

CONSEIL DE L'EUROPE ——— ——— COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

DEPUTY CHAIR'S ORDER of 11 May 2001 in the case of Tarcisio BASSI v. Secretary General

I, Deputy Chairman of the Administrative Tribunal,

Having regard to appeal No. 264/2000 lodged by Mr Tarcisio BASSI on 22 November 2000;

Having regard to the further pleadings of the same date;

Having regard to the appellant's memorandum of 15 December 2000, in which he gave notice that he wished to withdraw the appeal;

Having regard to the letter from the Secretary General dated 2 January 2001 in which he raised no objections to the aforementioned request;

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;

Considering that the Tribunal had deliberated on 8 March 2001;

Having submitted on 9 May 2001 a reasoned report to the judges of the Tribunal;

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

DECLARE

- Appeal No. 264/2000 struck out off the list, on the grounds set out in the report appended hereto.

Done and ordered in Strasbourg on 11 May 2001, this order being notified to the parties.

The Registrar of the
Administrative Tribunal

The Deputy 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

Appeal No. 264/2000

Tarcisio BASSI

The present report concerns Appeal No. 264/2000, lodged by Mr Tarcisio BASSI. It has been drawn up for the purposes of the procedure provided for in Article 5, paragraph 2 of the Statute of the Administrative Tribunal and Rule 20, paragraph 2 of the Rules of Procedure of the Tribunal.

THE PROCEEDINGS

1. Mr BASSI submitted his appeal on 22 November 2000. It was registered on the same date as No. 264/2000. Also on 22 November 2000, the appellant lodged further pleadings.
2. In a memorandum dated 15 December 2000 Mr BASSI gave notice that he wished to withdraw his appeal. On 2 January 2001, the Secretary General informed the Tribunal that he had no objection to the appeal being struck off the list.
3. On 9 May 2001, the Deputy Chairman of the Administrative Tribunal submitted the present report to the members of the Administrative Tribunal.

THE FACTS

4. On 3 July 2000, the Director General of Administration and Logistics sent a memorandum to the appellant confirming to him that the Secretary General intended to terminate his service as a permanent staff member, holder of an indefinite contract, in pursuance of Appendix VI to the Staff Regulations, the Regulations on indemnity for loss of job.

Appended to this memorandum of 3 July was, *inter alia*, a calculation of the indemnity for loss of job, headed "Mr Tarcisio Bassi: estimate of the indemnity for loss of job". This showed the information on the basis of which the amount of the said indemnity had been calculated: the appellant's (grade A6/08) salary, increased by 14%, plus the household allowance.

5. On 6 July 2000, the appellant sent an "e-mail" to the Director General of Administration and Logistics, pointing out that, in his opinion, the calculation of the indemnity for loss of job was inaccurate: the basic salary should have been increased by the pension scheme contribution, currently standing at 16.6%, and not 14%; while

the latter figure appeared in the Council of Europe's texts, those texts were not up-to-date.

6. In a letter dated 11 July 2000, the Director General of Administration and Logistics confirmed that the increase of the basic pay remained set at 14%.

He gave the following reasons for his reply:

“It does in fact seem, from research conducted at the Co-ordinated Organisations - which have the same provisions as the Council of Europe in respect of the indemnity for loss of job - that the Council of Europe is the only organisation to have rules specifying a particular percentage. At the other Co-ordinated Organisations, the basic salary is increased by the ‘contribution to the provident fund’. For this reason, this increase remains applicable in those organisations which have a pension fund or to those staff members of Co-ordinated Organisations who have remained affiliated to a provident fund. This increase has no reason to exist - and is therefore no longer applied - in those organisations which have a pensions system which is part of their budget and to the staff members who benefit from such a scheme.

“In such a case, in practice, the staff member may have the period covered by the indemnity for loss of job credited as reckonable service by paying just his/her personal contribution to the pension scheme (currently 8.3% of the basic pay). The organisation's pension budget bears the cost of the validation effected by the staff member.

“In this situation, it would be more logical for the 14% augmentation to be withdrawn. However, during the present financial year, the provisions of the Staff Regulations will remain unchanged.”

7. On 25 July 2000, the Director General of Administration and Logistics sent the appellant a memorandum confirming that his service was to be terminated in pursuance of Appendix VI to the Staff Regulations, with effect from 30 June 2001.

He also drew the appellant's attention to the fact that it was possible under the Pension Scheme Rules to have the period covered by the indemnity for loss of job credited as reckonable service, provided that he paid his personal contribution to the pension scheme for this period.

In this context, he referred to the calculation of the indemnity for loss of job which had been attached to the letter of 3 July, for the purpose of determining the cost of validation of this indemnity period.

8. On 25 August 2000, the appellant sent a memorandum to the Secretary General which, in the present appeal, he describes as an administrative complaint, asking the Secretary General to confirm that the indemnity would be calculated on the basis of a 16.6% increase of his basic pay, and not 14%.

9. On 25 September 2000 the Director of the Private Office of the Secretary General sent the appellant a memorandum in which the Secretary General reminded

him of “the content of the reply of 11 July 2000 from the Director General of Administration and Logistics” and affirmed that “there was no reason to alter the terms of this reply”.

10. On 22 November 2000, the appellant lodged the present appeal.

THE LAW

11. The appellant appealed against “the implicit refusal of the Secretary General to calculate the indemnity for loss of job on the basis of an increase of 16.6% (and not 14%) of the basic pay”. He asked the Tribunal to issue a ruling on his entitlement to have his indemnity for loss of job based on a rate of 16.6%, to declare void the Secretary General’s implicit refusal to make the calculation on the basis of that rate, and to order the Council of Europe to pay him an amount equal to his financial loss and to reimburse his court fees.

On 15 December 2000, without giving a reason, he gave notice that he wished to withdraw his appeal.

12. The Secretary General expressed no objections to this.

13. The Deputy Chairman points out that, in pursuance of Rule 20, paragraph 1(a) of the Tribunal’s Rules of Procedure, an appeal may be struck off the list if the appellant declares that he/she wishes to withdraw it. The Deputy Chairman notes that, in the case at issue, there is nothing to prevent the appeal from being struck off the list. He reached this conclusion in spite of the fact that the appellant had not given any indication of the reason for wishing to withdraw. He also noted that the appeal was to be struck off the list in accordance with the procedure laid down in Rule 20, paragraph 2 of the Rules of Procedure.

CONCLUSIONS

19. The present 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 Administrative Tribunal, to which Rule 20, paragraph 2 of the Rules of Procedure refers.

The Deputy Chairman

Kurt HERNDL