

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

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

Appeal No. 547/2014 (Monique BECRET v. Secretary General)

The Administrative Tribunal, composed of:

Mr Giorgio MALINVERNI, Deputy Chair,
Mr Jean WALINE,
Mr Rocco Antonio CANGELOSI, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar,
Ms Eva HUBALKOVA, Deputy Registrar

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant, Ms Monique Bécret, lodged her appeal on 20 March 2014. On the same date, the appeal was registered under no. 547/2014.
2. On 28 March 2014, the Chair decided that there were no grounds in this case for granting the request for anonymity made by the appellant when lodging her appeal.
3. On 25 April 2014, the appellant filed supplementary pleadings.
4. On 26 May 2014, the Secretary General submitted his observations.
5. The appellant filed submissions in reply on 8 August 2014.
6. The public hearing took place in the Tribunal's hearing room in Strasbourg on 2 October 2014. The appellant was represented by Maître Carine Cohen-Solal, a barrister practising in Strasbourg. The Secretary General was represented by Ms Ekaterina Zakovryashina of the Legal Advice Department, assisted by Ms Maija Junker-

Schreckenbergh and Ms Sania Ivedi, administrative officers in the same department.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The appellant is a permanent staff member of the Council of Europe employed on an indefinite contract. She was assigned to the Directorate of Information Technology at grade A3.

8. On 26 March 2013, the Organisation published on the intranet portal an announcement inviting staff who met certain criteria to express their interest in considering leaving the Organisation either under the provisions on termination of service (Resolution (92) 28) or under the provisions of Appendix VI to the Staff Regulations on indemnity for loss of job.

9. On 12 April 2013, the appellant expressed her interest.

10. Previously, on 9 August 2012, she had had an exchange with her Director, who informed her that he intended to propose her redeployment to another post in a priority department of the Organisation pursuant to the Secretary General's decisions on the reform of the Organisation.

11. In the appellant's view, the decision on redeployment had an official and final character. However, she received no information on her assignment and accordingly decided to express her interest in early termination of service.

12. On 19 November 2013, the appellant was informed that:

“the Secretary General, having regard to the work, the 2014-2015 priorities and the operational requirements of the Organisation, [had] decided not to give effect to [her] expression of interest.”

In this communication it was specified that the appellant could obtain any further information she might require.

13. On 18 December 2013, the appellant submitted an administrative complaint to the Secretary General under Article 59, paragraph 2 of the Staff Regulations. She asked that the decision of 19 November 2013 be annulled and that a favourable response be given to her expression of interest.

14. On 16 January 2014, the Secretary General dismissed the administrative complaint, deeming it inadmissible and/or ill-founded.

15. On 20 March 2014, the appellant lodged this appeal.

RELEVANT LAW

16. In the Organisation, two regulations are relevant for the purposes of this appeal: the provisions of the Staff Regulations governing loss of job and Resolution (92) 28 concerning termination of service.

A. Loss of job

17. According to Article 44 of the Staff Regulations:

“An indemnity for loss of job may be awarded to any member of staff confirmed in his or her appointment, if the contract is terminated in the circumstances provided for in Appendix VI to these Regulations, which also sets out the methods of calculating and paying such indemnities.”

The relevant provisions of the Regulations on indemnity for loss of job are worded as follows:

Article 1 – Scope

“These Regulations, issued in accordance with Article 44 of the Staff Regulations, lay down the conditions in which the Secretary General may grant an indemnity for loss of job.”

Article 2 – General principles

“An indemnity may be granted to a staff member who holds a firm contract and whose services are terminated for any one of the following reasons:

- a. suppression of the post or position occupied by the staff member;
 - b. changes of such a nature in the duties of the post or position occupied by the staff member that he or she no longer possesses the required qualifications;
 - c. general staff cuts including those due to a reduction in or termination of the activities of the Council;
 - d. the withdrawal from the Council of the member state of which the staff member is a national;
 - e. the transfer of the headquarters of the Council or any of its units to another country and the consequent transfer of the whole staff concerned;
 - f. the refusal by the staff member, where the contract does not cover the point, to be permanently transferred to a country other than that in which he or she is serving; and
- who is not offered a post or position, as the case may be, in the same grade in the Council; or
 - who is not appointed to a vacant post in one of the other co-ordinated organisations at a comparable remuneration; or
 - who, if employed in the public service, has not been immediately reintegrated in his or her national civil or military administration.”

B. Termination of service

18. Resolution (92) 28 on the regulation introducing special measures to terminate the service of permanent staff of the Council of Europe was adopted by the Committee of Ministers on 25 June 1992. The preamble refers to the changing tasks of the Council of Europe, which call for continuous adjustment of administrative machinery and job descriptions, and states that the adoption of specific measures for early termination of service is intended to speed up the renewal of the Organisation's human resources and at the same time to facilitate the orderly progress of careers.

