

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

Appeal No. 405/2008 (Anne KLING (IV) v. Secretary General)

The Administrative Tribunal, composed of:

Ms Elisabeth PALM, 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. Ms Anne Kling lodged her appeal on 4 February 2008. It was registered the same day as file 405/2008.
2. On 7 April 2008 the appellant submitted a supplementary memorial.
3. On 7 May 2008 the Secretary General submitted his observations on the appeal.
4. The appellant lodged observations in reply on 13 June 2008.
5. The public hearing on this appeal was held in the Administrative Tribunal's courtroom in Strasbourg on 23 September 2008. The appellant put her own case, whilst the Secretary General was represented by Ms Bridget O'Loughlin, Deputy Head of the Legal Advice Department, assisted by Ms Maija Junker-Schreckenber, an assistant in the same department.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The appellant is a permanent Council of Europe staff member with French nationality, who was recruited in 1972. Prior to the present case, she was employed in a grade B5 post in the Documents and Publications Production Department, part of the Directorate General of Administration and Logistics. The present appeal challenges the Secretary General's decision to punish the appellant by the disciplinary measure of downgrading to grade B4.

A. The background

7. On 10 June 2002, on account of the opinions expressed by the appellant in the course of her political and community activities, the Secretary General referred her case to the Disciplinary Board, saying that, due to the seriousness of the facts, he intended to punish her by removing her from her post.

8. On 11 September 2002 the Secretary General delivered an *ad personam* decision (No. 2673) removing the appellant from post with effect from 30 September 2002.

9. On 13 August 2003, after her administrative complaint under Article 59 of the Staff Regulations had been rejected, the applicant lodged an appeal with the Administrative Tribunal which was registered as file No. 316/2003.

In a decision delivered on 7 May 2004 the Tribunal annulled the aforementioned disciplinary measure on the ground that the Secretary General had not given sufficient reasons for his decision to remove the appellant from post.

10. On 26 August 2004 the Secretary General decided to resume disciplinary proceedings against the appellant.

11. On 28 January 2005, in an *ad personam* decision (No. 2957), the Secretary General imposed a reprimand on the appellant.

12. On 4 April 2005, after her administrative complaint under Article 59 of the Staff Regulations had been rejected, the applicant lodged an appeal with the Administrative Tribunal which was registered as file 345/2005.

In a decision delivered on 22 December 2005 the Tribunal declared the appeal ill-founded.

B. The facts surrounding the present appeal

13. The appellant wrote and published a book entitled "*La France LICRAtisée*" (France under the influence of the LICRA [= League against Racism and Anti-Semitism]).

14. On 18 April 2007 the Secretary General referred the appellant's case to the Disciplinary Board saying that he intended to punish her by removing her from her post.

15. On 8 July 2002 the Board delivered its unanimous opinion that a disciplinary penalty was appropriate, in view of the facts. By a majority vote it advocated downgrading her.

16. On 5 October 2007, in an *ad personam* decision (No. 4092), the Secretary General imposed a downgrading on the appellant. The decision read (translation):

“The Secretary General,

Having regard to Article 25 of the Staff Regulations;

Having regard to Article 27 of the Staff Regulations;

Having regard to Article 54 of the Staff Regulations;

Having regard to Instruction No. 32 of 24 February 1994;

Having regard to Rule No. 1237 of 25 July 2006;

Having regard to the Disciplinary Board’s opinion of 6 September 2007;

Having heard Ms Kling (the staff member) on 3 October 2007 in accordance with Article 8.2 of Appendix X to the Staff Regulations containing the Regulations on Disciplinary Proceedings;

Whereas it is established that in 2006 the staff member published a book entitled “*La France LICRAtisée*” which contained views described by the Disciplinary Board as follows (translation):

‘These views, which stand out by virtue of the virulence, albeit restrained, of the terms used and the total lack of any nuance, are at odds with the Council of Europe’s ideal, its purpose and the values which it has upheld since its foundation. More especially, they are blatantly at odds with the respect, tolerance and calm which must obtain in the intercultural and inter-faith exchanges which the Organisation promotes.’

