CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeal No. 616/2019
(Magno LOURENCO AGOSTINHO v. Secretary General of the Council of Europe)

The Administrative Tribunal, composed of:

Ms Nina VAJIĆ, Chair,
Ms Françoise TULKENS,
Mr Christos VASSILOPOULOS, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar,
Ms Eva HUBALKOVA, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant, Mr Magno Lourenco Agostinho, lodged his appeal on 15 May 2019. It was registered the same day under No. 616/2019.

2. On 17 June 2019, the Secretary General in office at the time submitted his observations on the appeal.

3. On 8 July 2019, the appellant submitted observations in reply.

4. In the meantime, on 31 May 2019, Mr Mahir Mushteidzada, a staff member, had submitted a request to intervene in accordance with Article 10 of the Statute of the Tribunal (Appendix XI to the Staff Regulations).

5. On 7 June 2019, the Secretary General submitted his observations in which he opposed the said intervention. The appellant did not submit any comments.

6. By an order dated 1 July 2019, the Chair declared the request to intervene admissible and set a time-limit for the person seeking to intervene to submit his written observations.

7. On 30 July 2019, the intervener submitted his observations. These were communicated to the parties, who were informed that they could submit their comments in writing or do so orally at the hearing.

8. The public hearing on the appeal was held in the Administrative Tribunal's hearing room in Strasbourg on 23 October 2019. The appellant was represented by Ms Nathalie Verneau, Council of Europe staff member, while the Secretary General was represented by Ms Sania Ivedi, legal adviser in the Legal Advice and Public International Law Department (Jurisconsult), assisted by Ms Ine De Coninck and Ms Léa Boucard, respectively adviser and assistant lawyer in the said department.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The appellant is a member of staff of the Council of Europe. He is assigned to the European Directorate for the Quality of Medicines and Healthcare, where he works as Head of the Purchasing Section on grade A2.

10. The appellant was initially recruited on 1 October 2013 on a one-year fixed-term contract with a probationary period of one year. The contract was to fill a position and could be renewed for up to a maximum of five years. The recruitment procedure was governed by Article 16 of the Regulations on Appointments (Appendix II to the Staff Regulations), which at the time governed recruitment under the competitive procedure based on qualifications.

11. As the end of the five years approached, a competition notice (No. e100/2017) was published to fill the post held by the appellant, whose ability to extend his employment under the same contract had reached the maximum allowed under the regulations. This recruitment procedure was governed by Article 15 (Recruitment procedure) of the Regulations on Appointments (Appendix II to the Staff Regulations).

12. The vacancy notice did not indicate whether a post or a position was to be filled; nevertheless, it did state that it was for a fixed-term contract without, however, indicating its duration, the possibilities for renewal or the length of the probationary period for the person to be recruited. The latter two details were, however, given for contracts that would be offered to persons who were on the reserve list and were recruited when it was valid.

13. By letter dated 20 March 2018, which the appellant received by email on 23 March followed by the original on 28 March, the Director of Human Resources sent the

appellant an offer of employment for a two-year period. The start of the letter was worded as follows (original):

> "*In accordance with the provisions of Article 11 of the Staff Regulations I am instructed by the Secretary General of the Council of Europe to offer you employment on the following terms.*"

14. The letter stated that this contract was subject to a probationary period of 24 months. It further stated that it was a fixed-term contract which could be renewed one or more times but did not indicate any maximum period.

15. The 20th and last paragraph was worded as follows (original):

> *20. Acceptance*
>
> *"If you accept the terms and conditions of this offer of employment please return a copy to [the Director of Human Resources] within 10 days having first initialled each page thereof and having added on the final page in your own handwriting the words "Read and agreed having taken note of the Staff Regulations" followed by the date and your signature.*
>
> *This offer shall constitute the initial contract and make the appointment effective.*
>
> *Your current fixed-term contract will end as of 31 March 2018."*

16. According to the information provided at the hearing by the appellant's representative, the appellant told his line manager that he did not believe he had to complete a probationary period again and he thought his manager basically agreed with him because he actually did not have to be trained again.

