

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

Appeal No. 532/2012 (Joan STAFFORD v. Secretary General)

The Administrative Tribunal, composed of:

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

assisted by:

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

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant, Ms Joan Stafford, lodged her appeal on 13 July 2012. It was registered the same day under No. 532/2012.
2. On 14 September 2012, the applicant's counsel filed further pleadings.
3. On 17 October 2012, the Secretary General forwarded his observations on the appeal. The appellant submitted a memorial in reply on 12 November 2012.
4. On 23 October 2012, the appellant lodged with the Tribunal the paper file which is the subject of these proceedings.

On 15 November 2012, three persons instructed by the Secretary General's representative consulted this file with the authorisation of the Chair (Article 7, paragraph 6 of the Statute of the Tribunal).

On 28 November 2012, two persons instructed by the appellant's counsel also consulted the same file, with the authorisation of the Chair (Article 7, paragraph 6 of the Statute of the Tribunal).

5. On 4 December 2012, the appellant's counsel requested that one of these two persons (Ms E. Koudriavtseva) be heard by the Tribunal as a witness.

6. On 5 December 2012, the Tribunal decided not to hear Ms Koudriavtseva as a witness. The Tribunal stipulated that this decision did not prevent her from assisting the appellant's counsel at the hearing, if the latter so wished, and acting as his advisor in his role as the appellant's representative, and from making a statement if he sought authorisation from the Chair, which is what happened.

7. The public hearing on this appeal was held in the Tribunal's hearing room in Strasbourg on 6 December 2012. The appellant was represented by Maître Jean-Pierre Cuny. The Secretary General was represented by Ms Christina Olsen, from the Legal Advice Department, assisted by Ms Maija Junker-Schreckenber and Ms Sania Ivedi, administrative officers in the same Department.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

8. The applicant, an Irish national aged 54, joined the Council of Europe on 1 April 1984 as an administrative assistant (grade B2). She currently occupies a post in the same grade in the Directorate General of Human Rights and Rule of Law (DGI).

9. On 1 February 2012, the appellant submitted an administrative request to the Secretary General pursuant to Article 59, paragraph 1, of the Staff Regulations, in which she requested the destruction of a "CDCJ folder" (European Committee on Legal Co-operation) which she claimed contained private and confidential information on staff in her department, "located in a cupboard that was relatively accessible". She also asked for an investigation to be carried out "to identify the e-mails and all their links stored in the public folders of her Directorate despite their personal and confidential nature, and for an order to be given for their destruction."

10. By letter of 5 April 2012, the Director of Human Resources replied as follows:

"I would like to inform you that I will contact the Director General concerned to discuss these issues and, if need be, ways to guarantee the archiving of sensitive information and indeed access to it is in line with the Staff Regulations and implementing Rules.

I consider that the aforementioned measures adequately reply to and satisfy your administrative request."

11. On 12 April 2012, the appellant submitted an administrative complaint in which she requested the annulment of the above reply, as in her view, the Director of Human Resources had not given her a positive response.

12. In his reply, dated 14 May 2012, to the administrative complaint, the Secretary General stated that:

“(…) the Director of Human Resources had taken measures to locate and identify any files and e-mails which might contain private and confidential information.

These measures would be carried out in accordance with the ‘six-eyes principle’ in order to comply with the concept of personal data as described in Instruction No. 47 on the use of the Council of Europe’s Information System so as to ensure the required confidentiality of this investigation.

Without any precise indication of the location of the data being searched for, this work will take some time, the duration of which it is impossible to determine at this stage.

If these measures result in the identification of private and confidential data, they will be deleted and/or placed in the administrative file of the staff member concerned, in accordance with your requests.

Thank you for having drawn the Organisation’s attention to this point. Where appropriate, any measures taken further to your request will prevent private or confidential data from being divulged.

(…)

We therefore consider that your administrative complaint requires no further action.”

