

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

## TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

**Appeal No. 171/1993 (AMAT v. Secretary General)**

The Administrative Tribunal, composed of:

Mr. Carlo RUSSO, President  
Mr. Kåre HAUGE, and  
Mr. Alan H. Grey, judges

assisted by:

Mr. Sergio SANSOTTA, Registrar, and  
Mrs. Claudia WESTERDIEK, Deputy Registrar,

has delivered the following decision after due deliberation.

### PROCEEDINGS

1. The appellant lodged her appeal on 8 July 1993 and it was registered on that day under file No. 171/1993.
2. The Secretary General submitted her observations on 30 September 1993.
3. The appellant's reply is dated 27 October 1993.
4. The public hearing took place in the Court Room of the European Court of Human Rights, Strasbourg, on 24 March 1994. The appellant, Mrs. C. AMAT, was assisted by Mr. L. LANG; the Secretary General was represented by Mr. E. HARREMOES, Director of Legal Affairs, assisted by Mr. T. MARKERT, Administrative Officer in the Directorate of Legal Affairs.
5. In Resolution (94) 11 of 5 April 1994, the Committee of Ministers decided that the Appeals Board would henceforth be known as the Administrative Tribunal of the Council of Europe.

## **THE FACTS**

6. The appellant, a French national, joined the Council of Europe in 1985. She is a permanent staff member in grade B3, serving with the Visitors Unit in the Directorate of Information.

7. On 27 April 1990 the Secretary General, wishing to increase the number of press officers in the Directorate of Information, invited staff who felt that they possessed the necessary qualifications and skills to contact the Head of Personnel Division. The appellant, who then occupied a B2 post, applied on 11 May 1990. On 14 January 1991 the Head of Personnel Division informed her that the departmental chiefs concerned had decided that her skills and professional experience qualified her to join the press officers' team, and that, since there were no suitable vacancies at the time, he would contact her again if the occasion arose. Apart from the appellant, there was only one other applicant, a B3 staff member, who was considered potentially suitable for such a post.

8. When the Council of Europe's 1991 budget was adopted, the Committee of Ministers did not accept the Secretary General's proposals concerning the creation of new press officer posts, but only approved the creation of three specific temporary press officer posts in grade B5. The Secretary General accordingly recruited temporary staff. When the 1992 budget was adopted, the Committee of Ministers agreed to convert these three temporary posts into permanent posts for a fixed period of three years.

9. On 12 February 1993 the Secretary General issued Vacancy Notice No. 23/93, announcing an external competition to fill the three press officer posts which had been created for three years from 1 January 1992. A fourth press officer post, which had become vacant, was advertised internally in Vacancy Notice No. 24/93. The appellant applied in response to both of these vacancy notices.

10. On 22 March 1993 the appellant lodged an administrative complaint against the Secretary General's decision to hold an external competition, as announced in Vacancy Notice No. 23/93. This complaint was rejected on 11 May 1993.

11. On 18 May 1993 the appellant was informed that, following her interview with the Recruitment Panel concerning her application (Vacancy Notice No. 23/93), the Secretary General had, on the Panel's recommendation, placed her name on a reserve list valid for three years.

12. Miss B., Mr. G. and Miss Z., the temporary staff who had previously occupied the three temporary press officer posts, had been appointed to the three new posts. A permanent B4 staff member had also been appointed to the fourth press officer post (Vacancy Notice No. 24/93).

## **THE LAW**

13. The appellant is appealing, firstly, against the Secretary General's decision to hold an outside competition to recruit three press officers and, secondly, against her decisions appointing Miss B., Mr. G. and Miss Z. to the posts in question.

14. The appellant considers that the decision to hold an external competition violated the provisions in the Staff Regulations concerning appointments to vacant posts, and particularly Article

12 para. 2.

15. The appellant further considers that this decision violated the rights which she had acquired under the procedure launched in April 1990 and the memorandum sent her by the Head of Personnel Division on 14 January 1991. She argues that the fact that she had supplemented her professional training by taking a master's degree in law would have justified an exceptional promotion within the meaning of Article 22 para. 1 of the Regulations on Appointments. She also suggests that she could have been seconded to one of the temporary posts or, at any rate, to one of the fixed-term posts.

16. The Secretary General considers the appeal unfounded and maintains that she exercised her discretionary powers in deciding to use the external recruitment procedure to fill the posts in question, that this decision was consistent both with Article 6 para. 1 of the Regulations on Appointments and with Article 12 of the Staff Regulations, and that it violated no rights acquired by the appellant.

17. Concerning the alleged violation of Article 12 of the Staff Regulations, the Secretary General states that pressing service requirements led her to use the external recruitment procedure. She points out that the posts in question were created for a fixed period and that it is by no means certain, in view of financial and budget constraints, that they will be maintained in 1995. A permanent staff member seconded to such a post would, if it were not maintained, have to find a vacancy in the same grade, or be transferred to a lower grade post, in accordance with Article 28 para. 1 of the Regulations on Appointments, which requires the approval of the Committee of Ministers. Given the special nature of a press officer's duties and the importance of communication with the public, she also considers that the experience acquired by the appellant was limited by comparison with that of the external candidates, and indeed that acquired by the candidates selected after the competition. In effect, the appellant wanted the privilege of not having to compete with other candidates, particularly external candidates. She also considers that the appellant's appointment would not have been authorised by Article 22 para. 1 of the Regulations on Appointments.

