

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

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

Appeal No. 241/1998 (Veronica TONNA v. Secretary General)

The Administrative Tribunal, composed of:

Mr Carlo RUSSO, Chair,
Mr Kåre HAUGE,
Mr José da CRUZ RODRIGUES, Judges,

assisted by:

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

has delivered the following decision after due deliberation.

PROCEEDINGS

1. Ms Veronica TONNA lodged her appeal on 23 September 1997. On 24 September 1997, the appeal was registered under file No. 241/1997.
2. On 4 November 1997 the appellant's representative, Mr Michel WELSCHINGER, a member of the Colmar Bar, filed a supplementary memorial.
3. On 15 December 1997, the Secretary General submitted his observations on the appeal. The appellant's representative filed observations in reply on 20 January 1998.
4. On 13 February 1998 the Staff Committee, represented by its Chair, Mr Alfonso ZARDI, applied to intervene in the case in support of the appellant's submissions.
5. In an Order issued on 16 April 1998, in accordance with Article 10 of the Tribunal's Statute, the Chair authorized the Staff Committee to submit written observations.
6. On 11 May 1998, the Staff Committee submitted its written observations, copies of which were disclosed to the parties. In filing its submissions, the Staff Committee sought permission to take part in the oral proceedings as well. Permission was refused.

7. The public hearing took place in the Human Rights Building, Strasbourg, on 27 July 1998. The appellant was represented by Mr Michel WELSCHINGER and the Secretary General by Mr Roberto LAMPONI, Head of the Legal Adviser's Service, Department of Legal Affairs, assisted by Ms Meri RANTALA, Administrative Officer in the same directorate.

THE FACTS

8. The appellant, who has been an employee of the Council of Europe since 15 June 1970, is a permanent staff member on grade B3. Since 1 January 1991, after an internal competition (Vacancy Notice No. 23/90), she has held a post of private secretary to the Executive Director of the European Centre for Global Interdependence and Solidarity (the North-South Centre) in Lisbon.

A. The Council of Europe North-South Centre and the position regarding the Council's Lisbon staff

9. The Council of Europe North-South Centre was established by Committee of Ministers Resolution (89) 14, adopted on 16 November 1989, in the form of a partial agreement. It began operating on 1 May 1990 for an initial period of three years. To begin with, the centre was in the nature of a pilot project. On 21 October 1993, the Committee of Ministers made the centre permanent.

10. Article 18 of the General Agreement on Privileges and Immunities of the Council of Europe of 2 September 1949, to which Portugal acceded on 6 July 1982, provides:

“Officials of the Council of Europe shall:

- (a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity and within the limit of their authority;
- (b) be exempt from taxation on the salaries and emoluments paid to them by the Council of Europe;
- (c) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and aliens' registration;
- (d) be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable rank forming part of diplomatic missions to the government concerned;
- (e) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;
- (f) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question, and to re-export the same free of duty to their country of domicile.”

11. Under Article 19 of the General Agreement, privileges and immunities are granted to officials in the interests of the Council of Europe and not for the personal benefit of the individuals themselves.

12. Article 20 of the General Agreement allows the Council of Europe to conclude with any member or members supplementary agreements modifying the provisions of the General Agreement so far as that member or those members are concerned.

13. A first draft supplementary agreement to meet the needs of the North-South Centre and the Lisbon staff was submitted by the Portuguese authorities on 8 April 1992. On 4 June 1992, the Directorate of Legal Affairs sent its comments to the Portuguese authorities.

14. On 16 March 1993, the Secretary General wrote to the Permanent Representative of Portugal to the Council of Europe drawing his attention to the difficulties, which staff of the Lisbon Office were having in obtaining a residence permit from the Portuguese authorities to prove their lawful presence in Portugal.

15. In March 1993 the Lisbon Ministry of Foreign Affairs began issuing staff with an attestation certifying their duties ("*certificado de funções*"). Other Portuguese authorities did not recognise the attestations as residence permits, however.

16. On 3 September 1993, the Portuguese authorities submitted further proposals concerning the supplementary agreement. The Directorate of Legal Affairs replied on 27 October 1993.

17. The Secretary General made further representations to the Permanent Representative of Portugal dated 30 March 1994.

18. On 7 July 1994, the Portuguese authorities submitted a further draft supplementary agreement to the Council of Europe. The draft was examined in the period from July to October 1994 and, after linguistic correction, was submitted to the Committee of Ministers in three languages. The Committee of Ministers approved it on 24 November 1994. The agreement was signed on 15 December 1994.

