

# CONSEIL DE L'EUROPE

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# COUNCIL OF EUROPE

## TRIBUNAL ADMINISTRATIF

## ADMINISTRATIVE TRIBUNAL

**Appeals Nos. 268-282/2001 (Pascal PALERMITI and others  
v. Secretary General)**

The Administrative Tribunal, composed of:

Mr Kurt HERNDL, Chairman,  
Mr José da CRUZ RODRIGUES,  
Mr Helmut KITSCHENBERG, Judges,

assisted by:

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

has delivered the following decision after due deliberation.

### PROCEEDINGS

1. The Tribunal is called upon to examine appeals lodged by:

- Mr Pascal PALERMITI,	Appeal No. 268/2001
- Ms Michèle JORDAN,	Appeal No. 269/2001
- Ms Marianne DESMAZURES,	Appeal No. 270/2001
- Ms Odile GRIMM,	Appeal No. 271/2001
- Ms Martine QUOIX-KRUCHEN,	Appeal No. 272/2001
- Ms Simone KAISER	Appeal No. 273/2001
- Ms Marie-Louise HERRMANN,	Appeal No. 274/2001
- Ms Michelle REMORDS,	Appeal No. 275/2001
- Ms Nicole BENOÎT d'ENTREVAUX,	Appeal No. 276/2001
- Ms Marie-Anne MENGER,	Appeal No. 277/2001
- Ms Anne-Marie NOTHIS,	Appeal No. 278/2001
- Ms Anny MOCHEL,	Appeal No. 279/2001
- Ms Marlène MATHIS,	Appeal No. 280/2001
- Mr Louis KLIPFEL,	Appeal No. 281/2001
- Mr Jean-Paul ROMENS,	Appeal No. 282/2001

The appellants lodged their appeals on 13 March 2001. The appeals were registered the same day.

2. On 2 January 2000, in connection with administrative complaints lodged prior to these appeals, Mr Palermi, Ms Jordan, Ms Desmazes, Ms Grimm, Ms Quoix-Kruchen, Ms Kaiser, Ms Remords, Mr Klipfel and Mr Durner applied for a stay of execution of all the measures concerning early termination of employment taken in 2000 under Appendix VI to the Staff Regulations and Resolution (92) 28. By an Order of 19 January 2001 the Deputy Chairman of the Tribunal rejected the requests to stay execution.

3. On 30 May 2001 the appellants' representative, Mr Jean-Pierre Cuny, filed supplementary pleadings. On 9 July 2001 the Secretary General submitted his observations on the appeals. The appellants filed a memorial in reply on 29 August 2001. The Secretary General submitted further observations on 12 September.

4. On 19, 20 and 30 July and 1 August, Ms Parienti, Mr Fanfani, Mr Coeckelenbergh and Mr Benevolenza, former staff members who had benefited from the early termination measures, applied to intervene in the appeals. In an Order issued on 7 September 2001, pursuant to Article 10, paragraph 1, of the Tribunal's Statute, the Deputy Chairman authorised the Staff Committee to submit written observations. On 19 September 2001 Ms Parienti filed written submissions, which were transmitted to the parties to the proceedings.

5. On 13 September 2001 the Staff Committee, represented by its Chairman, Mr Denis Huber, applied to intervene, requesting authorisation to support the appellants' submissions.

6. By a Chairman's Order of 28 September 2001 the Staff Committee was given leave to file written submissions in accordance with Article 10 of the Tribunal's Statute.

7. On 3 October 2001 the Staff Committee filed written submissions, which were transmitted to the parties to the proceedings.

8. The public hearing concerning these appeals took place in the courtroom of the Strasbourg Administrative Tribunal on 10 October 2001. The appellants were represented by Mr Jean-Pierre Cuny, and the Secretary General by Mr Jörg Polakiewicz, Deputy Head of the Legal Advice Department in Directorate General I - Legal Affairs.