Whereas in media interviews to promote her book the staff member also expressed views of the same kind, similar to those she had expressed since 2002, and which had resulted in the imposition on her of a disciplinary penalty on 1 February 2005;

Whereas the facts of which she stands accused are established;

Whereas, under Article 25 of the Staff Regulations, Council of Europe staff are required to refrain from any action which might reflect upon their position as members of Council staff or which might be prejudicial morally or materially to the Council;

Whereas, under Article 27 of the Staff Regulations, Council of Europe staff may not publish or have published any text relating to the work of the Council (...) without the authorisation of the Secretary General;

Whereas Instruction No. 32 of 24 February 1994, in force when her book was published and the media interviews were given, placed on staff members a duty to ensure that their secondary or unofficial activities were not incompatible either with the Council of Europe’s interests or with their status as staff members of the Council, and that such activities did not conflict either with the principles set out in the Council of Europe’s Staff Regulations or with the objectives pursued by the Organisation;

Whereas Rule No. 1237 of 25 July 2006 stipulates that, before making any statement to the media relating to the activities of the Organisation, staff members must have authorisation from the head of their major administrative entity and inform the Directorate of Communication, which will provide guidance on request, and that, in any event, staff members must refrain from making any statement that is incompatible with their status as Council of Europe officials or which could cause material or non-material damage to the Council;

Whereas, in its opinion of 6 September 2007, the Disciplinary Board concluded that (translation):

'Ms Kling has failed to abide by the terms of Article 25 of the Staff Regulations, by her repetition of behaviour inconsistent with her duties, the nature of her offences and the casual attitude she displays. Inevitably, such facts must seriously undermine the Organisation's confidence in her and, as a result, give cause for doubt as to whether Ms Kling should hold the responsibilities entrusted to her in her work as a grade B5 staff member.'

Whereas the behaviour of the staff member is inconsistent with Articles 25 and 27 of the Staff Regulations and with Instruction No. 32 and Rule No. 1237, since her conduct does not show consideration for the interests of the Council of Europe;

Whereas notwithstanding the various comments, observations and warnings already addressed to her, Ms Kling has persisted in and repeated her behaviour;

Whereas a normally conscientious staff member could not fail to appreciate the nature and seriousness of such violations;

DECIDES:

Article 1 – For the above reasons, and on the basis of the facts as established by the Disciplinary Board, a downgrading is imposed on Ms Anne Kling for conduct incompatible with her position as a Council of Europe staff member and contrary to her duty of loyalty to the Secretary General, and for thus failing in her duties under Articles 25 and 27 of the Staff Regulations and the rules quoted;

Article 2 – The penalty takes effect as from 1 November 2007. From that date Ms Anne Kling's grade will be B4, step 11."

17. On 12 November 2007 the appellant lodged an administrative complaint against *ad personam* decision No. 4092.
18. On 10 December 2007 her administrative complaint was rejected.
19. On 6 February 2008 the appellant lodged the present appeal.

II. HE RELEVANT PROVISIONS OF THE STAFF REGULATIONS AND OTHER TEXTS

20. Articles 25 and 27 of the Staff Regulations are contained in Part III (Duties and obligations of staff) and read as follows:

Article 25 – Loyalty and integrity

"1. On taking up their duties, staff members shall sign the following declaration in the presence of the Secretary General:

'I solemnly declare that I will carry out the duties entrusted to me as a member of the staff of the Council of Europe loyally and conscientiously, respecting the confidence placed in me. In discharging these duties and in my official conduct I will have regard exclusively to the interests of the Council of Europe. I will not seek or receive any instructions in connection with the exercise of my functions from any government, authority, organisation or person outside the Council. I will refrain from any action which might reflect upon my position as a member of the staff of the Council or which might be prejudicial morally or materially to the Council.'

2. Staff members may not, without the permission of the Secretary General, accept either directly or indirectly any material or other advantage offered in relation to the performance of their duties. This prohibition shall continue after the staff member's employment has terminated."