19. In a letter dated 9 August 1995, the Secretary General, referring to Article 18, paragraph (c), of the General Agreement on Privileges and Immunities of the Council of Europe, explained to the Portuguese Permanent Representative that recognition of the Council of Europe staff privilege concerned required that staff be issued with appropriate residence permits. On 17 October 1995, the Portuguese Permanent Representative informed the Secretary General that to minimise the inconveniences caused by delay in ratifying the seat agreement concerning the North-South Centre, particularly with regard to visas and residence permits, provisional measures would be introduced. Replying on 17 October 1995, the Secretary General asked for details of the provisional measures. In his reply, dated 13 November 1995, the Portuguese Permanent Representative stated that staff of the North-South Centre had been issued with identity cards.

20. The supplementary agreement was approved by the Portuguese Parliament on 17 April 1996 and ratified by Portugal on 30 August 1996. After publication of the ratification in the

Portuguese official gazette on 24 September 1996, the agreement entered into force on 24 October 1996.

21. The supplementary agreement provides that Articles 17, 18 and 19 of the General Agreement on Privileges and Immunities of the Council of Europe apply to staff who are not permanently resident in Portugal. In addition, such staff are entitled to import or buy cars and other products free of value added tax. Newly assigned staff have six months to do so, running from their first day of residence in Portugal; they are entitled to buy or import a car free of value added tax at the time of their arrival and every five years thereafter. Staff already in post were given until 30 April 1997 to request purchase or import of a car free of value added tax.

22. After the letter from the Portuguese Permanent Representative to the Secretary General dated 13 November 1995, staff received their identity cards, dated February 1996, on 11 December 1996.

B. The particular circumstances of the case

23. Since 1994, there has been an exchange of memorandums between the appellant and Personnel Division concerning the various difficulties which she maintains she has encountered in Portugal as a Maltese national not having a residence permit and in particular concerning purchase of a car free of value added tax.

24. In reply to questions put to him by fax dated 17 July 1995, the Head of Personnel, in a memorandum dated 5 September 1995, informed the appellant:

“The right to buy a car tax-free is granted entirely at the discretion of the host country. Tax-free purchase of a car or other consumer item is thus not an entitlement deriving from status as an international civil servant. Certainly, the seat agreement with the Portuguese authorities was approved by the Council of Europe Committee of Ministers in December 1994 and is in the process of being ratified. It provides that staff of the North-South Centre may import or buy a motor vehicle tax-free. In the meantime, it is unfortunately impossible for us to request that you be allowed to buy a car tax-free in France since that would involve the Council of Europe in supplying false information to the French authorities.

I enclose the requested attestation, a copy of which has been sent to your Maltese address.

As regards issue of a residence permit, the Secretary General has, as you know, responded to your letters by several times contacting the Portuguese authorities to have the situation regarding Lisbon staff put on a legal footing. Further representations have just been made and we hope that this time they will produce positive results.

I regret that, at the time of your appointment, you were insufficiently informed of the various practical implications, for Lisbon staff, of the lack of a seat agreement.

...”

Enclosed with the memorandum was an attestation certifying that the appellant was a Council of Europe official working at the North-South Centre in Lisbon.

25. On 26 September 1996, the appellant sent the Secretary General a memorandum concerning her “illegal situation” in Portugal. The relevant passages of the memorandum read:

“Referring to Article 40 of the Staff Regulations, I would draw your attention to my illegal situation in Portugal, which has lasted nearly six years.

(...)

Although a Council of Europe official having the same status as my colleagues in Strasbourg and although entitled to the same conditions as they, I am at present still:

1. without a residence permit;
2. in possession of an illegal car (with 600K plates, insured in Portugal);
3. unable to buy a new car tax-free, despite my efforts to do so.

This situation has caused me, and continues to cause me, many additional worries and inconveniences.

On arrival in Lisbon in 1991, I intended, but have been unable, to buy a new car tax-free. I have been extremely patient all this time but my car will shortly be 16 years old and although I frequently take it to the garage for checks, my safety and that of my family and passengers are at permanent risk.

I therefore urgently need to buy a new car.

In view of my illegal situation – which is not my fault and which I was not warned about before coming to Portugal – I would request your permission for the Council of Europe to reimburse me any taxes I have to pay in buying a new car. I would be grateful for confirmation of your authorisation as soon as possible.

