

# CONSEIL DE L'EUROPE

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# COUNCIL OF EUROPE

## TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

### CHAIR'S ORDER OF 12 JULY 2017

#### In the case of Nezh DUSKUNKORUR v. Secretary General

I, Chair of the Administrative Tribunal,

Having regard to appeal No. 577/2017 lodged by Mr Nezh Duskunkorur on 21 March 2017;

Having regard to the applicant's letter sent on 28 June 2017, in which he gave notice that he did not wish to pursue his appeal;

Having regard to the letter sent by the representative of the Secretary General of the Council of Europe on 4 July 2017 in which he states that he has no objection to the appellant's appeal being struck off the list;

Having regard to Rule 20 of the Tribunal's Rules of Procedure;

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

Considering that there are grounds for applying the procedure provided for in the said articles;

Having submitted a reasoned report to the Tribunal judges on 10 July 2017;

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

#### **DECLARE**

- Appeal No. 577/2017 struck off the list on the grounds set out in the report appended hereto.

Done and ordered at Kifissia (Greece), on 12 July 2017, this order being notified to the parties.

The Registrar of the Administrative  
Tribunal

Sergio Sansotta

The Chair of the Administrative  
Tribunal

Christos Rozakis

**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. 577/2017  
Nezih Duskunkorur v. the Secretary General**

The present report concerns Appeal No. 577/2017 lodged by Mr Nezih Duskunkorur. 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. Mr Nezih Duskunkorur lodged his appeal on 21 March 2017. The appeal was registered under No. 577/2017 on the same date.
2. The appellant submitted supplementary pleadings on 7 April 2017.
3. The Secretary General filed submissions on 17 May 2017.
4. On 19 June 2017, the appellant filed observations in reply.
5. On 22 June 2017, the Secretary General requested a postponement of the hearing that had initially been scheduled for 29 June 2017. This hearing was to address this appeal as well as appeals 571-576/2017 and 578/2017 lodged by seven other staff members and which related to the same issues or in some cases, only one of them.
6. On 23 June 2017, the Chair of the Tribunal accepted said request to postpone the hearing and, on 29 June 2017, set a new date for the hearing on 25 September 2017.
7. In the meantime, the appellant informed the Chair on 28 June 2017 that he did not wish to pursue his appeal.
8. On 4 July 2017, the Secretary General informed the Tribunal that he had no objection to the appeal being struck off the list.
9. On 10 July 2017, the Chair of the Tribunal submitted the present report to the members of the Tribunal.

**THE FACTS**

10. The appellant is a permanent staff member at the Organisation. He is based in Strasbourg.

11. Following the entry into force of a number of changes to the private medical and social insurance scheme for staff members at the Organisation, on 21 December 2016, the appellant submitted an administrative complaint to the Secretary General under Article 59, paragraph 2, of the Staff Regulations.

12. On 18 January 2017, the Secretary General rejected the administrative complaint as inadmissible and ill-founded.

13. On 21 March 2017, the appellant lodged the present appeal.

## **THE LAW**

14. In his appeal, the appellant asked the Tribunal to annul the amendments that had recently been made to the private medical and social insurance scheme for staff at the Organisation and which modified provisions concerning the capital sum paid in the event of the staff member's death or invalidity and the supplementary insurance for a dependent spouse.

15. In his observations dated 17 May 2017, the Secretary General asked the Tribunal to declare the appeal inadmissible insofar as it had been made against the change to the capital sum that was paid out in the event of death or invalidity and, secondarily, was ill-founded as a whole, and to dismiss it.

16. In his observations in reply to the Secretary General's comments, the appellant upheld his conclusions.

17. In a letter dated 28 June 2017, the appellant gave notice that he did not wish to pursue his appeal.

18. He said that he had been elected to the Council of Europe's Staff Committee on 8 June 2017, and at its plenary meeting of 26 June 2017, the aforementioned Committee had appointed him to sit on the Supervisory Board – a joint body responsible for examining the accounts of the group insurance contract – as a full member for the next two years. Therefore, he felt he was now in “a situation of conflict of interest because [he had] lodged [his] appeal to contest a decision made by the same body to which [he was now going to] be appointed.” Under these circumstances, he had decided not to pursue his appeal.

19. On 4 July 2017, the Secretary General informed the Tribunal that he had no objection to the appeal being struck off the list.

20. The Chair points out that under the terms of Rule 20, paragraph 1 a, of the Tribunal's Rules of Procedure, an appeal may be struck off if an appellant states that he or she wishes to withdraw it and, according to paragraph 2 of the same provision, the Tribunal shall rule in accordance with the procedure set out in Article 5, paragraph 2 of its Statute which applies in cases where the appeal is manifestly inadmissible.

21. The Chair, for his part, notes that there is no reason why the appeal should not be struck from the list. In his letter informing the Tribunal of his decision not to pursue his appeal, the appellant indicated the reasons which prompted this decision. It is the view of the

Chair that it is not his role to pass judgement on those reasons and that this fact should not stand in the way of a decision to strike the appeal off the Tribunal's list of cases. As for the full implications of this decision, the Chair stresses that the Tribunal will continue to deal with the other appeals pursuing the same aim. Moreover, under Rule 20, paragraph 3, of the Rules of Procedure, "the Tribunal may decide to restore an appeal to its list of appeals if it considers that the circumstances justify such a course."

22. The Chair further notes that the appeal is to be struck off according to the procedure provided for in Rule 20, paragraph 2, of the aforementioned Rules.

## **CONCLUSION**

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  
Christos Rozakis