13. According to the Secretary General, measures were taken by the Directorate of Human Resources (DHR) to look for any documents containing private and confidential information in her Directorate. On 11 July 2012, the appellant was contacted by the staff member tasked by the DHR with co-ordinating the investigation which had been initiated in response to the administrative complaint. The latter asked the appellant, for the purposes of examining the relevant electronic and paper files, to contact him in order to discuss the arrangements whereby the staff appointed to carry out the investigation in accordance with the six-eyes principle could have access to the files containing private and confidential information referred to by the appellant in her administrative complaint. However, the appellant refused to hand over the file to the investigating working group.

14. On 13 July 2012, the appellant lodged the present appeal.

15. On an unspecified date, the appellant came into the possession of a file (with reference DG-HL Public and Private Law STAFF 2007-2010) under circumstances which she has not made clear. She kept this file under her control until handing it over to the registry of the Tribunal (paragraph 4 above) apart from a period when she had entrusted it to the Council of Europe mediator.

16. In an e-mail dated 27 July 2012, the Directorate of Human Resources asked the appellant to hand over the file in question by 20 August 2012.

17. On 16 August 2012, the appellant challenged this act with a second administrative complaint calling on the Secretary General “to annul the decision of 27 July and introduce appropriate guarantees of [her] substantive and procedural rights.” She claimed that the file in question would constitute “incontrovertible evidence in her appeal” and that there was “a risk that the file could be altered if Administration were to get hold of it.”

18. On the same day and in connection with this second administrative complaint, the appellant applied to the Chair of the Administrative Tribunal for a stay of execution under Article 59, paragraph 9 of the Staff Regulations, requesting “the suspension of the e-mail of 27 July 2012 on the grounds that it would be likely to cause [her] grave prejudice difficult to redress.”

19. On 24 August 2012, the Chair rejected her complaint, noting that:

“I cannot see how the fact of handing over to Administration the file in question at this stage in the proceedings could cause the complainant grave prejudice difficult to redress. The complainant – who fears that major and substantive changes may be made to the file in question – is clearly familiar with the file and could, possibly in agreement with Administration, take any measure which could reassure her (...)”

20. On 14 September 2012, the Secretary General rejected this second administrative complaint. The appellant did not lodge any appeal with the Tribunal against this rejection.

21. The appellant then handed the file over to the Mediator, who informed DHR of this fact. In response to the request of the staff member tasked with co-ordinating the investigation to have access to the file, the Mediator said that the Director of Human Resources would have to give the appellant a written instruction formally asking her to hand over the file to DHR, which the Director of Human Resources did by e-mail dated 4 October 2012. Having recovered the file from the Mediator, on 23 October 2012, the appellant lodged the file in question with the registry of the Tribunal.

22. Meanwhile, on 15 October 2012, the appellant submitted a second request for a stay of execution of the impugned act. This request was part of the proceedings concerning the present appeal (which began with the submission of her first administrative complaint).

23. On 30 October 2012, the Deputy Chair rejected this second request for a stay of execution.

II. RELEVANT LAW

24. Article 46 (Personal administrative files) of the Staff Regulations reads as follows:

“1. There shall be established a single personal administrative file for each staff member.

2. The file shall contain solely the documents relating to the application of these Regulations and their implementing provisions to the person concerned and other documents concerning the staff member’s administrative situation, competence, work and conduct. The file shall be kept by the Human Resources Division, with the exception of the medical file, which shall be kept by the Council’s doctor.

3. The file shall contain no document unknown to the staff member. The latter may comment on any document submitted to him or to her; any comments shall be attached to the document for inclusion in the file unless the author of the document in question amends the content thereof with the agreement of the staff member.

4. The file shall not refer to the political, philosophical or religious views of the staff member.

5. Staff members or their authorised representative may at any time examine their file, even after the termination of their employment.

6. The file shall be confidential and may only be consulted at the headquarters of the Secretariat. The Secretary General shall issue rules stipulating which staff members, boards and committees shall, by reason of their official functions, be authorised to consult it.”

25. Article 59 (Complaints procedure) of the Staff Regulations reads as follows:

“1. Staff members may submit to the Secretary General a request inviting him or her to take a decision or measure which s/he is required to take relating to them. (...)

