

# CONSEIL DE L'EUROPE

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# COUNCIL OF EUROPE

## TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

### ORDER OF THE DEPUTY CHAIR OF 31 July 2019

#### In the case of Gianfranco Alberelli (IV) and others v. Secretary General of the Council of Europe

I, Deputy Chair of the Administrative Tribunal,

Having regard to Appeals Nos. 607-615/2019 lodged by Mr Gianfranco Alberelli, Mr Alfonso Zardi, Ms Melina Babocsay, Mr Johannes de Jonge, Mr Yann De Buyer, Mr Alessandro Mancini, Ms Monique Becret, Mr Pierre Masson and Mr Ulrich Bohner on dates from 30 April to 10 May 2019;

Having regard to the letter from the appellants' counsel of 28 June 2019 indicating that the appellants wished to withdraw their appeals in accordance with [Rule 20, paragraph 1\(a\)](#), of the Tribunal's Rules of Procedure;

Having regard to the letter sent by the representative of the Secretary General of the Council of Europe on 2 July 2019 in which he states that he has no objection to the appeals 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 Tribunal;

Considering that it is appropriate to apply the procedure provided for in the said provisions;

Having submitted a reasoned report to the Tribunal judges on 15 July 2019;

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

### DECLARE

- Appeals Nos. 607-615/2019 struck off the list on the grounds set out in the report appended hereto.

Done and ordered in Budapest, on 31 July 2019, this order being notified to the parties.

The Registrar of the  
Administrative Tribunal

The Deputy Chair of the  
Administrative Tribunal

Sergio SANSOTTA

András BAKA

**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**

**Appeals Nos. 607-615/2019**

**Gianfranco Alberelli (IV) and others v. Secretary General of the Council of Europe**

This report concerns appeals Nos. 607-615/2019 lodged by Mr Gianfranco Alberelli, Mr Alfonso Zardi, Ms Melina Babocsay, Mr Johannes de Jonge, Mr Yann De Buyer, Mr Alessandro Mancini, Ms Monique Bécet, Mr Pierre Masson and Mr Ulrich Bohner. It has been drawn up for the purposes of the procedure provided for in Rule 20, paragraph 2, of the Tribunal's Rules of Procedure and Article 5, paragraph 2, of the Tribunal's Statute.

**THE PROCEEDINGS**

1. Mr Gianfranco Alberelli, Mr Alfonso Zardi, Ms Melina Babocsay, Mr Johannes de Jonge, Mr Yann De Buyer, Mr Alessandro Mancini, Ms Monique Bécet, Mr Pierre Masson and Mr Ulrich Bohner lodged their appeals on dates from 30 April to 7 May 2019. On dates from 30 April to 10 May 2019, the appeals were registered under Nos. 607-615/2019. The appeals concern the 2019 salary adjustment.
2. On 10 May 2019, the Deputy Chair informed the parties that, further to an urgent exchange between the Registrar of the Tribunal and the appellants' counsel at the latter's request, he had decided that he would set the time-limit for the counsel to submit his further pleadings once examination of the similar appeals concerning the 2018 salary adjustment had been completed ([appeals Nos. 595-601/2018](#) – Alberelli (III) and others v. Secretary General of the Council of Europe).
3. On 20 June 2019, the Tribunal delivered its [decision](#) in these appeals.
4. On 28 June 2019, the appellants informed the Deputy Chair that they did not wish to pursue their appeals.
5. On 2 July 2019, the Secretary General informed the Tribunal that he had no objection to the appeals being struck off the list.
6. On 15 July 2019, the Deputy Chair submitted the present report to the members of the Tribunal.

**THE FACTS**

7. The appellants are either permanent members of staff assigned to various departments of the organisation or former staff members of the organisation in receipt of retirement pensions from it.

8. The appellants challenge the decision reflected in January 2019 in either their payslips or their pension slips, as applicable, not to grant them the salary adjustment for 2019.

9. Previously, three of the appellants and four other serving or former staff members challenged the decisions reflected in January 2018 in either their payslips or their pension slips, as applicable, not to grant them the salary adjustment for 2018 and to defer until 2019 the entry into force of the salary moderation clause. These appeals were ruled upon in a single decision delivered on 20 June 2019.

10. In the present case, on dates from 7 February to 21 February 2019, the appellants submitted administrative complaints to the Secretary General under Article 59, paragraph 2, of the Staff Regulations.

11. On 11 March 2019, the Secretary General rejected the administrative complaints, declaring them unfounded.

12. On dates from 30 April to 7 May 2019, the appellants lodged their appeals.

## **THE LAW**

13. In their appeals, the appellants asked the Tribunal to annul the Secretary General's decision to implement the Committee of Ministers' decisions on the salary freeze in 2019.

14. The legal issue raised in these appeals is the same as that which gave rise to the aforementioned decision of 20 June 2019, with the sole difference that the second series of appeals concerns the financial year 2019 rather than 2018.

15. By letter dated 28 June 2019, the appellants stated that they wished to withdraw their appeals.

16. They indicated that they were acting further to the aforementioned decision of 20 June 2019. They added, for information, that they reserved the right to submit an administrative request in accordance with Article 59, paragraph 1, of the Staff Regulations once the organisation's financial situation in relation to the Russian Federation's contribution was clarified.

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

18. The Deputy 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 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's Statute which applies in cases where the appeal is manifestly inadmissible.

19. The Deputy Chair, for his part, notes that there is no reason why the appeal should not be struck from the list. In their letter informing the Tribunal of their decision not to pursue their appeals, the appellants implicitly provide indications of the grounds which prompted the decision. It is clear that the appellants are inferring that the problem of the 2019 salary

adjustment will be resolved once the Russian Federation has paid its contribution. The Deputy Chair believes that he is not required to rule on the merits of these grounds and that the appellants' approach should not stand in the way of a decision to strike the appeal off the Tribunal's list of cases. As to the whys and wherefores of the decision, the Deputy Chair points out that 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."

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

## **CONCLUSION**

21. 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  
András BAKA