

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF

ADMINISTRATIVE TRIBUNAL

Appeal No. 560/2014 (Nataliya YAKIMOVA v. Secretary General)

The Administrative Tribunal, composed of:

Mr Christos ROZAKIS, Chair,
Ms Mireille HEERS,
Mr Ömer Faruk ATEŞ, 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 Nataliya Yakimova, lodged her appeal on 15 January 2015. The appeal was registered on the same day under number 560/2014.
2. On 20 May 2015, the Secretary General submitted his observations on the appeal.
3. The appellant said that she did not wish to file observations in reply.
4. The parties having stated that they were prepared to dispense with oral proceedings, the Tribunal decided on 26 June 2015 that there was no need to hold a hearing.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The appellant was recruited on 1 June 2012 as an assistant lawyer in the Registry of the European Court of Human Rights (hereafter “the Court”), on grade B3, step 1, under a fixed-term contract with a probationary period of one year.

6. The probationary period having been deemed satisfactory, she was offered a further fixed-term contract starting from 1 June 2013 and her appointment became final on that date.

7. In August 2014, the appellant approached the Directorate of Human Resources (hereafter “the DRH”) to ask when she would advance to the next step. She believed that she was entitled to this, having completed 24 months’ service at the Council of Europe.

8. The DRH answered on 24 August 2014 that she would advance to the next step on 1 July 2015, i.e. the first day of the first quarter after a period of 24 months from her confirmation in employment.

9. On the same day, the appellant asked what the legal basis for this rule was and the DRH replied on 22 September 2014 that discussions were in progress regarding staff recruited before and after 1 January 2014 and that it would keep her informed.

10. On 18 November 2014, the appellant contacted the DRH again and, having failed to receive a reply, submitted an administrative complaint on 20 November 2014.

11. Her administrative complaint was dismissed in a letter dated 18 December 2014.

12. On 15 January 2015, the appellant lodged this appeal.

II. RELEVANT LAW

13. Article 17 (Probationary period) of the Staff Regulations provides as follows:

“1. Before staff members can be confirmed in their appointment, they must have satisfactorily completed a probationary period, the length of which shall be determined by the Regulations on Appointments.

2. During the probationary period a contract may be terminated by either party at two months’ notice.”

14. Article 18 (Confirmation in employment) of the Staff Regulations reads as follows:

“Contracts confirming employment shall be of indefinite or fixed-term duration, as determined by the Regulations on Appointments without prejudice to Articles 19 and 20 of these Regulations.”

15. Article 20 of the Regulations on appointments (Appendix II to the Staff Regulations) provides as follows:

“1. Before the probationary period expires, the Board shall examine the staff member’s file and, in particular, his or her appraisal reports made in accordance with Article 19.

2. If the staff member's work is satisfactory, the Board shall recommend that the Secretary General confirm him or her in his or her employment."

16. Article 3 of the Regulations governing staff salaries and allowances (Appendix IV to the Staff Regulations) provides as follows:

"1. Each staff member, confirmed in employment, shall advance up the scale for his or her grade by the steps shown.

2. Such advancement shall be continuous, from one step to the next, starting on the first day of the first quarter.

3. For category A staff, advancement to steps 2 to 5 (grades A7 and A6) and 2 to 7 (grades A5, A4, A3 and A2) shall take place after twenty-four months of service in the step immediately below and advancement to steps 6 (grade A7), 6 to 8 (grade A6) and 8 to 11 (grades A5, A4, A3 and A2) after forty-eight months of service in the step immediately below.

4. For category L staff, advancement to the next step shall take place after thirty-six months of service in the step immediately below.

5. For staff in categories B and C, advancement to steps 2 to 8 shall take place after twenty-four months of service in the step immediately below, and to steps 9 to 11 after forty-eight months' service.

6. For the advancements under this Article, only those years of service in which the staff member's appraisal certifies that s/he at least fully satisfied the requirements of his/her post or position shall be taken into account."