...”

26. On 16 December 1996, not having received any reply, the appellant filed an administrative complaint challenging the implicit rejection of her request of 26 September 1996. Referring to her memorandum of 26 September 1996, she complained of her “thoroughly unclear administrative situation in Portuguese law” as a result of not having any residence document, contrary to Article 18 (c) of the General Agreement. In this connection she added that, for want of any explanations, she was unable to judge the value of the Ministry of Foreign Affairs card, which she had received on 11 December 1996. She once again pointed out that she had not had the benefit of the car-buying facility provided for in Article 18 (f) of the General Agreement. She contended that, at the time of her transfer to Lisbon, she had been misled about that aspect of her employment conditions. She asked the Secretary General to ensure that the Portuguese authorities complied fully with the provisions of Article 18 (c) and (f) of the General

Agreement or else arrange for a compensatory payment.

27. At her request, the complaint was submitted to the Advisory Committee on Disputes on 19 December 1996.

28. In Opinion No. 7/1996, dated 1 July 1997, the Advisory Committee on Disputes delivered its conclusion that the complaint was not only late but also groundless.

29. The committee decided it was competent to deal with the complaint that the Secretary General had not adequately protected the appellant's interests. However, it took the view that the complaint that she had been misled about working conditions in Lisbon should have been made as soon as she had become aware what the real conditions were. With regard to the merits of the complaint, the committee held firstly that, as a general principle of law, the Secretary General had an obligation to protect the administrative interests of Council of Europe staff, including those working in places other than Strasbourg. When the North-South Centre had been established, he had therefore had a duty, *inter alia*, to take appropriate steps to ensure that a seat agreement was reached without any unnecessary delay and to protect the interests of the centre's staff. The Council of Europe had in fact made persistent efforts to conclude an agreement with the Portuguese authorities, and the Secretary General, in addition to requests to speed up the procedure, had twice written to the Portuguese authorities about the Lisbon staff, requesting that they be provided with appropriate residence permits. The delay in the negotiations concerning the seat agreement had been entirely attributable to the Portuguese authorities. Consequently, it could not be said that the Secretary General had failed in his obligation to protect the interests of the Lisbon staff. With regard to the appellant's second complaint, that she had not been able to buy a tax-free car, the committee noted that this was a privilege granted to staff of an international organisation by the host country and did not form part of the employment contract.

30. On 22 July 1997, the Director of Administration, on the Secretary General's behalf, rejected the administrative complaint.

31. On 21 September 1997, the appellant obtained the official registration papers for a car she had bought tax-free in April 1997.

THE LAW

32. The appeal is directed against the Secretary General's decision dismissing the administrative complaint concerning the appellant's circumstances in Portugal.

33. The appellant complains that the Secretary General neglected his duty to assist a staff member as laid down in Article 40 of the Staff Regulations. In the matter of her circumstances in Portugal from 1 January 1991 to 11 December 1996, she maintains that she did not have the benefit of Article 18, paragraph (c), of the General Agreement on Privileges and Immunities of the Council of Europe. She further complains that she did not have the benefit of Article 18, paragraph (f), of the General Agreement for buying a tax-free car. She also contends that the relevant Council of Europe services failed to provide her with the necessary information.

A. The Secretary General's preliminary objections

34. The Secretary General raises two preliminary objections. He contends that the appeal is inadmissible on the ground of lateness in so far as it concerns lack of information at the time the appellant took up her post in Lisbon and that it is baseless in so far as it concerns her residence circumstances in Portugal and purchase of a tax-free car. The Secretary General observes that, when the administrative complaint was lodged on 16 December 1996, the appellant had already been issued with a Portuguese identity document which all the Portuguese authorities seemed to recognise as a residence permit and that in April 1997 she had also bought a new car tax-free.

35. The appellant maintains that the appeal is admissible. She states that the subject of her initial request dated 26 September 1996 was the entirety of her circumstances in Portugal. Referring to the text of her administrative complaint, she further argues that she still had an interest in taking action because her doubts about the validity of the Portuguese identity document had not yet been allayed.

