

Decision of the Appeals Board of 26 June 1992
Appeal No. 165/1989 (VANGREENBERGHE (II) v. Secretary General)

The Appeals Board, composed of:

Mr Carlo RUSSO, Chairman,
Mr Kåre HAUGE, and
Mr Michael MELLETT, substitute members

assisted by:

Mr Michele de SALVIA, Secretary and
Mr Christos GIAKOUMOPOULOS, Deputy to the Secretary

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant lodged his appeal on 19 September 1990 and it was registered on the same day under the number 165/1990. On 1 January 1991, the appellant produced a supplementary memorial.
2. The Secretary General's observations were communicated to the Board on 27 September 1991. The appellant replied to them on 4 November 1991.
3. On 23 October 1991, the Chairman of the Board met the parties in private to agree the arrangements for the proceedings.
4. On 8 November 1991, the appellant presented a list of persons whom he wished to attend the hearing as witnesses. The Secretary General presented her observations on this request on 9 December 1991.
5. On 8 and 17 February 1992, the appellant presented his replies to the Secretary General's observations on his request for the hearing of witnesses. The Secretary General submitted supplementary observations on 24 February 1992.
6. On 28 February 1992, the Appeals Board considered the appellant's requests for witnesses to be heard and that a part of the proceedings be held in camera. After due deliberation and having regard to the provisions of Article 9, paragraph 5 of its Statute and Rule 25, paragraph 2 of its Rules of Procedure, the Appeals Board decided to reject the appellant's request for witnesses to be heard. The Board also decided not to grant the appellant's request that a part of

the proceedings be held in camera, while reserving the right to hold part of the hearing in camera if circumstances so required. The parties were informed of the Board's decisions by letter dated 2 March 1992.

7. On 2 March 1992, the appellant submitted his comments on the Secretary General's observations of 24 February 1992 to the Board.

8. The public hearing took place on 24 March 1992 in the court room of the European Court of Human Rights in Strasbourg and was attended by the appellant, Mr F. VANGREENBERGHE; the Secretary General was represented by Mr E. HARREMOES, Director of Legal Affairs, assisted by Mr P. DEWAGUET, Administrative Officer in the Directorate of Legal Affairs.

9. At the end of the hearing, the Board considered the appellant's request for a fresh hearing, at which witnesses would be heard in camera. After due deliberation and having regard to Rule 25 of its Rules of Procedure, the Appeals Board saw no grounds for reversing its decision of 28 February 1992 and rejected the appellant's request. The parties were informed of this by letter dated 26 March 1992.

10. By letter of 15 May 1992 the appellant submitted a request that a further hearing be held in his case. After due deliberation the Appeals Board decided, on 26 May 1992, to reject this request. The appellant was so informed by letter of 4 June 1992.

THE FACTS

The facts set out by the parties may be summarised as follows:

11. Mr Frans Vangeenberghe entered Council of Europe service on 1 February 1969. He has been in retirement since 1 July 1991. Before his retirement, the appellant was a member of staff on grade A4 in the Directorate of Legal Affairs.

12. A decision on an earlier appeal by the appellant (no 77/1981, Vangeenberghe v the Secretary General) was delivered on 11 June 1982. This appeal concerned a decision by the Secretary General to transfer the appellant to a post in the Directorate of Legal Affairs.

13. On 21 December 1989, the Secretary General published vacancy notice no 87/89 relating to a grade A6 post (no 7013 - Deputy Director of Human Rights), for which the appellant submitted an application within the specified time-limit.

14. On 23 May 1990, the Head of the Establishment Division informed the appellant that the Secretary General had decided to appoint Mr X, a member of staff on grade A5 in the Directorate of Human Rights, to the post in question.

15. On 12 July 1990, the appellant submitted a complaint to the Secretary General. He requested the annulment of the appointment of Mr X to the post of Deputy Director of Human Rights.

16. On 9 September 1990, following the expiry of the period of 60 days provided for in Article 59, paragraph 3 of the Staff Regulations, during which the Secretary General had not given a reasoned decision on the appellant's complaint, the appellant lodged the present appeal with the Appeals Board.

IN LAW

17. The appeal is directed against the Secretary General's decision to appoint Mr X. as Deputy Director of Human Rights. It calls for the annulment of this appointment and compensation for the material and non-material damage which the appellant claimed to have suffered as a result of the contested decision.