## **THE FACTS**

9. Mr P. Palermi and the fourteen other appellants are permanent members of staff of the Council of Europe in grades C5, B3, B4 and B5. They entered the organisation's employ between 1961 and 1986. Mr Romens ceased his duties as from 1 January 2001.

### **A. The circumstances of the case**

10. In the context of the structural reform of the Council of Europe secretariat and prioritisation of the organisation's activities, the Committee of Ministers had asked the Secretary General to reinforce sectors of activity dealing with the control mechanisms for certain conventions.

11. At a meeting on 10 November 1999 the Rapporteur Group on Administrative and Budgetary Questions (GR-AB) resumed discussion of the structural reforms. The Deputy Secretary General made a statement on application of measures to compensate permanent members of staff for loss of job or termination of service. In this statement he drew attention to certain constraints which might slow down implementation of the restructuring and reform procedures. To have a real impact on the restructuring process, he proposed releasing twelve to fifteen serving members of staff under the provisions of the Staff Regulations allowing compensation of permanent staff for loss of job. This initial statement was favourably received, and it was decided to resume consideration of this matter on the basis of a more detailed proposal.

12. At the 691st meeting of the Ministers' Deputies, held from 7 to 9 December 1999, the Secretary General made a statement on application of measures to compensate permanent members of staff for loss of job or termination of service. He indicated that there were two regulatory texts enabling him to terminate the duties of staff having a permanent contract with the organisation, namely Appendix VI to the Staff Regulations (Regulations on Indemnity for Loss of Job) and Resolution (92) 28 introducing special measures to terminate the service of permanent staff of the Council of Europe. For lack of specific financing, he proposed that the operation be funded with an internal loan.

13. At the same meeting the Deputies adopted the budgets of the Council of Europe for the 2000 financial year. They took note of the Secretary General's proposal to implement the regulatory provisions on compensation for loss of job and asked the Budget Committee and the GR-AB to examine the proposal.

14. On 10 January 2000 the Budget Committee recommended acceptance of the proposed arrangements and method of financing, provided that the arrangements were implemented as part of an approved plan for the management of human resources requirements. In this connection, it also recommended that the redundancy scheme be properly managed (not voluntary; functional selection; fair, reliable, credible selection procedures; staff confidence). The GR-AB resumed consideration of this matter at its meeting on 11 January 2000, obtaining the Secretary General's acceptance that the scheme could work only if it was not voluntary in nature. The group agreed that the scheme should proceed on the basis of the Budget Committee's recommendations.

15. At their 696th meeting on 3 February 2000 the Ministers' Deputies took note of the Secretary General's intention to make use of the regulatory provisions in force concerning termination of the duties of permanent staff of the Council of Europe and decided to finance the relevant measures.

16. In a memorandum of 28 March 2000 the Secretary General set out the key objectives for 2001 and their budgetary impact. This document described, in particular, the results of the prioritisation of activities exercise and took account of the

efforts to optimise utilisation of human and financial resources. In conclusion, the Secretary General pointed out that the main structural imbalances could be corrected through redeployment of staff following the prioritisation exercise and implementation of measures to compensate staff made redundant. Appendix II to the document gave more precise information on the proposed redeployment.

17. The Secretary General concurrently initiated the procedure for consultation of the Joint Committee, which was compulsory both for application of Appendix VI to the Staff Regulations and under Resolution (92) 28. Having held three meetings on 10 and 23 March and 12 July 2000, chaired by the Deputy Secretary General, the Joint Committee adopted, as at that last date, a final version of the relevant “guidelines” and its opinion on implementation of the measures. A statement by the staff representatives on the Joint Committee was appended to the opinion, asserting “given the form and manner in which the entire exercise has been conducted there could have been serious grounds for cancelling it”.

18. On 25 July 2000 the Secretary General informed the persons concerned of his decision to apply the provisions of Resolution (92) 28 to two staff members and those of Appendix VI to the Staff Regulations to twelve others.