36. The Tribunal firstly points out that, in matters governed by the Staff Regulations and the appendices to them, anyone who is directly and adversely affected by an administrative measure has the right to refer the measure firstly to the Secretary General and then if necessary to the Administrative Tribunal except by *actio popularis* (see ATCE, Zimmermann v. Secretary General, Decision of 24 April 1997, paragraph 26). Article 59 of the Staff Regulations defines the notion of victim and lays down the circumstances in which a person affected by the act or the omission is entitled to take action. The interest which the person concerned must demonstrate must be direct – *ie* it must be capable of having an impact which is personal, and actual, that is to say that the impact must continue to exist for so long as the case has not been determined (see ABCE, Nos. 79-93/1983, Buhler and Others v. Secretary General, Decision of 1 March 1985, paragraph 69; and Nos. 94-99/1983, Nouari and Others v. Secretary General, Decision of 1 March 1985, paragraph 73).

37. In addition, in accordance with Article 60, paragraph 1, of the Staff Regulations, the Tribunal, in the disputes procedure, deals only with appeals lodged after dismissal of an administrative complaint. Here, Article 60, paragraph 1, requires not only that the complaint has been filed with the Secretary General but also that the heads of complaint submitted to the Tribunal have been raised in the manner prescribed in Article 59 (see ATCE, Zimmermann decision, paragraph 21 and the references contained therein).

38. The Tribunal notes that, before the present appeal, there was an exchange of memorandums between the appellant and the Council of Europe Directorate of Administration on the various difficulties she reported having encountered in Portugal. The appellant's memorandum to the Secretary General dated 26 September 1996 concerned her "illegal situation" in Portugal – the lack of a residence permit, the impossibility of buying a new car tax-free and the non-provision of information about these matters at the time she took up her duties in Lisbon. She raised these same matters in her administrative complaint dated 16 December 1996.

39. She thus complains not of a particular measure but of a situation in which she had found herself since taking up her post in Lisbon in January 1991, and more particularly of a failure by the Secretary General to provide appropriate assistance. Admittedly, the supplementary agreement to the General Agreement on Privileges and Immunities of the Council of Europe

came into force in October 1996, the appellant obtained a Portuguese identity card in December 1996, and in September 1997 she received official registration papers for the car which she had bought tax-free in April 1997. However, the appeal is concerned with alleged neglect by the Secretary General of his duty to provide her with assistance and the adverse results of that, and the Tribunal takes the view that the supplementary agreement's entry into force and the other aforementioned circumstances do not remove the subject of the dispute or, consequently, end the appellant's interest in obtaining a ruling on whether the rights on which she relies were infringed by the Secretary General.

40. In addition, the Tribunal infers from the appellant's arguments that, in the present case, there is a close connection between the main issues relating to her legal and actual circumstances in Lisbon pending the supplementary agreement to the General Agreement on Privileges and Immunities of the Council of Europe and the issue of whether sufficient information was provided. The appeal accordingly needs scrutinising in the light of the file as a whole.

41. The two objections must therefore be rejected.

B. Merits of the appeal

42. The appellant contends that her situation in post in Lisbon was illegal and contrary to Article 18, paragraph c, of the General Agreement. She argues that it was not possible for the Secretary General to decline all responsibility. Referring to the Vacancy Notice concerning the post at the North-South Centre, she says that it contained nothing to suggest there would be any change in her status if she took up a post in Lisbon or that she would not have the privileges and immunities of Council of Europe staff working in Strasbourg. Yet neither during the three-year transitional period nor after the North-South Centre was made permanent in October 1993 did the Secretary General, she maintains, contemplate bringing in provisional measures pending signature of the seat agreement. The length of the diplomatic negotiations, she says, is no defence to her claims.

43. She maintains that the Secretary General, having failed to give her assistance within a reasonable time, must be held liable for the material and non-material injury which she sustained through not having a Portuguese residence permit from 1 January 1991 to 11 December 1996. In this connection, she refers to delays at border crossings.

44. In addition, relying on Article 18, paragraph (f), of the General Agreement and Article 1 of the supplementary agreement to the General Agreement, she argues that she was within her rights to ask to be enabled to buy a tax-free car as an official of the Council of Europe. Given her circumstances in Portugal, she says, that possibility should have been open to her as coming under Council of Europe headquarters in Strasbourg.

45. She maintains that she was not given any detailed information. For over six years, she was unable to obtain Portuguese registration plates for her car, which was registered in France in a special series ("600K") and also posed safety problems. In this connection, she maintains that the Secretary General neglected his duty to provide assistance.