18. In support of his appeal, the appellant claimed that the appointment constituted a misuse of the Secretary General's discretionary power with regard to promotions and that the appointment was a further example of the discrimination, in the form of continuous ostracism, which the appellant had been subjected to throughout his Council of Europe career. In addition, he stated that he had been given no work for three years and that the Secretary General had failed on numerous occasions to fulfil her obligations to the appellant as an international civil servant.

19. The Secretary General submitted firstly that the appeal was inadmissible, because it would be abusive and because the appellant did not have a direct and existing interest in requesting the annulment of the contested decision. She also stated that the appeal was ill-founded and that it should be dismissed.

Subject matter of the appeal

20. The appellant stated, in particular in his observations of 4 November 1991, that the subject matter of his appeal was not simply the appointment of Mr X to the post of Deputy Director of Human Rights. He argued that this appointment was confirmation of the discrimination to which he had been subject since he entered the Council of Europe's service. This discrimination had first manifested itself in a memorandum written by the Deputy Director of Administration in 1970, which described a discussion he had had with the appellant and which the latter was unaware of until 1990. The appellant claimed that a series of subsequent decisions and actions offered proof of discrimination against him. In this regard, he referred to his appointment to the Secretariat of the Social Charter in 1971, his transfer to the Secretariat of the Resettlement Fund, his transfer, against his will, in 1981 to the Directorate of Legal Affairs, the decision of the Appeals Board regarding this transfer, which he described as "unfair" ("faux procès"), the failure since 1974 to grant him any promotion and the alleged withholding of any work during the three years preceding his retirement.

21. The appellant considers that the discrimination of which he claimed to have been the victim resulted from his relatively "advanced" age when he took up his duties at the Council of Europe, the "favoritism" shown to certain members of the Organisation's staff and the exercise of outside political influence. Evidence of this discrimination was also to be seen in two false

documents and accusations relating to him.

22. The Secretary General claimed that the various points on which the appellant based his argument were either pure conjecture or without foundation. These points were, moreover, irrelevant to the subject matter of the case, which was the appointment of Mr X to the post of Deputy Director of Human Rights.

23. The Appeals Board notes that the appellant alleges that the appointment constituted further confirmation of the discrimination of which he claimed to have been the victim throughout his Council of Europe career. The Board does not consider this allegation to be sufficient for declaring itself competent to examine the lawfulness of all the acts and decisions of which the appellant complains. Such a step would clearly be at variance with the provisions of the Staff Regulations and the Statute of the Appeals Board, according to which an appeal may only be made to the Board after the rejection of an administrative complaint and within sixty days of that rejection. Further, with reference to the appellant's complaint regarding the Appeal Board's decision of 11 June 1982, the Board notes that neither the Staff Regulations or its own Statute provide for any appeal against a decision.

24. It follows that the facts set out by the appellant in his supplementary memorial and his observations, other than those relating to the appointment of Mr X to the post of Deputy Director of Human Rights, do not fall within the Appeals Board's jurisdiction. This in no way implies that, in reaching its decision, the Board would be prevented from taking account of established and uncontested facts submitted by the parties. However, it cannot enquire into allegedly unlawful facts and acts which have not been properly brought before it in accordance with the deadlines and procedures prescribed in the Staff Regulations.

25. It follows that the subject matter of the appeal to the Board is restricted to the appointment of Mr X to the post of Deputy Director of Human Rights.

The objection to admissibility raised by the Secretary General

26. The Secretary General submitted in her written observations and at the hearing that the appeal was unreasonable.

27. The Board notes that abuse of the right of appeal may constitute grounds for inadmissibility. However, it has identified no aspect of this appeal which would enable it to conclude that the appellant has abused the right of appeal granted to him by the Staff Regulations. The appeal cannot therefore be dismissed on these grounds.

28. The Secretary General also argued that the appeal was inadmissible under the terms of Article 59 paragraph 1 of the Staff Regulations. According to this article, only a staff member with "a direct and existing interest" may lawfully submit a complaint against an administrative act adversely affecting him. In this case, it is argued, the appellant is retired and can thus no longer claim any right to be appointed to the post in question. Therefore, he would have no interest in contesting the appointment. On this point, the Secretary General referred to the *Moritz v Commission of the European Communities* judgment of the Tribunal of the European Communities, 13 December 1990.

29. The appellant again stressed here that the contested appointment was not the only basis for his appeal. He also stated that he should not be penalised for having reached retirement age before the Board decided on his appeal.