THE LAW

17. The appellant requests the annulment of the decision not to grant her a salary step advancement after twenty-four months of service because she considers that her probationary period should be taken into account in the twenty-four months of service mentioned in Article 3 of the Regulations governing staff salaries and allowances (Appendix IV to the Staff Regulations – paragraph 16 above) as a requirement for advancing to the next step.

18. The Secretary General asks the Tribunal to dismiss the appellant's appeal.

I. THE PARTIES' SUBMISSIONS

19. The appellant submits that, in the reply to her administrative complaint, the Legal Advice Department interprets Article 3, paragraph 1, to mean that the provisions concerning step advancement apply once the staff member has been "confirmed in employment", so that the period of 24 months' service starts from the date of that confirmation. However, this interpretation appears to be broad and inconsistent with the other provisions of this

article specifying which years must be counted (paragraphs 5 and 6 of Article 3). The appellant considers that these provisions should be read cumulatively.

20. The appellant submits that the purpose of paragraph 1 of Article 3, taken in conjunction with the other provisions concerning step advancement, is to ensure that this advancement does not occur during the probationary period. In other words, advancement to the next step is, in principle, only possible after confirmation in employment.

21. She adds that this paragraph does not concern the definition of the time from which the period of twenty-four months starts to run. Furthermore, it does not expressly exclude the probationary period from the staff member's length of service. The period of service to be taken into account is specified in paragraphs 5 and 6 of Article 3.

22. The appellant therefore infers from this that it was starting from 1 June 2014 that she satisfied the requirements of Article 3 concerning advancement to the next step. Specifically, she had been employed as a staff member of the Court, on grade B3, step 1, since 1 June 2012, and the requirement of two years' service was therefore satisfied on 1 June 2014. She stresses that neither the terms of her contract nor the Staff Regulations exclude the probationary period from the period of service to be taken into account for advancement to the next step. These documents do not state that her step was provisional pending completion of her first year of employment, as the Organisation suggests in the reply to her administrative complaint. If that period was not to be taken into account, the documents relating to her employment should have clearly stated that she would be employed provisionally on grade 3, step 0. However, that was not the case.

23. In conclusion, the appellant believes that the probationary period should not be excluded from the period of service to be taken into account for advancement to the next step.

24. The Secretary General notes that Article 3, paragraph 1, of the Regulations governing staff salaries and allowances specifies that only staff members confirmed in employment are entitled to advance to the next step. However, the appellant completed a probationary period of one year (from 1 June 2012 to 31 May 2013) and was not confirmed in employment until 1 June 2013.

25. In reply to the appellant's argument that there is no provision in her contract or the Staff Regulations excluding the probationary period from the length of service for advancement to the next step, the Secretary General emphasises that such a provision is unnecessary because the terms of Article 3 are clear. In restricting step advancement to staff members who have successfully completed their probationary period and are thereafter confirmed in employment, the legal rule contained in Article 3 satisfies the conditions of clarity and foreseeability required by the Administrative Tribunal (see *ATCE, Cucchetti and others v. Secretary General*, Appeals Nos. 548-553/2014, decision of 28 April 2015, paragraph 65, *Yeo v. Secretary General*, Appeal No. 476/2011, decision of 13 December 2011, paragraph 49). The Secretary General stresses that the wording which the appellant would like to have added would be redundant given the clear terms of Article 3, and that she fails to consider the meaning and scope of the words "confirmed in employment" which are used expressly in the article in question. If those who drafted the regulations had wanted to grant step advancement to all staff after twenty-four months' presence in the Organisation,

they would not have specified that only staff confirmed in employment would be eligible for this.

26. Referring to the provisions of Articles 17 and 18 of the Staff Regulations and Articles 17 and 20 of the Regulations on appointments (Appendix II to the Staff regulations), the Secretary General reiterates that a staff member's appointment only becomes final on completion of a satisfactory probationary period. Moreover, the appellant does not dispute that she was appointed on 1 June 2012, but her appointment was provisional during her probationary period and only became final following its completion, i.e. on 1 June 2013. According to Article 3 of the Regulations governing staff salaries and allowances, it is from the date of final appointment that the period for entitlement to step advancement (in the appellant's case, twenty-four months of service) starts to run.