46. In conclusion, she requests that the Secretary General's decision dated 22 July 1997 be

set aside. She claims token compensation of one franc together with apologies and reimbursement of her legal costs.

47. The Secretary General maintains that the appellant cannot complain of any infringement of the General Agreement on Privileges and Immunities by the Council of Europe. The General Agreement, being an international treaty concluded between most of the Council of Europe member states, places obligations on those states. Similarly, the supplementary agreement of March 1950 to the General Agreement applies only to France and Article 1 of it applies only to official purchases by the Council of Europe.

48. In the Secretary General's view, it is evident from its wording that Article 40 of the Staff Regulations does not apply to the matters raised in the present appeal, the only possible basis of which is the Secretary General's duty to give protection and assistance to officials where they are experiencing difficulties in the performance of their duties, and in the Organisation's interests at that. He maintains that he did what was necessary and possible to secure observance of the staff's privileges and immunities.

49. With regard to the Lisbon staff, he states that he would not have assigned them to the North-South Centre unless there had been a legal basis enabling them to reside lawfully in Portugal: under Article 18 of the General Agreement, to which Portugal acceded in 1982, the appellant and her family were not legally subject to provisions restricting immigration or to the registration formalities applying to foreigners. He accordingly submits that the appellant was not in an illegal position in Portugal but resident there entirely lawfully.

50. As regards practical problems in dealings with some Portuguese authorities as a result of not having a properly issued residence permit, the Secretary General points out that he made numerous representations to win improvements of North-South Centre staff's conditions. He says that concluding the supplementary agreement with Portugal took longer than expected but that he did everything in his power to expedite it.

51. In so far as the appellant complains that she was unable to buy a tax-free car in Portugal, he argues that, under Article 18, paragraph f, of the General Agreement, she could, on arriving in Portugal, have had her old car registered without charge in a Portuguese series. However, that facility did not entitle her to register her car in a special diplomatic series with exemption from normal road tax or to import or buy a car tax-free after taking up her post. The Secretary General's contention is that this is not a general right attaching to status as an international civil servant or Council of Europe official but a facility which some countries grant to some officials under arrangements which vary from one country to another and from one organisation to another within the one country. In the case of North-South Centre staff, such a facility is granted in the supplementary agreement of October 1996.

52. Lastly, the Secretary General maintains that the appellant's criticisms of the information she was given when she was posted to Lisbon are without foundation.

53. The Staff Committee, whom the Chair gave permission to file written submissions (see paragraph 5 above), states that it attaches great importance to compliance with the provisions of the General Agreement on Privileges and Immunities. It asserts, firstly, that privileges and

immunities are rights of the individual under the internal legal systems of international organisations generally and that of the Council of Europe in particular. Secondly, it points out that the Secretary General has nothing less than a duty to assist his staff. The Staff Committee's contention is that the Secretary General is negligent whenever he fails to ensure that member states fully comply with the provisions of the General Agreement and that in the present case he neglected that duty.

54. The Tribunal notes at the outset that, under Article 4, paragraph 1, of the Regulations on Staff Participation, the Staff Committee represents the general interests of the staff and contributes to the smooth running of the Council by providing the staff with a channel for the expression of their opinions. The present appeal is concerned with matters relating to protection of the interests of a staff member whose work station is outside France. In view of the Organisation's growing decentralisation, matters of this kind are of general importance to the staff. Consequently, and for general reasons of proper administration of justice, the grounds which the Staff Committee put forward to justify its participation were sufficient for the purposes of Article 10, paragraph 1, of the Statute of the Administrative Tribunal (see paragraph 5 above).

55. As regards the merits, the Tribunal points out that Article 40 of the Statute of the Council of Europe provides:

“a. The Council of Europe, representatives of Members and the Secretariat shall enjoy in the territories of its Members such privileges and immunities as are reasonably necessary for the fulfilment of their functions ...

b. The Members undertake as soon as possible to enter into agreement for the purpose of fulfilling the provisions of paragraph (a) above. For this purpose, the Committee of Ministers shall recommend to the Governments of Members the acceptance of an Agreement defining the privileges and immunities to be granted in the territories of all Members. In addition, a special Agreement shall be concluded with the Government of the French Republic defining the privileges and immunities which the Council shall enjoy at its seat.”