17. On 29 March 2018, the appellant crossed out the section on page 2 of the contract covering the probationary period and added the duly initialled reference, "*not applicable*". He then initialled each page of the offer of employment and signed it on the seventh and last page after adding the text cited in paragraph 15 above and returned the offer to the Directorate of Human Resources.

18. On the same day, the appellant emailed the staff member in the Directorate of Human Resources in charge of recruitment notifying her that he had signed the offer of employment and returned it to her by internal mail. He made no reference to the fact that he had crossed out the clause in the employment offer relating to the probationary period or that he believed that it did not apply in his case.

19. On 9 April 2018, the said staff member emailed the appellant notifying him that she had received the signed offer.

20. During the contentious proceedings, the Secretary General indicated that, on that occasion, the staff member in charge of recruitment management had not noticed the change made to the offer of employment.

21. At the beginning of May 2018, the appellant's line manager informed him that, for the purpose of his probationary period, he had to set his objectives for his appraisal during the period from 1 April to 30 September 2018. However, the appellant disagreed, as he believed that he was not required to complete a probationary period. On 3 May 2018, he sent an email to the human resources manager in his department but did not mention the fact that in his acceptance of the offer of employment, he had crossed out the section on the probationary period. This email was forwarded to the Directorate of Human Resources.

22. By email dated 28 June 2018, which was brought to the appellant's notice on 20 July 2018, the said Directorate replied that a fresh probationary period was required in his circumstances because of his fresh recruitment and of the change in his contractual status.

23. On 10 August 2018, the appellant submitted an administrative complaint to the Secretary General in office at the time under Article 59, paragraph 2, of the Staff Regulations. After making a series of points concerning, inter alia, loss of earnings and losses in terms of pension entitlement, he challenged the refusal to relieve him of the requirement to complete a further probationary period. He also requested that the complaint be submitted to the Advisory Committee on Disputes (Article 59, paragraph 5, of the Staff Regulations).

24. The Advisory Committee gave its opinion on 15 February 2019.

Firstly, it dismissed the two objections of inadmissibility (late submission and lack of standing) of the administrative complaint raised by the Secretary General. With more particular regard to the former, it relied on the opinions issued in the appeal by Bilge Kurt Torun (ATCE, Appeal No. 543/2014 – Bilge Kurt Torun v. Secretary General, decision of 6 February 2015, paragraph 16) in stressing that a single circumstance could entail several decisions adversely affecting a person, in respect of each of which administrative complaints could be lodged.

The Committee then unanimously both stated that the Secretary General should reconsider his decision to impose a fresh probationary period on the appellant and also recommended that Administration should review its practice of requiring fresh probationary periods under new contracts for the same functions.

25. On 18 March 2019, the Secretary General rejected the administrative complaint, declaring it inadmissible and/or unfounded.

26. On 15 May 2019, the appellant lodged the present appeal.

II. RELEVANT LAW

27. Under Article 59 (Complaints procedure), paragraphs 1 to 3, of the Staff Regulations:

Article 59 – Complaints procedure

"1. Staff members may submit to the Secretary General a request inviting him or her to take a decision or measure which s/he is required to take relating to them. If the Secretary General has not replied within sixty days to the staff member's request, such silence shall be deemed an implicit decision rejecting the request. The request must be made in writing and lodged via the Director of Human Resources. The sixty-day period shall run from the date of receipt of the request by the Secretariat, which shall acknowledge receipt thereof.

2. 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, other than a matter relating to an external recruitment procedure. The expression "administrative act" shall mean any individual or general decision or measure taken by the Secretary General or any official acting by delegation from the Secretary General.

3. The complaint must be made in writing and lodged via the Director of Human Resources:

a. within thirty days from the date of publication of the act concerned, in the case of a general measure; or

b. within thirty days of the date of notification of the act to the person concerned, in the case of an individual measure; or

c. if the act has been neither published nor notified, within thirty days from the date on which the complainant learned thereof; or

d. within thirty days from the date of the implicit decision rejecting the request referred to in paragraph 1.

