

CONSEIL DE L'EUROPE—————

—————**COUNCIL OF EUROPE**

TRIBUNAL ADMINISTRATIF

ADMINISTRATIVE TRIBUNAL

**in the case of Appeal No. 584/2017 (Pedro AGRAMUNT FONT DE MORA
v. Secretary General of the Council of Europe)**

ORDER OF THE CHAIR of 10 November 2017

I, Chair of the Administrative Tribunal,

Having regard to Appeal No. 584/2017 lodged by Mr Pedro Agramunt Font De Mora on 27 July 2017;

Having regard to the observations submitted by the Secretary General on 1 September 2017;

Having regard to the applicant's observations in reply submitted on 5 October 2017;

Having regard to Article 60, paragraphs 1 and 3, of the Staff Regulations;

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

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

Considering that it is appropriate to apply the procedure provided for in the said articles;

Having submitted a reasoned report to the Tribunal judges on 19 October 2017;

Noting that the judges raised no objection and, on the contrary, gave their consent to this Order;

DECLARE

- Appeal No. 584/2017 inadmissible on the grounds set out in the report appended to this Order.

Done and ordered in Strasbourg, on 10 November 2017 this Order being notified to the parties concerned.

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 ARTICLE 5, PARAGRAPH 2, OF THE STATUTE OF THE TRIBUNAL AND RULE 19, PARAGRAPH 2 OF THE RULES OF PROCEDURE OF THE TRIBUNAL

Appeal No 584/2017

**Pedro AGRAMUNT FONT DE MORA
v. Secretary General of the Council of Europe**

The present report concerns Appeal No. 584/2017 lodged by Mr Pedro Agramunt Font De Mora. It has been drawn up for the purposes of the procedure provided for in Article 5, paragraph 2 of the Statute of the Tribunal and Rule 19, paragraph 2 of the Rules of Procedure of the Administrative Tribunal.

THE PROCEEDINGS

1. Mr Pedro Agramunt Font De Mora lodged his appeal on 27 July 2017. The appeal reached the registry of the Tribunal on 28 July 2017 and was registered the same day under No. 584/2017. The appeal form included the grounds of the appeal in full.
2. On 1 September 2017, the Secretary General submitted his observations.
3. On 5 October 2017, the appellant submitted his observations in response.
4. On 6 October 2017, the Tribunal learned from the press that the appellant had resigned from his position as President of the Parliamentary Assembly of the Council of Europe and that the latter had decided that the debate on his dismissal, scheduled for 9 October 2017, would not take place.
5. On 18 October 2017, the Chair asked the appellant to state whether he wished to maintain or withdraw his appeal (Rule 20 of the Rules of Procedure of the Tribunal).
6. The same day, the appellant indicated that he wished to maintain his appeal as his resignation did not call into question the legal foundation of his appeal.
7. On 19 October 2017, the Chair of the Tribunal, having taken note of the arguments put forward by the parties during the written procedure (Rule 19, paragraph 2 of the Rules of Procedure of the Tribunal) and of the appellant's decision to maintain his appeal, submitted this report to the members of the Tribunal.

THE FACTS

8. The facts of the case which are relevant to this decision can be summarised as follows.
9. The appellant is a member of the Spanish Senate. He is also a member of the Parliamentary Assembly of the Council of Europe, of which he had been President since 25 January 2016, with the first term of office being renewed on 23 January 2017.

10. On 8 June 2017, the Committee on Rules of Procedure, Immunities and Institutional Affairs of the Parliamentary Assembly of the Council of Europe adopted a draft report on “Recognition and implementation of the principle of accountability in the Parliamentary Assembly”.

11. This report included a draft resolution establishing, by means of a modification to Rules 54 and 55 of the Assembly’s Rules of Procedure, first a procedure for dismissing the President and Vice-Presidents of the Assembly, and second, a procedure for dismissing the chairs and vice-chairs of the committees. The resolution stipulated that these modifications would enter into force upon adoption of the resolution and its provisions would apply to the current terms of office of the President of the Parliamentary Assembly, the Vice-Presidents and the chairs and vice-chairs of the committees.