19. On 20 September 2000 the Joint Committee’s opinion was published on the Intranet, the internal computer network of the Council of Europe. The same day, staff were informed of the termination-of-employment measures in a staff notice distributed by electronic mail. With regard to the background to the measures, the staff notice specified that they were linked to both the redefinition of the organisation’s priorities and the restructuring of the secretariat and that these new factors entailed the redeployment of posts to high-priority sectors and redefinition of the respective job descriptions in the light of those sectors’ requirements. Reference was made to the Joint Committee’s opinion.

20. On 11 October 2000 the Staff Committee distributed its Circular No. 646, entitled “Staff demand transparency on early termination”, to which the statement by the staff representatives on the Joint Committee was appended.

21. On 13 December 2000, in response to a request made by the appellants on 10 November 2000, the Deputy Secretary General provided them with information on the measures for early termination of the duties of certain staff of the Council of Europe.

22. On 15 December 2000 administrative complaints were lodged by all the appellants apart from Ms M.-L. Herrmann and Mr J.-P. Romens. The latter lodged their administrative complaints on 18 December 2000.

23. On 15 January 2001 the Secretary General, through the intermediary of the Director General of Administration and Logistics, rejected the appellants’ administrative complaints. He gave the following grounds, among others, for his decisions:

“... concerning application of Resolution (92) 28 and Appendix VI to the Staff Regulations, your administrative complaint was lodged outside the time-limits specified in the Staff Regulations. The Secretary General’s decision to apply the

provisions of Resolution (92) 28 to two members of staff and those of Appendix VI to the Staff Regulations to twelve others was notified to the staff members concerned on 25 July 2000, on which date the Joint Committee submitted its opinion to the Secretary General.

All members of staff were informed of this measure in a staff notice distributed by the Secretary General's Private Office on 20 September 2000. If you wished to challenge the Secretary General's decision, you should have done so within thirty days of the decision's publication, that is to say by 20 October 2000.

In any event, as the Deputy Secretary General points out in his note of 13 December 2000, although staff are entitled under Article 2, paragraph 1, of Resolution (92) 28 to request early termination of service, the Secretary General is under no obligation to grant such a request. Staff have no individual right to benefit from the provisions of Resolution (92) 28 or Appendix VI to the Staff Regulations.

You ask whether the two members of staff to whom the provisions of Resolution (92) 28 were applied had in the course of 1999 requested application of those measures. The answer is no; they did not submit any request to that effect. However, Article 2, paragraph 3, of the resolution empowers the Secretary General to apply the provisions thereof to staff whom he has chosen in accordance with Article 1, in the light of the changing tasks of the Council of Europe, which have made necessary the adjustment of administrative machinery and job descriptions (see the preamble to Resolution (92) 28). The fact that the names were not communicated at the beginning of the year does not affect the validity of the procedure implemented by the Secretary General.

As to your second question, concerning the staff members whose duties have been done away with, whether they can be redeployed is a decision coming under human resources management and the Secretary General's authority. As you know, the latter took his decision solely after consulting the Joint Committee, whose opinion he moreover followed.

All the questions raised in your note were in fact examined by the Joint Committee, the body authorised to give an opinion on the measures proposed by the Secretary General, which on the whole approved the measures in question and the arrangements for their implementation.

In conclusion, your administrative complaint is unfounded and the Secretary General cannot but reject it."

24. On 13 March 2001 the appellants lodged the present appeals against the decisions to reject their administrative complaints.

25. In the meantime, on 22 January 2001, requests to benefit from early termination of employment submitted by Ms Herrmann, Ms Mochel, Ms Quoix-Kruchen and Ms Remords, dated respectively July and December 2000, were brought to the attention of the Joint Committee pursuant to Article 2, paragraph 3, of

Resolution (92) 28. The persons concerned were informed that their requests would be considered should the principle of a new series of early termination measures be envisaged by the Secretary General within a budget approved by the Committee of Ministers.

