

CONSEIL DE L'EUROPE— —COUNCIL OF EUROPE

COMMISSION DE RECOURS APPEALS BOARD

Appeal No. 32/1974 (Margaret LEGUIN v. Secretary General)

The Appeals Board, meeting in private in Strasbourg, on 14 and 15 January 1975, under the chairmanship of Mr H. DELVAUX and in the presence of:

Mr S. VEROSTA, Deputy Chairman
Mr S. CANTONO di CEVA, Member

assisted by:

Mr A. PLATE, Secretary
Miss D. COIN, Substitute Secretary.

After deliberating.

PROCEEDINGS

The appellant, a grade B3 assistant, lodged her appeal on 11 March 1974, and on 12 March 1974, it was registered as Appeal No. 32/1974. The appellant was represented by Mr Etienne REUTER, Administrative Officer at the Council of Europe.

The Secretary General of the Council of Europe, who was represented by Mr H. GOLSONG, Director of Legal Affairs, submitted his comments on 2 July 1974.

The appellant presented her memorandum in reply on 30 September 1974.

By letter of 4 November 1974, the Secretary duly informed the parties that the Board had decided to invite them to appear before it. Following that, by letter dated 10 December 1974, the parties were informed that the hearing would take place at 4 p.m. on 14 January 1975.

The parties informed the Board that they were prepared not to avail themselves of hearing, and the Board accepted this arrangement.

The Board has given the present decision.

THE FACTS

The facts, not in dispute between the parties may be summarised as follows:

Mrs Margaret Leguin, born on 25 March 1945 in Liverpool (Great Britain), is a British national by birth; she took up employment with the Secretariat on the Council of Europe in 1968. At the time of the disputed decision her grade was B3.

Following her marriage on 28 October 1972 to Mr Leguin, a French national and permanent official of the Council of Europe, she was informed on 9 April 1973 that, as she had automatically become French in application of Article 37 of the French Nationality Code in force at the time, she was no longer entitled to the expatriation allowance which she had been receiving in accordance with Article 4 of Resolution (72) 32, which states:

- “1. An expatriation allowance shall be payable to staff in categories A, L, and B who:
- i. are nationals of a country other than France and who do not have French nationality under French law; and
 - ii. were not permanently resident in France at the time of their appointment to the Council of Europe.”

Mrs Leguin instituted proceedings under Article 25 of the Staff Regulations for the purpose of obtaining annulment of this decision and restoration of the expatriation allowance.

The appellant and her representative had several interviews with the Director of Legal Affairs and the Head of Establishment Division.

On 8 June 1973, the appellant agreed to suspend her action after being assured by the Secretary General's representatives that her case would be satisfactorily settled within the framework of the revision of Resolution (72) 32.

She was also assured that the Secretary General would not claim inadmissibility *ratione rempons* as provided for in Article 3, paragraph 3, of the Statute of the Appeals Board.

The appellant claims that the Administration also agreed, in the context of this arrangement, to allow her to retain the expatriation allowance paid for the period between 1 November 1972 and 1 May 1973; during the proceedings, the Administration did not dispute this assertion.

The amendments to Resolution (72) 32, which were approved in January 1974, permit a satisfactory solution of the applicant's situation, with effect from 1 January 1974.

In a letter of 12 February 1974, the appellant asked the Secretary General to restore her expatriation allowance for the period from 1 November 1972 to 31 December 1973.

On 5 March 1974, the Head of Establishment Division informed her that the Secretary General was not in a position to take a final decision on her request until the Ministers' Deputies decided whether to give retroactive effect to the amendments to Resolution (72) 32 to 1 January 1973.

On 11 March 1974, the appellant lodged an appeal with the Appeals Board against the decision referred to above.

At their 230th meeting, on 27 March 1974, the Ministers' Deputies adopted Resolution (74) 11. According to Article 8 of this Resolution, the amendments made to Resolution (72) 32 in January 1974 entered into force on 1 January 1974. The Deputies therefore did not decide to give retroactive effect to their Resolution to 1 January 1973.

SUBMISSIONS OF THE PARTIES

A. The submissions of the appellant may be summarised as follows:

The appellant claims that her marriage to a French national led the Administration to regard her as having French nationality and consequently to deprive her of the expatriation allowance which she had received until then, in accordance with Article 4 of Resolution (72) 32 containing regulations concerning salaries and allowances of permanent staff.

The appellant contests this application of the regulations. In her opinion, the Administration's decision creates discrimination based on sex, as a result of the French Nationality Code being taken in conjunction with Article 4 of the Regulations. She invokes the practice of the administrative tribunals of the international organisations, which confirms the application of the general principles of law. She considers that the solution arrived at by the Secretary General is incompatible with the principles posed by the Statute of the Council of Europe, the general principles of law, the European Convention on Human Rights and the Social Charter.

The same considerations would be advanced if the Administration were to apply Article 2 of Rule No. 236 of 12 July 1955 referring to the status of head of family.

The appellant wishes to point out that, following revision of the French Nationality Code in 1973, acquisition of French nationality through marriage is no longer automatic.

The appellant considers, moreover, that the Administration's decision is contrary to *morality* and public order, in that it appears to penalise her and her husband for their marriage, and so to encourage concubinage.

The appellant stresses finally that before lodging the present appeal, she attempted, with the Secretary General's representatives, to arrive at a friendly settlement of the case.

