

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

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

Appeal No. 472/2011 (Franceline DENTINGER v. Secretary General)

The Administrative Tribunal, composed of:

Mr. Georg RESS, Deputy Chair,
Mr. Angelo CLARIZIA
Mr. Hans G. KNITEL, 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. Franceline Dentinger, lodged her appeal on 8 February 2011, and it was registered on that day as No. 472/2011.
2. On 8 March 2011, the appellant submitted a supplementary memorial.
3. On 6 April 2011, the Secretary General submitted his observations. The appellant submitted a memorial in reply on 9 May 2011.
4. The public hearing on the appeal was held in the Administrative Tribunal's hearing room in Strasbourg on 22 June 2011. The appellant was represented by Ms. Nathalie Verneau, staff-member of the Council of Europe, and the Secretary General by Ms Bridget O'Loughlin, Deputy Head of the Legal Advice Department, assisted by Ms Maija Junker-Schreckenber and Ms. Sania Ivedi, assistants in that department.

THE FACTS

I. THE FACTS OF THE CASE

5. The appellant is a French national, born in 1965. She is a permanent staff-member of the Council of Europe, serving in Strasbourg.

6. On 6 August 2008, the appellant applied to the Directorate of Human Resources (“DRH”) for an education allowance for her daughter, who was about to start studying for a double degree in French and German law at the Universities of Cologne and Paris-Sorbonne. Her application was rejected on 11 September 2008, for the following reasons:

“One of the conditions for payment of the education allowance to staff not entitled to the expatriation allowance is that ‘no school or university corresponding to the child’s educational cycle is available within 80 km distance from the official’s duty station or home’. In fact, there are establishments corresponding to your daughter’s educational cycle in or close to Strasbourg.”

7. On 5 December 2008, the appellant submitted a second application, which was again rejected on 12 December 2008, on the ground that, under Article 7, paragraph 1b) of the Regulations governing staff salaries and allowances (Appendix IV to the Staff Regulations), in the version then in force, education expenses were refunded only for children studying for a third-level diploma in the country of which the staff-member was a national.

8. Since the first two years of the course were taught in Germany, the appellant took the matter no further. However, having passed her examinations in Cologne, the appellant’s daughter was preparing to take the second two years of her course at the University of Paris-Sorbonne, i.e. in the country where her mother was serving. Considering that the conditions specified in Article 7, paragraph 1 a) of the Regulations were now fulfilled, the appellant renewed her application, on 26 August 2010, for the academic year 2010–2011.

9. On 6 September 2010, the DRH refused her application in the following terms:

“Under Article 7, [paragraph] 2.1. of the Regulations [...], staff not entitled to the expatriation allowance may, in exceptional cases, be paid the education allowance ‘if no school or university corresponding to the child’s educational cycle is available within 80 km distance from the official’s duty station or home’. However, there are establishments corresponding to your daughter’s educational cycle in or close to Strasbourg.

Because of its exceptional character, this provision must be interpreted with the utmost strictness. The special nature of the degree does not justify application of this exceptional provision.”

10. On 22 September 2010, the appellant met the person dealing with her case in the DRH. An exchange of e-mails followed this meeting. In an e-mail of 12 October 2010, the person dealing with her case informed her that the DRH had taken a final decision, refusing to pay the education allowance. Specifically, the text contained the following passages:

“[The provisions of Article 7, paragraph 2.1 a) of the Regulations extend the measures applying to recipients of the expatriation allowance to staff with local status. This results from Resolution CM/Res(2007)9 of 16 May 2007, transposing the recommendations made by the Co-ordinating Committee on Remuneration (CCR) in its 164th report of 3 May 2005. Although all the other Co-ordinated Organisations have decided to repeal these provisions, the Committee of Ministers of the Council of Europe finally decided to retain them, although some delegations insisted on their being applied only in wholly exceptional cases. The decisions of the Committee of Ministers are binding on the Secretary General.

These are the reasons why Article 7, paragraph 2.1 begins by insisting on the exceptional nature of the measure; it explains that the allowance may be paid only in cases where no suitable establishment exists near the duty station; this must be interpreted with the utmost strictness.

In fact, the University of Strasbourg offers courses leading to a bachelor's and master's degree in law, qualifications which allow holders to practise law in France, and correspond to your daughter's educational cycle, within the meaning of Article 7, paragraph 2.1 a).

