

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

ORDER OF THE CHAIR OF 26 NOVEMBER 2019

in the case of

Claire SMITH v. Governor of the Council of Europe Development Bank

The Chair of the Administrative Tribunal,

Having regard to appeal No. 602/2018 lodged by Ms Claire SMITH on 20 December 2018;

Having regard to the appellant's letter of 12 November 2019 in which she informed the Tribunal that she did not wish to pursue her appeal;

Having regard to the letter sent by the representative of the Governor of the Council of Europe Development Bank on 18 November 2019 in which he states that he has no objection to the 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 it is appropriate to apply the procedure provided for in the said articles;

Having submitted a reasoned report to the Tribunal judges on 20 November 2019;

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

DECLARES

- Appeal No. 602/20178 struck off the list on the grounds set out in the report appended hereto.

Done and ordered in Zagreb, on 26 November 2019, this order being notified to the parties.

The Registrar of the
Administrative Tribunal

Sergio SANSOTTA

The Chair of the
Administrative Tribunal

Nina VAJIĆ

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. 602/2018

Claire SMITH v. Governor of the Council of Europe Development Bank

This report concerns appeal No. 602/2018 lodged by Ms Claire Smith. 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. The appellant lodged her appeal on 20 December 2018. On the same date, the appeal was registered under No. 602/2018.
2. The appellant submitted her additional pleadings on 24 January 2019.
3. On 22 February 2019, the Governor submitted his observations.
4. After the original deadline was extended, on 9 April 2019 the appellant lodged her observations in reply.
5. The public hearing on this appeal took place in the Administrative Tribunal's hearing room in Strasbourg on 12 June 2019. The appellant was represented by M^e Carine Cohen-Solal, a barrister practising in Strasbourg, while the Governor was represented by Mr Andrea Buccomino, Deputy Director, Office of the General Counsel, assisted by Mr Jan De Bel, General Counsel, and Ms Laura Guiard, a staff member in the same department.
6. Following discussions, on 19 June 2019 the Tribunal informed the parties that it had taken note of the statements made by them at the hearing on 12 June 2019. It was clear from these that the parties had not tried to reach an out-of-court agreement even though a similar case had recently been settled in this way (ATCE, appeal No. 585/2017, Rona Brown v. Secretary General, [strike out order](#) of 21 December 2017).
7. The Tribunal added that, in the light of the foregoing, it had decided to give the parties one month to try to reach an agreement in the present appeal.
8. On 5 July 2019, the appellant's barrister informed the Tribunal that she was in negotiations with her opposite number and that the appellant needed more time to make a decision. She asked that the deadline be extended until August.
9. On 8 July 2019, the Governor's representative indicated that he was not in a position to conclude an agreement in August and, therefore, would have no objection to the deadline being extended until 31 July or 15 September 2019.

10. On the same day, the President granted an extension until 15 September 2019.
11. On 12 September 2019, the appellant informed the Tribunal that the parties had reached an agreement and that she would be sure to send formal notification of her intention not to pursue her appeal as soon as that agreement had been formalised and executed.
12. The Tribunal having requested an update on 10 October 2019, on 16 October 2019 the appellant's barrister informed the Tribunal by e-mail that the agreement reached between the parties had in fact been formalised and executed. She also stated that the appellant did not wish to pursue her appeal. A letter to this effect reached the Registry on 15 November 2019.
13. On 18 November 2019, the Governor informed the Tribunal that he had no objection to the appeal being struck off the list.
14. On 20 November 2019, the Chair of the Tribunal submitted the present report to the members of the Tribunal.

CIRCUMSTANCES OF THE CASE

15. The appellant was a permanent staff member of the Council of Europe Development Bank.
16. On 28 May 2018, the appellant was retired on invalidity grounds following a long absence from work for health reasons which had started in June 2015.
17. Upon finalising the procedure, the appellant was informed that she would be entitled to a capital sum which was less than the amount she had been expecting to receive.
18. At the same time, the appellant learned that the rules on benefits in the event of death, permanent and total disability, partial disability or long-term care had changed as of 1 January 2017.
19. The appellant then had a discussion with the Directorate of Human Resources, which confirmed that the capital sum she would receive would be the one indicated earlier.
20. On 1 October 2018, the appellant submitted an administrative complaint to the Governor under Article 59, paragraph 2, of the Staff Regulations in the text applicable to Bank staff.
21. On 2 November 2018, the Governor dismissed the administrative complaint.
22. On 20 December 2018, the appellant lodged this appeal.

THE LAW

23. The appellant lodged her appeal in order to complain about the decision to pay her a capital sum corresponding to 12 months' rather than 24 months' salary.
24. While both the appellant and the Governor presented arguments during the written and oral proceedings, it is not necessary to summarise them here.

25. The parties having, at the request of the Tribunal, entered into negotiations with a view to reaching an out-of-court settlement, the appellant confirmed in a letter received on 15 November 2019 that an agreement had been reached between the parties and that she did not wish to pursue her appeal.

26. On 18 November 2019, the Governor informed the Tribunal that he had no objection to the appeal being struck off the list.

27. The Chair points out that under the terms of Rule 20, paragraph 1a, of the Tribunal's Rules of Procedure, an appeal may be struck out 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 the Tribunal Statute which applies in cases where an appeal is manifestly inadmissible.

28. The Chair, for her part, notes that, in the instant case, there is no reason why the appeal should not be struck from the list. Admittedly, in her letter informing the Tribunal of her decision not to pursue her appeal and in earlier exchanges, the appellant gave no indication of the terms of the settlement agreement concluded and executed between the parties outside these proceedings. Accordingly, the Chair is unable to carry out any review of this agreement, neither the rationale nor the ins and outs of the decision, but this omission is no reason not to order that the appeal be struck off the Tribunal's list of cases. Indeed, 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."

29. 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 said Rules.

CONCLUSION

30. 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
Nina VAJIĆ