12. In the summary of this report, the Committee explained that it wished to

“reiterate the importance of the principle of accountability, which includes a duty of transparency and an obligation to account for one’s acts, without which the Assembly cannot have any confidence in those it has elected to office.

In order to ensure that this principle is given full recognition, the committee invites the Assembly to complete its regulatory framework by creating a procedure to bring into play the institutional accountability of holders of elective offices within the Assembly and the possibility to dismiss them during their term of office.”

13. In the explanatory memorandum, the rapporteur cited a visit made by the appellant to Syria in March 2017, adding that:

“The visit (...), in addition to provoking outraged reactions by several members, delegations and political groups, raised questions about the commitments by which Assembly members who exercise key elective offices are bound.”

14. Meanwhile, on 7 June 2017, the appellant, having been apprised of the content of this report, sent a letter to the Secretary General of the Parliamentary Assembly of the Council of Europe expressing his doubts as to whether the draft resolution contained in the draft report was in compliance with the Statute of the Council of Europe.

15. On 8 June 2017, the Secretary General replied to the appellant, stating that he did not consider that the aforementioned Committee had overstepped its competences.

16. The same day, the applicant sent a letter to the Chairman-in-Office of the Committee of Ministers of the Council of Europe.

17. On 23 June 2017, the applicant submitted a formal complaint to the Secretary General of the Council of Europe.

18. In the proceedings before the Court, the Secretary General stated his belief that this letter did not require a reply.

19. On 27 June 2017, the draft resolution contained the aforementioned report was adopted by the Parliamentary Assembly.

20. On 30 June 2017, 158 members of the Parliamentary Assembly tabled a motion for the dismissal of the appellant from his position of President of the Parliamentary Assembly.

21. In the proceedings before the Tribunal, the Secretary General stated that it was planned to put this motion for dismissal, tabled in application of the new Rule 54.3 of the Rules of Procedure, to a vote in the Assembly at the opening of the part-session immediately following its publication, namely on 9 October 2017, the date of the opening of the fourth ordinary part-session of 2017.
22. On 27 July 2017, the appellant lodged this appeal.
23. On 6 October 2017, the appellant resigned from his position as President of the Parliamentary Assembly of the Council of Europe.
24. The same day, the Assembly decided that the debate on his dismissal would not be held.

THE RELEVANT TEXTS

25. The following are the provisions of the Staff Regulations and of the Statute and Rules of Procedure of the Tribunal which are of relevance to the current appeal.
26. Article 59 of the Staff Regulations governs the complaints procedure and is worded as follows:

“1. Staff members may submit to the Secretary General a request inviting him or her to take a decision or measure which s/he is required to take relating to them. If the Secretary General has not replied within sixty days to the staff member's request, such silence shall be deemed an implicit decision rejecting the request. The request must be made in writing and lodged via the Director of Human Resources. The sixty-day period shall run from the date of receipt of the request by the Secretariat, which shall acknowledge receipt thereof.

2. Staff members who have a direct and existing interest in so doing may submit to the Secretary General a complaint against an administrative act adversely affecting them, other than a matter relating to an external recruitment procedure. The expression “administrative act” shall mean any individual or general decision or measure taken by the Secretary General or any official acting by delegation from the Secretary General.

3. The complaint must be made in writing and lodged via the Director of Human Resources:

- a. within thirty days from the date of publication of the act concerned, in the case of a general measure; or
- b. within thirty days of the date of notification of the act to the person concerned, in the case of an individual measure; or
- c. if the act has been neither published nor notified, within thirty days from the date on which the complainant learned thereof; or
- d. within thirty days from the date of the implicit decision rejecting the request referred to in paragraph 1.

The Director of Human Resources shall acknowledge receipt of the complaint.

In exceptional cases and for duly justified reasons, the Secretary General may declare admissible a complaint lodged after the expiry of the periods laid down in this paragraph.

4. The Secretary General shall give a reasoned decision on the complaint as soon as possible and not later than thirty days from the date of its receipt and shall notify it to the complainant. If, despite this obligation, the Secretary General fails to reply to the complainant within that period, he or she shall be deemed to have given an implicit decision rejecting the complaint.