It is true that [...] the Paris-Cologne course at the University of Paris I Panthéon-Sorbonne qualifies students to practise law in France, and also trains them in German law, with a view to their working on Franco-German cases. The fact remains, however, that this training is not needed to accede to one of the legal professions in France. Moreover, Strasbourg University's integrated bachelor's and master's courses in Franco-German business law have exactly the same profile as the Paris-(Cologne) course, and serve the same vocational purpose. Like the former, the latter does not prepare students for the state examination required to practise law in Germany, but only for the University of Cologne's LL.M. degree - a degree also available at the University of Freiburg-im-Breisgau as part of Strasbourg University's master's course in Franco-German business law, which students taking the integrated Franco-German course can join in their third year. In other words, the difference between the two integrated courses is a matter, not of special features, but solely of organisation. Neither organisation nor indeed special features can be taken as a criterion in deciding whether an equivalent course, within the meaning of article 7, paragraph 2.1 a) exists, without derogating from the exceptional character required by the Committee of Ministers.

This being so, the decision to take the Paris-Cologne and not the Strasbourg course is (your daughter's) personal choice, and as such no concern of the Council of Europe [...].”

11. On 9 November 2010, the appellant formally requested that the DRH's refusal be reviewed, and the education allowance paid her for the academic years 2010-2011 and 2011-2012. This request was rejected by the Secretary General by decision taken on 8 December 2010, and notified to her on 11 December 2010. Without specifying the academic year to which his reply referred, the Secretary General noted that:

“In this instance, the education allowance could have been paid only if there were no university offering a primary and higher (master's) degree in law, either in or close to Strasbourg. However, the Strasbourg Faculty of Law, Political Science and Management is such an establishment.

The fact that this faculty does not offer exactly the course selected by your daughter is not sufficient reason to conclude that there is no university establishment in Strasbourg corresponding to her educational cycle. She is entirely free to choose a course other than those offered by the Strasbourg Faculty, but this choice is her own, and does not entitle you to an education allowance. The special features of each course in each establishment have no bearing on the decision to grant or withhold an education allowance.

(...) When they agreed to retain the exception provided for in Article 7, paragraph 2.1 a), the Ministers' Deputies indicated that this was to be applied in very few cases, and interpreted as strictly as possible.

This intention is clear from the record of the meeting at which the Resolution was adopted, and particularly from a statement made by the Representative of France (from: Rapport de la réunion des Délégués des Ministres du 16 mai 2007):

“Suite aux différents débats relatifs au projet de résolution transposant le 164^e rapport du Comité de coordination sur les rémunération (CCR) daté du 3 mars 2005 et modifiant le règlement régissant l’indemnité d’éducation, figurant à l’Annexe IV au Statut du Personnel du Conseil de l’Europe, et à la lumière de l’échange de courrier (DD(2007)209 et DD(2007)209 add), la France n’émet pas d’objection à l’adoption du document CM(2007)45. Elle n’en souhaite pas moins marquer sa préoccupation devant la croissance forte de ce poste de dépenses et rappeler l’importance qu’elle attache à :

- *l’assurance d’une interprétation stricte du nouveau dispositif, s’agissant notamment de ses paragraphes 5 et 6c ;*
- *l’égalité de traitement entre les agents du Secrétariat ;*
- *la neutralité budgétaire des mesures adoptées.”*

When they amended Article 7, paragraph 2.1 a) of the Regulations, the Committee of Ministers clearly intended to word it even more restrictively than before. The Secretary General’s position, that payment of the education allowance in exceptional cases should be limited to those where the type of course envisaged is not available within 80 km of Strasbourg, would seem entirely reasonable, and fully in accord with the aim pursued by the authors of the text in question.

[...]

The terms “exceptional” and “may” used in Articles 7, paragraph 2.1 a) of the Regulations indicate that payment of the education allowance to staff not entitled to the expatriation allowance is not a right, but a simple possibility. (This provision) offers no legal basis for a right to automatic payment of that allowance. (It) merely indicates that the education allowance may be paid in exceptional situations - which further confirms that the allowance is only very rarely payable to staff not entitled to the expatriation allowance. This means that you are not entitled to the education allowance. In this connection, the international case law on matters left to the discretion of the authorities concerned consistently confirms that decisions to award optional benefits are a matter for those authorities alone, and may not be over-ruled by the courts (see, *inter alia* and *mutatis mutandis*, judgments Nos. 2357 of 14 July 2004, 2193 of 3 February 2003, and 204 of 14 May 1973 of the ILO Administrative Tribunal).

