

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

CHAIR'S ORDER OF 3 OCTOBER 2007 In the case of C.I. GLODEAN (II) v. Secretary General

I, Chair of the Administrative Tribunal,

Having regard to appeal No. 389/2007 lodged by Mr Cornel Ioan Glodean on 5 March 2007;

Considering that since the lodging of his appeal, the appellant has, in the course of the written proceedings, neither submitted his observations nor indicated that he did not wish to do so, nor given any written response to the letters sent to him by the Tribunal;

Noting therefore that the applicant has remained silent during the preparation of the appeal and that this silence would appear to indicate that the appellant no longer wishes to pursue his appeal;

Having regard to Rule 20 of the Rules of Procedure of the Administrative Tribunal, and in particular paragraph 1b;

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

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

Having submitted a reasoned report to the judges of the Tribunal on 24 September 2007;

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

DECLARE

- Appeal No. 389/2007 struck off the case list on the grounds set out in the report appended hereto.

Done and decided at Strasbourg on 3 October 2007, the present order being notified to the parties to the case.

The Registrar of the
Administrative Tribunal

S. SANSOTTA

The Chair of the
Administrative Tribunal

E. PALM

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. 389/2007

Cornel Ioan GLODEAN (II) v. Secretary General

This report concerns Appeal No. 389/2007 lodged by Mr Cornel Ioan Glodean. 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 Cornel Ioan Glodean, of Romanian nationality, is the husband of a member of the Council of Europe's staff. He lodged his appeal by letter posted on 5 March 2007, arriving at the registry of the Tribunal on 7 March 2007. The appeal was registered on the same day under No. 389/2007. On the appeal form, the appellant stated that he was claiming through a staff member of the Organisation (Article 59, paragraph 6b of the Staff Regulations)
2. In filling out the "Object and Grounds for the Appeal" part (points 7 and 8 of the form), the applicant observed that he had not received the documents relating to the application for a stay of execution which he had lodged (paragraphs 15 and 17 below) and said that he would "complete and provide grounds in this [part of the form] once all the requested procedural documents had been provided [to him] by the [Tribunal] and the Council of Europe".
3. When notifying the appellant of the registration of his appeal on 7 March 2007, the Registrar of the Tribunal told him that the documents requested – the Secretary General's observations on his application for a stay of execution and the order relating to that request – had been sent to him on 9 and 19 January respectively. Nevertheless, the Registrar forwarded further copies, and informed the appellant that the Chair of the Tribunal had allowed him until 10 April 2007 to submit supplementary observations.
4. The appellant submitted no observations, nor did he forward any written communication.
5. On 20 April 2007, the Registrar noted in a letter sent to the appellant that he had not submitted any supplementary observations by the given deadline.
6. On 15 May 2007, the Secretary General submitted his observations.
7. On 18 May 2007, the Registrar forwarded this document to the appellant and asked him to submit his observations in response by 18 June 2007.
8. The appellant submitted no observations, nor did he forward any written communication.
9. On 28 June 2007, the Registrar wrote to the appellant stating that he had not submitted any observations in response nor asked for an extension of the deadline, nor indicated that he had no wish to submit any observations. He further pointed out that since lodging the appeal, the appellant had not submitted any observations, document or letter and had remained silence during the various

stages of the proceedings. Accordingly, the Registrar drew the appellant's attention to the terms of Rule 20 of the Tribunal's Rules of Procedure (paragraph 22 below).

THE FACTS

10. The applicant is the husband of a Council of Europe member of staff.
11. On 23 October 2006, vacancy notice e109/2006 was published on the Council of Europe's internet site. The competitive examination was for the recruitment of technical, secretarial and clerical support staff (grade B2).
12. The applicant did not submit an application as a candidate in the competitive examination.
13. By letter dated 22 December 2006, which arrived on 4 January 2007, the appellant submitted an administrative complaint to the Secretary General (under Article 59 of the Staff Regulations). He asked him to cancel the aforementioned competitive examination.
14. By letter posted on 22 December 2006 which reached the Registry of the Tribunal on 5 January 2007, the appellant submitted to the Chair of the Administrative Tribunal, an application for a stay of execution of the administrative act which he had challenged (paragraph 7 of the above-mentioned Article 59).
15. On 16 January 2007, the Secretary General dismissed the administrative complaint.
16. On 19 January 2007, the Chair dismissed the application for a stay of execution.
17. On 5 March 2007, the appellant lodged the present appeal.

THE LAW

18. The appellant lodged the appeal against the Secretary General's decision to hold competitive examination No. e109/2006. He asked for this to be cancelled for several reasons: creation of a manifestly discriminatory situation, violation of the principle of the independence of the international civil service, lack of transparency and the creation of greater injustice in the Council of Europe's recruitment procedures. In the appellant's view, the competitive examination in question was a disguised large-scale integration procedure which had not been approved by the Committee of Ministers.
19. The Secretary General pleaded the inadmissibility of the appeal on two grounds. As to the merits, he asked the Tribunal to dismiss all of the appellant's demands.
20. The Chair would point out that Rule 20 of the Tribunal's Rules of Procedure is worded as follows:

“1. The Tribunal may strike an appeal out of its list of cases:

a Where the appellant states that he wishes to withdraw his appeal; or

b Where the circumstances, in particular the appellant's failure to provide information requested or to observe time-limits set, lead to the conclusion that he does not intend to pursue his appeal.

2. In this case, the Tribunal shall also rule in accordance with the procedure set out in Article 5, paragraph 2 of the Statute. It shall inform the appellant of its decision, of which a copy shall be sent to the Secretary General.

3. The Tribunal may decide to restore an appeal to its list of appeals if it considers that the circumstances justify such a course.”

21. The Chair would point out that under Rule 20, paragraph 1b of the Tribunal’s Rules of Procedure, an appeal may be struck off the list “where circumstances (...) lead to the conclusion that [the appellant] does not intend to pursue his appeal”. She notes that in the current case, the appellant took no further action following the lodging of his appeal. Furthermore, not only did the appellant fail to submit the observations which are generally submitted during the written proceedings before the Tribunal, but he also failed to indicate that he did not wish to add anything to what he had already said in his appeal. Lastly, the appellant remained silent even after the Registrar had reminded him of the terms of Rule 20 of the Tribunal’s Rules of Procedure and brought to his attention the consequences of maintaining his silence.

22. The Chair concludes that these facts are circumstances leading to the conclusion that the applicant no longer intends to pursue his appeal and that, therefore, the appeal should be struck off the Tribunal’s list. She also observes that the appeal must be struck off the case list in accordance with the procedure set out in Rule 20, paragraph 2, of the Tribunal’s Rules of Procedure.

CONCLUSIONS

23. 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
Elisabeth PALM