

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

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

Appeal No. 225/1996 (STAFF COMMITTEE (III) v. Secretary General)

The Administrative Tribunal, composed of:

Mr Carlo RUSSO, Chair,
Mr Kåre HAUGE,
Mr Alan 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 Staff Committee of the Council of Europe lodged its appeal on 25 October 1996. The appeal was registered on 28 October 1996 under file No. 225/1996.
2. On 27 November 1996, the Secretary General submitted his observations on the appeal. On 26 December 1996, the appellant submitted its observations in reply. On 4 February 1997, the Secretary General filed observations in reply dated 3 February 1997.
3. The appellant was represented by Professor D. RUZIÉ and the Secretary General by Mr R. LAMPONI, Head of the Legal Advice and Treaty Office Division, Directorate of Legal Affairs. The parties agreed to waive oral proceedings.

THE FACTS

4. On 12 February 1996, the appellant lodged an appeal against the Secretary General's decision to extend the contract of the Director of Administration, Mr G, who was on secondment to the Council of Europe.

In its decision of 2 July 1996, the Administrative Tribunal declared the appeal founded

and annulled the decision (ATCE, decision of 2 July 1996 on Appeal No. 215/1996, Staff Committee (II) v. Secretary General).

5. In the present appeal, the appellant requests an interpretation of the Tribunal's decision.

The relevant facts can be summed up as follows.

6. Some days after the Tribunal's decision, the Secretary General informed the staff representatives of his intention to end Mr G's contract with three months' notice and begin the procedure to fill the resulting vacancy.

7. On 9 July 1996, he sent a note to all staff in which he explained:

"To implement the decision of the Administrative Tribunal, Mr G has been given notice that his contract as Director of Administration will expire on 31 October 1996.

The post will be filled in accordance with Article 25 of the Regulations on Appointments. A Vacancy Notice will be issued shortly."

8. On 2 August 1996, the Secretary General informed the Tribunal of the execution of its decision of 2 July 1996 (Staff Regulations, Article 60, paragraph 6, second sentence).

9. A Vacancy Notice was published on 17 July 1996 and at the Committee of Ministers meeting of 14 to 17 October 1996, the Secretary General announced his intention to appoint Mr G to the post of Director of Administration under the appointment procedure which had been set in motion.

10. According to the information provided by the Secretary General to the Tribunal, Mr G left the French civil service on 23 October 1996.

11. On 23 October 1996, the Secretary General wrote to the French Permanent Representative to the Council of Europe as follows (translation):

"In a letter of 12 May 1995, I asked you to have your authorities extend Mr G's secondment until 31 December 1999.

As you know, the decision to renew Mr G's contract has been annulled by the Administrative Tribunal of the Council of Europe on the grounds that, under the Staff Regulations, a government official cannot be seconded for more than six years.

Following a new recruitment procedure which has just been completed, I decided, after consulting the Ministers' Deputies, to re-appoint Mr G to the post of Director of Administration, not on secondment as before but on a permanent basis.

Could you therefore inform your authorities that Mr G's secondment should not be extended beyond 31 October?"

THE LAW

12. The appellant requests an interpretation of the Administrative Tribunal's decision of 2 July 1996 on its first appeal (No. 215/1996).

13. The Tribunal notes that the Secretary General does not question the Tribunal's competence to interpret the decision of 2 July 1996. The Tribunal has already held that, in the absence of any provision on the matter in the Staff Regulations and the Statute of the Tribunal, it has inherent jurisdiction to deliver interpretative rulings (ATCE, decision of 25 March 1996 in Appeal No. 212/1995, *Bouillon II v. Secretary General*, paragraph 21).

In that decision, the Tribunal noted that "neither the Staff Regulations nor the Statute of the Tribunal [gave] it explicit jurisdiction in matters concerning the interpretation of its decisions" (*ibidem*, paragraph 21). Even less, therefore, let it be said, does the Statute contain any provisions as to what the membership of the Tribunal should be when it examines requests for interpretations.

Since one of the Tribunal members who took part in the determination of Appeal No. 215/1996 is no longer a judge, the Tribunal, in the absence of written rules to the contrary, holds that it must abide by the principle – confirmed by the European Court of Human Rights (Rule 57, paragraph 4, Rules of Court "A" and Rule 59, paragraph 5, Rules of Court "B") – that in interpretation cases a tribunal should be composed, as far as possible, of the same judges as delivered the decision to be interpreted.