30. The Board has already decided that the scope of the appeal is restricted to the dispute relating to the appointment of Mr X to the post of Deputy Director of Human Rights. However, it notes that the appellant also stated in his appeal that this appointment caused him material and non-material damage, for which he requests compensation. This raises the question whether the appellant, notwithstanding the fact that he is retired, has a direct and existing interest within the meaning of Article 59 paragraph 1 of the Staff Regulations.

31. However, the Board is not required to decide on this point. Even assuming that the appellant has an interest in challenging the decision, his appeal must, in any event, be rejected for the following reasons.

The merits of the appeal

32. The appellant argued firstly that the person appointed to the post was less qualified and experienced than himself, and that this appointment therefore represented an error of judgment.

He also claimed that the appointment of Mr X constituted a misuse of the Secretary General's discretionary power with regard to promotions. In particular, the post in question had been created for the staff member who was appointed.

33. The Secretary General stated that the appellant's allegation that the post in question had been created for the person appointed was without foundation. She stressed that the creation of this post reflected the need to give the Directorate of Human Rights an organisational and staffing structure which matched the importance and breadth of its responsibilities. Moreover, it would have been inconsistent for Human Rights, unlike other directorates, not to have a deputy director.

The Secretary General also noted that, contrary to what the appellant stated, the successful candidate had had all the necessary qualifications and that his appointment was in the interests of the service.

Finally, the Secretary General argued that she enjoyed a wide measure of discretion in determining the interests of the service and that, in view of the importance of the post in question, this principle was of great importance in this case.

34. The Board recalls that the Secretary General has a wide-ranging discretionary power in matters of staff management. Within the scope of that power she is qualified to know and assess the operational needs of the organisation. The existence of the authority's discretionary power is borne out by the case-law of international administrative tribunals. This case-law recognises that the authority has a wide measure of discretion to assess the needs of the organisation (see the Bartsch and Peukert decision of 30 March 1987, paragraph 51 with references).

35. This discretionary power is, however, subject to the rules in force in the organisation. The power is exercised “without prejudice to the rights which servants enjoy under their Staff Regulations” (CJEC, case of G. Vistosi v Commission of the European Communities, 16 June 1971, ECR 1971, p 535 et seq.). This is an essential rule which safeguards the rights and interests of the persons who form the administrative staff of the organisation.

36. Clearly, in the event of a dispute the international tribunal cannot substitute its own judgment for that of the administration. Nevertheless, it has a duty to ascertain whether the disputed decision was taken in accordance with the regulations and with general principles of law, to which the legal systems of international organisations are subject (ABCE 8/1972, G Artzet v Secretary General, Digest, p. 47).

37. Even the wide discretionary power of the administrative authority must always be exercised lawfully. That is why it is for the tribunal hearing an appeal against an administrative decision taken in the exercise of that discretionary power to determine not only whether that decision has been taken by a competent authority and whether it is in due form, but also whether the correct procedure has been followed. The tribunal must also determine, with regard to the legality of the decision under the organisation’s own rules, whether the administration’s decision took account of all the relevant facts, whether the wrong conclusions have been drawn from the documents in the file, or finally, whether there has been misuse of power (Bartsch and Peukert decision, paragraph 53).

38. The Board also agrees with the Secretary General’s contention that in the case of an appointment to a very senior post, she enjoys a wide margin of discretion. The exercise of this discretion is still, of course, subject to the oversight of the administrative tribunal. However, the scope of this oversight is limited to penalising irregularities and manifest errors of judgement.

39. The Board notes that its examination of the case has revealed no evidence to show that in exercising her authority, the Secretary General disregarded the above-mentioned principles. On the contrary, there is evidence that her decision was based on a number of relevant and objective factors, such as the experience of the person appointed in the human rights field and in the organisation and management of the Directorate of Human Rights. It follows that no manifest error can be found in this case.

40. The Board also notes that the contested decision did not involve any procedural irregularity.

41. The Board has considered the appellant’s allegation that the contested decision constituted a misuse of power. It has not found any evidence to support this allegation.

42. The facts of the case do not therefore reveal any unlawful action.

43. Finally, the Board notes that since the contested decision was in no way unlawful, the appellant’s request for compensation for material and non-material damage has no legal foundation and must be dismissed.

For these reasons,

the Appeals Board:

Declares the appeal unfounded,

Dismisses it in its entirety; and

Orders that each party shall bear its own costs.

Done and decided in Strasbourg on 26 June 1992, the French text of the decision being authentic.

The Secretary of the
Appeals Board

M. de SALVIA

The Chairman of the
Appeals Board

C. RUSSO