Article 27 – Publications

“1. Staff members may not publish or have published any text relating to the work of the Council, either on their own initiative or in collaboration with others, nor make public statements or deliver lectures on such matters, without the authorisation of the Secretary General.

2. The authorisation referred to in paragraph 1 shall be granted if there is no risk of the interests of the Council being affected. The decision shall be taken within thirty days of the staff member’s request. In the absence of a reply within that period, authorisation shall be deemed to have been given.

3. In the case of other publications, statements or lectures, staff members shall refrain from making use of their status as a staff member of the Council.”

21. Rule No. 1237 of 25 July 2006 covers statements relating to the activities of the Organisation made by staff members to the media. This instrument reads as follows:

“The Secretary General of the Council of Europe,

Having regard to Articles 25, 26 and 27 of the Staff Regulations;

Having regard to the rules on access to classified information;

Considering that there is a need to clarify the conditions under which staff members may make statements relating to the activities of the Council to the media;

Having consulted the Staff Committee, in accordance with Article 5, paragraph 3 of the Regulations on Staff Participation (Appendix I to the Staff Regulations),

DECIDES:

Article 1

In respect of any statement made to the media relating to the activities of the Organisation, staff members must have authorisation from the Head of their Major Administrative Entity and inform the Directorate of Communication who will provide guidance on request.

Where staff members are asked to make a statement to the media relating to the activities of the Organisation during an official journey and have not obtained and cannot obtain authorisation by the Head of their Major Administrative Entity, they shall be authorised to make the statement in question on condition that mention thereof is made in their official-journey report. The Directorate of Communication shall be informed.

Article 2

In any case, staff members must not make any statement which is incompatible with their status as Council of Europe officials, or which could cause any material or non-material damage to the Council. Staff members must maintain the utmost discretion in respect of facts and information which come to their notice in, or in connection with, the performance of their duties. They may not communicate in any form whatever to an unauthorised person any document or information which remains classified

Article 3

This Rule shall enter into force on the first day of the month following its signature by the Secretary General.

This Rule revokes Office Circular No. 665 of 12 December 1983.”

22. Instruction No. 32 of 24 February 1994, in force when the book was published and the media interviews took place, has since been revoked by Article 9 (Final provisions) of Rule No. 1236 of 14 December 2006. This Rule, which came into force on 1 January 2007, covers secondary activities of staff members and publications and lectures dealing with subjects relating to the activities of the Organisation (Articles 27 and 32-35 of the Staff Regulations).

23. Disciplinary procedure is governed by Articles 54-58 of the Staff Regulations. Appendix X to these contains the Regulations on Disciplinary Proceedings.

Article 54 of the Staff Regulations reads as follows:

“1. Any failure by staff members to comply with their obligations [...] may lead to [...] disciplinary action.

2. Disciplinary measures shall take one of the following forms:

- a. written warning;
- b. reprimand;
- c. deferment of advancement to a higher step;
- d. relegation in step;
- e. downgrading;
- f. removal from post.

3. A single offence shall not give rise to more than one disciplinary measure.”

THE LAW

24. The appellant asks the Tribunal to set aside *ad personam* decision No. 4092 which imposes on her the disciplinary punishment of downgrading. She also asks the Tribunal, by way of compensation for the material damage that she has suffered, to order that she be paid retroactively the difference in salary resulting from her downgrading as of 1 November 2007.

25. The Secretary General for his part asks the Tribunal to declare the appeal ill-founded and to dismiss it.

I. THE PARTIES' ARGUMENTS

A) The appellant

26. The appellant sets out a number of arguments concerning issues relating to her case.

27. Concerning the matter of the impugned views and free criticism of faiths, the appellant, having made an analysis of certain passages in her book and of some of the Disciplinary Board's considerations, maintains that the list of accusations against her constitutes in itself a severe curtailment of freedom to criticise faiths and consequently to criticise their followers. She adds that such a list is intrinsically shocking in that it breaches the secular principles by which a body such as the Council of Europe is governed. After reviewing Articles 10 (freedom of expression), 9 (freedom of thought, conscience and religion) and 14 (prohibition of discrimination) of the European Convention on Human Rights, the appellant argues that there are no grounds under the last two articles for subjecting her to the restrictions on freedom of expression for which Article 10, paragraph 2 provides.