27. The Secretary General submits that the appellant interprets the article in question freely and incorrectly, especially with regard to paragraph 5, which, in her view, only indicates the period of service needed to obtain advancement to the next step. He further submits, however, that this paragraph cannot be used to calculate the starting point for the period to be taken into account for advancement to the next step. In his view, it indicates the manner in which staff of grades B and C advance to the next step. Paragraphs 3, 4 and 6 of Article 3 are used to calculate the months of service needed to advance to the next step in the four categories to which a staff member may be recruited at the Council of Europe. The period of service needed to obtain advancement to the next step differs according to the category of staff. For example, paragraph 3 stipulates the period of service which staff of category A must complete to obtain advancement to the next step, depending on their grade and step. Paragraph 4 stipulates the period of service which staff of category L must complete. These periods of service are the periods to be taken into account for advancement to the next step, starting from the day on which staff members are confirmed in employment.

28. In reply to the appellant's argument that there is no provision in her contract or the Staff Regulations specifying expressly that the probationary period is excluded from the period of service required for advancement to the next step, the Secretary General submits that Article 3 allows all future staff members to understand that they will have to wait to be confirmed in employment before the period required for advancement to the next step starts to run. In fact, the appellant is the only staff member to have submitted an administrative complaint and an appeal based on the terms of this provision.

29. The Secretary General concludes that there is no possible exception to the rules providing for advancement to the next step twenty-four months after a staff member's confirmation in employment and, consequently, that the appellant's request to advance to the next step after twenty-four months of service should be rejected.

III. THE TRIBUNAL'S ASSESSMENT

30. The Tribunal notes first of all that advancement to a higher step signifies a progression in a Council of Europe staff member's career within a grade. It is reflected in a salary increase which, in principle, has no effect on the duties performed.

31. It observes that this appeal concerns a difference of interpretation regarding the provisions of the Staff Regulations, in particular Article 3 of the Regulations governing staff salaries and allowances, which sets the criteria for advancement to the next step.

32. Although the Tribunal could accept the appellant's argument that there is no provision in the regulations specifying expressly that the probationary period is excluded from the period of service required to advance to the next step, it considers that the rules in question are described in a clear, transparent and comprehensible manner, ensuring that there is no confusion or ambiguity. It points out in this connection that the rules applicable in a specific case must be interpreted in their entirety, applying a logical interpretation.

33. Paragraph 1 of Article 3 of the regulations governing staff salaries and allowances states that "[e]ach staff member, confirmed in employment, shall advance up the scale for his or her grade by the steps shown" (see paragraph 16 above). According to Article 17 of the Staff Regulations, before staff members can be confirmed in their appointment, they must have satisfactorily completed a probationary period, which, in the appellant's case, was set at twelve months, a fact which she does not dispute. It follows that advancement to the next step concerns only staff members confirmed in employment, i.e. once the probationary period has been successfully completed.

34. Under these circumstances, the appellant cannot legitimately claim that the period of service for advancement to the next step began on the date of her provisional appointment, 1 June 2012. Consequently, the Tribunal, like the Secretary General, considers that this period did not begin until 1 June 2013, once she had satisfied the requirements laid down in the Staff Regulations for entitlement to such advancement (see paragraph 20 above).

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

For these reasons,

The Administrative Tribunal:

Declares the appeal unfounded and dismisses it;

Orders each party to bear its own costs and expenses.

Adopted by the Tribunal in Strasbourg, on 22 October 2015, and delivered in writing, pursuant to Rule 35, paragraph 1, of the Tribunal's Rules of Procedure, on 23 October 2015, the French text being authentic.

The Registrar of the
Administrative Tribunal

S. SANSOTTA

The Chair of the
Administrative Tribunal

C. ROZAKIS