## **B. Relevant regulations**

### *1. Loss of job*

26. Article 44 of the Staff Regulations provides:

“An indemnity for loss of job may be awarded to any member of staff confirmed in his or her appointment, if the contract is terminated in the circumstances provided for in Appendix VI to these Regulations, which also sets out the methods of calculating and paying such indemnities.”

The relevant provisions of the Regulations on Indemnity for Loss of Job (Appendix VI to the Staff Regulations in the version of 19 June 1996) are worded as follows:

#### **“Article 1 - Scope**

These Regulations, issued in accordance with Article 44 of the Staff Regulations, lay down the conditions in which the Secretary General may grant an indemnity for loss of job.

#### **Article 2 - General principles**

An indemnity may be granted to a staff member who holds a firm contract and whose services are terminated for any one of the following reasons:

- a. suppression of the budget post occupied by the staff member;
- b. changes of such a nature in the duties of the budget post occupied by the staff member that he or she no longer possesses the required qualifications;

...”

Under Article 9 of the Regulations on Staff Participation (Appendix I to the Staff Regulations in the version of 19 June 1996) the Joint Committee shall give its opinion on measures for the termination of service within the meaning of the regulations on indemnity for loss of job.

### *2. Termination of service*

27. Resolution (92) 28 on the regulation introducing special measures to terminate the service of permanent staff of the Council of Europe was adopted by the Committee of Ministers on 25 June 1992. The preamble refers to the changing tasks of the Council of Europe, which call for the continuous adjustment of administrative machinery and job descriptions, and specifies that the aim of adopting specific

measures for early termination of service is to speed up the renewal of the organisation's human resources and at the same time facilitate the orderly progress of careers.

The principles governing scope and procedure are set out in Articles 1 and 2 of the resolution, which are worded as follows:

**“Article 1**

1. In the interests of the Organisation's work, the Secretary General is authorised to take, within the limits of the budgetary appropriations available and on the conditions set out in this Regulation, measures terminating the service of permanent staff aged at least 58 who have completed at least 15 years' service.

2. The termination-of-service measures provided for under this Regulation may be taken without the agreement of the staff concerned only in the case of staff aged at least 62. They shall on no account be of a disciplinary nature.

**Article 2**

1. Staff members complying with the age and service requirements referred to in Article 1, paragraph 1, above may on their own initiative request the Secretary General to apply the termination-of-service measures provided for by this Regulation. The Secretary General himself/herself may ask staff members to request that these measures be applied.

2. In all cases where the Secretary General intends to take a measure without the agreement of the staff member concerned or not to grant his/her request, the staff member shall first be given a hearing.

3. At the beginning of each year, the Secretary General shall transmit to the Joint Committee a list of staff who requested the application of a termination-of-service measure under this Regulation during the previous year. At the same time the Secretary General shall inform the Joint Committee of the names of staff members to whom he/she intends to apply the said measure, including those who have not given their agreement. In this respect, he/she shall indicate the factors he/she has taken into account, particularly the age and seniority of the staff concerned. Before giving its opinion, the Joint Committee shall hear any member of staff concerned who so requests.

4. The Secretary General shall take a final decision only after receiving the Joint Committee's opinion. Reasons shall be given for each individual measure.”

## THE LAW

28. The appellants have challenged the decisions to apply the provisions of Resolution (92) 28 to two members of staff and Appendix VI to the Staff Regulations to twelve others.

They request joinder of appeals Nos. 268 - 282/2001, cancellation of the twelve decisions whereby the Secretary General applied Appendix VI and of the two individual measures taken under Resolution (92) 28 and reimbursement of the expenses engendered by the above-mentioned appeals.

29. The Secretary General has stated that he has no objection to joinder of the appeals. He asks the Tribunal to declare all the appeals inadmissible or, in the alternative, to dismiss all the appeals.

### A. JOINDER OF THE APPEALS

30. As the fifteen appeals are closely connected, the Administrative Tribunal hereby orders their joinder, in accordance with Rule 14 of its Rules of Procedure.