56. The privileges and immunities of Council staff are governed by Part VI of the General Agreement on Privileges and Immunities of the Council of Europe (Articles 16 to 19 of the General Agreement – see paragraphs 10 and 11 above). Here the point should be made that Article 1 of the March 1950 supplementary agreement to the General Agreement is concerned only with large purchases which the Council of Europe makes for its official use and not with privileges and immunities of Council of Europe staff.

57. Article 39, paragraph 1, of the Staff Regulations provides: “The privileges, immunities and facilities laid down in the General Agreement on Privileges and Immunities of the Council of Europe ... and in any other agreements relating thereto, are conferred on staff members solely in the interests of the Council of Europe and not for their personal benefit”, the wording being similar to that of Article 19 of the General Agreement (see paragraph 11 above). From the wording of Article 40 of the Statute of the Council of Europe, Articles 18 and 19 of the General Agreement and Article 39, paragraph 1, of the Staff Regulations, it is clear that privileges and immunities are expressly granted to the Organisation's staff and confer individual rights on them on account of their duties within the Organisation (see, *mutatis mutandis*, CJEC, Case No. 6-60,

Jean-E. Humblet v. Belgium, Judgment of 16 December 1960, European Court Reports 60, p. 1 131). Such rights are recognised by the member states of the General Agreement. If staff members consider themselves to have been injured by some infringement of the General Agreement by a member state, the Secretary General cannot be held directly responsible for the offending act or omission.

58. Referring to Article 40 of the Staff Regulations, the appellant maintains that the Secretary General is liable for neglect of his duty to ensure, within a reasonable time, that the Portuguese authorities observed the privileges and immunities.

For his part, the Secretary General recognises that he has a general duty to provide assistance to Council of Europe staff but maintains that all the measures necessary and possible were taken.

59. Article 40, paragraph 1, of the Staff Regulations states: “Staff members may seek the assistance of the Secretary General to protect their material or non-material interests and those of their family where these interests have been harmed without fault or negligence on their part by actions directed against them by reason of their being a staff member of the Council”. The second paragraph of Article 40, paragraph 2, states: “Where the Secretary General deems that the conditions set forth in the above paragraph are met, he or she shall decide what form such assistance may take ...”

60. In the Tribunal’s view, Article 40 of the Staff Regulations, as its title states, is concerned with protection of Council of Europe staff in their official capacity. Protection of staff in their official capacity cannot be existent and effective unless it includes a duty of the Secretary General to assist a staff member who complains that a member state has infringed the rights which his or her status as a staff member confers on him or her for the Organisation’s benefit (see, *mutatis mutandis*, ABNATO, Decision No. 361 of 3 December 1997). In such cases, no distinction may be made between acts and omissions. Where, to staff members’ detriment, a member state disregards the privileges and immunities which staff members enjoy under the General Agreement on Privileges and Immunities or any agreement supplementary to it, the staff concerned can invoke Article 40 of the Staff Regulations in seeking assistance from the Secretary General. This conclusion is all the more evident in that neither the General Agreement nor other instruments provide a remedy for non-compliance with the privileges and immunities which they lay down.

61. In the present case, the Tribunal must decide whether there existed a situation requiring that the Secretary General take positive steps in accordance with his duty of assistance and what the required extent of those steps was. In the Tribunal’s view, such matters are questions of staff management and in this sphere, the Secretary General has some discretionary power. He is required primarily to assess any request for assistance from a staff member and to decide how any assistance is to be provided. However, it is for the Tribunal to review the Secretary General’s decisions from the standpoint of legality. Although it cannot substitute its judgment for that of the Council’s administrative services, it has a duty to satisfy itself that the Secretary General complied with the Organisation’s regulations and the general principles of law (see, *mutatis mutandis* ATCE, Zimmermann decision, paragraph 37).

62. As regards the appellant’s first ground of appeal, concerning her legal situation as a staff

member at the Lisbon North-South Centre, the Tribunal notes that she does not allege that, when she took up her duties in 1991 or subsequently, immigration restrictions or foreigner-registration formalities were applied to her contrary to Article 18, paragraph (c), of the General Agreement on Privileges and Immunities.

63. It notes, however, that in a letter dated 9 August 1995, the Secretary General, referring to Article 18, paragraph (c), of the General Agreement on Privileges and Immunities of the Council of Europe, explained to the Permanent Representative of Portugal that recognition of this privilege enjoyed by Council of Europe staff required actual issue of an appropriate residence permit (see paragraph 19 above). The appellant, and other staff of the North-South Centre, did not receive any document equivalent to a residence permit until March 1993, when the Ministry of Foreign Affairs in Lisbon began issuing staff with attestations certifying their duties, which, however, were not recognised by other Portuguese authorities as residence permits (see paragraph 15 above). Throughout the preceding period, in particular when crossing borders, the appellant had had difficulty proving that she was legally present on Portuguese territory (see paragraphs 14 and 23 above).