2. Staff members who have a direct and existing interest in so doing may submit to the Secretary General a complaint against an administrative act adversely affecting them, other than a matter relating to an external recruitment procedure. The expression ‘administrative act’ shall mean any individual or general decision or measure taken by the Secretary General or any official acting by delegation from the Secretary General.

(...)

4. The Secretary General shall give a reasoned decision on the complaint as soon as possible and not later than thirty days from the date of its receipt and shall notify it to the complainant. If, despite this obligation, the Secretary General fails to reply to the complainant within that period, he or she shall be deemed to have given an implicit decision rejecting the complaint.”

26. Article 60 of the Staff Regulations Personnel provides that:

“1. In the event of either explicit rejection, in whole or part, or implicit rejection of a complaint lodged under Article 59, the complainant may appeal to the Administrative Tribunal set up by the Committee of Ministers.

(...)”

THE LAW

27. In her form of appeal, the appellant asks the Tribunal to annul the Secretary General’s decision not to destroy immediately the confidential information relating to her which could “illegally be found in files other than administrative files”. In her further pleadings, she asks the Tribunal to annul the Secretary General’s decision deferring indefinitely the regularisation of the situation of which she was complaining.

28. For his part, the Secretary General asks the Tribunal to declare the appeal inadmissible and/or ill-founded and to dismiss it.

I. SUBMISSIONS OF THE PARTIES

29. The appellant claims that the facts at issue and the Secretary General's decision in particular, constitute a violation of Article 46 of the Staff Regulations and the general principles of law. She claims that the placing in the public folders of the e-mail concerning her health violated the requirement that only the medical officer of the Organisation should have access to information of a medical nature. The appellant points out that she had informed her line management of the existence of the file and the e-mail, but that no practical action had been taken as a result. The appellant's Director had assured her that he would deal with the matter, but she had subsequently found that there was still a copy of the e-mail in the public folders, as the e-mail archiving system had saved it there.

30. The appellant also maintains that the negligent treatment of confidential information concerning the administrative situation of staff and the divulgence of comments relating to their health constitute a violation of the obligation of confidentiality. Such an approach is also contrary to the Organisation's obligation to show due regard for the dignity and reputation of staff and not to place them unnecessarily in a difficult personal situation. The appellant claims that the existence of a paper file containing personal data on the staff in her Directorate did not correspond to a legitimate and reasonable aim. The refusal by her line managers to take account of her request that the file in question be destroyed or at least removed was also unreasonable insofar as it failed to comply with the requirements laid down by international case-law. She claimed that the Secretary General had therefore violated his obligation to protect the reputation and dignity of staff, to show due respect for their private life and to take reasonable action.

31. The appellant points out that she had contacted the Data Protection Commissioner, adding that the latter had merely taken note of the problem and said that she was the only person dealing with a large number of similar cases brought to her attention by staff of the Organisation.

32. For his part, the Secretary General claimed that the appellant's administrative complaint had been allowed (paragraph 13 above). This appeal was therefore not directed against an "explicit rejection, in whole or part", or against an "implicit rejection" of the appellant's administrative complaint within the meaning of Article 60, paragraph 1 of the Staff Regulations. In his view, the appellant's appeal was inadmissible.

33. The Secretary General also maintains that the appellant had not demonstrated her interest in bringing proceedings. First, with regard to her complaints about the negligent treatment of confidential data relating to the administrative situation of staff and the existence of documents containing data concerning several staff members in her Directorate, the appellant had not proved an interest giving her capacity to bring proceedings. Second, insofar as she was requesting annulment of the decision of 14 May 2012, the Secretary General notes that in his response to the administrative complaint, he had informed the appellant that measures had been taken by the Director of Human Resources to locate and identify any files and e-mails which could contain private and confidential information and that any such documents identified would be deleted and/or placed in the administrative file of the staff member concerned.

34. Furthermore, on 11 July 2012 the applicant had been contacted by the member of staff tasked with co-ordinating the “six-eyes principle” investigation to assist with the identification of the file referred to in her administrative complaint. The appellant failed to explain why the measures decided upon had not been satisfactory. In contrast, she prevented the investigation from identifying and solving the problems she raised as she did not allow Administration to have access to the file in question.

