

CONSEIL DE L'EUROPE——— ———COUNCIL OF EUROPE

COMMISSION DE RECOURS APPEALS BOARD

Appeal No. 153/1988 (G. STEPHAN v. Secretary General)

The Appeals Board, consisting of:

Mr Gunnar LAGERGREN, Chairman
Sir Donald TEBBIT,
Mr Emanuel DIEZ, members

assisted by:

Mr Michele de SALVIA, Secretary
Ms Margaret KILLERBY, Deputy Secretary

has delivered the following decision after due deliberation.

PROCEDURE

1. The appellant lodged her appeal on 23 September 1988. It was entered in the Appeals Board's register on the same day under No. 153/1988.
2. The observations of the Secretary General were sent to the appellant on 20 October 1988.
3. The reply of the appellant was sent to the Secretary General on 9 November 1988.
4. The public hearing took place in the Commission Room of the European Commission of Human Rights Strasbourg, on 21 November 1988.
5. This hearing was attended by Ms E. BRAND, of the Strasbourg Bar, representing Ms G. STEPHAN, and Mr. E. HARREMOES, Director of Legal Affairs, representing the Secretary General, assisted by Mr. P. DEWAGUET, Administrative Officer, Directorate of Legal Affairs.

THE FACTS

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

6. By a contract dated 28 May 1986, Ms Stephan was employed as a temporary member of

the staff of the Council of Europe from 1 May 1986 to 31 December 1986.

7. Before this contract ended Ms Stephan was, provisionally, appointed to a permanent post, in grade B2, with effect from 1 December 1986 to 30 November 1987. Her probationary period was for one year.

8. Following the recommendation of the Recruitment Panel on 7 August 1987 and in the light of the reports on her work, the Secretary General extended the contract of Ms Stephan for a further probationary period of six months from 1 December 1987.

9. Owing to Ms Stephan's absence on sick leave from 25 November 1987, the Secretary General informed Ms Stephan, by letter dated 7 March 1988, that this further probationary period would commence at the end of her sick leave.

10. A form ("avenant") dated 3 February 1988 and containing an additional term extending her contract for a new probationary period of six months from 1 December 1987, was signed by the appellant. A second form ("avenant") dated 29 March 1988 and containing an additional term extending this contract for a new probationary period from the end of her sick leave on 23 March 1988, was also signed by the appellant.

11. On 15 June 1988, the Recruitment Panel advised the Secretary General that Ms Stephan's contract should be terminated as her work was not satisfactory.

12. On 17 June 1988, Ms Stephan was informed in writing by the Head of Establishment Division of the views of the Recruitment Panel.

13. On 27 June 1988, Ms Stephan sent the Secretary General her observations concerning her contract with the Council of Europe.

14. On 29 June 1988, the Director of Administration and Finance notified Ms Stephan that her contract would end on 30 September 1988.

15. On 22 July 1988, Ms Stephan wrote to the Secretary General requesting an extension of her probationary period.

16. By letter dated 8 August 1988, the Director of Administration and Finance rejected her request.

17. On 23 September 1988, Ms Stephan applied to the Chairman of the Board for a stay of execution of the decisions of 29 June 1988 and 8 August 1988 as their execution was, according to the appellant, likely to cause her grave prejudice difficult to redress.

18. On 10 October 1988, the Chairman of the Appeals Board rejected Ms Stephan's application for a stay of execution.

SUBMISSIONS BY THE PARTIES

19. The appellant is seeking the annulment of the Secretary General's decision, communicated to her by letter of 29 June 1988 and confirmed on 8 August 1988, to end her contract on 30 September 1988.

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

20. Concerning the admissibility of her complaint, the appellant stated that, by letter of 22 July 1988, she submitted a valid administrative complaint to the Secretary General concerning his decision to terminate her contract and that the Secretary General rejected her complaint by letter of 8 August 1988. She stated that Article 59 of the Staff Regulations did not require any specific formalities concerning the contents of the complaint and that there was no requirement that the grounds for the administrative complaint and the appeal should be the same.

21. As regards the merits of the case the appellant submitted that there were procedural defects affecting the validity of the decision taken by the Secretary General. In particular with regard to the probationary period, the appellant submitted that:

i. she should not have been required to complete the full probationary period of the one year or the maximum period of 18 months as Article 18 (2) of the regulations on appointments provides that this period shall be reduced in relation to the period of service completed as a temporary staff member;

ii. the recruitment panel should have examined her file at least 3 months before the probation period of 12 months expired. A formal decision should have been taken by the Secretary General and she should have been notified of this decision before the end of the 12 months contract.

22. With regard to her work, Ms Stephan claimed that the Secretary General had not shown that the decision had been taken in the light of all the facts and she considered that the reports on her work were contradictory.

