

# CONSEIL DE L'EUROPE

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# COUNCIL OF EUROPE

## TRIBUNAL ADMINISTRATIF

## ADMINISTRATIVE TRIBUNAL

**Appeal No. 266/2001 (Nicolas GIRASOLI v. Secretary General)**

The Administrative Tribunal, composed of:

Mr Kurt HERNDL, Deputy Chair,  
Mr José da CRUZ RODRIGUES,  
Mr Helmut KITSCHENBERG, Judges

Assisted by:

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

has delivered the following decision after due deliberation.

### **PROCEEDINGS**

1. Mr Nicolas GIRASOLI lodged his appeal on 26 January 2001. The same day, the appeal was registered under No. 266/2001.
2. On 14 March 2001, the appellant's representative, Mr. Jean-Pierre CUNY, filed a supplementary memorial. On 2 May 2001, the Secretary General submitted his observations concerning the appeal. The appellant filed his memorial in reply on 30 May 2001.
3. The public hearing took place in the Administrative Tribunal's hearing room in Strasbourg on 19 June 2001. The appellant was represented by Mr Cuny and the Secretary General by Mr Lamponi, Head of the Legal Advice Department in the Directorate General of Legal Affairs.

### **THE FACTS**

4. The appellant, an Italian national aged 61, entered the Council of Europe's employment in October 1974 as a temporary official on grade C3 in the mail office. Two

years later, in October 1976, he was recruited to a permanent post on the same grade and in the same department.

5. In February 1995, a post of Head of Sector (grade C4) in the Directorate of Administration - Central Section - Internal and Security Service was opened to internal competition in vacancy notice No. 40/95. The vacancy notice gave the following description of the post:

“Under the authority of the Head of the Internal and Security Service, the postholder will be responsible for carrying out the duties of Head of Sector in the “E” building, Boecklin. The postholder will be responsible for the following duties:

- supervision of the ushers, both permanent and temporary, allocating staff, noting absences, ensuring that smartness is maintained and that duties are properly discharged, training the team and particularly reinforcements;
- participation in everyday tasks connected with the functioning of the building (general security and cleaning duties; posting details of meetings and preparing meeting rooms);
- liaison and consultation with hierarchical superiors and, where appropriate, administrator liaison officers;
- application of standing instructions with regard to access, security of persons, property and equipment, and service provision;
- all other tasks compatible with the functions of Head of Sector.”

6. Following the internal competition, the appellant was appointed, as from 1 June 1995, to a post of Head of Sector and promoted to grade C4, step 7. When he took up his duties, two reception ushers and two administrative assistance ushers were employed full-time in E Building, Boecklin.

7. On 10 March 1997, the appellant sent a memorandum to the Director of Administration advising him of a problem in his team and with the usher service in E Building. He stated that one of the ushers was not respecting the team’s work system and was damaging human relations in the building. He went on:

“It is my duty to inform you that the real work of the two administrative assistance ushers takes up from one to one and a half hours in the morning and barely one hour in the afternoon (collecting, distributing and sorting post). The rest of the time is spent on personal activities (telephone calls, reading the newspaper, breakfast, sitting in the usher’s office). Given the current workload in Boecklin there is thus at least one usher too many.

I therefore request, as a matter of urgency, a review of my department with a view to reducing the staffing and restoring respect with regard to relations in all departments, including respect for myself.”

The appellant was subsequently informed of the transfer of the two administrative assistance ushers, following which he complained about the transfer of the second permanent staff member in a memorandum to the Director of Administration dated 3 April 1997. A half-time post filled by a temporary staff member remained in his sector.

8. In 1998, as part of the reorganisation of the ushers service, two posts of Head of Group (grade C5) were created in the Directorate of Administration, Logistics Department: the Head of the Administrative Assistance Team and the Head of the Reception and Security Team. The posts were filled in early 1999 (see Nos. 254 and 257/2000, decision of 6 October 2000, *Hornecker v. Secretary General*, paras. 9 and 19).