The principles relating to scope and procedure are contained in Articles 1 and 2 of Resolution (92) 28, worded as follows:

Article 1

“1. In the interests of the Organisation's work, the Secretary General is authorised to take, within the limits of the budgetary appropriations available and on the conditions set out in this regulation, measures terminating the service of permanent staff aged at least 58 who have completed at least 15 years' service.

2. The termination-of-service measures provided for under this regulation may be taken without the agreement of the staff concerned only in the case of staff aged at least 62. They shall on no account be of a disciplinary nature.”

Article 2

“1. Staff members complying with the age and service requirements referred to in Article 1, paragraph 1, above may on their own initiative request the Secretary General to apply the termination-of-service measures provided for by this regulation. The Secretary General himself/herself may ask staff members to request that these measures be applied.

2. In all cases where the Secretary General intends to take a measure without the agreement of the staff member concerned or not to grant his/her request, the staff member shall first be given a hearing.

3. At the beginning of each year, the Secretary General shall transmit to the Joint Committee a list of staff who requested the application of a termination-of-service measure under this regulation during the previous year. At the same time the Secretary General shall inform the Joint Committee of the names of staff members to whom he/she intends to apply the said measure, including those who have not given their agreement. In this respect he/she shall indicate the factors he/she has taken into account, particularly the age and seniority of the staff concerned. Before giving its opinion, the Joint Committee shall hear any member of staff concerned who so requests.

4. The Secretary General shall take a final decision only after receiving the Joint Committee's opinion. Reasons shall be given for each individual measure.”

THE LAW

19. The appellant lodged this appeal in order to have the decision of 19 November 2013 annulled. She also claims compensation of 10 000 euros for the non-pecuniary damage incurred (Article 60, paragraph 2 of the Staff Regulations). Finally, she claims 5 000 euros in respect of procedural costs.

20. The Secretary General asks the Tribunal to declare the appeal inadmissible and/or unfounded or ill-founded and to dismiss it. He considers that the claims for non-pecuniary damages and reimbursement of costs should also be rejected.

THE PARTIES' SUBMISSIONS

A. Admissibility

1) The Secretary General

21. In the Secretary General's view, the appellant does not have a direct and existing interest within the meaning of Article 59, paragraph 2 of the Staff Regulations.

22. The Secretary General notes that, according to the case law, the concept of direct and existing interest requires the staff member to show that his or her legal position has been adversely affected. But this condition is not satisfied in the instant case since the decision on early termination of service depends entirely on the assessment made by the Secretary General, taking the Organisation's interests into consideration. A decision of this kind therefore does not prejudice a staff member's legitimate interests.

23. The Secretary General adds that he had adopted a measure relating to the general organisation of the Secretariat in order to "give heads of entities the opportunity of considering all possible avenues should post suppressions be required" (announcement of 26 March 2013, paragraph 8 above).

2) The appellant

24. The appellant for her part points out that the defining element of interest in bringing proceedings is the link between the appellant and the impugned measure. Furthermore, the Administration must abide by the rules in force in the Organisation.

The appellant adds that she is in no way claiming a right to early termination of service, but rather is contesting the impugned decision because it is based on an error of fact, was taken following an irregular procedure and infringes general principles of law, in particular those of good faith and legitimate trust.

B. Merits of the appeal

1) The appellant

25. According to the appellant, the impugned decision is vitiated by errors of fact, non-compliance with the procedure prescribed in Article 2, paragraph 2 of Resolution (92) 28 and violation of the principles of good faith and legitimate trust.

26. The appellant considers that there is an error of fact insofar as the measure or decision of 19 November 2013 was purportedly taken “having regard to the work, the 2014-2015 priorities and the operational requirements of the Organisation”.

27. In her view, the reasons given are clearly in contradiction with the initial final decision to redeploy her post and hence to suppress it within her directorate.

28. Next, the appellant alleges a violation of Article 2 of Resolution (92) 28 because she was not given a hearing by the Secretary General. She submits that her failure to mention this resolution in her expression of interest was due to the fact that the latter constituted a request in principle for one of the two sets of rules to be applied to her, so that her failure to mention each one specifically cannot be held against her.

29. The appellant finally alleges a violation of the general principles of good faith and legitimate trust on several counts. Firstly, because the Administration made no move to redeploy her and it now denies that a decision had been taken to suppress her post. Nor had she been informed of the about-turn regarding her redeployment. Finally, she submits that the Administration did not deal transparently with staff members’ requests for early termination of service.

30. In conclusion, the appellant considers herself justified in asking that the decision of 19 November 2013 be annulled.