23. The **Secretary General**'s submissions may be summarised as follows.

The Secretary General stated that the appeal was inadmissible as the appellant had failed to comply with the requirements concerning administrative complaints under Article 59 of the Staff Regulations. In particular her letter of 22 July 1988 could not be considered to be an administrative complaint as she had not indicated that she was making an administrative complaint under this Article and had not contested the decision of the Secretary General of 29 June 1988 to end her contract. The letter dealt essentially with the means of calculating her probationary period. Furthermore, the Secretary General stated that even if the letter could amount to an administrative complaint the appeal proceedings should be confined to the matters raised in the letter.

24. With regard to the probationary period the Secretary General submitted that:

i. under Order 614 of 8 July 1982 a reduction in the probationary period was possible only after 12 months temporary service. As the appellant had not completed 12 months temporary service she was not entitled to any reduction;

ii. in compliance with Article 20 (1) of the regulations on appointments the Recruitment Panel met on 7 August 1987 and proposed that the appellant's contract should be extended for a new probationary period of 6 months from 1 December 1987. The appellant was notified, at the latest by a note dated 28 October 1987, of the decision of the Secretary General to extend her probationary period. Owing to her illness, the probationary period could only begin when she returned to work in March 1988.

25. The Secretary General submitted that he had taken the decision to end the appellant's contract in the light of the opinion of the recruitment panel and the reports made concerning her work.

THE LAW

26. The appellant appealed against the decision taken by the Secretary General on 29 June 1988 to terminate the contract concerning her and thereby ending her appointment with the Council of Europe with effect from 30 September 1988. She sought the annulment of this decision.

27. The Secretary General submitted that the appellant had not complied with the conditions for bringing a case before the Appeals Board and that, in any event, the appeal was without foundation.

28. He pointed out, as his main submission, that the appeal was inadmissible as first it had not been brought after an administrative complaint as required by Article 59 of the Staff Regulations and secondly, even if there had been an administrative complaint, the complaint and the appeal did not concern the same question.

29. In this respect, the appellant submitted that by her letter dated 22 July 1988 she had requested, in substance, the modification of the decision taken concerning her. According to her, Article 59 of the Staff Regulations did not require any special formalities concerning the drafting of the administrative complaint and the complaint did not have expressly to take account of the legal aspects of the case. Moreover, there was no requirement that the grounds presented in the administrative complaint should be the same as those set out in the appeal.

30. As the Appeals Board has pointed out on several occasions, the formalities and the procedures laid down in the Staff Regulations are designed to ensure the observance of the principle of legal certainty inherent in the Council of Europe system, in the interests of both the Organisation and the members of staff (see the decision in Appeal 129/1985 of 25 July 1986 with references).

31. Observance of the principle of legal certainty requires that the control of the legality of an administrative act by the Appeals Board is possible only where the procedures provided for this purpose by the rules in force have been previously respected.

32. In this case, the parties have different opinions concerning the nature of the request presented by the appellant on 22 July 1988. The Secretary General did not consider it to be an administrative "complaint" under Article 59 of the Staff Regulations or having the character of an administrative "complaint" for the purpose of this appeal.

33. The Board notes that the appeal is against the decision to terminate the contract of 29 June 1988 (as well as against the confirmative decision of 8 August 1988) and that the letter sent by the appellant on 22 July 1988 does not refer to this. The letter in fact concerns only the communication of 17 June 1988 and the calculation of the probationary period.

34. Although the appellant presented no formal administrative complaint against the decision to terminate her appointment, the clear implication of her request of 22 July 1988 for an extension of the probationary period must be that if it were granted the termination of her

appointment by the administrative authorities would have been made impossible. It follows that her request presented on 22 July 1988 and the appeal presented to the Board are linked.

35. Whatever may be the solution to this problem, the Board considers that in any event the appeal is without foundation for the following reasons.

36. According to the appellant, the procedure concerning her was defective.

37. The Board examined the allegations made by the appellant. It considers that none of the matters submitted to it supports these allegations.

38. First, Order 614, on the basis of which the Secretary General rejected the request for a reduction of the first probationary period, fully complies with the provisions of paragraph 2 of Article 18 of the regulations on appointments.

39. Secondly, the appellant had in fact been informed not later than 28 October 1987 of the extension of the probationary period. Moreover, it should be noted that neither paragraph 3 of Article 20 of the said regulations nor any other rules require a period of notice to be given.

40. In addition, first by her silence and then by signing the two forms extending her contract ("avenant") dated 3 February 1988 and 29 March 1988, the appellant agreed to the procedure which had been carried out in this case.

41. It follows consequently that no illegality has been shown especially as the decision of 29 June 1988 was based on the reports on her work prepared by the different heads of department and that in taking this decision the Secretary General had not infringed the rights which the appellant could legitimately claim to be entitled. In particular the Board notes that the procedure provided for by paragraph 4 of Article 20 of the regulations on appointments had been respected in this case.

For these reasons,

the Appeals Board:

1. Declares the appeal unfounded;
2. Dismisses it;
3. Orders that each party shall bear its own costs.

Delivered in Strasbourg, the French text being authentic.

The Secretary of the
Appeals Board

The Chairman of the
Appeals Board

M. de SALVIA

G. LAGERGREN

Read in public on 17 February 1989 by Mr. Emmanuel DIEZ

E. DIEZ