9. On 31 March 2000, in answer to a memorandum from the Head of the Buildings, Equipment and Security Department reminding him that the assistance ushers were directly answerable to the Head of the Administrative Assistance Team and the reception and security ushers to the Head of the Reception and Security Team, the appellant asked whether he was still Head of Sector in E Building. He repeated this question in a memorandum dated 4 September 2000.

10. In early September 2000, the appellant had a meeting with the Head of the Internal Resources and Management Division and the Head of the Administrative Assistance Team. The parties disagree over what precisely happened at this meeting.

According to the Secretary General, the approximately three hour meeting was devoted to reviewing the appellant's work situation. At the meeting his two hierarchical superiors informed him of the Administration's intention of removing the part-time post that remained in his sector. Following the appellant's protests, they discussed with him the possibility of his taking over the post of the Head of Sector of B Building, who was currently on long-term sick leave.

The appellant states that the meeting lasted between about an hour and an hour and a half. The purpose was not to review his work situation but to explain to him that, for purely budgetary reasons, he would no longer be able to rely on the additional part-time post. He also denies that he was offered the post of the Head of Sector of B Building. He states that, following his protests, his superiors had discussed with him the possibility of a transfer to another department, but he had emphasised that he wished to remain Head of Sector of E Building.

11. On 30 October 2000, the appellant lodged an administrative complaint pursuant to Article 59 of the Staff Regulations. He complained of the conditions in which he had been forced to carry out his duties and, above all, of the fact that over the years the number of staff he was required to supervise had been reduced almost to zero. He considered that by not replying to his questions concerning his post, the Administration had failed to comply with its duty to provide relevant information. He claimed that he was obliged to exert greater physical effort than was suitable for a man of his age and asked to be assigned duties in conditions that corresponded to the description of the post he occupied.

12. On 29 November 2000, the Director of Administration rejected the administrative complaint.

He explained this as follows:

“Since your appointment to the post of “Head of Sector” your duties have changed and no longer fully reflect the description of them in the vacancy notice to which you refer in your administrative complaint.

Nevertheless, you were informed in 1997, like all the staff concerned - either at the various meetings that they were invited to attend or in the reports of the meetings they had been unable to attend - that the department was to be restructured.

You cannot therefore claim that you were unaware that, among the structural changes planned, E Building was to be assigned one full-time and one part-time usher, with the part-time post being scheduled to disappear once the Administration had moved to the Palais de l'Europe. You were also informed that, while retaining the title of "Head of Sector", you were going to be called on to undertake duties connected with day-to-day operations. In practice, the restructuring involved the disappearance in the more or less near future of the duties of "Head of Sector". I refer in this context to the conclusions of the meeting of the Internal and Security Service of 24 November 1997, item 7 of which states:

*The current heads of sector will probably be assigned geographical areas where the departments carry more "weight", and where the duties to be performed will be more or less the same as in other departments, but more complex.*

I can confirm that you remain "Head of Sector" for E Building, but unfortunately the current budgetary constraints mean that there can be no increase in staffing.

If you do not wish to continue to carry out the duties of "Head of Sector" corresponding to your current post, I invite you to contact the Head of Human Resources to discuss possible ways of rectifying this situation."

13. On 26 January 2001, the appellant lodged this appeal.

## **THE LAW**

14. The appellant has lodged his appeal against the Secretary General's decision, communicated to him in a memorandum of the Director of Administration dated 29 November 2000, to reject his administrative complaint concerning his work situation.

He asks the Tribunal to set aside the contested decision, to grant him adequate compensation for non-pecuniary and professional damage and to award him 22 000 French francs as reimbursement of all the costs he has incurred by this appeal.

15. Regarding his memorandum of 10 March 1997, the appellant maintains that his main concern was not to draw attention to an excessive workforce but to highlight a relationship problem between one of his subordinates and himself. He only used the argument of the reduced workload and excessive staffing to be able to secure the precious benefit of a peaceful life and tranquil working conditions. He complains that the memorandum was used to leave just a part-time administrative assistance usher answerable to him and that his reaction to this went unanswered.

