

COUNCIL OF EUROPE

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TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

ORDER OF THE CHAIR of 10 December 2007

In the case of C.I. GLODEAN (III) v. Secretary General

I, Chair of the Administrative Tribunal,

Having regard to appeal No. 391/2007 lodged by Mr Cornel Ioan Glodean on 18 May 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;

Considering that the foregoing holds good even though the appellant, on the appeal form, signified his wish for oral proceedings during which three witnesses were to be examined;

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 Rule 20 and Article 5, paragraph 2;

Having submitted a reasoned report to the judges of the Tribunal on 30 October 2007;

Noting that they raised no objection but assented to this order ;

DECLARE

- Appeal No. 391/2007 struck off the case list on the grounds set out in the report appended hereto.

Done and decided at Strasbourg on 10 December 2007, the present order being notified to the parties to the case.

The Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

S. SANSOTTA

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. 391/2007

Cornel Ioan GLODEAN (III) v. Secretary General

This report concerns Appeal No. 391/2007 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, a Romanian national, was the spouse of a staff member of the Organisation at the time the application was lodged. He lodged his appeal by letter posted on 18 March 2007, arriving at the registry of the Tribunal on 30 May 2007. The appeal was registered on the same day under No. 391/2007. 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 would "complete the objects and reasons for the appeal after the Secretary General and/or the Tribunal will provide [to him] the reply to the administrative complaint certify on every page and signed in the original". The appellant acted so because according to him the letter that was sent to him was not numbered and possessed no element of identification.

3. In informing the appellant that the appeal had been registered, on 30 May 2007, the Registrar of the Tribunal told him that the Chair of the Tribunal had set a deadline expiring on 2 July 2007 for the submission of a supplementary memorandum.

4. The appellant lodged no memorandum and sent no mail whatsoever.

5. On 16 July 2007 the Registrar wrote to the appellant, observing that the latter had not lodged a supplementary memorandum by the deadline set. He informed the appellant that he was moving on to the next stage in the proceedings and had asked the Secretary General to lodge his observations on the appeal.

6. In a letter dated 31 August 2007 and delivered to the Registry on 11 September 2007, the Secretary General lodged his observations.

7. On the same date, the Registrar disclosed that document to the appellant and asked him to send him his observations in reply by 11 October 2007.

8. The appellant lodged no memorandum and sent no mail whatsoever.

9. On 16 October 2007, the Registrar wrote to the appellant, observing that he had neither lodged submissions in reply, nor requested an extension of the aforementioned deadline, nor signified her disinclination to lodge any submissions. He further observed that since the appeal was lodged the appellant had not forwarded any memorandum, document or mail, and had maintained silence during the various stages of the proceedings. Such being the case, the Registrar drew the appellant's attention to the terms of Article 20 of the Rules of Procedure of the Tribunal.

THE FACTS

10. The appellant is the husband of a former Council of Europe staff member who served up to 31 August 2007.

11. On 15 January 2007, the appellant asked to benefit from protection in an official capacity as provided in Article 40 of the Staff Regulations. He also requested the renewal of his residence permits.

12. On 29 January 2007, the Secretary General dismissed this request.

13. By letter dated 4 March 2007, the appellant lodged an administrative complaint with the Secretary General (Article 59 of the Staff Regulations)

14. In a letter dated 21 March 2007, transmitted on 5 April 2007, the Secretary General dismissed the administrative complaint.

15. On 18 May 2007, the appellant lodged the present appeal.

THE LAW

16. The appellant lodged the appeal against the Secretary General's decision not to grant him protection in an official capacity (Article 40 of the Staff Regulations). On his appeal form he asked that a hearing be held, among other reasons, to take statements from three witnesses.

17. As to the request for protection in an official capacity, the Secretary General pleads the inadmissibility of the appeal on the ground that under the terms of the aforementioned Article 40, only staff members may request protection in their official capacity. Thus, the appellant does not have locus standi and consequently the administrative complaint and the appeal are inadmissible.

18. As to the request for renewal of the residence permits, the Secretary General submits that the appellant and his wife were asked, like others whose permits were nearing expiry, to send their residence permits to the Directorate of Human Resources.

19. In conclusion, the Secretary General asks the Tribunal to declare the appeal inadmissible.

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 appellant's having requested on the appeal form that a hearing be held cannot constitute a ground for assuming that he wishes to persist in the appeal, considering the antecedence of the lodging of the appeal form in relation to the subsequent silence.

23. 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

24. 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