

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

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

DEPUTY CHAIR'S ORDER of 11 May 2011
in the case of X v. Secretary General

I, Deputy Chair of the Administrative Tribunal,

Having regard to Appeal No 265/2000 lodged on 12 December 2000 by X, to whom the Chair of the Tribunal had granted anonymity;

Having regard to the appellant's memorandum of 12 January 2001;

Having regard to the letter of 15 January 2001 in which the Secretary General was asked to submit his observations by 15 February 2001;

Having regard to the appellant's letter of 7 March 2001 in which the appellant gave notice that she wished to withdraw the appeal;

Having regard to the letter from the Secretary General dated 14 March 2001 in which he raised no objection 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 conducted a preliminary examination of the above-mentioned request on 8 March 2001;

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

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

DECLARE

- Appeal No. 265/2000 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. 265/2000

X v. Secretary General

The present report concerns Appeal No. 265/2000 lodged by X. 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 Tribunal's Statute.

THE PROCEEDINGS

1. X submitted his appeal on 12 December 2000. At the same time, he requested anonymity, which was granted by the Chair of the Tribunal.
2. The appeal was registered under No. 265/2000. On 12 January 2001, the appellant presented a memorandum.
3. In a letter dated 7 March 2001, the appellant gave notification that he wished to withdraw his appeal. On 14 March 2001, the Secretary General informed the Tribunal that he had no objection to the appeal being struck off the list.
4. On 9 May 2001, the Deputy Chair of the Administrative Tribunal submitted the present report to the members of the Tribunal.

THE FACTS

5. Further to previous correspondence, in a memorandum of 30 August 1999, the Head of the Human Resources Department confirmed to the appellant that he would be required to reimburse a certain sum which he had received improperly in respect of household allowance and increased expatriation allowance.
6. On 24 September 1999, the appellant filed an administrative complaint which, at his request, was referred to the Advisory Committee on Disputes.
7. The Advisory Committee rendered its opinion on 22 August 2000. It found that the Administration's claim was justified and that, bearing in mind the offer of staggered repayment of the amounts in question, the Secretary General's exercise of his discretionary powers under Article 38 of the Staff Regulations could not be criticised.
8. On 13 November 2000, the Secretary General rejected the administrative complaint, adopting the opinion of the Advisory Committee on Disputes.
9. On 12 December 2000, the appellant lodged the present appeal. In the meantime, the Secretary General and the appellant continued their attempts to reach a friendly settlement.

THE LAW

10. The appellant appealed against the Secretary General's decision to reclaim the disputed sum. In his memorandum, he argued that the disputed decision was in breach of Article 4 para 3 of the Regulations on Staff Remuneration and Allowances. Furthermore, it had no legal basis as regards the differing treatment according to whether or not a staff-member's spouse also worked at the Council of Europe. In addition, the decision violated the principle of equality of treatment and Article 38 (recovery of overpayments) of the Staff Regulations. Lastly, it ignored the Organisation's administrative practice and breached the principle of proportionality. The appellant asked the Tribunal to annul the Secretary General's decisions of 30 August 1999 and 13 October 2000.

On 7 March 2000, he indicated that he was withdrawing his appeal, explaining that the parties had reached a friendly settlement.

11. The Secretary General, for his part, raised no objection.

12. The Deputy Chair points out that according to Rule 20 paragraph 1 a of the Tribunal's Rules of Procedure, an appeal may be struck out if an appellant withdraws it. He notes that the parties have reached a friendly settlement, so that there is no obstacle to striking out this appeal. He further notes that the appeal is to be struck out according to the procedure provided for in Rule 20 paragraph 2 of the Rules of Procedure.

CONCLUSIONS

13. 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 Deputy Chair

Kurt HERNDL