### B. ADMISSIBILITY

31. The Secretary General raises two objections to admissibility: firstly, the lateness of the appeals and, secondly, the lack of an interest in bringing an action, within the meaning of Article 59, paragraph 1, of the Staff Regulations.

32. He first contends that the appeals are inadmissible because they are out of time. The Joint Committee's opinion was published on the Council of Europe's Intranet site on 20 September 2000, and an electronic mail concerning the termination measures was sent to all staff of the organisation the same day. According to the Secretary General, the appellants who have computer user accounts were therefore notified of the measures concerning termination of employment and could acquaint themselves with the Joint Committee's opinion. In view of the nature of the information distributed in this way, the appellants were able to ascertain as from 20 September the termination measures adopted. Their complaints, respectively dated 15 and 18 December 2000, were accordingly lodged outside the thirty-day time-limit set in Article 59, paragraph 2 a), of the Staff Regulations.

33. The appellants dispute that the measures in question were "published" in the true sense. They maintain that the staff notice of 20 September 2000 "has no physical existence".

They contend that if provision is made for decisions to be published by computerised means, all subjects of a system of law, in the instant case all staff of the organisation, must be duly informed that this is so. They maintain that on 20 September 2000 the administrative practice of the Council of Europe was in fact such that all members of staff were accustomed to receiving, through the internal mail or by posting on notice boards, paper versions of any information that the Secretary General deemed necessary or appropriate to publish. Furthermore, two appellants did not have computer user accounts at the time.



34. The Tribunal takes the view that, at the material time, the practice regarding information and in-house communication was not sufficiently clear to satisfy the requirements of transparency in personnel management matters. It wonders whether in the instant case the time-limit for lodging administrative complaints can be deemed to have run from 20 September 2000, as alleged by the Secretary General.

35. The Tribunal nonetheless considers that it must first examine the objection that the appellants had no interest in bringing proceedings, which appears to be more radical than that founded on expiry of the time-limit.

36. The Secretary General maintains that the appellants have no “direct interest”, within the meaning of Article 59, paragraph 1, of the Staff Regulations, as “the impugned measures are not individual decisions taken in respect of the appellants nor acts adversely affecting [their] legitimate interests.” Mere hopes or interests devoid of legal protection do not suffice to establish an interest in bringing proceedings.

The Secretary General points out that, according to the Tribunal’s precedents (No. 251/1999, *Baechel v. Secretary General*, decision of 22 October 1999, para. 32), only legitimate interests recognised under the organisation’s regulations can be asserted. The regulatory provisions - Appendix VI and Resolution (92) 28 - do not grant staff an individual right to benefit from early termination of employment, nor a legitimate interest in doing so. Accordingly, only persons concerned by early termination procedures have a legitimate interest in submitting decisions taken by the Secretary General to the Tribunal’s scrutiny. In the circumstances of the case the termination measures taken in respect of fourteen officials did not affect the appellants’ administrative situation in any way. Acknowledging that the appellants had a legitimate interest in bringing an action, in accordance with Article 59, paragraph 1, of the Staff Regulations, would be tantamount to accepting an *actio popularis*.

37. The appellants consider that, by their very nature and their financial implications, the provisions of the regulations applied in the instant case, i.e. Appendix VI to the Staff Regulations and Resolution (92) 28, potentially concerned them. Since Resolution (92) 28 had not been implemented at any time over the period from 1993 to 1999, they expected to be invited to submit a request, or at the very least to express their interest, that the proposed measures be applied in their own cases.

The appellants believe they have an interest in ensuring that the termination-of-employment measures, which offer some financial advantage, are applied in full compliance with the general principles of law and the relevant texts, so that they are guaranteed a reasonable chance of benefiting from one or the other measure on a completely equal footing with their colleagues and in accordance with the law. They maintain that a “legitimate expectation” is synonymous with an “interest” and that a “legitimate interest”, regarded as an individual legal situation, may constitute a ground for bringing proceedings in the same way as an individual right.