All of this shows that there has been no violation of statutes, regulations, general legal principles or practice in this case, that there have been no formal or procedural irregularities, that account has been taken of all the relevant facts, that no false conclusion has been drawn from the material in the file, and, finally, that there has been no abuse of authority (...).”

12. The appellant lodged the present appeal on 8 February 2011.

II. THE RELEVANT LAW

13. Article 7 of Appendix IV (Regulations governing staff salaries and allowances) to the Staff Regulations, in the version in force at the time read as follows:

“1. Staff members entitled to the expatriation allowance with dependent children as defined according to the Staff Regulations, regularly attending on a full-time basis an educational establishment, may request the reimbursement of educational costs under the following conditions:

[...]

2.1. By way of exception, staff members not qualifying under the terms of paragraph 1 above may request payment of the education allowance in any of the following situations:

a. for education in the duty country, if no school or university corresponding to the child’s educational cycle is available within 80 km distance from the official’s duty station or home [...].”

III. COUNCIL OF EUROPE DOCUMENTS

CM(2005)62 164th Report of the Co-ordinating Committee on Remuneration (CCR) Education allowance: Rules for the reimbursement of educational costs.

14. The Committee of Ministers examined this report at its 932nd meeting, on 29 June 2005. The report contains the opinions and conclusions of the Committee of Representatives of the Secretaries General (CRSG) and those of the Committee of Staff Representatives (CRP) on review of the education allowance. The CRP concluded that the proposal of the Secretaries General not only did nothing to improve the position of staff not in receipt of the expatriation allowance but, on the contrary, imposed an additional restriction (limitation to the duty country), which took no account of certain special situations, particularly those of staff resident in Luxembourg and Strasbourg.

CM(2006)98 Draft Resolution revising Articles 7 and 9 of the Regulations governing staff salaries and allowances (Appendix IV to the Staff Regulations) on the education and language allowances

15. The Committee of Ministers examined this draft at its 978th meeting, on 25 October 2006. Part II of the document explained the main changes proposed in the current system of education allowances (section 3 of the document). The Secretary General proposed the adoption of exceptional provisions. He pointed out to the Deputies that staff members who were not entitled to the expatriation allowance could request payment of an education allowance if there were no school or university corresponding to a child’s educational cycle within 80 km of their duty station or home; under the new rules, only education costs incurred in the duty country might be refunded (section 9 of the document).

16. It was proposed that Article 7, paragraph 2 be amended as follows:

“1. By way of exception, staff members not qualifying under the terms of paragraph 1 above may request payment of the education allowance in any of the following situations:

a) **for education in the duty country, if no school or university corresponding to the child’s educational cycle is available within 80 km distance from the official’s duty station or home...**”.

THE LAW

17. The appellant contests the Administration's refusal, on 12 October 2010, to pay her the education allowance for the academic years 2010-2011 and 2011-2012 ("the decision complained of"). She requests that this refusal be rescinded. She also asks the Tribunal to find that she satisfies the conditions laid down in Article 7, paragraph 2.1 b) of the Regulations governing staff salaries and allowances, and should accordingly be paid the said allowance for the academic years in question.

18. The Secretary General, for his part, asks the Tribunal to dismiss the appeal.

I. THE PARTIES' ARGUMENTS

19. The appellant is aware that staff not entitled to the expatriation allowance are paid the education allowance only in exceptional cases, and that Article 7, paragraph 2.1 a) of the Regulations must be interpreted strictly. However, she considers that the Secretary General's interpretation of the rule in his letter rejecting her administrative complaint verges on the absurd. He explains that this allowance is paid to staff not entitled to the expatriation allowance only when "the type of course envisaged is not available within 80 km of Strasbourg". In her view, this would effectively mean that staff in this category would never be paid the education allowance, since Strasbourg clearly offers a broad range of courses, particularly in law, her daughter's chosen subject. She draws the Tribunal's attention to the special features of the double diploma offered by the Universities of Paris I and Cologne, and argues that these were such that "no [...] university corresponding to the educational cycle" of her daughter existed within 80 km of the Council of Europe.