The Director of Human Resources 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."

28. The matter of probationary periods is governed by Articles 17 and 18 of the Staff Regulations and Articles 17-20 of the Regulations on Appointments (Appendix II to the Staff Regulations). The provisions of the Staff Regulations read as follows:

Article 17 – Probationary period

"1. Before staff members can be confirmed in their appointment, they must have satisfactorily completed a probationary period, the length of which shall be determined by the Regulations on Appointments.

2. During the probationary period a contract may be terminated by either party at two months' notice."

Article 18 – Confirmation in employment

"Contracts confirming employment shall be of indefinite or fixed-term duration, as determined by the Regulations on Appointments without prejudice to Articles 19 and 20 of these Regulations."

29. The relevant provisions of the Regulations on Appointments read as follows:

Article 17 – Probation

"1. Staff members recruited in accordance with the provisions of Articles 15 and 16 of these Regulations on appointments shall be subject to a two-year probationary period during which time they shall be appointed on the basis of fixed-term contracts.

2. During this period, either side may terminate the contract at two months' notice. Should this notice period extend beyond the term of the initial contract, then that contract shall be extended accordingly.

3. Termination of the contract on the initiative of the Secretary General shall be decided by him or her on the advice of the Board."

Article 18 – Probationary period

"1. The probationary period is a trial and training period and may be extended by one year, in the case provided for in Article 20, paragraph 3.

2. Where the probationary period has been interrupted for reasons outside the staff member's control, the Secretary General may, on the advice of the Board, extend it by the length of the interruption.

3. During the probationary period, the staff member shall be assigned to a Major Administrative Entity or to different Major Administrative Entities in turn. He/she shall be entrusted with duties corresponding to his or her grade to enable him or her to acquire the necessary training under the supervision of his or her superiors. The staff member shall take part in induction activities organised by the Director of Human Resources and covering the aims, structure and functioning of the Council.

4. During the probationary period, staff members cannot apply for internal competitions or be promoted."

Article 19 – Appraisal during the probationary period

"The conditions governing the appraisal of staff members during their probationary period are laid down in a General Rule. The provisions of Article 22 of the Staff Regulations apply, mutatis mutandis, to the appraisal of staff members during their probationary period."

Article 20 – Confirmation in employment for an indefinite duration or for a fixed term

"1. Before the probationary period expires, the Board shall examine the staff member's file and, in particular, his or her appraisal reports made in accordance with Article 19.

2. If the staff member's work is satisfactory, the Board shall recommend that the Secretary General confirm him or her in his or her employment.

3. If the staff member's work is the subject of conflicting opinions, the Board may, in exceptional cases, recommend that the Secretary General extend the probationary period in accordance with the provisions of Article 18, paragraph 1.

4. If the staff member's work is unsatisfactory, the Board shall recommend that the Secretary General terminate the employment, subject to the required notice being given. The staff member

concerned shall be notified of this recommendation and shall have the right to submit observations to the Secretary General within eight working days.

5. A fixed-term contract may initially be offered for a duration of at least six months and for a maximum duration of two years. It may be extended or renewed one or more times, each time for a maximum period of five years. When deciding whether a fixed-term contract shall be prolonged or not, the Secretary General shall take at least three criteria into account: the need of the Organisation in terms of competencies, secured funding and satisfactory performance of the staff member. The Secretary General may determine the application of these criteria and add additional criteria in a Rule.

6. Staff members recruited for the career path leading to indefinite-term contracts shall be granted such a contract upon confirmation in employment.

7. Following confirmation in employment, a staff member recruited for employment on fixed-term contracts shall be offered a fixed-term contract which may be renewed in accordance with the provisions of paragraph 5. Before a renewal which would bring the staff member's service on fixed-term contracts with the Organisation to more than nine years, the Director General of Administration, having consulted the Major Administrative Entity concerned, shall examine the file and make a recommendation to the Secretary General whether the contract should be extended beyond nine years or expire.

