CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

ORDER OF THE CHAIR OF 12 NOVEMBER 2009
Franck KOLB v. Secretary General

I, Chair of the Administrative Tribunal,

Having regard to Appeal No. 407/2008 lodged by Mr Franck KOLB on 14 March 2008;

Having regard to the appellant's letter received on 27 October 2009, in which he gave notice that he wished to withdraw the appeal;

Having regard to the Secretary General's letter of 10 October 2008 in which he raised no objections to striking the appeal out of the case list;

Having regard to Rule 20 of the Rules of Procedure of the Administrative Tribunal;

Having regard to Article 5, paragraph 2, of the Statute of the Tribunal;

Having regard to Rule 20 of the Rules of Procedure of the Administrative Tribunal;

Having regard to Article 5, paragraph 2, of the Statute of the Tribunal;

Having submitted a reasoned report to the judges of the Tribunal on 7 November 2009;

Noting that they raised no objection, but, on the contrary, gave their consent to this order;

DECLARE

- Appeal No. 407/2008 struck off the case list on the grounds set out in the report appended hereto.

Done and decided at Strasbourg on 12 November 2009, the present order being notified to the parties to the case.

The Registrar of the Administrative Tribunal	The Deputy Chair of the Administrative Tribunal
S. SANSOTTA	G. RESS

REPORT DRAWN UP FOR THE PURPOSES OF THE PROCEDURE PROVIDED FOR IN RULE 20 OF THE RULES OF PROCEDURE OF THE ADMINISTRATIVE TRIBUNAL AND ARTICLE 5, PARAGRAPH 2, OF THE STATUTE OF THE TRIBUNAL

Appeal No. 407/2008

Franck KOLB v. the Secretary General

This report concerns Appeal No. 407/2008 lodged by Mr Franck Kolb. It has been drawn up for the purposes of the procedure provided for in Rule 20, paragraph 2, of the Rules of Procedure of the Administrative Tribunal and Article 5, paragraph 2, of the Statute of the Tribunal.

THE PROCEEDINGS

1. Mr Franck Kolb, a Council of Europe staff member, lodged his appeal on 14 March 2008. It was registered under No. 407/2008 on the same day.

2. On 15 April 2008, the Secretary General sent his observations about the appeal.

3. On the same day, the Chair of the Administrative Tribunal fixed the appellant a term until 15 May 2008 to submit his observation in reply. This term was prolonged until 30 May 2008, but at this date, the appellant had not yet filed his memory.

4. On 6 June 2008, the Secretary General indicated the ad hoc Committee set up to advise the Secretary General in the post classification exercise would revise the matter of the appellant's grade and, after precising that the appellant had done his agreement on the matter, he asked for the suspension of the procedure before the Tribunal while waiting for the decision of the ad hoc Committee.

5. On 20 June 2008, the Chair acceded to that request of suspension of the procedure before the Tribunal until the results of the revision procedure.

6. On 20 September 2009 the Secretary General informed the Tribunal that, following the recommendation of the ad hoc Committee, the Secretary General had reclassified the post of the appellant.

7. On 27 October 2009, the appellant gave notice that he wished to withdraw the appeal.

8. On 4 November 2009 the Secretary General informed the Tribunal that he had no objections to the appeal being struck off the list of cases.

9. On 7 November 2009, the Deputy Chair of the Administrative Tribunal submitted this report to the members of the Tribunal.

THE FACTS

10. The appellant is a permanent staff member of the Council of Europe.

11. On 12 November 2007, the Secretary General upgraded the post of the appellant from C2 to C3 following the exercise of reclassification of posts.

12. Considering that his post should be upgraded into B3/C5, on 17 December 2007 the appellant lodged an administrative complaint with the Secretary General under Article 59 of the Staff Regulations.

13. On 14 January 2008, the Secretary General dismissed the administrative complaint.

14. On 14 March 2008, the appellant lodged the present appeal.

15. On 26 August 2009, the Secretary General, following the recommendation of the ad hoc Committee, upgraded the post of the appellant from C3 into C4 starting from 1 January 2008. On 13 October 2009, the Appointments Board promoted the appellant into grade C4.

THE LAW

16. The appellant lodged the appeal against the Secretary General's decision not to upgrade his post to grade C5.

17. The Secretary General pleads the inadmissibility of the appeal for not exhausting of domestic remedies and because he considers the appeal premature. On the merits, he requests that the Tribunal declare the appeal ill-founded and dismiss it.

18. In a letter dated 27 October 2008, the appellant informed the Tribunal that as on 13 October 2009 the Appointments Board decided to upgrade him to grade C4 he decided not to continue the procedure before the Tribunal.

19. The Secretary General for his part raised no objection to striking the appeal off the Tribunal's case list.

20. The Deputy Chair would point out that, under Rule 20, paragraph 1.a of the Tribunal's Rules of Procedure, an appeal may be struck off the case list if the appellant declares that he or she wishes to withdraw it. For his part, the Deputy Chair observes that in the present case there is no reason not to strike the appeal off the list. In the absence of any other indication, the Deputy Chair considers that the appellant is satisfied with the development which took place after the appeal was lodged, the upgrading of his post to grade C4. He further observes that the appeal must be struck off the case list in accordance with the procedure set out in Rule 20, paragraph 2, of the Tribunal's Rules of Procedure.

CONCLUSIONS

21. This report is being submitted to the Tribunal judges so that they may exercise the supervision provided for in Article 5, paragraph 2, of the Statute of the Tribunal, to which Rule 20, paragraph 2, of the Rules of Procedure refers.

The Deputy Chair

Georg Ress