35. In this connection, the staff tasked with conducting the “six eyes principle” procedure were only able to produce a preliminary report based on the investigations carried out on the public folders in the appellant’s Directorate. The staff responsible for the investigation used as a basis the e-mail provided by the appellant in her administrative complaint in seeking to identify whether there were any practices which could pose a problem in terms of personal data protection in the appellant’s Directorate. The e-mail in question concerned a discussion between managers in the appellant’s department about filling the post of assistant. The exchange focused on the fact that this post was very demanding in terms of stress and workload and that the appellant, who was under regular observation by the Organisation’s medical officer and who had clearly expressed her wish not to continue working in that Division because of her health problems, could not be appointed to the vacant post.

36. The working group tasked with the “six-eyes principle” procedure examined the public folders in the Directorate in question, using this e-mail as their basis. The preliminary report concluded that the e-mail at issue was accessible only by a very restricted number of staff members having legitimate reasons to access it, namely the staff administering the public folder system, who had access to all folders, and the two persons managing the human resources issues in the Directorate General. The report indicated, however, that it was possible that the e-mail had been originally stored in a folder to which a larger number of persons had access and that it could have been deleted in the meantime. In addition, the working group found no other e-mails containing sensitive personal data stored in an inappropriate folder. The report concluded that the policy of general access to public folders appeared to be satisfactory, but made a number of recommendations to improve the system. The report stated that as the procedure had not provided any evidence of illegitimate practices, the working group had decided not to pursue any further investigations, adding that this decision could be reviewed following verification of the paper file. If the investigation had concluded that there had been a problem regarding access to personal and confidential data in the management of access to the public folders in the appellant’s Directorate, instructions would have been given to take remedial action. However, such had not been the case.

37. The Secretary General points out that the e-mail complained of by the appellant was accessible only to a small number of users, all of whom had legitimate access to the public folders in question and to the information contained therein. Furthermore, the information on the appellant’s health contained in the e-mail was objective. It was a straightforward exchange between the appellant’s managers to explain her situation and her wishes with regard to the vacant post. It had in no way been drafted with the intention of causing prejudice to the appellant, but was the communication of information for legitimate reasons in order to take a decision bearing in mind the appellant’s wishes vis-à-vis the problems she had raised with her line management. The e-mail contained no information or inappropriate comments on the appellant’s health. Accordingly, it should be concluded in this respect that there was no violation of the obligation to protect the reputation and dignity of the appellant, or of the obligation to respect her privacy or of the obligation to act reasonably towards the appellant.

With regard to the appellant's allegations regarding the contents of the impugned paper file, the Secretary General points out that Administration had been unable to verify the said contents because of the appellant's refusal to hand over the file, despite numerous requests to that effect. In the written proceedings, he stressed the fact that the appellant was in possession of a file which did not belong to her.

38. The Secretary General adds that with regard to the processing of staff data, the Organisation has a Regulation outlining a data protection system for personal data files in the Council of Europe, adopted by the Secretary General and approved by the Committee of Ministers on 13 April 1989, which established the independent function of Data Protection Commissioner, whom the appellant could have approached.

39. The Secretary General therefore asks the Administrative Tribunal of the Council of Europe to declare the appeal inadmissible and/or ill-founded.

II. THE TRIBUNAL'S ASSESSMENT

A. The appellant's allegations concerning her colleagues

40. The Tribunal must first of all consider whether the applicant has an interest in bringing proceedings with regard to facts which do not concern her personally but which involve her colleagues in the Directorate.

41. In considering this question, the Tribunal believes that it would be appropriate to draw on the definition and interpretation of the term "victim" used by the European Court of Human Rights, in accordance with Article 34 of the Convention: in order to claim to be a victim of a violation, a person must be directly affected by the impugned measure.