8. For staff members employed on fixed-term contracts following a competition under Article 15B of these Regulations and who are confirmed in employment, the Secretary General may decide to hold a special formal assessment procedure for specific profiles in specific grades allowing the successful candidates to be employed on indefinite-term contracts."

THE LAW

30. The appellant is asking that the decision requiring him to complete a fresh probationary period be set aside. He is also asking that his rights be restored retroactively, in particular in terms of step advancement and promotion to grade A3.

31. The appellant is further seeking payment of a sum of 5 000 euros as compensation for non-pecuniary damage and of default interest at the statutory rate for the late payment of salary and allowances.

32. For her part, the Secretary General invites the Tribunal to declare the appeal inadmissible and, secondarily, unfounded and to dismiss it.

33. As to the merits, she considers that the appellant has not proved any violation of the applicable regulatory and statutory regulations; accordingly, he cannot validly claim to have suffered any damage and his claim for compensation for alleged non-pecuniary damage should also be dismissed.

I. THE ADMISSIBILITY OF THE COMPLAINT

A. The Secretary General

34. At the hearing, the Secretary General repeated the arguments made during the written proceedings and maintained that the appeal was inadmissible in two respects: it was out of time and the appellant did not have standing.

1. *Late submission*

35. In her view, the only decision about which the appellant would have been entitled to complain was the offer of employment of 20 March 2018, which was emailed to him on 23 March 2018 and which he accepted on 29 March 2018. This document was the contract and entailed his appointment.

36. After putting forward arguments which relate more to the merits of the case, the Secretary General maintains that the email from the Directorate of Human Resources which was communicated to the appellant on 20 July 2018 merely amounted to a confirmation of the terms and conditions of the offer of employment. Yet, under no circumstances may an act which merely confirms an earlier, final decision be considered a new decision that would cause the time-limit for lodging an administrative complaint to start running afresh.

37. In the instant case, the Secretary General maintains that it was the offer of employment made to the appellant on 23 March 2018 that unequivocally laid down a measure with legal effects affecting his interests and binding on him. The offer of employment, therefore, is the only act about which the appellant would have grounds to complain.

38. In the light of the above, the Secretary General maintains that the administrative complaint lodged by the appellant on 10 August 2018, i.e. well after the time-limit of 30 days which began running on 23 March 2018 or, at the latest, on the date the contract was concluded, namely 29 March 2018, was lodged too late and that, consequently, the present appeal is inadmissible because it is out of time.

2. *Lack of standing*

39. The Secretary General further considers that the appeal is also inadmissible for lack of standing, as the appellant freely consented to the act which allegedly adversely affected him. On this point, she refers to international administrative case-law declaring appeals inadmissible in such circumstances (ILOAT, Judgment No. 1396 of 1 February 1995, consideration 7) and that of the Tribunal (ATCE, Appeal No. 392/2007, A. D. v. Secretary General, decision of 29 January 2008, paragraphs 39 and 40).

40. In the Secretary General’s view, the appellant was fully aware of the fact that his fresh recruitment would be subject to the completion of a fresh probationary period. Yet

the appellant, who began working under his new contract, could not go back on his acceptance of the job offer without breaching the principle of good faith, as confirmed by the ILO Administrative Tribunal in Judgment No. 545 of 30 March 1983 (consideration 3).

41. The Secretary General concludes that the present appeal is therefore inadmissible on all these grounds.

B. The appellant

42. In his appeal submissions, the appellant firstly states that he is not challenging the contract binding him to the Organisation which he signed on 29 March 2018, but the Directorate of Human Resources' decision to require him to complete a second probationary period as a result of their refusal to acknowledge the "reservation" which he made upon signing the contract. He maintains that the second contract actually merely constituted the continuation of his first contract and that, consequently, imposing a fresh probationary period was wrongful. The appellant states that the refusal took the form of the email of 28 June 2018 which was communicated to him on 20 July 2018.

43. The appellant adds that the purpose of his appeal is to challenge a provision in the offer of employment which was submitted to him for signature. He maintains that, upon signing the offer, he entered a clear and explicit reservation refusing the inclusion of the relevant provision as an integral part of his contract.

