

# CONSEIL DE L'EUROPE— —COUNCIL OF EUROPE

## COMMISSION DE RECOURS APPEALS BOARD

**Appeal No. 149/1987 (S. CARONJOT v. Secretary General)**

The Appeals Board, composed of:

Mr. Walter GANSHOF VAN DER MEERSCH, Chairman,  
Mr. Raul VENTURA and  
Sir Donald TEBBIT, Members,

assisted by:

Mr. Michele de SALVIA, Secretary and  
Mrs Margaret KILLERBY, Deputy Secretary

has delivered the following decision, after due deliberation.

### PROCEEDINGS

1. The appellant, Mrs S. Caronjot, lodged her appeal on 7 January 1987. It was entered in the Board's register the same day under No. 149/1987.
2. The appeal was transmitted to the Secretary General on 8 January 1987.
3. On 28 January 1987, the Secretary General was invited to submit his observations before 27 February 1987.
4. On 2 March 1987, the Secretary General's observations were forwarded to the applicant.
5. On 16 March 1987, the applicant was invited to submit her reply before 15 April 1987.
6. On 25 March 1987, the applicant communicated her reply.
7. On 15 April 1987, the parties were informed that the hearing had been set down for 27 May 1987 at 9.30 am.
8. The public hearing was attended by Mrs S. Caronjot, represented by Mr A. Schafir, of the Paris Bar, and by Mr G. Buquicchio, Head of the Central Section of the Directorate of Legal Affairs and Mr P. Dewaguet, administrative officer of the Directorate of Legal Affairs, representing the Secretary General.

## THE FACTS

The facts as set out by the parties may be summarised as follows:

9. From 1981 to 1984, the appellant carried out occasional home translation work for the Council of Europe.
  10. Between 16 July 1984 and 1 August 1986, she worked for the Council of Europe as a temporary member of staff on the basis of contracts of four to six weeks.
  11. In February 1986, the appellant had discussions with the Head of the Language Services, Documents and Conferences Division and with the Head of the French Translation Section concerning prospects of employment at the Council of Europe.
  12. On 25 April and 21 July 1986, the applicant took part in tests in a competition for the recruitment of French language translators.
  13. On 6 August 1986, she was informed by a letter from the Head of the Establishment Division that, following the competition, the Recruitment Panel had not recommended her appointment and that the Secretary General had accepted that recommendation.
  14. On 29 August 1986, the appellant had an interview with the Head of the Establishment Division concerning employment prospects within the organisation.
  15. On 3 October 1986, the appellant submitted a complaint directed against the decision of the Recruitment Panel and the Secretary General not to include her name on the list of suitable candidates. She claimed that her age had been the decisive factor in those decisions.
- Her complaint was also directed against the alleged decision to offer her no more temporary contracts, which, in her view, penalised her in relation to other temporary members of staff.
16. In their letters dated 24 October 1986, the Deputy Secretary General and the Head of the Establishment Division drew the appellant's attention to what she had been told in the course of the discussions which she had had in February and August 1986 concerning temporary contracts: namely that the reduction in the funds available for translation work and the recruitment of new permanent translators would result in less frequent use of temporary staff and would therefore make it impossible to offer her such regular temporary contracts as in the past.
  17. On 19 November 1986, the appellant was offered a home translation contract. She refused it on the ground that she wished to work solely on the basis of "on-premises" temporary contracts.
  18. The appellant's complaint was forwarded to the Advisory Committee on Disputes, which expressed the view in its Opinion No. 8/1986 of 5 December 1986 that the complaint was unfounded.
  19. On 7 January 1987, the appellant lodged this appeal against the implied decision rejecting her complaint, which was deemed to have been taken on 3 January 1987.

## THE LAW

## SUBMISSIONS OF THE PARTIES

20. The appellant claimed that she should be accorded the same rights as those who were, in her view, the most favoured of the other temporary members of staff and that her temporary “on premises” contracts should be renewed subject to a penalty payment of 500 FF per day of failure to comply with any decision to that effect as from the date thereof.

She also claimed compensation for loss of salary calculated on the basis of 13,000 FF per month from 31 July 1986 until such time as the contracts were renewed.

The **appellant’s** submissions may be summarised as follows:

21. The appellant, who took part in the French language translators’ competition in April and July 1986 alleged that she had apparently been well placed following the written papers. In addition, she had come to the conclusion that her age had been a decisive factor in the panel’s decision not to recommend her recruitment.

22. She maintained that such a decision could effectively frustrate the derogation provisions by which in certain circumstances the age limit for participation in a competition might be increased. She did not, however, invoke one of the possible grounds for such derogation.

23. She pointed out that she had not been offered a temporary contract since 31 July 1986 and claimed that this state of affairs was necessarily linked to the results of the above-mentioned competition.

24. She maintained that during the period in which she had not had a contract the number of temporary translators had never been lower than 6 and had even increased to 10 or 11 in September. She added that, with a single exception, the temporary translators who had worked during this period had not taken part in the competition or had failed to fulfill the conditions thereof.