20. In her view, her case thus differs from that decided by the ILO Administrative Tribunal in judgment No. 2357 of 14 July 2004, referred to by the Secretary General (paragraph 11 above), in which the courses in question were comparable, unlike those at issue here. On the contrary, she considers that the conclusions of the DRH are manifestly incorrect. In fact, no Strasbourg course has the same special features or the same vocational purpose as that offered by the Universities of Paris I and Cologne. The course her daughter is taking leads to a degree giving holders unrestricted access to all branches of the law in both Germany and France, which is by no means true of the Strasbourg course. In fact, the two courses differ in length (4 years for Paris-Cologne, only 3 for Strasbourg-Saarbrücken) and in the type of degree to which they lead: the Strasbourg-Saarbrücken course leads to a French degree, holders of which may practise law only in France, whereas the Paris-Cologne course leads to a French Master's I and a German Magister Legum, holders of which may either pursue their studies further and/or practise law in both France and Germany. This being so, it cannot be argued that a course comparable to the one her daughter is currently taking in Paris is available in Strasbourg.

21. The appellant concludes that no "educational cycle" comparable to the course her daughter is taking in Paris for the two academic years 2010-2011 and 2011-2012 exists either in, or within 80 km of, Strasbourg. She considers that the DRH has committed an error of assessment in examining her file.

22. In conclusion, the appellant asks the Tribunal to set aside the Secretary General's decision of 8 December 2010, and award her the education allowance for the above-mentioned academic years. She also asks that she be paid, under Article 11, paragraph 2 of the Statute of the Tribunal, the sum of €500 to cover the time and energy which she and the colleague who represents her have spent on this appeal.

23. The Secretary General refers, for his part, to Article 7, paragraph 2.1 a) of the Regulations, and argues that an establishment corresponding to her daughter's educational cycle does indeed exist in Strasbourg, but that the latter chose to register for the Paris-Cologne course at the University of Paris I Panthéon-Sorbonne. In his view, the fact that the Strasbourg Faculty does not offer the exact course chosen by the appellant's daughter is not reason enough to consider that Strasbourg has no university corresponding to her educational cycle.

24. The current wording of Article 7, paragraph 2.1 a) of the Regulations derives from Resolution CM/Res(2007)9, adopted by the Committee of Ministers on 16 May 2007, which transposes the recommendation of the Co-ordinating Committee on Remuneration (CCR), contained in its 164th report of 3 March 2005. In that report, the CCR left each of the Co-ordinated Organisations free to retain or rescind this provision. He emphasises that the Council of Europe is the only organisation which still provides for an exception to the rule that the education allowance is paid only to staff who are entitled to the expatriation allowance. However, the Ministers' Deputies have indicated that they wish this provision to be interpreted as strictly as possible.

25. The Secretary General rejects the appellant's argument that his interpretation "would effectively mean that staff in this category would never be paid the education allowance, since Strasbourg clearly offers a broad range of courses, particularly in law". He points out that the education allowance is paid only when there is no establishment corresponding to the educational cycle of the child in question either in, or close to, Strasbourg. The DRH takes care to ensure that the specified conditions are rigorously enforced, and pays the education allowance when they are complied with.

26. The Secretary General accordingly asks the Tribunal to declare the appeal manifestly unfounded and dismiss it.

II. THE TRIBUNAL'S ASSESSMENT

27. The appellant applied to the DRH for the education allowance provided for in Article 7, paragraph 2. 1 a) of the Regulations governing staff salaries and allowances for her daughter, who wished to take a university course in Paris. Under that provision, a staff member who is not entitled to the expatriation allowance may seek this education allowance for a child in the duty country, if there is no school or university corresponding to the child's educational cycle within 80 km of the staff member's duty station or home.

28. Her application was rejected on the ground that there was in Strasbourg, where she was serving, an establishment corresponding to her daughter's educational cycle, i.e. the University of Strasbourg (see paragraphs 9, 10 and 11 above).

29. In the appellant's view, the Secretary General interpreted the scope of Article 7, paragraph 2.1 a) of the Regulations too restrictively (see paragraphs 20-21 above).

30. The Tribunal notes that the parties disagree on interpretation of this provision, and particularly the concept of a "university corresponding to the child's educational cycle".

31. The Tribunal notes that the essential purpose of the education allowance provided for in the Council of Europe Staff Regulations is to compensate expatriate staff for education expenses incurred as a result of working outside their own country. Non-expatriate staff are in a different position: they are eligible for the education allowance only when they and their children are in the same situation as expatriate staff - which they are, in the nature of things, far less frequently. In

such cases, Article 7, paragraph 2.1 a) of the Regulations itself expressly states that the allowance is paid “in exceptional cases”.

32. Despite this use of the word “exceptional”, which it considers justified, the Tribunal holds that the legal basis for payment in such cases, i.e. Article 7, paragraph 2.1 a), must not be interpreted in such a way that the allowance is never paid.