5. Either on the initiative of the Secretary General or if the staff member so requests in his or her complaint, the complaint shall be referred to the Advisory Committee on Disputes. The Advisory Committee on Disputes shall formulate its opinion within one year of the date of such referral. In that event, the Secretary General shall have thirty days from the date of receipt of the opinion of the Advisory Committee on Disputes to give a decision on the complaint.

6. The Advisory Committee on Disputes shall comprise four staff members, two of whom shall be appointed by the Secretary General and two elected by the staff under the same conditions as those for the election of the Staff Committee. The committee shall be completely independent in the discharge of its duties. It shall formulate an opinion based on considerations of law and any other relevant matters after consulting the persons concerned where necessary. The Secretary General shall, by means of a rule, lay down the rules of procedure of the committee.

7. When dealing with cases concerning a staff member of the Council of Europe Development Bank, the Advisory Committee on Disputes shall include two members of the Bank's staff, one of whom shall be appointed by the Governor and the other elected by the Bank's staff under the same conditions as apply for the election of the Bank Staff Committee. These two members shall respectively take the place of the second member appointed by the Secretary General and the second member elected by the Council of Europe staff.

8. The complaints procedure set up by this article shall be open on the same conditions *mutatis mutandis*:

a. to former Council of Europe staff members;

b. to persons claiming through staff members or former Council of Europe staff members, within two years from the date of the act complained of; in the event of individual notification, the normal time-limit of thirty days shall apply;

c. to the Staff Committee, where the complaint relates to an act of which it is subject or to an act directly affecting its powers under the Staff Regulations;

d. to staff members and candidates outside the Council of Europe, who have been allowed to sit a competitive recruitment examination, provided the complaint relates to an irregularity in the examination procedure.

9. A complaint shall not have a suspensive effect. However, the complainant may apply to the Chair of the Administrative Tribunal, with copy to the Secretary General, for a stay of execution of the act complained of if its execution is likely to cause him or her grave prejudice difficult to redress. The Secretary General shall, save for duly justified reasons, stay the execution of the act until the Chair of the Administrative Tribunal has ruled on the application in accordance with the Tribunal's Statute."

27. Article 60 of the Staff Regulations governs the appeals procedure. The paragraphs relevant to the instant case are worded as follows:

"1. In the event of either explicit rejection, in whole or part, or implicit rejection of a complaint lodged under Article 59, the complainant may appeal to the Administrative Tribunal set up by the Committee of Ministers.

2. The Administrative Tribunal, after establishing the facts, shall decide as to the law. In disputes of a pecuniary nature, it shall have unlimited jurisdiction. In other disputes, it may annul the act complained of. It may also order the Council to pay to the appellant compensation for damage resulting from the act complained of.

3. An appeal shall be lodged in writing within sixty days from the date of notification of the Secretary General's decision on the complaint or from the expiry of the time-limit referred to in Article 59, paragraph 4. Nevertheless, in exceptional cases and for duly justified reasons, the Administrative Tribunal may declare admissible an appeal lodged after the expiry of these periods.

4. An appeal shall have no suspensive effect. However, if a stay of execution of the act complained of has been granted by the Chair of the Administrative Tribunal following an application under Article 59, paragraph 9,

that stay of execution shall be maintained throughout the appeal proceedings unless the Tribunal decides otherwise on a reasoned request from the Secretary General.

5. While an appeal is pending, the Secretary General 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.

6. Decisions of the Administrative Tribunal shall be binding on the parties as soon as they are delivered. The Secretary General shall inform the Tribunal of the execution of its decisions within thirty days from the date on which they were delivered.

7. If the Secretary General considers that the execution of an annulment decision is likely to create serious internal difficulties for the Council, he or she shall inform the Tribunal to that effect in a reasoned opinion. If the Tribunal considers the reasons given by the Secretary General to be valid, it shall then fix the sum to be paid to the appellant by way of compensation.”

28. Article 5 of the Statute of the Tribunal concerns the admissibility of appeals and stipulates that:

“1. An appeal shall not be admissible unless it complies with the conditions laid down in Article 60, paragraphs 1 and 3, of the Staff Regulations.

2. 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.”

29. Rule 19 of Rules of Procedure of the Administrative Tribunal concerns the conditions under which an appeal is considered admissible and reads as follows:

“1. The appellant must substantiate the grounds of admissibility of his appeal, as mentioned in Article 60, paragraphs 1 and 3 of the Staff Regulations.

