

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF

ADMINISTRATIVE TRIBUNAL

CHAIR'S ORDER of 1 June 2003
in the case of J.-C. LAZARO (I) and (II) v. Secretary General

I, Chair of the Administrative Tribunal,

Having regard to Appeals Nos. 306/2002 and 310/2002, lodged on 27 May and 18 October 2002 by Mr J.-C. Lazaro;

Having regard to the letter dated 10 April 2003 from the appellant's counsel, Mr Cuny, giving notice that the appellant wished to withdraw his appeals;

Having regard to the Secretary General's letter of 22 April 2003 in which he raised no objection to striking the appeals out of the case list;

Having regard to Rule 20 of the Rules of Procedure of the Administrative Tribunal;

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

Considering that it was appropriate to apply the procedure provided for in the above provisions;

Having submitted a reasoned report to the judges of the Tribunal on 23 May 2003;

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

DECLARE

- Appeals Nos. 306/2002 and 310/2002 struck off the list on the grounds set out in the report appended hereto.

Done and ordered at Bad Aussee on 1 June 2003, this order having been notified to the parties to the case.

The Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

S. SANSOTTA

K. HERNDL

**REPORT DRAWN UP FOR THE PURPOSES OF THE PROCEDURE PROVIDED FOR IN
RULE 20 OF THE RULES OF PROCEDURE OF THE ADMINISTRATIVE TRIBUNAL
AND ARTICLE 5, PARAGRAPH 2, OF THE STATUTE OF THE TRIBUNAL**

Appeals Nos. 306/2002 and 310/2002

LAZARO (I) and (II) v. Secretary General

The present report concerns Appeals Nos. 306/2002 and 310/2002, lodged by Mr Lazaro. It has been drawn up for the purposes of the procedure provided for in Rule 20, paragraph 2 of the Rules of Procedure of the Administrative Tribunal and Article 5, paragraph 2 of the Statute of the Tribunal.

THE PROCEEDINGS

1. Mr Jean-Claude Lazaro lodged his appeals on 27 May and 18 October 2002. The appeals were registered on 27 May and 25 October as files Nos. 306/2002 and 310/2002 respectively.
2. On 10 July 2002 the appellant's counsel, Mr Cuny, lodged observations concerning Appeal No. 306/2002, then, on 19 December 2002, observations concerning Appeal No. 310/2002.
3. The Secretary General submitted his observations on 18 September 2002 and 10 February 2003. He was represented by Mr Jörg Polakiewicz, acting head of the Legal Advice Department, Directorate General I - Legal Affairs.

On 21 October 2002 the appellant submitted observations in reply under Appeal No.306/2002.

4. In a letter dated 10 April 2003 he gave notice of his wish to withdraw the appeals. On 22 April 2003 the Secretary General informed the Tribunal that he had no objection to the appeals being struck off the list.
5. On 23 May 2003 the Chair of the Administrative Tribunal submitted this report to the members of the Administrative Tribunal.

THE FACTS

A Appeal No. 306/2002

7. The appellant joined the Council of Europe on 1 May 1990 and was assigned to the European Support Fund for the Co-Production and Distribution of Creative Cinematographic and Audiovisual Works, Eurimages (hereafter referred to as "Eurimages"). On 1 May 1998 he was appointed principal administrative officer (grade A4) in the same department. Since 2 January 2003 he has held the post of principal administrative officer in the Directorate of Youth and Sport (Directorate General IV - Education, Culture and Heritage, Youth and Sport).

8. On 13 June 2002 he lodged two administrative complaints. The first concerned a change in his job description, which he alleged was made without his knowledge. The second had to do with his immediate superior's having access to his personal administrative file. Relying on Article 40 of the Staff Regulations, the appellant maintained that, under his duty to protect staff members in their official capacity, the Secretary General should have protected him from the attacks to which he alleged he had been subjected.

9. On 25 June 2001 the administrative complaints were submitted to the Advisory Committee on Disputes at the Secretary General's request.

10. The Advisory Committee delivered its opinion on 19 February 2002. It held that the complaint about the job description was unfounded and that, with regard to the complaint about the administrative file, no breach of the Staff Regulations was to be found.

11. On 26 March 2002 the Director General of Administration and Logistics, on the Secretary General's behalf, "adopted the Advisory Committee's opinion" and dismissed both complaints.

12. On 27 May 2002 the appellant lodged the present appeal against the dismissal of his administrative complaints.

B Appeal No. 310/2002

13. On 24 September 2001, under Article 59 of the Staff Regulations, the appellant wrote to the Secretary General requesting official-capacity protection (Article 40 of the Staff Regulations) and seeking disciplinary action against some of his colleagues.

On 26 November 2001 the Director General of Administration and Logistics informed him that he refused the request, considering the complaints to be groundless.

14. On 10 December 2001 the appellant lodged an administrative complaint seeking a positive response to his request of 24 September 2001.

15. On 13 December 2001 the Secretary General decided to submit the complaint to the Advisory Committee on Disputes. On 15 July 2002 the Advisory Committee delivered its opinion. It held that the complaint was partly founded in relation to a matter concerning action taken by the Executive Secretary of Eurimages, and unfounded in relation to another matter.

16. On 19 August 2002 the Director General of Administration and Logistics, on behalf of the Secretary General, informed the appellant that he concurred with the Advisory Committee opinion. He accordingly dismissed the request "in respect of that part of it which the Advisory Committee on Disputes [had] deemed unfounded".

17. On 18 October 2002 the appellant lodged the present appeal.

THE LAW

18. The appellant challenged the Secretary General's decision not to give him the official-capacity protection provided for in Article 40 of the Staff Regulations, and sought redress of injury suffered. In his observations he alleged defects in the reasons given for the dismissal decision. He further alleged infringement of his right to protection in his official capacity, together with disregard of general legal principles such as good faith, the duty of care and legal certainty. He

asked the Tribunal to annul the Secretary General's decision to refuse him protection in his official capacity, sought appropriate redress of non-material and professional injury and requested reimbursement of all his legal costs.

19. On 10 April 2003 he gave notice that he wished to withdraw his appeals. The reason he gave for his decision was that the parties had arrived at a friendly settlement.

20. The Secretary General has not raised any objection to striking the appeals off the list.

21. The Chair notes that under Rule 20, paragraph 1a of the Tribunal's Rules of Procedure, an appeal may be struck off the Tribunal's list if an appellant wishes to withdraw it. He further notes that the parties have arrived at a friendly settlement and that there is no obstacle to striking the appeals from the list. He further notes that the appeals are to be struck off in accordance with the procedure provided for in Rule 20, paragraph 2 of the Rules of Procedure.

CONCLUSIONS

22. This report is being submitted to the Tribunal judges so that they may exercise the supervision provided for in Article 5, paragraph 2, of the Statute of the Tribunal, to which Rule 20, paragraph 2, of the Rules of Procedure refers.

The Chair

Kurt HERNDL