28. Concerning the matter of whether the appellant acted in her capacity as a member of the Council of Europe staff, the appellant points out that she has always “been careful not to mention her position as a Council of Europe staff member, and that it was contacts from within the Council which had enabled a direct link to be made between her and her status as a staff member”.

29. The appellant claims that she had preferred to describe herself as an “international civil servant” because the term was technically accurate and did not allow the Council of Europe to be identified as her employer. Strasbourg was also the seat of Europe’s oldest international organisation, the Central Commission for Navigation on the Rhine, the Eurocorps, the European Ombudsman and the International Commission on Civil Status. The European Parliament had a base in Strasbourg, and the High Commission for Refugees also had some offices in the city.

30. The appellant concludes from this that, by describing herself as an “international civil servant”, one who might work for any of the city’s numerous organisations, and not necessarily the Council of Europe, she had published her impugned book without breaching her obligations as a staff member of the Council of Europe.

31. Concerning the issue of a breach of the general legal principle of *nullum crimen sine lege*, the appellant argues that the principle of the legality of offences and penalties requires express statutory provision to have been made for a disciplinary offence. She notes that the facts of which she stands accused are essentially alleged violations of Articles 25 and 27 of the Staff Regulations. She further argues that the damage mentioned in Article 25, whether moral or material, has to result from a direct attack on the Organisation. The pledge which staff members give in their “declaration” is thus an undertaking not directly to call into question the Organisation, its bodies, its leaders, in writing or verbally, in the course of either their work or their private activities.

The appellant concludes that, by exercising sufficient discretion and not making the Council of Europe identifiable, she did nothing to cause “moral or material damage to the Council”. She did nothing to call the Council of Europe directly or indirectly into question.

32. Regarding the matter of a possible duty of discretion and a failure to observe it, the appellant maintains that, in order to be valid, such a duty must be provided for by law. But the Council of Europe’s Staff Regulations make no such provision.

33. Concerning her alleged failure to abide by Article 27 of the Staff Regulations, the appellant denies breaking this rule. She argues that her book does not relate to the Council of Europe’s activities and consequently is not subject to Article 27, paragraph 1. She states that she did not call the Council of Europe into question, but merely criticised the French Government’s immigration policy in a manner fully consistent with a legitimate political commitment. She adds that the impugned publication clearly falls within the ambit of the freedom which every staff member enjoys under ordinary law in respect of his or her private activities. Her publication came very specifically under the terms of paragraph 3 of the aforementioned article. She points out that she was not required to seek prior authorisation for her book under paragraph 1, because it came within the purview of paragraph 3 of the same article. She had, moreover, been careful not to refer to her status as a staff member of the Organisation.

34. Concerning the appellant’s alleged repetition of her behaviour, the appellant affirms that this is a normal part of political and community activism which, by definition, continues over a number of years and across a range of activities. And the present disciplinary case should not be treated in the same way as the previous one. No interpretation, however open to challenge, enables ideological and social criticism of a religion to be placed on the same footing as xenophobia or racism.

35. Concerning the allegation that her views conflicted with the Council's values, the appellant argues that there is no merit at all in the claims of both the Secretary General and the Disciplinary Board that her views were at odds with the Organisation's fundamental values and with the values enshrined in the Statute of the Council of Europe. The appellant fully shares the values and ideals on which the Council of Europe was founded.

36. In conclusion, the appellant is convinced that she did not breach any part of the regulations and committed no offence against the Organisation. She adds that, should the Tribunal deem her to have committed an offence, she believes in any case that the penalty imposed upon her, namely downgrading, the next step on the scale of severity after removal from post, is manifestly out of proportion to any facts of which she might stand accused.