Accordingly, the Tribunal bench examining the present request for an interpretation will be the same as examined Appeal No. 215/1996.

14. Arguing that the request is admissible and on what grounds, the appellant puts the following question to the Tribunal:

"Although setting aside the Secretary General's decision to renew the Director of Administration's contract, did the Tribunal intend allowing the Secretary General to keep him in post?"

15. The Secretary General argues that the request for an interpretation is irrelevant to the case in that the appellant alleges failure to execute the Tribunal's decision on the basis of Article 20 of the Staff Regulations, which deals, among other things, with secondment of a civil servant of a member state to the Council of Europe. He also disputes the admissibility of the request, contending that it was late. In the alternative, he asks the Tribunal to find that the way in which he executed the decision on Appeal No. 215/1996 was in accordance with the decision.

16. With regard to the Secretary General's first objection, the Tribunal notes that, during the proceedings, the appellant and the Secretary General put forward arguments which are not directly related to the question put to the Tribunal.

When examining a request for an interpretation, the Tribunal "goes no further than to clarify the meaning and scope which it intended to give to a previous decision which issued from its own deliberations, specifying if need be what it thereby decided with binding force"

(European Court of Human Rights, Ringeisen case (interpretation of the Judgment of 22 June 1972), Judgment of 23 June 1973, Series A No.16, p. 8, paragraph 13). The Tribunal accordingly will take account only of arguments relating to the question put to it.

Furthermore, in its observations in reply, the appellant stated that its appeal sought only to challenge keeping Mr G uninterruptedly in post from the end of his previous contract to the start of the new one.

17. On the lateness objection, the appellant says that it delayed lodging its request until 28 October 1996 so as not to inconvenience the Secretary General during the filling of the post Mr G had occupied, which was a sensitive one.

In addition, and above all, the appellant argues that since it is challenging the result at which the Secretary General arrived in keeping Mr G uninterruptedly in post beyond the limit set by Article 20 of the Staff Regulations, it had to have proof of his having done so before it lodged the request. In particular, it notes that if Mr G had not been re-appointed, it would not have had any interest in challenging the procedural defect and the Secretary General would not have failed to criticise it for vexatiousness.

18. For his part, the Secretary General believes that in the absence of specific time-limits for lodging requests for interpretations, the customary time-limits should apply, in compliance with the general principle of legal certainty, and that, by analogy with Article 60 of the Staff Regulations, a request for an interpretation alleging improper execution must be lodged within sixty days from the date of publication of the execution measures, or the occurrence indicative of failure to execute. In the instant case, he contends, the sixty-day period started on 9 July 1996 and therefore the request, lodged on 28 October 1996, was inadmissible.

19. In reply, the appellant maintains that there is no reason to apply the customary appeal time-limits to requests for interpretations.

On the other hand, it acknowledges that the general principle of legal certainty does apply and that there is a good case for applying the concept of reasonable time as in the occasional cases where new evidence emerges and the period for appeal is restarted.

It argues that a request for an interpretation can only be made once a problem arises in the execution of a decision and that it is from that point on that the reasonable-time requirement applies.

20. Before ruling on the objection that the appeal is out of time, the Tribunal points out that its decisions are binding on the parties from the time of delivery. When a decision sets aside administrative measures, unless otherwise stated by the Tribunal, such measures cease to have any legal existence. Any suggestion that, in cases other than those in which the Tribunal specifically so permits, the Tribunal's decisions are not to be executed immediately would be tantamount to disregarding the binding force of its decisions.

21. This is in keeping with the provisions of Part VII of the Staff Regulations, "Disputes", which deals with disagreements between the staff and the Secretary General and not – like other parts of the Staff Regulations – with the Secretariat's work. Under Part VII there are two bodies

to deal with disputes: the Advisory Committee on Disputes, which expresses an opinion, and the Tribunal, whose decisions “shall be binding on the parties as soon as they are delivered” (Article 60, paragraph 6, of Staff Regulations). Not to recognise the binding and immediate effect of the Tribunal’s decisions would be to empty Part VII of all meaning.

22. On the lateness question, the Tribunal holds that, in the absence of any specific provision, the sixty-day time-limit set by Article 60, paragraph 3, of the Staff Regulations in disputes cannot be applied by analogy. Instead, an assessment must be made as to what lapse of time from delivery of the initial decision would be “reasonable”.

