

CONSEIL DE L'EUROPE— —COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

**Decision of the Administrative Tribunal of 23 May 1995
in the case of Régis BRILLAT and Anna CAPELLO-BRILLAT v. Secretary General**

The Administrative Tribunal, composed of:

Mr Carlo RUSSO, Chair
Mr Kåre HAUGE,
Mr Alan GREY, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar, and
Mrs Claudia WESTERDIEK, Deputy Registrar,

delivers the following decision after due deliberations.

PROCEEDINGS

1. Mr Régis BRILLAT and Mrs Anna CAPELLO-BRILLAT, (hereinafter “the appellants”), lodged their appeals on 19 January 1995. These appeals were registered on the same date under Nos. 198/95 and 199/95 respectively.
2. The appellants’ counsel, Mr D. RUZIE, submitted a supplementary memorial on 20 January 1995.
3. On 24 February 1995 the Secretary General submitted his observations on the appeals. The appellants’ counsel submitted his observations in reply on 9 March 1995.
4. The Administrative Tribunal decided, after consulting the parties, not to hold oral proceedings.

THE FACTS

5. The appellants are both permanent staff members of the Council of Europe. When the appeal were lodged Mr BRILLAT, who has French nationality, had reached grade A4, step 2 and Mrs CAPELLO-BRILLAT, who has Italian nationality, had reached grade A3 step 7. They have been married since 1985 and have four children. On 1 July 1994 Mr BRILLAT was drawing the basic salary plus a residence allowance and Mrs CAPELLO-BRILLAT was

drawing, in addition to a basic salary and an expatriation allowance, also a household allowance and a dependent-child allowance.

Their appeals concern the decision taken by the Director of the Administration of the Council of Europe on 24 November 1994, dismissing their administrative complaint as a result of which the household allowance and the dependent-child allowances were thenceforth to be paid to Mr BRILLAT and not to Mrs CAPELLO-BRILLAT, with retrospective effect from 1 July 1994.

6. On 30 September 1994, the appellants both received a sheet of notes entitled “Changes to the personal file of a permanent staff member” signed on 21 September by a staff member working in the Division of Human Resources and countersigned by the Financial Controller on 26 September 1994. It emerged from these notes that the household allowance and the dependent-child allowances would thenceforth be paid to Mr BRILLAT and not to Mrs CAPELLO-BRILLAT.

7. As a result of this measure the allowances were now lower and the couple’s joint income was correspondingly reduced. In addition the appellants claim that, as she was no longer drawing household allowance, Mrs CAPELLO-BRILLAT was deprived of home leave in respect of her children and of various other Council of Europe benefits.

8. Both appellants therefore lodged an administrative complaint on 25 October 1994, in which they claimed that the decision was illegal in that their family situation remained the same and in that the situation resulting from this change was discriminatory and unfair.

On 24 November 1994 the Secretary General dismissed their administrative complaints, relying in particular on Article 4 para. 5 of Appendix IV to the Staff Regulations which states that if “a husband and wife employed by the Council or by the Council and another co-ordinated organisation are both entitled to the household allowance, the allowance shall be paid only to the person whose basic salary is the higher.”

9. In two notes sent to the appellants on 7 February 1995, the Director of the Division of Human Resources informed them that the Secretary General had granted their requests in their entirety with retrospective effect from 1 July 1994.

THE LAW

10. On 19 January 1995, the appellants lodged an appeal against the Secretary General’s decision to thenceforth pay to Mr BRILLAT the household allowance and dependent-child allowances previously paid to Mrs CAPELLO-BRILLAT. The appellants also claimed compensation for both pecuniary and non-pecuniary damage as well as the reimbursement of the procedural costs.

11. The Administrative Tribunal ordered the joinder of the appeals, as being closely related, in accordance with Rule 14 of its Rules of Procedure.

12. The Secretary General maintained that the appeals were devoid of purpose and asked the Administrative Tribunal to strike them out of the list of cases.

In their observations in reply dated 9 March 1995, the appellants noted that in accepting to continue to pay the household allowance, with retrospective effect from 1 July 1994, the Secretary General had recognised their main claim. They no longer request compensation for the non-pecuniary damage caused to them by the need to lodge this appeal and recognise that the retrospective effect of the Secretary General's decision means that they should not suffer any pecuniary damage.

13. However, as their rights were not recognised until after they had lodged their appeal and submitted a supplementary memorial, they request the reimbursement of the procedural costs which they estimate at FF 8 000.

14. The Tribunal notes that, in February 1995, the Secretary General granted all of the requests made by the appellants, with retrospective effect from 1 July 1994. It follows that the appeals are now devoid of purpose and there is no need for a ruling on their merits.

Nevertheless, the Tribunal acknowledges that the appellants had a legitimate interest in taking action and that this should be taken into account as regards the reimbursement of the costs incurred.

For these reasons, the Administrative Tribunal:

Decides that appeals Nos. 198-199/1995 should be joined;

Decides that the Council of Europe should pay the appellants the sum of FF 8 000 for costs and expenses;

Decides to strike out the remainder of the case.

Delivered in French on 23 May 1995 in Strasbourg and notice given thereof in pursuance of Rule 25, para. 1 of the Rules of Procedure.

The Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

S. SANSOTTA

C. RUSSO