

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF

ADMINISTRATIVE TRIBUNAL

Appeal No. 354/2006 – Cecilia Adina GLODEAN (I) v. Secretary General

The Administrative Tribunal, composed of:

Ms Elisabeth PALM, Chair,
Mr Angelo CLARIZIA,
Mr Hans G.KNITEL, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. Ms Cecilia Adina Glodean lodged her appeal on 29 March 2006. The appeal was registered on the same day under No. 354/2006.
2. On 17 July 2006, the appellant submitted further pleadings.
3. On 29 August 2006, the Secretary General filed his pleadings.
4. Having been invited to submit observations in reply, the appellant initially requested an extension of the time-limit which she had been given for this purpose.
5. When the time-limit expired on 20 October 2006, the appellant requested a further extension and a new time-limit was set at 1 December 2006. On this occasion she submitted a document which she wished to be added to the file.
6. On 1 December 2006, the appellant asked the Tribunal to suspend the proceedings.
7. On 6 December 2006, the appellant was informed that her request was refused and was invited to file her pleadings by 11 December 2006 at the latest.
8. The appellant filed no document and sent no letter.

9. On 11 January 2007, the Registrar noted that no document had been filed.

10. After consulting the parties, who indicated that they did not want a hearing, the Tribunal decided on 18 January 2007 that it was unnecessary to hold a hearing. It informed the parties of this on 22 January 2007.

11. On 28 February 2007, the appellant sent a letter in which she again asked for the proceedings be suspended and requested that her appeals be joined, that a hearing be held, that originals of certain documents be obtained (copies of these documents had already been filed), and that witnesses be heard. However, this communication did not contain the names and description of the persons whom the appellant wished to be heard as witnesses and did not indicate the subject to be dealt with by their statements (Rule 25 of the Tribunal's Rules of Procedure). On 18 March 2007, the appellant applied for interim measures pending delivery of the decision. On 17 April, she reiterated her requests. Meanwhile, on 23 March 2007, the Secretary General had submitted his observations on the appellant's first two letters. The Tribunal had communicated the third to him for information only.

On 17 April 2007, the Tribunal decided to refuse all the appellant's requests. The request for joinder of the appeals is dealt with in this decision.

THE FACTS

12. The appellant is a grade B2 staff member of Romanian origin. She is assigned to the European Court of Human Rights. In the appeal form she states that she holds a "fixed-term contract".

13. She has an ongoing dispute with the Secretary General which has resulted in the submission of three appeals (Nos. 354/2006, 355/2006 and 380/2006, Cecilia Adina Glodean (I), (II) and (III) v. Secretary General) to the Tribunal. These appeals concern a request for protection in her official capacity (Article 40 of the Staff Regulations), her recruitment as a staff member and the banning of her husband from entering Council premises. Her husband also challenged the decision concerning him (Appeal No. 369/2006, Cornel Ioan Glodean v. Secretary General). The four appeals were decided today in separate decisions.

14. On 19 September 2005, the appellant made a request to the Secretary General for protection in her official capacity under Article 40 of the Staff Regulations. She asked for protection of her family against "the abuses of the Romanian Government with the support of the Council of Europe/European Committee of Social Rights due to the fact that she was a staff member of the Council of Europe/European Court of Human Rights".

15. In her request, the appellant put forward the following arguments.

She stated that, in September 2003, at the end of her maternity leave, her husband, an officer in the Romanian army, applied for parental leave, which he eventually obtained in December 2003.

She then provided a number of items of information from which it emerges that her husband apparently did not resume his service after taking parental leave and was prosecuted for desertion (he was sentenced to four years' imprisonment).

The appellant also referred to the fact that she had asked her hierarchical superior (the Registrar of the European Court of Human Rights) to intercede with the Romanian authorities on her husband's behalf. She also mentioned that her husband had approached the European Committee of Social Rights about the way in which Romania granted parental leave to members of the armed forces.

Lastly, the appellant complained that, unlike in the case of other couples where one partner already worked at the Registry of the European Court of Human Rights, her husband had not been recruited as a temporary staff member. She also complained that her husband had been unable to prepare for an external recruitment procedure organised by the Council of Europe because of the thousands of pages he had had to write to meet deadlines in the proceedings before the Romanian courts.

16. On 7 October 2005, the Secretary General asked the appellant for information; she replied on 14 October.

17. The Secretary General having not replied to the request, such silence was deemed an implicit decision rejecting it after the expiry of the sixty-day period provided for in the Staff Regulations (Article 59, paragraph 1 *in fine*).

18. By letter dated 16 December 2005 the appellant lodged an administrative complaint.

19. On 13 January 2006, the Secretary General dismissed the administrative complaint, deeming it inadmissible and unfounded. Regarding the substance of the complaint, he pointed out that Article 40 of the Staff Regulations provides for the Secretary General's assistance where it is rendered necessary "by actions directed against [staff members or their family] by reason of their being a staff member of the Council". He added that, in the instant case, there had been no actions directed against them by reason of their being a staff member and, consequently, Article 40 of the Staff Regulations did not apply to the appellant. He added that protection of staff members in their official capacity was designed to protect not only staff members but also the Organisation's own interests. He concluded by stating that the facts described and the allegations made in no way constituted actions directed against the appellant in her capacity as a staff member of the Organisation.