18. With regard to the Notice of 27 April 1990 and the letter of 14 January 1991 from the Head of Personnel Division, the Secretary General points out that the actual terms of the Notice make it clear that this was not a recruitment procedure, within the meaning of the Staff Regulations, but simply a survey of staff intentions, within the general context of staff management. No specific promise of a post had been given the appellant.

19. Concerning the request that the decisions appointing the three candidates selected through the external recruitment procedure be set aside, the Secretary General considers that the appellant has not shown that there was any irregularity in the conduct of that procedure.

20. As the Administrative Tribunal/Appeals Board has ruled in the past, the Secretary General, being vested with the authority to make appointments (Article 36c of the Statute of the Council of Europe, and Article 11 of the Staff Regulations) and holding primary responsibility for the organisation of the Secretariat, is best qualified to know and assess the needs of the Organisation and to achieve a proper balance between the various criteria which must guide her choice. This discretionary power must always, however, be exercised lawfully. The decisions taken must respect the relevant forms and procedures laid down by the regulations in force (ABCE No. 170/92,

Decision of 25.9.92, Müller-Rappard v. Secretary General). This rule is essential to protection of the rights and interests of those who constitute the Organisation's overall administrative workforce.

21. Regarding the circumstances of the case, the Tribunal cannot accept the appellant's argument that the decision to fill the three press officer posts by external competition violated the provisions concerning appointments to vacant posts included in the Staff Regulations, and specifically Article 12 para. 2.

22. Under Article 6 para. 1 of the Regulations on Appointments, when a post becomes vacant, the Secretary General decides, having regard to Article 12 of the Staff Regulations, whether the external recruitment procedure should be followed or an internal competition organised for serving staff.

23. The Tribunal points out that Article 12 of the Staff Regulations lays down two basic principles in the matter of recruitment policy: recruitment must aim at ensuring the employment of staff of the highest ability, efficiency and integrity (paragraph 1), and the Secretary General, in making appointments to vacant posts, is required to make due allowance for the qualifications and experience of serving staff members (paragraph 2). This recognises the latter's "right to a career". Although serving staff are not automatically entitled to priority, promotions policy should aim to give them reasonable opportunities of acceding to vacant posts within the Organisation. This requirement is clearly deductible from the actual text of the provision in question, which reserves the possibility of bringing in "fresh talent from time to time" (cf. ABCE No. 170/92, Decision of 25.9.92, Müller-Rappard v. Secretary General).

24. In considering the Secretary General's decision to fill the three vacant B5 press officer posts by external competition, the Tribunal must decide whether the reasons given by the Secretary General for doing so seem sufficient.

25. First of all, the Tribunal recognises that the Organisation's relations with the press and public are important, and that this makes it necessary to appoint persons with superior qualifications and professional experience in this field to press officer posts in this grade.

26. The Tribunal further notes that the three posts in question were created for a period of three years. The appointment of a permanent staff member to a fixed-term post is likely to cause reintegration problems when that contract expires and the staff member in question has either to be appointed to a vacant post corresponding to his or her grade, or to be transferred to a lower grade, in accordance with Article 28 of the Regulations on Appointments. In this connection, it should be noted that a fourth press officer post of unlimited duration was also filled by internal competition.

27. A further consideration may be added: having supplemented her professional training by taking a master's degree in law while working for the Council, the appellant stood a reasonable chance of demonstrating her qualifications and continuing her career on a markedly higher level at the time that she took part in the external and internal competitions.

28. The Tribunal accordingly concludes that the Secretary General was entitled to hold an external competition to fill the three press officer posts which had been created for a three-year period. This means that she did not exceed her powers under Articles 11 and 12 of the Staff Regulations and Article 6 of the Regulations on Appointments. Having completed the competition

successfully, the appellant was placed on a reserve list.

29. Moreover, the Tribunal is not convinced by the appellant's claim that the Secretary General's decision to hold an external competition to fill the three press officer posts violated rights which she had acquired by virtue of the procedure launched in April 1990 and the memorandum sent her on 14 January 1991 by the Head of Personnel Division.

30. The Tribunal considers that the special nature of the invitation addressed to permanent staff in April 1990 with a view to strengthening the press officer team, and the reply of January 1991, informing the appellant that her interview with the departmental chiefs concerned had led them to decide that she was suitable for press officer duties, could well have given her certain hopes for her future career. However, the initial invitation and the action subsequently taken cannot be regarded as constituting an internal competition within the meaning of the Regulations on Appointments. Neither the wording of the notice of April 1990 nor the terms used in the memorandum of January 1991 were such as to confer rights on the appellant.

31. Moreover, the file does not indicate that the way in which the external competition was conducted, and the successful candidates were appointed, was in any way unlawful.

32. In short, nothing unlawful can be shown to have occurred.

For these reasons, the Administrative Tribunal

Declares the appeal to be unfounded;

Dismisses it, and

Orders that each party shall bear its own costs.

Delivered in Strasbourg on 21 April 1994, the French text of the decision being authentic.

The Registrar of the  
Administrative Tribunal

The Chairman of the  
Administrative Tribunal

S. SANSOTTA

C RUSSO