

CONSEIL DE L'EUROPE— —COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

ORDER OF THE CHAIR of 20 March 2000

**in Appeals Nos. 252 and 253/1999
(Taner BEYGO (IX) and Claire BEYGO (VI) v. Secretary General)**

I, Chair of the Administrative Tribunal,

Having regard to Appeals Nos. 252 and 253/1999 submitted by Mr Taner Beygo and Mrs Claire Beygo;

Having regard to their supplementary memorial of 30 April 1999;

Having regard to the Secretary General's observations of 26 May 1999 and the appellants' reply of 29 June 1999;

Having regard to Article 5 of the Statute of the Administrative Tribunal;

Having regard to Rule 19 of the Tribunal's Rules of Procedure;

Whereas it was appropriate to apply the procedure laid down in Article 5 and Rule 19;

Having submitted a reasoned report to the other Tribunal judges on 19 November 1999;

Noting that they did not raise any objections within the prescribed two months;

DECLARE

- Appeals Nos. 252 and 253/1999 inadmissible for the reasons set out in the report attached hereto.

Done and ordered at Savona on 20 March 2000, this order being notified to the parties.

The Registrar of the
Administrative Tribunal

S. SANSOTTA

The Chair of the
Administrative Tribunal

C. RUSSO

**REPORT DRAWN UP FOR THE PURPOSES OF THE PROCEDURE PROVIDED
FOR IN ARTICLE 5(2) OF THE STATUTE OF THE ADMINISTRATIVE TRIBUNAL
AND RULE 19(2) OF THE TRIBUNAL'S RULES OF PROCEDURE**

Appeals Nos. 252-253/1999 (Taner and Claire BEYGO)

This report concerns Appeals Nos. 252/1999 and 253/1999 lodged respectively by Mr Taner Beygo and Mrs Claire Beygo. It has been drawn up for the purposes of the procedure laid down in Article 5(2) of the Statute of the Administrative Tribunal and Rule 19(2) of the Administrative Tribunal's Rules of Procedure.

THE PROCEEDINGS

1. Mr and Mrs BEYGO lodged their appeals on 1 April 1999. On 12 April the appeals were registered under Nos. 252/1999 and 252/1999.
2. Mrs Beygo, representing Mr Beygo and as co-appellant, lodged a supplementary memorial on 30 April 1999. On 26 May 1999 the Secretary General submitted observations on the appeals. Mrs Beygo submitted observations in reply on 29 June 1999.
3. On 19 November 1999, the Chair of the Administrative Tribunal decided to submit this report to the members of the Administrative Tribunal.

THE FACTS

4. The two appeals are part of a dispute between the appellants and the Secretary General about Mr Beygo's right to an invalidity pension (Appeals Nos.227/1997, 229/1997 and 242/1998) and his removal from post on disciplinary grounds.
5. In a decision of 28 April 1999 on Mr Beygo's Appeal No.227/1997, the Tribunal declared the appeal founded in so far as it sought a ruling that the decision to halt examination of the application for retirement on invalidity grounds was illegal. The Tribunal dismissed the remainder of the appeal, together with Appeals Nos.229/1997 and 242/1998. With regard to the appeal concerning the removal from post on disciplinary grounds (Appeal No.220/1996), the Tribunal held, in the aforementioned decision, that it could not rule on the matter until a final decision had been taken on the application for retirement on invalidity grounds.
6. On 26 May 1999, the Secretary General informed the Tribunal of the measures taken to execute that decision and accordingly directed that examination of the application for retirement on invalidity grounds resume at the point at which it had been suspended on 31 January 1996.
7. On 8 December 1998, the appellants had sent the Secretary General a copy of a decision delivered on 25 November 1998 by the Strasbourg Social Security Tribunal, together with a request to pay Mr Beygo an invalidity pension. They also requested annulment of the decision removing him from post on disciplinary grounds.

8. In a letter dated 16 December 1998, the Secretary General informed the appellants that their letter did not call for any action on his part.

9. On 11 January 1999, the appellants lodged an administrative complaint. They requested that Mr Beygo be granted an invalidity pension as from 1 December 1995, that he be paid back pay in respect of leave untaken in 1995, and that the decision of 12 January 1996 removing him from post be annulled together with the disciplinary proceedings. They likewise claimed the sum of two million US dollars in compensation.

10. The Secretary General did not express any view on the complaint.

11. On 1 April 1999, the appellants lodged the present appeals.

THE LAW

12. Being closely related, the appeals should be joined under Rule 14 of the Tribunal's Rules of Procedure.

13. I note that the two appeals essentially claim an invalidity pension for Mr Beygo and seek annulment of his removal from post on disciplinary grounds.