2. 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 on Order of the Chairman.”

THE LAW

30. The applicant asks the Tribunal to

- declare null and void, and at the very least inapplicable to the instance case, the contentious modification of the Assembly’s Rules of Procedure introduced by the Assembly under the conditions described;
- order, as necessary, the Parliamentary Assembly to uphold and take account of the principle of the non-retroactivity of the norm and to ensure that he continues to hold the position of President of the Parliamentary Assembly until the end of his terms of office;
- guarantee compliance with Article 28 a. of the Statute of the Council of Europe to ensure the applicant’s exercise of his position as President of the Assembly at all levels until the end of his term of office.

31. In the grounds of his appeal, the appellant focuses briefly on the admissibility of his appeal and puts forward several arguments in support of the merits of his complaints.

32. With regard to the admissibility of his appeal, the appellant notes that the current case is unprecedented and that there is no regulatory norm enabling the President of the Parliamentary Assembly of the Council of Europe to challenge a regulatory reform that affects his honour, his mission and the most basic principles of the rule of law.

33. The appellant adds that following an exhaustive legal analysis of the applicable rules of the Council of Europe, he therefore feels that his appeal is legitimised by the application by analogy of the norms and regulations contained in Articles 59 and 60 of the Staff Regulations of the Council of Europe. This would guarantee his right to effective judicial protection, as established in Article 47 of the Charter of Fundamental Rights of the European Union, the first paragraph of which reads as follows:

Right to an effective remedy and to a fair trial

“Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.”

34. Accordingly, the appellant believes that in order to guarantee his right to effective judicial protection, the present appeal should be declared admissible and be considered by the Tribunal.

35. The appellant then develops his arguments in support of the merits of the appeal, which it is not necessary to summarise in this report.

36. For his part, the Secretary General asks the Tribunal to declare the appeal manifestly inadmissible, in accordance with Article 5, paragraph 2, of the Statute of the Administrative Tribunal (Appendix XII to the Staff Regulations).

37. Regarding the admissibility of the appeal, the Secretary General maintains that it is inadmissible on several counts, in particular *ratione personae*, *ratione materiae* and the absence of *locus standi*.

38. With regard to inadmissibility *ratione personae*, the Secretary General states that the appellant's status is such that he is not entitled to lodge a complaint under Article 59, paragraphs 2 and 8, of the Staff Regulations and, consequently, an appeal under Article 60 of the Staff Regulations.

39. The fact is that as a member and President of the Parliamentary Assembly, the appellant does not fit into any of the categories listed in the aforementioned paragraphs, and his position and status are political, determined by the Statute of the Council of Europe and the applicable provisions of the Assembly's Rules of Procedure. The Tribunal would, therefore, not have jurisdiction to examine the appeal lodged by the appellant in his capacity as member and President of the Parliamentary Assembly.

40. The Secretary General adds that examination of the Tribunal's jurisdiction *ratione personae* raises the question of whether he can be held liable in the instant case. As Secretary General, he is responsible for the activity of the whole Secretariat before the Committee of Ministers, including the Secretariat of the Parliamentary Assembly (see Article 37 (b) of the Statute of the Council of Europe). However, the Secretary General has no power of supervision regarding the exercise by the Parliamentary Assembly of the powers invested in it by the Statute of the Council of Europe. Accordingly, the Secretary General cannot be held responsible before the Tribunal for acts that cannot be attributed to him, but which come under the exclusive and sovereign competence of the Parliamentary Assembly, which exercises, in complete independence, the competences and powers

conferred upon it by the Statute of the Council of Europe (see Article 28 of the Statute of the Council of Europe).

41. Consequently, again in the view of the Secretary General, the Tribunal quite clearly has no jurisdiction to hold the Parliamentary Assembly liable either. No reasoning by analogy can be applied in this case, as the Tribunal has a specifically assigned jurisdiction which is exercised exclusively within the limits and under the conditions laid down in the Staff Regulations.

42. Therefore, for all these reasons, the appeal must be declared manifestly inadmissible as it fails to comply *ratione personae* with Articles 59 and 60 of the Staff Regulations.