16. The appellant claims that there was a violation of European and universal social law, and of Instruction No. 35 on the protection of human dignity at the Council of Europe, on account of the working conditions imposed on him, with their adverse consequences for his state of health.

He considers that these conditions were unreasonable because over the years they resulted in a constant increase in the physical burden and degree of vigilance necessitated by his duties. His age and physical condition, which continues to worsen, make this burden even harder to cope with. He also considers that they fail to take account of his health, and thus infringe his right to safe and healthy conditions.

In this context, the appellant states that his duties require a very great physical effort, particularly those connected with the reception of trays of correspondence and boxes of documents, the collection of correspondence, the preparation and transport of boxes of documents leaving the building, the supply of paper for photocopiers and printers and the reception and distribution of boxes of supplies. Although, as a result of a *de facto* arrangement, the reception and security ushers are required to help him carry out certain duties, this arrangement does not operate, particularly with regard to the supplying of photocopiers, when a regular usher is replaced. Besides, he is also concerned with office supplies and the allocation and supplying of meeting rooms. He is also responsible for movement inside E Building and emergencies occurring on any of the floors, since the reception and security ushers remain in the entrance hall. Similarly, under his general duties to provide assistance, he considers it his responsibility to back up or replace colleagues in the event of problems of access to the building.

He also states that his situation exposes him to sarcastic comments from certain of his colleagues, resulting in daily assaults on his dignity.

Finally, he maintains that these working conditions and the Administration's failure to consider his requests and complaints may be considered to amount to genuine moral harassment, and thus improper conduct by the organisation inimical to his physical health, morale and dignity. In this case, the Secretary General's margin of discretion reaches its limits. The proportionality principle has been breached because pursuing financial goals does not justify the serious harm done to his health.

17. Secondly, the appellant complains that the Secretary General has infringed Article 49 of the Staff Regulations.

He criticises the Secretary General for failing to intervene to remedy his situation and the risks posed to his health by his working conditions. The suggestion that he contact the Human Resources Department to secure a transfer does not reduce the Secretary General's responsibilities. He denies that he was offered a transfer to the post of Head of Sector of B Building, either at the September 2000 meeting or accompanying the decision to reject his administrative complaint. He values his duties and his post of "Head of Sector" and wishes to carry them out in conditions that are consistent with his health and dignity.

18. Thirdly, the appellant criticises the Administration for neglecting its duty to supply him with relevant information.

He claims that his superiors never replied to his memorandums of 31 March and 4 September 2000. The Director of Administration only received him one year after he had asked his secretary for such a meeting. With regard to the removal of the additional part-time post, he does not consider that his invitation to take part in the meeting of the Internal and Security Service of 24 November 1997, at which the Administration announced that the

service would be restructured, lessens the Secretary General's responsibilities. There is nothing in the meeting report to show that the part-time post was scheduled to disappear once the Administration had moved to the Palais de l'Europe.

19. The Secretary General explains firstly that the reduction in the number of staff answerable to the appellant is the result of the change in the nature of the administrative assistance ushers' workload, following the Council of Europe's wide-ranging computerisation programme, which has led to a decline in the amount of paper circulated.

20. Secondly, the Secretary General rejects as unfounded the complaint of moral harassment.

He maintains that the appellant's work situation is the consequence of changes in the nature and volume of his work and not of any personal animosity.

The Secretary General argues that, in accordance with his prerogatives, he carried out a needs assessment within the Administrative Assistance Team of ushers that revealed a decline in the workload caused by technological progress and rationalisation of working methods in all the Council of Europe's departments. This finding led to a reorganisation that included, among other measures, the removal of the remaining part-time post in the sector of which the appellant is the Head. The conclusions that he drew from objective and relevant information were not, in his view, disproportionate or manifestly unreasonable, and the measures he took were lawful.