14. In his observations dated 26 May 1999, the Secretary General argued that the appeals were inadmissible on the ground of manifest lateness and had been the subject of the proceedings leading to the Administrative Tribunal's decision of 28 April 1999. In addition, Mrs Beygo did not have capacity to bring an administrative complaint under Article 59(1) and (6) of the Staff Regulations. The complaints procedure was available to persons claiming through staff members only if the staff members themselves were unable to assert their rights. However, dismissal from post and the right to an invalidity pension concerned the staff member alone, and not the staff member's spouse.

With regard to immediate payment of an invalidity allowance, "if, under this head, the appellant's appeal were to be found admissible despite having no separate purpose from the previous appeals in the matter" he referred to the decision of 28 April 1999, which had dismissed appeals against previous decisions on the matter. The reference to the decision of the Strasbourg Social Security Tribunal was irrelevant in that that tribunal had no jurisdiction to rule on Council of Europe staff's invalidity pension entitlements under the scheme established by Article 13ff of the Pension Rules.

The back-pay claimed in respect of untaken leave had not been the subject of a complaint and he therefore regarded the claim as inadmissible.

Lastly, he took the view that Mr Beygo's pecuniary claims were groundless since the appeals were inadmissible and, in the alternative, ill-founded.

In conclusion, the Secretary General asked the Tribunal to find Mrs Beygo's appeal inadmissible and to find Mr Beygo's appeal inadmissible or, alternatively, dismiss it.

15. In their observations in reply, the appellants, in ill-considered fashion and terms defaming the Secretary General and members of the Secretariat, reiterated Mr Beygo's claim

to an invalidity pension on the basis of the decision of 25 November 1998 delivered by the Strasbourg Social Security Tribunal. As regards admissibility of the appeals, they alleged that Mrs Beygo was the victim of “machinations by the Secretary General and his administrative services”. The appeals were not late but based on a new legal situation created by the Strasbourg Social Security Tribunal’s decision, which amounted to an “unchallengeable grant of retirement on invalidity grounds” with annulment of the wrongful removal from post.

In conclusion they abided by their submissions.

16. Article 5(2) of the Statute of the Administrative Tribunal reads:

“If the Chair states, in a reasoned report to the judges of the Tribunal, that he or she considers the appeal to be manifestly inadmissible, and if the judges raise no objections within two months, the appellant shall be informed without delay that his or her appeal has been declared inadmissible for the reasons stated in the report, a copy of which shall be communicated to him or her.”

Rule 19(2) of the Tribunal’s Rules of Procedure provides:

“If, during the written procedure, the Chairman considers the appeal to be manifestly inadmissible, Article 5, paragraph 2 of the Statute shall apply. Any decision of rejection is given by an Order of the Chairman.”

17. As regards whether Mrs Beygo was allowed to lodge an appeal, the Chair notes that, under Article 60 of the Staff Rules, an appeal may be lodged only if there has first been an administrative complaint (see decision of the Tribunal of 28 April 1999 in Appeals Nos.214/1995, 223/1996, 228/1997 and 230/1997 and 243/1998, likewise lodged by Mrs Beygo, paragraphs 79-82). On this occasion she has doubtless met that admissibility requirement, but she still cannot claim to be the victim of an administrative act concerning her or of which she was the subject and that adversely affected her: the letter dated 8 December 1998 was concerned with measures required in Mr Beygo’s interest. That Mrs Beygo may, in terms of health assistance and less quality of life, have been affected by an administrative measure concerning her husband does not give her an independent right to lodge a complaint or appeal: protection of her rights requires an appeal by her husband and whatever action he sees fit to take. As Mrs Beygo cannot lodge an administrative complaint, it follows that she cannot lodge an appeal either.

Her Appeal No.253/1999 is therefore manifestly inadmissible within the meaning of Article 5(2) of the Statute of the Administrative Tribunal and must therefore be dismissed under the procedure laid down in Rule 19(2) of the Tribunal’s Rules of Procedure.

18. With regard to Mr Beygo, the Chair notes that his appeal asks the Tribunal to rule on matters on which the Tribunal has already ruled, in its decision of 28 April 1999 (see, in particular, the findings regarding Appeals Nos.229/1996 and 242/1996). The fact that on 25 November 1999 the Strasbourg Social Security Tribunal delivered a decision is not, contrary to the appellant’s contention, a new circumstance, having previously been brought to the Tribunal’s notice and having been referred to in paragraph 6 of the Tribunal’s decision of 28 April 1999.

19. Consequently, this appeal too, is manifestly inadmissible within the meaning of Article 5(2) of the Statute of the Administrative Tribunal and must be dismissed under the procedure laid down in Rule 19(2) of the Tribunal's Rules of Procedure.

20. Both appeals being manifestly inadmissible, the present report must now be submitted to the judges of the Tribunal so that, if they agree with the above findings, the appeals may be dismissed by order of the Chair.

CONCLUSIONS

21. The present report is submitted to the judges of the Tribunal to allow the review provided for in Article 5(2) of the Statute of the Tribunal.

The Chair
Carlo RUSSO