43. Concerning inadmissibility *ratione materiae*, the Secretary General maintains that none of the complaints or requests falls under the scope of the Administrative Tribunal's substantive powers.

44. He claims that in order to be admissible in accordance with the Tribunal's jurisdiction *ratione materiae*, an appeal must be submitted against an administrative act adversely affecting the appellant within the meaning of Article 59, paragraph 2, of the Staff Regulations. However, the act which is the substance of the present appeal is not an administrative act.

45. In point of fact, the act challenged by the appellant is the adoption, by the Assembly, of a procedure to dismiss its members exercising an elective function. Accordingly, the act challenged by the appellant is not an "administrative act", i.e. an act deriving from the action of the Administration which could be appealed against in order to ascertain a violation of the rights arising from the Staff Regulations.

46. As this was an act relating to the internal organisation of the Parliamentary Assembly, the Administrative Tribunal has no jurisdiction to examine related disputes. A parliamentary act, such as the one challenged by the appellant, by its very nature, falls outside the scope of the scrutiny of the Administrative Tribunal.

47. It therefore follows that the appeal must also be declared manifestly inadmissible as it fails to comply *ratione materiae* with Articles 59 and 60 of the Staff Regulations.

48. With regard to the appellant's *locus standi*, the Secretary General maintains that the appellant does not complain about an act which directly and currently adversely affects him and does not adduce any evidence of a challenge. He does not adduce evidence of an act taken against him which could adversely affect his legal position. His appeal is directed against the draft contained in report 14338 and not against a decision adversely affecting him, directly and at the present time.

49. On this point, although the appellant's appeal is not directed against the motion for dismissal tabled on 30 June 2017, it should be noted that this motion had not yet been put to a vote by the Assembly which was not due to examine it until 9 October 2017. Even if the motion in question were to be adopted following its examination by the Assembly, the appellant would not have any further evidence of an infringement of his subjective rights. As President of the Assembly, elected to this position to exercise a role as representative of the Assembly for a limited period, the appellant adduces no evidence of a violation of his rights in the event that he were to be dismissed. The appellant does not have an individual right to remain in office until the originally scheduled date of expiry of his term of office and he does not adduce evidence that he had acquired subjective rights on which he could rely to demand that he remain in that position until the end of his term of office. He had been chosen by the Parliamentary Assembly to exercise a political office, namely the position of President. Such a position does not carry with it subjective rights for the benefit of the holder of that office, an infringement of which could adversely affect him.

50. With regard to the admissibility of the appeal, the Secretary General also develops arguments to assert that Articles 6, paragraph 1, and 13 of the European Convention on Human Rights are not applicable to the instant case and that, here too, as the Tribunal has specifically assigned jurisdiction, it is not competent to examine the matter. However, the Chair believes that these arguments relate rather to the merits of the case, in the same way as the others developed in this connection.

51. In reply to the appellant's submissions that his appeal before the Administrative Tribunal may be justified by the need to guarantee access to a tribunal, the Secretary General points out that the right to access to a tribunal is guaranteed by Article 6, paragraph 1, of the European Convention on Human Rights while the right to an effective remedy is guaranteed by Article 13 of the same Convention.

52. He adds, however, that with regard to parliamentary acts, in particular sanctions imposed by parliamentary assemblies on their members, the European Court of Human Rights (the "Court") has ruled out the applicability of the Convention to such measures where "they relate to the internal regulation and orderly functioning of the House" (Court, 27 August 1991, *Demicoli v. Malta*, § 33).

53. In subsequent case law, the European Commission of Human Rights confirmed, even more explicitly, that challenges of this type may not relate to civil rights and obligations within the meaning of Article 6, paragraph 1: "Challenges resulting from a legal relationship between an organ of the State – in the instant case the national parliament which, in application of the principle of the separation of powers, is governed by the principles of independence and self-governance – and the senators and parliamentarians who sit or have sat in the parliament, do not concern rights of a private nature" [unofficial translation] (decision of 28 November 1994, in the *Di Nardo and 11 others v. Italy* case).