21. Finally, the Secretary General disputes the appellant's allegation that he showed no concern about the effects of the appellant's duties on his health.

He states firstly that, in a memorandum of 6 January 1998, in response to a medical certificate that the Council's Medical Adviser had sent to the Head of the Human Resources Division (currently Head of the Human Resources Department), the Administration had taken the necessary steps to relieve the appellant of the need to carry heavy loads, by arranging for such loads to be carried by the Reception and Security Team ushers. He refers to the arrangement with these ushers, formalised in the descriptions of their posts, under which they were required, *inter alia*, to help unload post arriving by shuttle, carry up heavy loads and supply the photocopiers.

The Secretary General also maintains that both at the September 2000 meeting and in the decision dismissing the administrative complaint, the Administration offered the appellant a similar post, of the same type and with the same title but without the physical burden of the existing post: that of Head of Sector of B Building. The appellant refused this offer.

22. Finally, the Secretary General considers that he cannot be accused of any failure to supply relevant information.

He notes that in March 1997, the Administration acceded to the appellant's request to remove "at least one" of the two usher posts in his sector. In November 1997, the appellant was invited to take part in the general meeting of the Internal and Security Service where the changes in the duties of administrative assistance ushers were announced. He was informed of the removal of the remaining part-time additional post at the September 2000 meeting,

during which the appellant had ample opportunity to hear the Administration's reasons and express his own views.

23. In conclusion, the Secretary General asks the Tribunal to declare the appeal unfounded and reject it on the grounds that the appellant has not established a violation of any of the applicable provisions or of any general principles of law.

24. The Tribunal recalls that international organisations have a broad discretion to organise their departments to suit the tasks entrusted to them and to assign staff available to them in the light of such tasks, on condition, however, that the staff are assigned in the interests of the service and in conformity with the principle of assignment to an equivalent post. Such discretion is indispensable in order to achieve effective organisation of work and to adapt that organisation to varying needs (see, *mutatis mutandis*, CFIEC decisions of 6 March 2001, Campoli v. Commission, T-100/00, para. 41; and 12 July 1990, Scheuer v. Commission, T-108/89, para. 37; with references. See also ABCE No. 76/1981, decision of 21 April 1982, Pagani v. Secretary General, paras. 23-26; No. 130/1985, decision of 10 November 1986, Fuchs v. Secretary General, paras. 46-48 and para. 53).

25. This case concerns changes in the appellant's working conditions since his appointment to the post of Head of Sector in 1995.

26. The Tribunal notes that the transfer of the two administrative assistance ushers from the appellant's team, leaving only one part-time additional post in his sector, occurred after the appellant had sent a memorandum to the Director of Administration dated 10 March 1997. The appellant informed him not only of a relationship problem with an usher in his sector but also of the objective reasons why he thought there was "at least one usher too many" (see paragraph 7).

27. In view of the appellant's assessment, as Head of Sector, of the real workload, the Administration was entitled not only to take the view that the transfer of a single usher was in the interests of the department, on account of the relationship difficulties, but also to conclude that the needs of the sector concerned no longer justified the presence of a second full-time administrative assistance usher, although a part-time usher remained in the sector.

28. Changes subsequently occurred as part of the reorganisation of the usher service. These measures resulted firstly in the establishment of two teams of ushers for the entire organisation, making ushers answerable to either the Head of the Administrative Assistance Team or the Head of the Reception and Security Team. One of the consequences was the disappearance of the functions of "Head of Sector", with the latter's duties now being concerned with day-to-day operations. The observed decline in workload, as a result of technological progress and rationalisation of working methods in all the Council of Europe's departments, also led to the removal of the post of part-time administrative assistance usher in E Building.

29. Nothing in the case file leads the Tribunal to doubt that these measures were introduced to adapt the usher service to the new needs of the organisation. They were therefore in the interests of the efficient management of the department. The Tribunal notes that the Administration has the authority to organise the administrative assistance ushers service and assign its staff as it did and must be able to take account of various priorities without a staff member concerned challenging the appropriateness of these decisions.