20. On 29 March 2006, the appellant lodged this appeal.

THE LAW

A. THE JOINDER OF THE APPEALS

21. The appellant requests that this appeal be joined with Appeal No. 355/2006 submitted by her.

22. The Secretary General has no comment to make.

23. The Tribunal considers that it is not required under Rule 14 of its Rules of Procedure to order the joinder of the two appeals. It considers that the fact that the two appeals are connected *ratione personae* does not require them to be joined, because their subject-matter is

different. The Tribunal comes to this conclusion despite the appellant's contention that the two appeals originate from one and the same dispute.

B. THE MERITS OF THE APPEAL

24. The appellant requests the annulment of the Secretary General's decision not to grant her protection in her official capacity. She states that, in this appeal, she is seeking assistance from the Secretary General of a kind appropriate to her situation (reconciliation with the Romanian State, specifically the granting of parental leave to her husband and, consequently, the withdrawal of the desertion charge, and early retirement), and fair compensation for the non-material damage suffered by her family, which she leaves to the discretion of the Tribunal. However, by way of non-material compensation, she asks that the Pro Merito medal be awarded to her husband.

25. The Secretary General asks the Tribunal to declare the appeal unfounded and to dismiss it.

26. The appellant considers that, in refusing to grant her protection in her official capacity, the Secretary General has deliberately omitted to take the most serious abuses into consideration. She alleges complicity between the Secretary General, the Romanian State, French institutions and the European Committee of Social Rights. She submits that she has a direct and existing interest as the impugned decision does not only concern her husband.

27. The Secretary General observes that the appellant is requesting protection in her official capacity for a family in respect of which a request had been made for the father to be granted parental leave, which is guaranteed by the revised European Social Charter. According to the Secretary General, the duties assigned to the appellant in the Registry of the European Court of Human Rights in no way include the implementation of the European Social Charter in the member states. Furthermore, it can in no way be inferred from the facts as described by the appellant that particular actions were being directed against her in order to influence her independence, or her professional capacities, in the framework of her duties as an assistant in the Registry of the European Court of Human Rights, Franco-Romanian section. The Secretary General argues that, for this reason, the appellant cannot obtain protection either for her husband or for herself in her official capacity.

28. As to the various facts described by the appellant (her husband's conviction and the lack of a civil-law decision on the question concerning him, harassment by the French police and hostility on the part of the French post office), the Secretary General points out that he has no authority to intervene in judicial proceedings in progress in a member state of the Organisation. He further submits that the facts described with regard to the French police and post office do not explain in what way the appellant, or her husband, is being subjected to harassment and, in any event, do not constitute actions directed against the appellant or her family by reason of her being a staff member of the Organisation.

As to the other facts mentioned by the appellant, concerning the appointment of another staff member on a permanent contract, the implementation of the appraisal procedure and intimidation by superiors, the Secretary General submits that these accusations are inadmissible in the context of the present appeal, which concerns the appellant's request for protection in her official capacity.

29. In the light of the foregoing, the Secretary General asks the Tribunal to declare the appeal unfounded and to dismiss it.

30. The Tribunal notes that under Article 40 of the Staff Regulations,

Protection of staff members in their official capacity

“1. 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.

2. 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 and the amount up to which the Council shall pay the costs incurred in the defence of the interests referred to in paragraph 1, including the costs of any legal action taken. If the Secretary General considers that legal action may harm the interests of the Council, he or she may ask the persons concerned not to take such action; in such cases, if they do not take legal action, the Council shall make good the material damage suffered by the persons concerned, provided that they assign their rights to the Council.”

31. The Tribunal notes that it has already had occasion to rule on a request by a staff member for protection in her official capacity (ATCE, Tonna v. Secretary General, Appeal No. 241/1997, decision of 9 November 1998). However, the present appeal differs from the Tonna appeal in that the latter was concerned with the consequences arising from the delay in concluding a seat agreement.

The Tribunal finds that, as submitted by the Secretary General, the instant case does not fall into the category of actions or situations calling for protection of staff members in their official capacity. For this reason, the Secretary General cannot be held to have violated his obligations under Article 40 of the Staff Regulations.

32. Indeed, a reading of the appellant’s request of 19 September 2005 for protection in her official capacity reveals no argument justifying the conclusion that the appellant, or her family, was the victim of actions on the part of the Romanian authorities aimed at harming her because of her work at the Registry of the European Court of Human Rights. The appellant has implied that the attitude of the Romanian authorities towards her husband’s request for parental leave was a form of pressure on her. The Tribunal fails to see how the Romanian authorities would have wanted to put pressure on her, because the appellant has not said anything on this point. Furthermore, the appellant alleged before the European Committee of Social Rights that Romanian legislation on social rights was not in conformity with the European Social Charter – or at least not at the time when the appellant’s husband sought to exercise a parental right – and, therefore, did not recognise the existence of a parental right as a source of law. Consequently, in the absence of evidence, the Tribunal finds it difficult to believe that the appellant was subjected to pressure on account of her status as a staff member of the Organisation. There was accordingly no requirement for the Secretary General to provide assistance to the appellant and her family to protect their material or non-material interests from being harmed by actions directed against them by reason of the appellant’s being a staff member of the Council of Europe.

33. In conclusion, the appeal is unfounded and must be dismissed.

For these reasons,

The Administrative Tribunal refuses the request for joinder of the present appeal with Appeal No. 355/2006;

Declares the appeal unfounded;

Dismisses it;

Orders each party to bear its own costs.

Adopted by the Tribunal in Strasbourg on 18 April 2007 and delivered in writing pursuant to Rule 35, paragraph 1 of the Tribunal's Rules of Procedure on 19 April 2007, the French text being authentic.

The Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

S. SANSOTTA

E. PALM