44. The appellant points out that the concept of reservations was recognised and explained in the 1969 Vienna Convention on the Law of Treaties, Article 2, 1(d), of which provides as follows:

> "d) 'Reservation' means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State".

45. He further maintains that it follows from the Tribunal's case-law that, in drawing up contracts with its staff members, the Organisation takes account of their ability to enter reservations when they sign their contracts (ATCE, Appeal No. 533/201 – Ellen Penninckx v. Secretary General, decision of 12 April 2013, paragraph 46). In his view, the Directorate of Human Resources is therefore entirely aware of this option.

46. The appellant points out that anyone leafing through the contract would immediately see that an entire paragraph had been crossed out and was marked with the very clear reference, "*Not applicable"*. In his view, Directorate of Human Resources staff members have a duty to check the validity of the documents submitted to them.

47. Insofar as the Directorate of Human Resources did not challenge the reference, "*Not applicable"*, which he had marked on the contract, the appellant believes that he could legitimately assume that the reservation had been accepted. Moreover, the Directorate of Human Resources could not rely on the argument that there was no reservation on the sole ground that it had not examined the contract which had been returned to it.

48. The appellant considers that he exercised his right to enter a reservation when he signed the offer of employment and that the only decision objecting to it was dated 20 July 2018. In this respect, that decision adversely affected him. He maintains that in lodging an administrative complaint on 10 August 2018, he complied with the time-limit laid down in the internal regulations.

49. In his reply to the Secretary General's written observations in terms of the objection that the complaint was out of time, the appellant firstly reiterates that the date from which he could have lodged an administrative complaint was 20 July 2018; secondly, he maintains that the case-law cited by the Secretary General could not be relied upon in the instant case; and thirdly, he points out that, according to the Advisory Committee on Disputes, a single circumstance can entail several decisions adversely affecting a person, in respect of each of which administrative complaints can be lodged.

50. The appellant makes no comments regarding the second objection that he did not have standing.

51. In conclusion, he asks the Tribunal to declare his appeal admissible.

C. The third-party intervener

52. The third-party intervener did not submit any arguments concerning admissibility.

D. The Tribunal's assessment

53. In order to rule on the two objections of inadmissibility, the Tribunal notes that it must first determine the administrative act that adversely affected the appellant within the meaning of Article 59, paragraph 2, of the Staff Regulations and the time at which it was adopted so as to check whether the administrative complaint was lodged within the time-limit of 30 days provided for in paragraph 3 b. of that article.

54. On the subject of the first objection that the administrative complaint was out of time, the Tribunal notes that the Secretary General maintains that the act adversely affecting the appellant was the letter of 20 March 2018 from the Director of Human Resources. Accordingly, the appellant ought to have lodged his administrative complaint no later than within 30 days of 29 March 2018, the date on which he signed his acceptance of the offer. The Secretary General maintains that no importance may be attached to the fact that the appellant crossed out the passage concerning the probationary period, as he could not, in so doing, alter the contract already signed by the Director of Human Resources.

55. For his part, the appellant asserts that the only act adversely affecting him was the refusal to strike out the passage concerning the probationary period. The act adversely affecting him was therefore the email of 28 June 2018, which was not brought to his attention until 20 July 2018 (paragraph 22 above) and it was from that date that the relevant 30-day time-limit began to run.

56. For its part, the Tribunal considers that the act which adversely affected the appellant within the meaning of Article 59, paragraph 2, of the Staff Regulations was the offer of employment of 20 March 2018.

57. With his appeal, the appellant is, in essence, seeking the modification of the contract concluded with the Organisation on 29 March 2018, subsequent to the contract of 1 October 2013, insofar as it required him to complete a probationary period, thereby depriving him of the ability to benefit from his rights under the Staff Regulations concerning his career development (steps and grades).

58. As to the merits of the appeal, the appellant sets out a series of arguments maintaining that the second contract merely constituted the continuation of the first contract and that, consequently, imposing a fresh probationary period in his second contract was wrongful. He notes that he entered a reservation on the subject upon signing the contract, which was not taken into account (paragraph 42 above). The respondent argues that the appeal is inadmissible on two grounds (paragraphs 34 et seq. above).