54. With regard to the right to an effective remedy, Article 13 of the Convention applies only when there is a defensible claim of a violation of a right recognised by the Convention. In the view of the Secretary General, the appellant cannot avail himself of any of the rights and freedoms guaranteed by the Convention as the appellant exercises a political office which does not grant him rights within the meaning of the Convention.

55. The Secretary General reaches the conclusion that the appellant cannot rely on Articles 6, paragraph 1, and 13 of the European Convention on Human Rights to claim an alleged violation of his right to a tribunal or his right to an effective remedy.

56. Lastly, he also points out that the Tribunal has a specifically assigned jurisdiction and the Staff Regulations do not include the possibility for a member of the Parliamentary Assembly to appeal against an Assembly decision relating to its internal functioning.

57. The Secretary General subsequently puts forward arguments relating to the merits of the appeal which it is not necessary to summarise in this report.

58. In his observations in response, the appellant reasserts his *locus standi* as he is acting as a victim of an "ad hominem" reform of the rules designed to remove him from the office of President of the Parliamentary Assembly. He reiterates that this vote against him was to be held on 9 October 2017.

59. He adds that this situation had been made possible solely by means of an unlawful procedure which had resulted in the impugned reform of the rules detrimental to him. The violation of his rights caused by the reform is in itself justification of his legitimate interest in taking action. On this point, he refers to the case law of the European Court of Human Rights which accepted that

applicants may be potential victims, for example when they are not able to establish that the legislation complained of had in effect been applied to them on account of the secret nature of the measures authorised by that legislation (*Klass and others v. Germany* judgment of 6 September 1978) provided that plausible and compelling evidence is adduced of the probability of a violation, the effects of which they suffer personally. The appellant states that in the instant case the violation of his rights was a result of the approval and retroactive application of the reform of the Parliamentary Assembly's Rules of Procedure and his being denied the possibility of a fair trial.

60. With regard to his right of access to a tribunal, the appellant points out that this is a universally guaranteed fundamental right. He adds that the Secretary General, in his observations, wishes, on the grounds of alleged inadmissibility, to deny him the possibility of access to this fundamental right and deprive him of the right to a fair trial. He maintains that, contrary to what is claimed by the Secretary General, the European Convention on Human Rights does indeed apply to members of the Parliamentary Assembly by virtue of Article 1 of the Convention, worded as follows:

Obligation to respect Human Rights

“The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention”.

61. In the appellant's view, accepting the absence of any remedy to challenge this type of reform of the Rules in accordance with the Secretary General's restrictive interpretation of Articles 59 and 60 of the Staff Regulations would be tantamount to depriving him of this right and would lead to a violation of the fundamental right of access to a tribunal, as guaranteed by Article 6, paragraph 1, of the European Convention on Human Rights. On this point, he refers to the case law of the Court and states that upholding the fundamental principle of being able to have his cause heard before a tribunal means that he cannot be deprived of this right in the instant case.

62. Lastly, the appellant highlights the unprecedented context of this appeal. He underlines the fact that this dispute has no precedent in the history of the Council of Europe and there is no statute or regulation prohibiting the President of the Parliamentary Assembly from challenging an act that affects his honour, his mission, his person and the most basic principles of the right to a fair trial. It is his contention that an examination of all the rules governing the functioning of the Council of Europe shows no restriction which would prevent the appellant from exercising this right of appeal.

63. The Chair, first of all, points out that the Staff Regulations lay down the admissibility conditions of an administrative complaint in Article 59, whereas Article 60 of those Regulations lays down the admissibility conditions – which are quite different – of an appeal lodged before the Tribunal.

64. In the first case, the provisions, as worded, indicate the persons who may submit an administrative complaint, the type of acts that can be challenged and the deadlines which must be complied with, all of which relate, depending on the circumstances, to the substance of the dispute and the procedure to be observed. In the second case, the provisions relate solely to procedural matters for lodging an appeal before the Tribunal.

65. This distinction is confirmed by the fact that, regarding the admissibility of an appeal and contrary to the situation for complaints, there is a difference between a declaration of manifest inadmissibility and a declaration of inadmissibility.