33. In accordance with the above-mentioned principles, the Tribunal takes the view that the phrase “university corresponding to the educational cycle of the child”, used in Article 7, paragraph 2.1 a) of the Regulations, must be interpreted with reference to the content, form and vocational purpose of the university course which the staff member’s child is or will be taking, as well as the qualifications to which it may lead. The same criteria apply to comparison of different courses. Moreover, the Tribunal is unable to accept the Secretary General’s contention that the possibility of acceding to the same legal professions on completion of either course is reason enough to withhold the education allowance - a view which would effectively ignore the sometimes significant differences in the features and content of university courses, as well as the many different ways in which a given profession can be exercised.

34. The Secretary General argues that Strasbourg University’s integrated Franco-German course and master’s degree in Franco-German business law have the same vocational aims as the Paris-Cologne course. In his view, the integrated courses offered by the Universities of Paris I Panthéon-Sorbonne and Strasbourg differ, not in their features, but solely in their organisation (see paragraph 10 above).

35. The Tribunal is not sufficiently convinced by this argument.

36. The material at the Tribunal’s disposal, including the website of the Faculty of Law, Political Science and Management at the University of Strasbourg (www-faculte-droit.u-strasbg.fr) indicates that the master’s course in Franco-German business law is aimed at third-year law students wishing to specialise in that area. The instruction given on French law focuses on business law. A basic knowledge of German business law is also acquired, with the emphasis on tax law, the law of special contracts and company law. Third-year students have the option of studying in Germany, at the University of Freiburg-im-Breisgau. They can also take a master’s 2 degree, with company law as specialisation, in Strasbourg.

37. The documents submitted to the Tribunal, and the University of Paris I website (<http://www.univ-paris1.fr/ddfal>), show that the Paris-Cologne course provides, by comparison, full training in French and German law. In four years, it takes students to master’s I level, allowing them to take master’s II directly. In those four years, they can obtain four diplomas – French and German bachelor’s and master’s in French and German law/Magister legum (LL.M. Cologne/Paris I). The course also allows them to study both legal systems from the outset, and so develop the ability to pass from one to the other. It represents a considerable saving in time, since it is no longer than the average four-year period needed to reach first-year master’s level.

38. From all this, the Tribunal concludes that the two courses differ substantially in content, diplomas obtainable and vocational aims. It cannot therefore accept the Secretary General’s argument that there was, in or within 80 km of Strasbourg, a university corresponding to the educational cycle of the appellant’s daughter, within the meaning of Article 7, paragraph 2.1 of the Regulations.

39. The Tribunal accordingly allows the appeal, and sets aside the decision complained of.

IV. THE APPLICATION FOR DAMAGES AND PROCEDURAL COSTS

40. The appellant asks the Tribunal to award her the education allowance for the academic years 2010-2011 and 2011-2012.

41. The Secretary General asks the Tribunal to reject this request.

42. The Tribunal first points out that Article 60, paragraph 2, second sentence of the Staff Regulations gives it unlimited jurisdiction in disputes of a pecuniary nature.

43. Since the Tribunal has set aside the contested decision to refuse the appellant the education allowance for the academic year 2010-2011, it considers that she should be awarded a sum equivalent to the one due to her on that account.

44. As for the academic year 2011-2012, the Tribunal notes that the Secretary General has not contested this part of the appellant's appeal. In view of its previous conclusions (see paragraphs 38 and 43 above), it takes the view that her daughter's situation in both the academic years 2010-2011 and 2011-2012 is similar, and that she should thus be awarded a sum equivalent to the one due to her on that account.

45. The appellant, who has been advised by her colleague, has also asked for €500 to cover costs. The Tribunal thinks it reasonable that the Secretary General should pay her the requested sum (Article 11, paragraph 2, of the Statute of the Tribunal – Appendix 11 to the Staff Regulations).

For these reasons, the Administrative Tribunal:

Declares the appeal is founded;

Instructs the Secretary General to pay the appellant a sum equivalent to the education allowance which she should have received for the academic years 2010-2011 and 2011-2012, and also the sum of €500 to cover costs.

Adopted by the Tribunal on 2 November 2011, and delivered in writing, in accordance with Rule 35, paragraph 1, of the Tribunal's Rules of Procedure, on 8 December 2011, the French text being authentic.

The Registrar of the
Administrative Tribunal

The Deputy Chair of the
Administrative Tribunal

S. SANSOTTA

G. RESS