42. In the light of this interpretation, the Tribunal considers that the appellant does not have a direct interest in bringing proceedings with regard to the facts relating to her colleagues in the Directorate. The mere fact that the file in question contains documents relating to both the applicant and other staff in the Directorate is not sufficient to create a sufficiently solid link to justify such an interest. The Tribunal concludes from this that the appellant, being in no way formally authorised to represent her colleagues, did not have the capacity to submit an appeal on this issue to the Tribunal nor, by extension, to lodge an administrative complaint with the Secretary General.

43. The Tribunal concludes, therefore, that this part of the appeal is inadmissible.

B. The appellant's allegations regarding her own situation

44. The appellant asks the Tribunal to annul the decision of the Secretary General, delivered on 14 May 2012, which she claims was adverse to her interests.

45. The Tribunal points out that under Article 60 of the Staff Regulations, it may deal with an appeal "in the event of either explicit rejection, in whole or part, or implicit rejection of a complaint lodged under Article 59" of the Staff Regulations. In this case, the Tribunal accepts that the competent authorities in the Organisation could have acted more speedily, bearing in mind that more than two months passed by between the time when the appellant referred the matter to the Director of Human Resources and the date on which the latter replied, which, in

view of the circumstances of the case, is certainly regrettable (see paragraphs 9 and 10 above) even though this time-frame is legitimate under the terms of the Staff Regulations. The Tribunal does not deem it appropriate to speculate on whether and to what extent this delay on the part of the Organisation could have encouraged the appellant to take and keep in her possession the file in question (see paragraph 15 above).

46. Despite this obvious inertia, the Tribunal notes with satisfaction that the Secretary General, in his response to the appellant's administrative complaint, informed the latter about the measures taken to locate and identify the files and e-mails which could contain private and confidential information and assured her that any private and confidential data identified would be deleted or placed in the administrative file of the staff member in question, in accordance with the appellant's request (see paragraphs 12 and 33 above). It also notes that the investigation to be conducted by the staff tasked with the "six eyes principle" procedure was indeed carried out, that the investigators examined the public folders of the Directorate concerned and drafted a report concluding that the policy of general access to public folders was satisfactory (see paragraphs 35 and 37 above). In the light of these circumstances, the Tribunal observes that this part of the appeal lacks substance as the appellant's administrative complaint had been allowed and not rejected, as required by Article 60 of the Staff Regulations.

47. With regard to the appellant's allegation concerning the violation of the general principles of law, the Tribunal asserts that any international organisation must ensure that the personal and confidential data of its staff are protected appropriately against any misuse or undesirable leaks. It acknowledges that in the instant case, the Directorate to which the appellant belongs showed negligence in the archiving of paper files. However, the Tribunal notes, without going into any further details, that the contents of the file, including the e-mail regarding the appellant's health, did not reveal any sensitive or intimate information concerning her personal and/or professional life (see paragraph 37 above). Furthermore, the applicant does not claim that the content of the e-mail in question had been wrongly used or that people other than those authorised to see it had been aware of it. The Tribunal therefore considers that the competent authorities of the Organisation, having been informed of the matter by the appellant and following the submission of the request provided for in Article 59, paragraph 1, of the Staff Regulations, acted appropriately in view of the nature of the situation even though they could have done so more speedily.

48. The Tribunal is conscious of the fact that neither the Director of Human Resources nor the Secretary General has provided the exact date on which all the measures they deemed appropriate were carried out. Nonetheless, it considers that this in no way undermines the attention they attached to the situation reported by the appellant. It is not a situation which can be considered as detrimental to the applicant's interests within the meaning of the relevant provisions of the Staff Regulations.

49. In conclusion, the rest of the appeal must be declared ill-founded.

50. For these reasons, the Administrative Tribunal:

Declares the appeal to be inadmissible with regard to the appellant's allegations concerning her colleagues;

Declares the rest of the appeal ill-founded and dismisses it;

Orders each party to bear its own costs.

Adopted by the Tribunal in Strasbourg on 25 January 2013 and delivered in writing on 25 January 2013 pursuant to Rule 35, paragraph 1, of the Tribunal's Rules of Procedure, the French text being authentic.

The Registrar of the
Administrative Tribunal

The Deputy Chair of the
Administrative Tribunal

S. SANSOTTA

G. MALINVERNI