B. The Secretary General's submissions may be summarised as follows:

As to the admissibility:

The Secretary General points out that on the date when the appeal was lodged, namely 11 March 1974, he had taken only a provisional decision on the appellant's request for the decision that she was no *larger* entitled to the expatriation allowance to be *annulled*.

In fact, in his reply of 5 March 1974, the Secretary *General* said that until the Ministers' Deputies decided the date of entry into force of Resolution f741 11, he was not in a position to take a final decision on the request.

However, the Secretary General does not intend to raise the question of the admissibility of the appeal, as, in his view, according to Article 25, paragraph 3 of the Staff Regulations, he would be bound to reject the application as he is not in a position to withdraw or modify a decision taken in accordance with the texts in force.

As to the merits:

The *Secretary General* draws the Board's attention to the decision taken on 15 March 1973 by the Appeals Board of the European Space Research Organisation in case No. 33 and to the letter addressed to the Director General of that Organisation by the Chairman of the said Appeals Board, both texts being attached to his submissions.

The Secretary General maintains his decision of 9 April 1973, which was taken on the basis of Article 4 of Resolution (72) 32.

C. Conclusions of the parties

The **appellant** asks the Appeals Board to:

- annul the decision of 7 May 1973 whereby she was no longer entitled to the expatriation allowance from the date of her marriage;
- confirm *her* entitlement to the expatriation allowance following her marriage for the period 1 November 1972 to 31 December 1973;
- order the Council of Europe to *pay* her the sum of 7,000 F. corresponding to her expatriation allowance for the period 1 November 1972 to 31 December 1973.
- order the Council of Europe to *pay* the costs of the proceedings.

The **Secretary General** requests the Appeals Board to:

- reject the appeal lodged on 11 March 1974 by Mrs Margaret Leguin as ill-founded.

THE LAW

As to the admissibility:

In accordance with Article 25, paragraph 3, of the Staff Regulations, an appeal *may* be lodged with the Appeals Board only "If the Secretary General rejects an application or takes no decision thereon within the time-limits provided for".

According further to Article 25, paragraph 1, sub paragraph 2, third sentence, “the Secretary General shall be allowed 30 days from the date of receiving the application to take a decision thereon”.

It appears from the exchange of correspondence between the parties that on 7 June 1973 the Secretary General asked the appellant to delay instituting proceedings with the Appeals Board until Resolution 1721 32 had been amended as proposed by him. The Secretary General added that, in this case, he would not invoke inadmissibility *ratione temporis* under Article 25, paragraph 1, sub-paragraph 2, of the Staff Regulations. In her reply of 8 June following, the appellant agreed to this, on the understanding that she would resume her claim in November 1973.

After a further application to the Secretary General, on 12 February 1974, and having still received only a provisional reply on 5 March 1974, the appellant brought her appeal on 11 March following.

Although the decision of 5 March 1974 still does not constitute a final reply within the meaning of Article 25, paragraph 3, the appeal of 11 March 1974 is nevertheless admissible, since following the above-mentioned decision by the Secretary General, it was reasonable for the appellant to assume that the Secretary General would not take a final decision within the period stated in paragraph 1 subparagraph 2 of Article 25.

Moreover, in his memorandum in reply of 2 July 1974, the Secretary General, formally undertook not to raise the question of the appeal’s admissibility.

As to the merits:

The appellant is mistaken in maintaining that the Secretary General’s decision concerning her is incompatible with the principles stated in the Statute of the Council of Europe, the general principles of law, the European Convention on Human Rights and the Social Charter.

Article 4 of Resolution (72) 32 concerning expatriation or residence allowance applies to certain members of Council of Europe staff without distinction of sex. If the appellant was refused that allowance following her marriage to a French national, the reason lies solely in the application of a provision in the French Nationality Code in force at the time, which provided that “a woman of foreign nationality who marries a French citizen acquires French nationality upon the celebration of the marriage”. The regulation complained against in Article 4 quoted above therefore contains no discrimination based on sex.

It is irrelevant whether or not the appellant’s marriage was celebrated in the United Kingdom, and if so, whether or not it had been transcribed into the Register of Civil Status in France, “any entry in a civil status register concerning French and foreign nationals, made in a foreign country, (being) authentic, if drawn up in accordance with the rules followed in that country” (Article 47 of the French Civil Code).

The appellant is mistaken in considering that the disputed decision is contrary to public order and morality, as marriage is an institution recognised by both British and French law; although it meant that the appellant lost her entitlement to expatriation allowance for several months, it nevertheless brought financial advantages to their home.

The applicant is wrong, lastly, in basing herself on discussions between the parties with a view to an arrangement, in particular in June 1973, as grounds for deducting that her “legitimate hope” should have been transformed into an “acquired right”, as these discussions with a view to an arrangement could not have taken place, in the absence of formal proof to the contrary, except subject to reservations and without recognition of any of the rights claimed by the parties and invoked by them.

The Appeals Board, therefore:

1. Declares the appeal admissible;
2. Declares the appeal ill-founded and rejects it;
3. Decides that each party shall bear its own costs.

Done in French at Strasbourg on 15 January 1975.

The Secretary to the
Appeals Board

A. PLATE

The Chairman of the
Appeals Board

H. DELVAUX