

CONSEIL DE L'EUROPE————— —————**COUNCIL OF EUROPE**

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

CHAIR'S ORDER of 29 January 2016

in the case of Raphaël ALOMAR v. Governor of the Council of Europe Development Bank

I, Chair of the Administrative Tribunal,

Having regard to Appeal No. 568/2015 lodged by Mr Raphaël Alomar on 9 October 2015;

Having regard to the observations submitted by the Governor on 23 November 2015;

Having regard to the appellant's letter of 8 January 2015 in which he stated that he was withdrawing his appeal;

Having regard to the letter sent by the representative of the Governor of the Council of Europe Development Bank on 14 January 2016 in which he raised no objection to striking the appeal out of the list of cases;

Having regard to the appellant's letter of 25 January 2016 in which he submitted further comments that have been communicated to the Governor;

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

Having regard to Article 5, paragraph 2, of the Statute of the Administrative Tribunal as applicable to the Bank;

Considering it appropriate to apply the procedure provided for in the above provisions;

Having submitted a reasoned report to the judges of the Tribunal on 25 January 2016;

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

DECLARE

- Appeal No. 568/2015 struck off the list of cases on the grounds set out in the report appended hereto.

Done and ordered in Strasbourg on 29 January 2016, the present order being notified to the parties to the case.

The Registrar of the
Administrative Tribunal

S. SANSOTTA

The Chair of the
Administrative Tribunal

C. ROZAKIS

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. 568/2015

Raphaël ALOMAR v. Governor

This report concerns Appeal No. 568/2015 lodged by Mr Raphaël Alomar. 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 Raphaël Alomar lodged his appeal on 9 October 2015. The appeal reached the Registry of the Tribunal on 16 October 2015 and was registered under No. 568/2015 on the same day.
2. On 23 November 2015 the Governor of the Council of Europe Development Bank submitted his observations.
3. Having been invited to submit observations in reply, on 8 January 2015 the appellant informed the Tribunal that he was withdrawing his appeal;
4. On 14 January 2016 the Governor indicated that he had no objection to striking the appeal off the list of cases;
5. On 25 January 2016 the appellant submitted further comments that have been communicated to the Governor;
6. On 25 January 2015 the Chair of the Tribunal, after having taken note of the arguments developed by the parties during the written procedure and at the time of the withdrawal request, submitted this report to the members of the Tribunal.

THE FACTS

7. The facts of the appeal as relevant to this decision are as follows.
8. The appellant is the former Governor of the Council of Europe Development Bank. He performed these duties before the current Governor; consequently, he is considered as the “outgoing Governor”.
9. The Council of Europe Development Bank set up an Autonomous Pension Fund. According to the instruments in force at the time of the lodging of the appeal (Administrative Council Resolution 3331 (1978) of 10 March 1978), the Fund was managed by the Governor, who was assisted by a Management Committee – which, in the meantime, changed its title –

of which the “composition in principle” included the participation of the “outgoing Governor”.

10. In his capacity as “outgoing Governor”, the appellant participated in five of these meetings; as from the meeting in January 2014 he received no further invitations to attend.

11. During the period February / April 2014 the appellant and the Governor exchanged letters on this issue.

12. On 21 July 2015 the appellant sent a letter to the Governor to be considered “as a formal letter of notice” to which the latter replied on 18 September 2015. Before the Tribunal the appellant described this letter as his administrative complaint.

13. On 18 September 2015 the Governor sent a letter to the appellant, which the latter, in his form of appeal, considered to be a rejection of his administrative complaint.

14. On 9 October 2015 the appellant lodged this appeal.

15. On 5 November 2015 the Administrative Council of the Bank adopted Resolution 1575 (2015) modifying, *inter alia*, the composition of the Pensions Advisory Committee. Consequently, the outgoing Governor is no longer a member of the committee.

THE LAW

16. Through his appeal, the appellant seeks the annulment of the decision to exclude him from the Advisory Committee of the Bank's Autonomous Pension Fund.

17. The Governor maintains that the appeal is inadmissible on four grounds. It is deemed inadmissible *ratione personae*, *ratione materiae*, *ratione temporis* and finally due to non-respect of the administrative complaints procedure.

18. Regarding the merits of the appeal, the Governor considers it to be unfounded.

19. Having been invited to submit observations in response, the appellant has informed the Tribunal that he wishes to withdraw his appeal.

20. After noting the amendment made, the appellant observes that it was clearly intended to render the appeal entirely ineffective. After having expressed a number of criticisms, the appellant indicates that, in any event, he can only take note thereof.

21. Having been called to give his opinion on the withdrawal request, the Governor indicates that he has no objections. He adds that he cannot agree with some of the assertions made by the appellant and corrects certain others that, according to him, are incorrect.

22. The 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 list of cases if the appellant declares that he or she wishes to withdraw it and, under paragraph 2 of the same provision, the Tribunal rules in accordance with the procedure provided in Article 5, paragraph 2 of the Statute of the Tribunal, which applies to statements of manifest inadmissibility of an appeal.

23. The Chair notes that, in this case, there is no obstacle preventing the striking out of the appeal. It is true that, in his letter informing the Tribunal of his decision to withdraw the appeal, the appellant presents his request as a consequence of the amendment introduced in November 2015. However, although the appellant considers that this amendment is at variance with Article 60, paragraph 5, of the Staff Regulations, he does not wish to draw legal conclusions from it with regard to continuing his appeal. According to this provision, “While an appeal is pending, the Governor shall avoid taking any further measure in respect of the appellant which, in the event of the appeal being upheld, would render unfeasible the redress sought.” The Chair notes that the appellant is accordingly aware of the implications of his decision. Consequently, there is no obstacle preventing the Tribunal from striking the appeal off its list of cases.

24. Finally, the Chair observes that the appeal must be struck off the list of cases in accordance with the procedure set out in Article 20, paragraph 2, of the Tribunal’s Rules of Procedure.

CONCLUSION

25. This report is submitted to the judges of the Tribunal 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 Chair
Christos ROZAKIS