59. The Tribunal notes that the Organisation sent the contract, which it had signed beforehand, to the appellant on 20 March 2018 and he signed it on 29 March 2018. Upon signing it, he wrote on the seventh and last page of the contract "*read and agreed having taken note of the Staff Regulations"* in accordance with the instructions given by the department that sent him the contract. In the same contract, however, the appellant crossed out clause no. 7 on the application of a probationary period and marked it "*not applicable"*.

60. The Tribunal concludes from the above that in crossing out clause no. 7 of the contract of 29 March 2018 and marking it "*not applicable*", the appellant actually wished to propose a modification of the contract to the Organisation insofar as it provided for a probationary period.

61. On this point, the appellant firstly argues that he emailed the relevant department to tell them that he had signed the contract. He then sent it by internal mail. By email dated 9 April 2018, the department acknowledged receipt of his signed contract without reacting his request for a modification. In his view, the lack of reaction as from 9 April 2018 by the respondent upon receipt of the signed contract entailed implicit acceptance of the proposed modification. Accordingly, the subsequent application of the rules in the Staff Regulations on the imposition of a fresh probationary period (under Article 17 of the Staff Regulations) by means of the email of 28 June 2018, which was brough to his notice on 20 July 2018 (paragraph 22 above), was the act that adversely affected him and he challenged it within the time-limit laid down by the regulations in accordance with the provisions regarding prelitigation procedure. In support of his argument, the appellant points out that he lodged an administrative complaint on 10 August 2018 pursuant to Article 59, paragraph 2, of the Staff Regulations. That complaint therefore commenced the prelitigation phase and led to the present appeal being lodged with the Tribunal.

62. However, the Tribunal believes it is important to note that the Staff Regulations do not provide that silence on the part of Administration regarding the provisions governing the contracts offered by the Organisation means acceptance of a request made by a staff member following the signature of a contract offered by Administration. Moreover, the appellant puts forward his argument in this respect without referring to any applicable text or relying on any specific provision of the Staff Regulations. On the other hand, the Tribunal points out that, for instance, in terms of the administrative requests covered by Article 59, paragraph 1, of the Staff Regulations, silence on the part of Administration during a given period is deemed an implicit decision rejecting or not accepting the requests (paragraph 27 above).

63. The appellant's argument that Administration tacitly agreed to his request must therefore be rejected. The Tribunal points out that the modification of an employment contract drawn up in accordance with the provisions of the Staff Regulations must comply with the rules provided for. Consequently, no complaint based on alleged tacit acceptance of the modification of an employment contract governed by the Staff Regulations may reasonably be made in the instant case.

64. The appellant alleges, secondly, that Administration did not pay due attention when he returned his contract in which he clearly and unambiguously had added a reservation concerning the application of a clause in the contract. From this point of view, the appellant complains of a breach of the principle of good administration.

65. From the outset, the Tribunal believes it is worthwhile noting that the appellant wrongly described his action as entering a "reservation" when what he was seeking was unilaterally to alter the terms of the contract which had already been duly signed by the Organisation.

66. In that sense, the Tribunal is of the view that, in the instant case, the appellant's action could have constituted a proposed modification of the terms of the contract that was to bind the two parties if the appellant, in accordance with the principle of good faith, had initiated discussions on the matter with the relevant staff members in the Directorate of Human Resources.

67. However, such a proposed modification has the effect of the act concerned not becoming final until the other party has accepted it explicitly. Implicit acceptance, as suggested by the appellant in the present case, cannot be taken into consideration for two reasons.

68. Firstly, because the document was a written offer of employment meant to become "*the initial contract*" and to make "*the appointment effective*" (paragraph 15 above). Any modification could therefore only be made by rewriting the offer or by means of a supplementary amendment. Secondly, because the offer of employment came from the Director of Human Resources; consequently, only she could agree to any changes.

