decision of 27 January 1997, paragraph 43). It added that “assessing each applicant's qualifications is a different matter from taking the final decision on which applicant to select. Moreover, the stage of considering the admissibility of each application, which is and must remain a preliminary one, by nature allows the Secretary General less latitude for discretion than the assessment of each staff member's qualifications and capabilities” (*ibid.*).

54. The Tribunal notes that, with regard to the phase of the competitive examination which follows publication of the vacancy notice, the Secretary General is bound firstly by the law, that is to say the rules of the Organisation, and by the rules on the conduct of competitive examinations, notably those stipulating the criteria for candidates' eligibility to take part. Only after applications have been received does the Secretary General exercise a power which one may call discretionary, in assessing candidates' qualifications in relation to the requirements stipulated by the vacancy notice. If the Secretary General does not abide by these rules when exercising this power he is exceeding his discretionary power and his decision may be viewed as a breach of the law.

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 drew conclusions that were patently incorrect or that its assessment of the appellant's qualifications was arbitrary.

55. Consequently this ground is without merit.

56. Concerning the second ground of the obligation to substantiate decisions, the Tribunal, on the basis of its findings whilst considering the plea of late submission, necessarily concludes that

this ground is without merit. As of 12 March 2008, the date on which the appellant was informed of the selection criteria which had been defined and applied, she had been given a decision that was adequately substantiated.

57. Concerning the third ground of legitimate expectation, the Tribunal finds that this is without merit. It is clear that the Secretary General did not take the decision solely on the basis that the appellant was a grade B2 staff member, but after due account had been taken of the appellant's experience.

58. In conclusion, the appeal is unfounded and must be dismissed.

For these reasons, the Administrative Tribunal:

Declares the appeal admissible;

Dismisses it;

Orders each party to bear its own costs.

Adopted by the Tribunal in Strasbourg on 11 March 2009, and delivered in writing pursuant to Article 35, paragraph 1 of the Tribunal's Rules of Procedure on 31 March 2009, the French text being authentic.

The Registrar of the
Administrative Tribunal

S. SANSOTTA

The Chair of the
Administrative Tribunal

E. PALM