64. The Tribunal notes that those problems stemmed from the protracted negotiations over the supplementary agreement to the General Agreement on Privileges and Immunities, which involved adjusting the latter to the needs of North-South Centre staff. The Secretary General did not delay the negotiations. Moreover, while the negotiations were going on, and between signature of the 1994 supplementary agreement and its ratification by Portugal in 1996, the Secretary General several times contacted the Permanent Representative of Portugal to request measures on behalf of North-South Centre staff.

65. As regards the appellant's second head of appeal, the impossibility of buying a new car tax-free in Portugal, the Tribunal points out that Article 18, paragraph (f,) of the General Agreement on Privileges and Immunities grants staff only the right to import their furniture and effects free of duty at the time of taking up their posts in the country in question. It is only the supplementary agreement which grants Council of Europe staff serving in Portugal the privilege of importing or buying cars or other products free of value added tax on certain conditions. The arguments which the appellant advances as evidence of a duty to provide assistance thus have no basis.

66. Consequently, there is no serious reason to consider inadequate or inappropriate the Secretary General's conduct concerning conclusion of the supplementary agreement with Portugal or the steps which he took in relation to the appellant's individual circumstances in Lisbon.

67. The Secretary General thus did not neglect his obligation of assistance towards the appellant.

68. As far as information is concerned, the Tribunal takes the view that, in any internal competition procedure, staff need information concerning the post to be filled and any special features of it, particularly when the post is not at the Organisation's headquarters in Strasbourg but outside France. Sufficiently precise information must be provided to enable staff to regulate their conduct, not only at the time of applying for the post but also, as the case may be, on taking up their duties.

69. In the Tribunal's view, the information which the appellant had been given dealt with the North-South Centre generally, its establishment as a pilot project for three years and calculation of her salary in accordance with the place of work and the job description in Vacancy Notice No. 23/90. Thus, the appellant did not lack relevant information, in the circumstances, concerning the special features of the post. The Tribunal also finds that the appellant has not shown that Council of Europe services knowingly misled her about her working conditions in Lisbon, in particular her legal position and privileges in Portugal.

70. The Tribunal thus takes the view that this information, although succinct, enabled the appellant to foresee the legal and personal implications of taking up a post in Portugal at a centre initially established for three years and then made permanent in October 1993. She should thus have expected her circumstances in Portugal to be – in some respects – possibly different from her circumstances in Strasbourg.

71. To sum up, the Tribunal holds that the appellant was in a position to foresee, to a reasonable extent, the changes in her legal and personal circumstances and the practical difficulties which might result.

72. Consequently, the Tribunal does not find any illegality.

For these reasons, the Administrative Tribunal:

Declares the appeal admissible;

Declares the appeal unfounded;

Dismisses it; and

Orders that each party bear its own costs.

Delivered at Strasbourg on 9 November 1998, the French text of the decision being authentic.

The Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

S. SANSOTTA

C RUSSO

Read out by Mr Kåre HAUGE
in the public hearing of 9 November 1998

K. HAUGE

Appendix 1

ORDER OF CHAIR OF 16 APRIL 1998

In the case of V. TONNA v/ Secretary General

I, CHAIR OF THE ADMINISTRATIVE TRIBUNAL,

Having regard to Appeal No. 241/1997- Veronica Tonna v/ Secretary General;

Having regard to the request to intervene lodged by the Staff Committee of the Council of Europe, with the aim of filing submissions in support to the appellant's conclusions and to the additional observations lodged on 19 March 1998;

Having regard to Article 10, paragraph 1 of the Statute of the Administrative Tribunal;

Having regard to the observations lodged by the Secretary General on 23 February and 6 April 1998;

Having consulted the members of the Tribunal;

Considering that the request tends to support the appellant's submission;

DECIDE

- that the Staff Committee's request for intervention is admissible;
- to grant until 7 May 1998 to submit observations in writing.

Done and ordered in Rome on 16 April 1998, the order to be forwarded to the parties and to the Staff Committee.

The Deputy Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

C. WESTERDIEK

C RUSSO