23. The Tribunal notes that the point at issue between the two parties is the time at which the Tribunal’s decision of 2 July 1996 took effect.

The appellant argues that the Tribunal’s decision took effect retroactively on 1 November 1995, whereas the Secretary General does not really take any stance on the matter. He simply states that, in exercising the discretion vested in him in execution matters, he formed the view that it was within the spirit of the rules governing staff contracts to give Mr G a period of notice. The length of notice, he adds, was that provided for in particular by Article 17, paragraph 2, and Article 23, paragraph 3, sub-paragraph a, of the Staff Regulations (observations of 26 November 1996).

24. The Tribunal must therefore consider whether the three months and sixteen days from 9 July 1996 (the date on which the appellant, along with the rest of the staff, was informed that Mr G had been given notice expiring on 31 October 1996, see paragraph 6 above) to 25 October 1996 (the date on which the request for an interpretation was made) was a reasonable lapse of time.

25. The Tribunal does not believe that the Secretary General’s discretion in the execution of its decisions extends to postponement of execution, even on the basis of provisions of the Staff Regulations. Moreover, the provisions relied upon concern the termination of contracts of permanent staff during the probationary period (Article 17) and the termination of fixed-term or indefinite contracts by resignation of a member of staff (Article 23, paragraph 3, sub-paragraph a).

26. In determining the Secretary General’s objection, the Tribunal attaches particular importance to the fact that the present request is essentially concerned only with whether Mr G’s contract should have been terminated: a) immediately after the decision on Appeal No. 215/1996 – namely on 2 July 1996; b) retroactively, as the appellant argues, on 1 November 1995; or c) on expiry of the period of notice given by the Secretary General.

The Tribunal notes that the appellant did not challenge the way in which the Tribunal’s decision was being executed, of which it had been aware for more than three months, until execution was practically complete.

27. The appellant contends that it had to wait for proof that the Secretary General had kept Mr G in post beyond the six-year limit set by Article 20 of the Staff Regulations.

However, the Tribunal observes that the appellant knew as early as 2 July 1996 that the

time-limit laid down in Article 20 of the Staff Regulations had been exceeded.

28. It notes the appellant's statement that it waited until the procedure to fill the Director of Administration post left vacant following the Tribunal's decision had been completed so as not to inconvenience the Secretary General during the filling of what was a sensitive post.

However, it has to be said that delaying until the end of the recruitment procedure launched in July 1996 has rendered the request for interpretation devoid of legal significance in the instant case. Equally, neither the Staff Regulations nor the Statute of the Tribunal empower the Tribunal to deliver a general, abstract interpretation, and so any interpretative ruling on the question raised by the appellant would overstep the Tribunal's jurisdiction in dispute matters as laid down in the aforementioned instruments (see, *mutatis mutandis*, European Court of Human Rights, case of *Allenet de Ribemont v. France* (interpretation of the Judgment of 10 February 1995), Judgment of 7 August 1996, paragraph 19).

29. Accordingly, the Tribunal considers that the reasonable time for lodging the present request for an interpretation was exceeded.

30. Under Article 11, paragraph 3, of the Statute of the Tribunal, the appellant asks for its costs to be reimbursed. This provision reads: "In cases where it has rejected an appeal, the Tribunal may, if it considers there are exceptional circumstances justifying such an order, decide that the Council shall reimburse in whole or in part properly vouched expenses incurred by the appellant."

31. The appellant maintains that the circumstances of the case were exceptional. For his part, the Secretary General opposes the claim. He concedes that requests for interpretations are unusual, but in his view that in itself does not make the circumstances of the case exceptional.

32. The Tribunal accepts that the circumstances of the case were exceptional and, in accordance with the Article 11, paragraph 3, awards the appellant costs of 5 000 French francs.

For these reasons, the Administrative Tribunal:

Finds that the request was not lodged within a reasonable time and therefore that it is not required to rule on the question submitted by the appellant;

Orders the Secretary General to reimburse the appellant the sum of 5 000 French francs in costs.

Delivered at Strasbourg on 21 March 1997, the French text being authentic.

The Registrar of the
Administrative Tribunal

S. SANSOTTA

The Chair of the
Administrative Tribunal

C RUSSO