2) *The Secretary General*

31. The Secretary General denies firstly that in August 2012 there was a final decision to suppress the appellant’s post.

32. Secondly, he disputes that there was any obligation to grant the appellant the benefit of early termination of service on whatever basis. Moreover, he can decide not to apply the relevant regulations even where the requisite conditions are met.

33. With regard to the alleged irregularities concerning the decision of 19 November 2013, the Secretary General contends that the reasons given are brief but adequate, given the abundant information supplied by the Administration.

The Secretary General adds that there was no lack of transparency.

34. Next, the Secretary General denies that he was under any obligation to apply the measures and the procedure prescribed by Resolution (92) 28, as the appellant had not explicitly indicated that she wished to avail herself of these rules too.

35. In particular, the Secretary General disputes that the right to a hearing provided for in Article 2 of Resolution (92) 28 implies that the appellant had to be heard by him.

36. In the Secretary General’s view, it is clear from all the foregoing considerations that there has been no breach of the Staff Regulations, the Organisation’s practice or

general principles of law. Neither has there been any incorrect assessment of the relevant facts, any erroneous conclusion or any misuse of authority.

The Secretary General comes to the conclusion that, having failed to prove any violation of the applicable regulations, the appellant cannot validly claim to have suffered any damage.

C. The Tribunal's assessment

1) The Secretary General's objection of inadmissibility

37. The Tribunal notes firstly that under the terms of Article 59, paragraph 2 of the Staff Regulations, a staff member may submit to the Secretary General a complaint against an administrative act adversely affecting him or her. This provision clearly specifies "that 'administrative act' shall mean any individual or general decision or measure taken by the Secretary General".

38. The Tribunal observes that the appellant is challenging the decision of 19 November 2013. This is certainly an individual administrative act adversely affecting the appellant since her expression of interest was rejected.

39. The Secretary General's objection of inadmissibility is therefore unfounded and must be dismissed.

2) The merits of the appeal

40. The Tribunal notes firstly that the appellant clearly states that she is in no way claiming a right to early termination of service. Moreover, she acknowledges that the Secretary General has discretionary power in the matter. She submits, however, that this power must be exercised in accordance with the rules and principles in force in the Organisation.

41. The Tribunal must therefore examine the appellant's grounds of complaint while bearing in mind the discretionary power held by the Secretary General.

42. The Tribunal must also bear in mind that, contrary to the appellant's claim, no final decision to redeploy her post had been taken in August 2012. Moreover, even if a final decision had been taken to this effect, a redeployment involves, unless explicitly stated to the contrary, the transfer of the staff member holding the post. Thus the appellant cannot equate this redeployment with a post suppression and infer from this that she was necessarily eligible for early termination of service. Therefore, contrary to what the appellant claims, the decision of 19 November 2013 is not vitiated by an error of fact.

43. Next, as correctly pointed out by the Secretary General, the appellant had confined herself to requesting termination of service under Appendix VI of the Staff Regulations without referring to Resolution (92) 28, which, however, had indeed been

mentioned in the call for expressions of interest. It is therefore inappropriate for the appellant to complain of a procedural irregularity due to the denial of the right to a hearing provided for in Article 2 of the Resolution. Nor can she complain that the Secretary General did not of his own motion make her an offer to that effect.

44. As to violation of the principles of good faith and legitimate trust, the Tribunal considers that where the matter of the appellant's redeployment is concerned, the Administration did not handle the matter expeditiously, and the appellant can reasonably complain of not having been treated with due attention. However, despite their being placed on a par by the appellant, this question was administratively different from the request for early termination of service, and it cannot be concluded that the Administration's attitude might vitiate the legality of the decision of 19 November 2013. Nor indeed did this attitude go so far as to possibly violate the principles invoked. As to the actual procedure whereby the expression of interest was considered, the appellant provides no evidence which might suggest that these principles were violated. Moreover, the time taken to consider the request cannot constitute an infringement of these principles, and the appellant does not allege that she was treated differently from the other staff who had expressed an interest.

45. Consequently, the three grounds of complaint do not provide proof of any procedural anomaly or of any irregularity vitiating the decision of 19 November 2013.

IV. CONCLUSION

46. The appeal is unfounded and must be dismissed.

For these reasons, the Administrative Tribunal:

Dismisses the Secretary General's objection of inadmissibility;

Declares the appeal unfounded and dismisses it;

Orders each party to bear its own costs.

Adopted by the Tribunal in Strasbourg on 30 January 2015 and delivered in writing on the same day pursuant to Rule 35, paragraph 1 of its Rules of Procedure, the French text being authentic.

The Registrar of the
Administrative Tribunal

S. SANSOTTA

The Deputy Chair of the
Administrative Tribunal

G. MALINVERNI