B) The Secretary General

37. Concerning the impugned views of the appellant and the freedom to criticise faiths, the Secretary General states that Council of Europe staff, notwithstanding their status as international civil servants, have the right to freedom of expression, including in areas covered by the work of the Organisation. That freedom extends to the expression, orally or in writing, of dissenting or minority opinions which differ from those of the Organisation that employs them (see, *mutatis mutandis*, CJEC judgement in the Connolly case C-274/99, paragraph 43). The Secretary General does not deny that the duty of loyalty under Article 25.1 of the Staff Regulations and its relevant implementing provisions, notably Rules Nos. 1236 and 1237, may interfere with the appellant's exercise of her right to freedom of expression, in that her participation in a number of political activities is limited in various ways.

38. He believes, however, that in this case such interference was justified.

39. He comments that the appellant, by her use of virulent language, made a public call for the rejection of Islam. In French law and the law of many other member States of the Council of Europe, the offence of provocation to discrimination and racial hatred does not require that the views expressed should have contained an incitement to hatred, violence or discrimination. It is enough that they should be of a nature likely to give rise to such sentiments (Paris Court of Appeal, judgement of 16 December 1998 in the Garaudy case; the appeal to the Court of Cassation was dismissed on 12 September 2000). The infringement of human dignity, to prevent which incitement to hatred against sections of the population has been made a criminal offence, arises not only from texts which deny victims' biological right to life, but also from those which deny their right to life in society.

40. However, even if the Administrative Tribunal should rule that the appellant's freedom to express her opinions qualifies for protection under Article 10 ECHR, it should at least take account of the content of those opinions when considering the proportionality of the interference.

41. In the present case there was no violation of Article 10 ECHR because, even supposing that the appellant can argue from the standpoint of that article and did suffer interference with the right of freedom of expression safeguarded by that provision, such interference would in any event be legitimate under paragraph 2 because it was "prescribed by law", pursued a legitimate objective and was "necessary in a democratic society".

42. Concerning the question of whether the appellant acted in her capacity as a staff member, the Secretary General notes that she does not deny being identified by the public as a Council of Europe staff member: she merely states that she was not responsible for this, and that – according to her – the information came from within the Organisation, and it was not therefore her fault. The Secretary General maintains, however, that the appellant should have asked for prior authorisation from the head of her major administrative entity before her book was published, and should have made sure that no publicity was given to her status as a Council of Europe official.

43. The Secretary General adds that the public was aware that the appellant was a Council of Europe staff member and that she continued to describe herself as such, establishing a link between her statements and activities and those of the Organisation and between herself and the Council of Europe. In so doing the appellant caused damage to the Council of Europe, which could have been suspected of endorsing the appellant's views.

44. Concerning the alleged breach of the general legal principle of *nullum crimen sine lege*, the Secretary General claims that the appellant failed in her duty of loyalty as required by Article 25.1 of the Staff Regulations. Her behaviour was incompatible with her status as a staff member and was likely to cause moral damage to the Council of Europe.

45. Article 25 of the Staff Regulations sets forth the duty of loyalty incumbent on every staff member and that duty includes the duty of discretion which typically applies to civil servants in member States of the Council of Europe.

46. The Secretary General adds that the scope and thrust of the duty of loyalty does not conflict with Articles 3 and 13 of the Staff Regulations. In his view it has been recognised that the spreading of statements that are fundamentally at odds with the objectives, ideals and values pursued and advocated by the Council constitutes a breach of Article 25.1 of the Staff Regulations. The appellant had publicly and repeatedly expressed violent, disparaging, even offensive opinions about groups of persons of immigrant origin who were nationals of member States of the Council. She had contradicted the Organisation's principles and aims, which she had a specific duty loyally to implement. She had thus "irremediably broken the trust which must exist between the Organisation and its staff".

47. Concerning the fact that the duty of discretion, in order to be binding on the appellant, should be stipulated in a provision of the Staff Regulations, the Secretary General points to paragraph 44 of the decision of 7 May 2004 on appeal No. 316/2003 (the appellant's first appeal against the Secretary General). The Tribunal had ruled in paragraph 44 that "*The duty of discretion is one aspect of loyalty to the Organisation*" as referred to in Article 25 of the Staff Regulations. The Secretary General infers from this that Article 25 is an adequate legal basis, and that its breaching by the appellant, who did not comply with her duty of discretion (and thus of loyalty), means that the appellant's behaviour is blameworthy.