In her view, the recruitment of two further permanent translators had merely compensated for the retirement of two members of the French translation section.

25. She considered that she had thus been unfairly penalised since she had been placed in a less favourable position than all the freelance translators who had not taken part in the competition or, a fortiori, who had failed to pass the written papers.

26. With regard to the offer of a home translation contract which had been communicated to her on 19 November 1986 and which she had refused, the appellant argued that to return to this type of work would undeniably constitute a retrograde step in particular as far as remuneration and social security cover were concerned.

The **Secretary General’s** submission may be summarised as follows:

27. The Secretary General stated that translators recruited outside the Council of Europe belonged either to the category of occasional staff (home translators) or temporary staff (translators working on the premises). The Board had observed that these categories of staff were “subject primarily to a contractual relationship” (ABCE 52-75 1981 Farcot and others v. Secretary General).

28. He added that it was for the Secretary General in the exercise of his administrative powers to determine whether the translation requirements of the organisation necessitated the

use of an external translator whether on the premises or at home. The choice between these two types of contract was made on the basis of the organisation's needs.

29. He stated that in either case the Secretary General had "wide discretionary powers the exercise of which may be supervised by international courts only in limited case" (ABCE 76/1981, *Pagani v. Secretary General*; 77/1981 *Vangeenberghe v. Secretary General*). Accordingly, "the question whether an appointment (of fixed duration) may or may not be extended...falls within the (Secretary) General's discretionary authority" (ILOAT, decision N° 243 Riley), (see also ILOAT, decision n° 116 Kirkbir and decision n° 214 Santoni).

30. Thus, he considered that the appellant was possessed of no right to be offered contracts on as frequent a basis as in the past and, a fortiori, had no right to a fixed contract.

31. He pointed out that she was mistaken in interpreting the fact that the Secretary General had not offered her any contracts as a temporary member of staff as a penalty for her failure in the competition.

32. He stated that two permanent translators had been recruited which had had the effect of reducing the need to use external translators.

33. He added that certain translators had indeed been employed as temporary members of staff but that was because of their particular qualifications and the nature of the translation work to be completed.

34. He concluded that the applicant had failed to show that she had any right to be offered contracts as a temporary member of staff and her claim for compensation was ill-founded because there was no evidence that she had suffered any damage in the present case.

### **The subject-matter of the appeal**

35. The applicant claimed that the contested decision was discriminatory.

36. There is no doubt that the rule of non-discrimination constitutes one of the general principles of law to which the legal system of the Council of Europe is subject (Article 14 of the European Convention on Human Rights).

37. However, as the European Court of Human Rights noted in the Case relating to certain aspects of the laws on the use of languages in education in Belgium, "Article 14 does not forbid every difference in treatment" (Eur. Court HR, *Belgian Language Case*, judgment of 23 July 1968, series A no. 6, p. 34, para 10).

38. Furthermore in the *Van der Mussele Case*, the Court ruled that, "Article 14 safeguards individuals, placed in analogous situations, from discrimination" (Eur Court HR, *Van der Mussele case*, judgment of 23 November 1983, Series A no. 70, p. 22, para. 46). In such cases, the rule of "equality of treatment is violated if the distinction has no objective and reasonable justification" and if "there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised". (*Belgian language case ... loc cit*)

39. In this respect, the Board notes that where it is called upon to determine whether, in a given case, there has been an unjustified difference in treatment, account has to be taken of the special nature of the international civil service and of the special needs of the organisation concerned (ABCE 100/81, *Van Lamoen v Secretary General*, decision of 20 December 1984, para. 61).

40. Moreover, as the Board has already ruled, the Secretary General has discretionary power in matters of staff management. In the exercise of this power, he is in a position to know and assess the organisation's operational needs. (ABCE 130/1985, Fuchs v. Secretary General, para. 46)

41. It falls to him *inter alia* to determine whether the requirements of the organisation require resort to the use of temporary staff.

42. In the instant case, it appears from the evidence supplied at the hearing by the Secretary General's representative that some permanent translator posts were created between 1985 and 1987.

43. The fact that the appellant had been given temporary contracts between July 1984 and August 1986 did not confer on her any right to be awarded further contracts once the contractual relationship had been interrupted.

44. The fact that the appellant's temporary contracts were renewed almost without interruption between July 1984 and August 1986 cannot have the effect of altering the nature of such contracts by transforming them into a permanent contract, even though domestic law in certain States recognises such transformation.

45. In this case the appellant therefore has no right to renewal of her contracts and *a fortiori* to the award of a certain type of contract.

This finding does not call into question the assessment of the value of her work under contracts which she has completed in the past.

For these reasons,

The Appeals Board

Declares the appeal unfounded;

Dismisses it;

Dismisses the claim for compensation; and

Orders that each party shall bear its own costs.

Delivered in public in Strasbourg on 3 August 1987, the French text of the decision being authoritative.

The Secretary of the  
Appeals Board

M. de SALVIA

The Chairman of the  
Appeals Board

W.J. GANSHOF VAN DER MEERSCH