69. Even though the wording of the offer was individualised, it nevertheless formed a kind of catalogue of general conditions that had to be agreed to or refused in full and in no circumstances were to be changed by unilateral modification of the text. Although the appellant was entitled, in exercising his contractual powers, to notify the Organisation before signing the offer of his disagreement with the inclusion of the clause on the probationary period, it was not up to him to call it into question in the way he did.

70. As to the complaint of the alleged breach of the principle of good administration, the Tribunal points out that it is precisely for the purpose of avoiding acts of negligence that could be prejudicial to the staff members concerned that the Staff Regulations confer upon staff members who believe they have been adversely affected by acts of the Organisation the right to lodge administrative complaints against the acts in question. Such complaints are examined by the relevant departments during a prelitigation phase and if they are rejected by Administration, the staff members are entitled to be able to challenge them before the Tribunal to preserve their rights. As is clear from the case-law of the Tribunal (see appeals Nos. 462/2009 and 533/2012), the expression of a reservation concerning the modification of a contract offered by the Organisation must accordingly be formalised in an administrative complaint.

71. It is, indeed, unfortunate that the person in the Directorate of Human Resources who received the offer signed by the appellant acted in a way that suggests she did not examine all the pages of the offer which had to be initialled by the appellant. Nevertheless, an omission of this kind is not enough in itself to modify the contract and in his contacts with that person, the appellant should have been clearer about his disagreement with the clause on the probationary period.

72. Yet it is clear that, unlike the case in similar situations, the appellant did not lodge an administrative complaint within the time-limit required under the Staff Regulations for the purpose of challenging the inclusion of this clause in the contract offered by the Organisation.

73. Consequently, the time-limit for lodging any administrative complaint began to run at the latest on the date the offer was accepted, i.e. 29 March 2018.

74. Moreover, the fact is that the appellant's attitude caused a degree of confusion. In signing the contract and adding the phrase, "*read and agreed having taken note of the Staff Regulations*", the appellant did repeat the exact terms suggested by the relevant department in the covering letter sent with his contract. Nevertheless, when the appellant sent his contract to the relevant department the same day (29 March 2018), he did not explicitly mention the fact that he had proposed a modification.

75. In this respect, the Tribunal points out that the appellant's arguments are to some extent contradictory. On the one hand, he claims that Administration implicitly agreed to his request while, on the other, he acknowledges that he did not formally press Administration not to apply the probationary period. In fact, the appellant did not lodge an administrative complaint against the application of a clause in his contract within the time-

limit laid down in the Staff Regulations. To make up for this omission, after a comment worded somewhat unclearly, he subsequently challenged that same clause, but outside the time-limit laid down by the Staff Regulations for lodging administrative complaints.

76. The Tribunal considers that it needs to be pointed out that the lodging of administrative complaints in accordance with the provisions of the Staff Regulations maintains legal certainty and safeguards the principle of equal treatment between staff in their contractual relationships which, contrary to what the appellant's position implies, are not left to the sole discretion of the parties but are governed by the specific rules provided for in the Staff Regulations.

77. It follows that the Secretary General's objection is well-founded and that the administrative complaint of 10 August 2018 must be declared out of time.

78. Having reached this conclusion, the Tribunal has no need to rule on the second objection of inadmissibility (paragraphs 39-41 above), which, in essence, comes on top of the first one, and it cannot examine the merits of the appeal.

79. It shall be for the Secretary General to determine in the instant case whether, considering the facts of the present appeal, she wishes to use her discretion to reduce the length of the probationary period.

II. CONCLUSION

80. In conclusion, the appeal must be declared inadmissible.

For these reasons,

The Administrative Tribunal:

Declares Appeal No. 616/2019 inadmissible and rejects it;

Orders that each party shall bear its own costs.

Adopted by the Tribunal in Strasbourg on 10 December 2019 and delivered in writing on 17 December 2019 pursuant to Rule 35, paragraph 1, of its Rules of Procedure, the French text being authentic.

The Registrar of the Administrative Tribunal	The Chair of the Administrative Tribunal
S. SANSOTTA	N. VAJIĆ