48. With regard to the appellant's belief that she has in no way breached Article 27 of the Staff Regulations because the content of her book does not relate to the activities of the Council, the Secretary General maintains that her book does deal with the Council of Europe's activities insofar as the Council works to combat racism, intolerance and xenophobia, which is one of the Organisation's *raison d'être*.

49. He adds that, even if the book did not deal with the activities of the Council of Europe, the fact remains that the appellant also breached Article 27, paragraph 3 by referring to her status as a member of the Council staff, even if she did not make an explicit reference to it.

50. Concerning her repetition of behaviour at odds with her obligations and her claim that her actions were lawful and legitimate, the Secretary General argues that the appellant is overlooking the fact that, while those actions may not have been punished by the French courts, they were punished by the Tribunal.

51. In the Secretary General's view, the appellant's repetition of this behaviour, despite all the warnings that she had received, is an aggravating factor in that behaviour, which was observed and mentioned by all the Council bodies responsible for disputes and disciplinary proceedings.

52. Concerning the supposedly disproportionate nature of the appellant's punishment in relation to any facts of which she might possibly stand accused, the Secretary General says that she was given very numerous written warnings about her persistence in behaviour incompatible with her status as a staff member, and that she had already received a reprimand; these punishments manifestly had no effect, as the appellant continued to offend. Moreover, in the Secretary General's view, the measures of temporary suspension of advancement to the next step or downgrading by one step are not sufficiently severe punishments for the serious misconduct – repeated despite all the warnings given – for which the appellant expresses no regret, but which, on the contrary, she vows to continue. The Secretary General, and the Disciplinary Board as well, thus find that downgrading was the proportionate and appropriate punishment for the offences of which the appellant stands accused.

53. The Secretary General points here to the consistency of the Tribunal's case-law whereby it is up to the administrative authority, in this case the Secretary General, to decide the punishment to be imposed, and the international tribunal's views cannot override those of the Administration. On the other hand, whilst administrative tribunals cannot rule on whether or not disciplinary measures are called for, they can verify whether punishments are appropriate and can criticise any that are disproportionate. If the disciplinary measure is "out of all proportion to the objective and subjective circumstances in which the misbehaviour was committed", there is an error of law.

54. In the light of all these considerations, the Secretary General concludes that the appeal is ill-founded.

II. THE TRIBUNAL'S ASSESSMENT

55. The Tribunal notes at the outset that the appellant, by her arguments, disputes the lawfulness, merits and proportionality of the disciplinary penalty imposed on her. The Tribunal will examine each of these three questions separately.

56. Regarding the lawfulness of the disciplinary measure, the Tribunal notes that this case centres primarily on the application of Articles 25 and 27 of the Staff Regulations, the other rules and the instruction referred to being above all enabling instruments for the principles set forth in those two articles.

57. To the Tribunal it is beyond doubt that Article 25 of the Staff Regulations includes a duty of discretion, which the appellant did not comply with. The fact that she described herself

as an international civil servant and that she was linked to the Council of Europe only because others had previously disclosed that she worked for the Council of Europe are not factors which exonerate the appellant from her share of the responsibility for referring to her occupational status in terms which allowed the reader to associate her with the Council of Europe. Moreover, the appellant is wrong when she claims that it is necessary for the Organisation to have been directly called into question: in order for this provision to apply it is enough that damage has been caused to the Council. It is clear that, given the ideals and objectives of the Organisation, it was damaged by the association of the book with a member of the Organisation's staff.

58. Concerning compliance with Article 27 of the Staff Regulations, the Tribunal deems it sufficient to point out that the appellant's book also dealt with racism and immigration, areas in which the Council of Europe has for years been very active. This is enough for the Tribunal to conclude that this was a situation governed by Article 27.1, and that consequently the appellant should have requested authorisation from the Secretary General, because in part at least her book related to the Organisation's activities.