They dispute the Secretary General’s argument that their appeals amount to an *actio popularis*. They are alleging a breach of their tangible, individual rights in their own moral and pecuniary sphere and in no way relying on a general interest.

38. Regarding administrative complaints, Article 59, paragraph 1, of the Staff Regulations provides *inter alia*:

“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. The expression ‘administrative act’ shall mean any individual or general decision or measure taken by the Secretary General. ...”

39. The Tribunal notes that, in the words of the first sentence of Article 59, paragraph 1, of the Staff Regulations, interest in bringing an action exists where staff members have “a direct and existing interest” in lodging a complaint against “an administrative act adversely affecting them”.

This provision therefore defines the notion of a victim and lays down the circumstances in which a person affected by the act or omission in dispute is entitled to take action. The interest which the person concerned must demonstrate must be direct, i.e. it must be capable of having an impact which is personal and actual (cf. ABCE Nos. 79-93/1983, Buhler and others v. Secretary General, decision of 1 March 1985, para. 69; Nos. 94-99/1983, Nouari and others v. Secretary General, decision of 1 March 1985, para. 73; No. 114/1985, Balfego v. Secretary General, decision of 25 October 1985, para. 56; see also ATCE No. 226/1996, Zimmermann v. Secretary General, decision of 24 April 1997, para. 26; and No. 241/1998, Tonna v. Secretary General, decision of 9 November 1998, para. 36).

40. The Tribunal has to state forthwith that a member of staff cannot bring an action in the interests of lawfulness or of the organisation. As a ground of appeal, staff members can solely rely on prejudice they have suffered personally (cf. the above-mentioned Zimmermann and Tonna decisions).

41. In the instant case the appellants assert that their interest in appealing against the termination-of-service measures applied in respect of fourteen other staff members of the organisation derives from the financial implications and the expectation of having a “reasonable chance” of being able to benefit from such measures.

42. The Tribunal holds, however, that decisions to apply the provisions of Resolution (92) 28 and Appendix VI to third parties cannot qualify as acts adversely affecting the appellants.

43. The Tribunal first notes that nothing in Appendix VI or Resolution (92) 28 requires the Secretary General to invite staff of the organisation to express an interest in having their service terminated.

44. As regards termination of contract within the meaning of Article 44 of the Staff Regulations, together with Appendix VI, the measures are based on objective criteria relating to loss of job, which rules out the possibility of staff members showing an interest in having their service terminated. As regards Resolution (92) 28, the Tribunal observes that this is a means of serving the administrative interest in “speed[ing] up the renewal of the organisation’s human resources and at the same time facilitating the orderly progress of careers” (Article 1). While it is true that “staff

members complying with the age and service requirements ... may on their own initiative request the Secretary General to apply the termination-of-service measures provided for by this Regulation” (Article 2, paragraph 1), the appellants did not do so at the appropriate time. Although a measure to terminate the service of a member of staff may indirectly affect a significant number of other staff, the fact remains that this measure has adverse implications only for the staff member concerned and, possibly, other persons who have requested application of such a measure.

45. The mere possibility of being able to request application of a termination-of-employment measure and, in more general terms, the financial interest raised by the appellants are not direct interests and hence do not meet the requirements of Article 59, paragraph 1, of the Staff Regulations.

46. It follows from all the above considerations that the appeals are inadmissible, as the acts complained of do not adversely affect the appellants. The Tribunal therefore cannot deal with the merits of the case.

On these grounds,

The Administrative Tribunal:

Orders the joinder of Appeals Nos. 268-282/2001;

Declares the appeals inadmissible;

Dismisses them;

Decides that the parties shall each bear their own costs.

Delivered at Strasbourg on 31 January 2002, the French text being authentic.

The Registrar of the  
Administrative Tribunal

S. SANSOTTA

The Chair of the  
Administrative Tribunal

K.HERNDL