30. There can thus be no question of abuse of power.

31. The Tribunal must nevertheless establish whether the restructuring of the appellant's functions as Head of Sector, in particular withdrawal of responsibility for supervising other ushers, could infringe his right to be assigned duties in connection with this post which, taken as a whole, correspond to his grade (Article 11 of the Staff Regulations; see ABCE No. 150/1987, decision of 2 May 1988, *Brown v. Secretary General*, para. 37)

32. For a measure connected with the reorganisation of a department to adversely affect this right, it is not sufficient that it should bring about a change or even a reduction in responsibilities, but it is necessary that, taken together, his remaining responsibilities should fall clearly short of those corresponding to his grade and post, taking account of their character, their importance and their scope (see CFIEC, No. T-108/89, referred to above, paras. 39-43).

33. In this case, the absence of subordinates cannot of itself be considered a circumstance likely to alter the nature and type of functions assigned to the appellant. He is still responsible for the provision of administrative assistance in B Building.

34. Turning to the appellant's allegation that the Administration failed to comply with its duty to provide relevant information, the Tribunal recalls that it attaches great importance to transparency in staff management (see No. 248/1998, Decision of 20 May 1999, *X v. Secretary General*, para. 50, with references).

35. In this case, the parties agree that a departmental meeting on general restructuring matters took place in late November 1997. The appellant's criticisms relate more specifically to the removal of the additional part-time administrative assistance post. Yet the Tribunal notes that the appellant was informed of this at a meeting with the Head of the Internal Resources and Management Division and the Head of the Administrative Assistance Team, his superior (see paragraph 10). Although it is true that the appellant expected more rapid responses to his memorandums and his request for an interview, the Tribunal notes that information on the reorganisation was at his disposal and that of the other staff concerned.

36. Bearing in mind the context of these measures, therefore, the appellant did not lack adequate information. For example, he was in a position to assess the lawfulness of the measures of which he complained and the desirability of challenging them through the complaints procedure.

37. Finally, the Tribunal recalls that the Administration must respect staff members' dignity and reputation in its dealings with them, in other words avoid putting them needlessly in difficult personal positions (see ILOAT, judgments of 24 April 1980, No. 396, *in re Guisset*, para. 5 and 13 March 1986, No. 809, *in re Najman* (Nos. 1 and 4), para. 20; see also ABCE No. 77/1981, decision of 11 June 1982, *Vangeenberghe v. Secretary General*, para. 44).

38. In this case, having regard to the circumstances surrounding the changes in the appellant's duties and his current work situation, the Tribunal considers that, seen as a whole, the measures taken by the Administration are not such as to harm the appellant's dignity or reputation. In particular, the reception and security ushers were asked to assist the appellant



to carry out tasks involving considerable physical effort. Though there might have been shortcomings in the functioning of this arrangement, particularly in the case of replacement staff, this does not cast doubts on the lawfulness of the measures concerned with internal organisation.

39. Moreover, the appellant's interests were taken into account in so far as the Administration had spoken to him about the possibility of transfer to another department, even though according to the appellant such an offer had not taken a concrete form. Again, in the decision to reject his administrative complaint, the Director of Administration had invited the appellant to contact the Head of Human Resources "to discuss possible ways of rectifying this situation". Finally, the Secretary General's representative reiterated such an offer at the hearing in this case. It therefore has to be concluded that the appellant himself wishes to retain his post in E Building.

40. In the light of the foregoing, the allegation of harassment cannot be sustained.

41. Consequently no illegality is to be found.

For these reasons the Administrative Tribunal:

Declares the appeal unfounded;

Dismisses it; and

Orders that each party bear its own costs.

Delivered at Strasbourg on 12 October 2001, the French text of the decision being authentic.

The Registrar of the  
Administrative Tribunal

The Deputy chair of the  
Administrative Tribunal

S. SANSOTTA

K.HERNDL