59. The Tribunal thus finds that the application of Articles 25 and 27 together did constitute a legal basis for disciplining the appellant, as there is no doubt that she acted in her capacity as a staff member.

60. Regarding the merits of the punishment, the Tribunal finds that, whilst it is true that the appellant did not in her book deal with matters relating directly to Council of Europe activities, she nevertheless analysed issues which come within the Organisation's field of activity and are material to the values it upholds. And it is clear that the appellant took up positions and expressed opinions that conflict with the values and principles fundamental to the Council of Europe. And this finding is not altered by the fact that the appellant cites in her book opinions that are similar to her own, expressed by prominent people, because in the present case, which stems from a disciplinary procedure, the point at issue is not the protection of freedom of expression in "sensitive" areas, but the way in which the appellant, an official employed by an international organisation and consequently bound by restrictions set by the Organisation and appropriate to that employment, exercised her right to freedom of expression.

61. In effect, the appellant's very description of herself as an international civil servant – the best way, as she saw it, of preventing herself from being associated with the Organisation – made it possible, in the light of what had gone before (to which the appellant herself alludes in her book), for that association to be made, with moral damage being caused to the Council as a result of the opinions expressed. The appellant had a duty to act in accordance with the Staff Regulations, which she freely accepted when she joined the staff of the Organisation.

62. Having regard to the appellant's arguments concerning her right to free criticism of faiths, and above all to the way in which she balances Article 10 of the European Convention on Human Rights (freedom of expression) against Articles 9 (freedom of thought, conscience and religion) and 14 (prohibition of discrimination), the Tribunal points out that disciplinary action may be regarded as a means of protecting both order and the rights and freedoms of others.

63. Concerning the proportionality of the penalty imposed, the Tribunal notes, as the Secretary General rightly points out, that the Administrative Tribunal consistently rules in its case-law on disciplinary action that it is up to the administrative authority to decide the punishment to be imposed, and the international tribunal's views cannot override those of the

Administration. On the other hand, whilst administrative tribunals cannot rule on whether or not disciplinary measures are called for, they can verify whether punishments are appropriate and can criticise any that are disproportionate. If the disciplinary measure is “out of all proportion to the objective and subjective circumstances in which the misbehaviour was committed”, there is an error of law (ATCE, decisions in Lelegard I, II, III and IV v. Governor of the Council of Europe Social Development Fund, appeals Nos. 190/1994, 196/1994, 197/1994 and 201/1995, decision of 29 September 1995, paragraphs 175-178; Roose I and II v. Governor of the Council of Europe Social Development Fund, appeals Nos. 187/1994 and 193/1994, decision of 29 September 1995, paragraphs 126-129; Ernould I and II v. Governor of the Council of Europe Social Development Fund, appeals Nos. 189/1994 and 195/1994, decision of 29 September 1995, paragraphs 152-155). The Tribunal has, moreover, already applied this case-law in an earlier appeal by the appellant (ATCE, Kling III, appeal No 345/2005, decision of 22 December 2005, paragraph 41).

64. The Tribunal notes that the appellant has submitted no arguments to support her argument that the penalty of downgrading was disproportionate, simply stating that it was “manifestly” out of proportion “to any facts of which she might stand accused”.

65. For its part, the Tribunal sees no reason to rule that the penalty imposed was out of all proportion to the facts of which the appellant stands accused. The Tribunal points out that the facts in issue in this case follow directly from an act of the appellant, who has already been disciplined with a reprimand.

66. Having made this finding, there is no reason for the Tribunal to rule on the appellant’s application to it for compensation in respect of material damage.

67. In conclusion, the appeal must be dismissed.

For these reasons the Administrative Tribunal:

Declares the appeal ill-founded;

Dismisses it;

Orders that each party shall meet its own costs.

Adopted by the Tribunal in Strasbourg on 27 November 2008, and delivered in writing pursuant to Article 35, paragraph 1 of the Tribunal’s Rules of Procedure on 19 December 2008, the French text being authentic.

The Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

S. SANSOTTA

E. PALM