The first declaration – which does not exist at the examination stage of a complaint – may be issued via the special procedure provided for in the Statute and Rules of Procedure of the Tribunal, which the Secretary General refers to in this instant case. In contrast, the second declaration always requires a decision to be pronounced, as it consists of a preliminary examination – prior to considering the merits of the appellant’s complaints – of the substance of the issues relating to the admissibility of the claims raised.

66. Given this distinction, the assimilation between the admissibility of an administrative complaint and the manifest inadmissibility of an appeal, made by the Secretary General in order to request the special application of the procedure provided for in Article 5, paragraph 2 of the Statute of the Tribunal, is not in keeping with the scope of the provisions relating to the Tribunal.

67. Accordingly, the Chair is not of the opinion that one can accept the reasoning of the Secretary General and conclude that the lack of competence *ratione personae* and *ratione materiae* can be equated to the failure to comply with the formal conditions for lodging an appeal and can *ipso facto* be declared under the special procedure of manifest inadmissibility without going into the merits of the case.

68. Nonetheless, the Chair notes that in the past, lack of competence *ratione personae* has been related to the absence of an administrative complaint and has given rise to a declaration of manifest inadmissibility (Appeal No. 253/1999 Claire Beygo (VI) v. Secretary General, Order of the Chair of 20 March 2000, appended report, paragraph 17). The relevant passage is worded as follows:

“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.”

69. The Chair believes that in this case he must follow the same approach.

70. Furthermore, he believes that the following four arguments are grounds for not departing from this case law.

71. First of all, contrary to what was the case in the aforementioned Appeal No. 253/1999, it is manifestly clear that the appellant does not belong to any of the categories of persons who may lodge an administrative complaint and, subsequently, an appeal. Moreover, the appellant is aware of this as he does not quite simply request the application of Article 59 or an “extensive” application (which would all the same imply the existence of a link between the norm and the instant case) but rather requests an “application by analogy” (which implies that there is no factual link between the norm and the case at hand). However, the lack of any remedy enabling the President to challenge a decision by his Assembly, the content of which is clearly not administrative but political, cannot justify an application by analogy of Article 59 of the Staff Regulations.

72. Secondly, it is clear that the act which the appellant is challenging is not an administrative or disciplinary act but an expression of the political power of the Parliamentary Assembly. The lack of any remedy within the Parliamentary Assembly against this type of decision cannot be regarded as an argument to justify a very broad extension of the jurisdiction of the Tribunal which, it should not be forgotten, in accordance with Article 4 of its Statute, remains the only body competent to decide on any dispute concerning the scope of its jurisdiction. If such were not the case, the Tribunal would depart significantly from its jurisdiction in employment disputes to become a tribunal dealing with political conflicts.

73. Doubts may also be raised regarding the nature of the letter sent by the appellant to the Secretary General on 23 June 2017 which he described as a “*formal complaint*”. Since it was not described as a “*complaint lodged under Article 59 of Staff Regulations*” and above all given the fact that it failed to comply with the procedure laid down by this provision (submission of the complaint “via the Director of Human Resources”), one may reasonably wonder whether the appellant really wished to lodge an administrative complaint within the meaning of Article 59, paragraph 2 or whether he simply wished to alert the Secretary General to his case.

74. Lastly, one may well wonder whether the appellant, who did not write in his own name but rather in his capacity as President of the Assembly, wished to lodge an administrative complaint or rather set in motion procedures of a “political” nature, as he had done by writing to the Secretary General of the Parliamentary Assembly of the Council of Europe and the Chairman-in-Office of the Committee of Ministers of the Council of Europe, drawing their attention to the general consequences which could result from the adoption of the report.

75. With regard to these last two arguments, it must be concluded that the appellant was not asking the Secretary General to annul the draft report to which he was opposed but to accept the “*complaint*” and to “*intervene in order to withdraw*” the disputed draft.

76. Accordingly, the fact that we are dealing here with a case similar to that of the appellant in Appeal No. 253/1999, together with the four arguments set out above, leads the Chair to conclude that one of the formally required conditions to lodge an appeal has not been satisfied and, consequently, it must be declared inadmissible.

77. In conclusion, the Chair is of the opinion that the appeal must be declared manifestly inadmissible and that the corresponding special procedure should be applied.

CONCLUSIONS

78. 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.

The Chair
Christos Rozakis