

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF

ADMINISTRATIVE TRIBUNAL

Appeal No. 284/2001 (Florence LOBIT-JACQUIN v. Secretary General)

The Administrative Tribunal, composed of:

Mr Kurt HERNDL, Chair,
Mr José da CRUZ RODRIGUES,
Mr Helmut KITSCHENBERG, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar, and
Ms Claudia WESTERDIEK, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. Ms Florence Lobit-Jacquín lodged her appeal on 2 July 2001. On 19 July the appeal was registered under No.284/2001.
2. On 12 September 2001, represented by Professor M. Piquemal, she lodged a supplementary memorial.
3. On 17 October 2001 the Secretary General submitted his observations on the appeal. He was represented by Mr P. Titium, Administrative Officer in the Legal Advice Department, Directorate General I - Legal Affairs.
4. The appellant replied on 3 December 2001.
5. As the parties had expressed their willingness to forego oral proceedings, the Tribunal decided that there was no need to hold a hearing

THE FACTS

6. The appellant, born in 1969, is a permanent staff member of the Council of Europe, on grade B2. She took up employment with the Council on 24 June 1996, as a temporary staff member assigned to the European Department for the Quality of Medicines. On 1 July 1997 she was recruited as a permanent member of staff in the same department, to which she is still assigned.

7. At the time of her recruitment on a long-term temporary contract she was not granted the residence allowance. On 22 January 1997 she wrote to the head of the Human Resources Division (now Directorate) to request that the Administration reconsider granting her the residence allowance and let her know whether she was entitled to it.

8. On 7 March 1997, on the basis of Article 6bis(5) of Appendix IV (Regulations governing Staff Salaries and Allowances) to the Staff Regulations, the head of the Human Resources Division informed her, in reply, that she could not be granted the residence allowance as she had decided to (translation) “seek work in Alsace ... for personal reasons” and had “left [her] Paris employment before receiving [our] official written notification”.

9. On 16 May 1997 she sent the head of the Human Resources Division a further memorandum repeating her request to be granted the residence allowance. In particular she argued that her change of address had been purely for administrative purposes and not a *de facto* one.

10. On 24 June 1997 the Head of Human Resources again refused her request on the ground that, from her file, it was evident that she had changed her place of residence in January 1996, well before the Council of Europe’s offer of employment dated 7 June 1996.

11. In late March 2001 she examined her individual administrative file, in which she found an undated memorandum by an administrative officer concerning the refusal of residence allowance.

12. On 3 April 2001 she lodged an administrative complaint under Article 59 of the Staff Regulations. She stated (translation):

“On 9 June 1997 I received an employment offer of a post of secretarial assistant in Social and Economic Affairs, Department for the Quality of Medicines (grade B2, step 2). I took up my duties on 1 July 1997. At the time Article 6bis(5) of the Regulations governing Staff Salaries and Allowances (Appendix IV to the Staff Regulations) provided that staff who, at the time of recruitment, lived more than 300 km from the duty station were entitled to residence allowance.

The Administration did not grant me the allowance despite the fact that up to my recruitment by the Council of Europe as a temporary staff member, on 24 June 1996, I had lived in the Paris area, having at that point just completed my period of notice with my previous employer, as my employment certificate certified ...

In addition, having read my personal file, I wish to take issue with information contained in the memorandum ... concerning my personal reasons for moving to

Alsace, as that information seems to have been a major factor in the refusal of my request.

Having only recently discovered that staff could ask to see their personal files, I only found out about the memorandum this week. For all too obvious reasons I had never been sent a copy of it. It goes without saying that if I had been aware of it at the time it was written, I would have lodged an immediate appeal, given the highly subjective and totally mistaken reasoning. At the time I genuinely thought the refusal had been on essentially legal grounds and not based on tendentious arguments.

I would like to make clear that the present administrative complaint about the residence allowance is directed against the April pay slip, which took no account of the allowance in the calculation of my pay ...”

13. On 3 May 2001 the Director General of Administration and Logistics, acting on behalf of the Secretary General, rejected the administrative complaint. He stated that the complaint must be regarded as inadmissible on the ground of being out of time: a first request, he explained, had been submitted on 22 January 1997 and refused on 7 March 1997 and a further request submitted on 16 May 1997 and refused on 24 June 1997, which meant that the complaint lodged on 3 April 2001 was more than 30 days after refusal of the request and therefore inadmissible.

THE LAW

14. The appeal contests the Secretary General’s decision not to grant the appellant the residence allowance provided for in Article 6bis of the Regulations governing Staff Salaries and Allowances (Appendix IV to the Staff Regulations). The appellant asks the Tribunal to set aside that decision and reimburse her appeal costs.

15. The Secretary General asks the Tribunal to declare the appeal primarily inadmissible or alternatively ill-founded and to dismiss it.

ADMISSIBILITY OF THE APPEAL

16. The Secretary General disputes the appeal’s admissibility. He argues that failure to observe the time-limit for lodging the administrative complaint renders the appeal inadmissible. The decisions unfavourable to the appellant were notified to her in memoranda dated 7 March and 24 June 1997. At that time she could, he says, have lodged a complaint within the 30-day period laid down in Article 59(2) of the Staff Regulations, but did not dispute the decisions as she could properly have done.

Referring to the decision of 12 October 2001 in the case of *Kakaviatos v. Secretary General* (No. 263/2000), he argues that there is nothing in the present case which might relieve the appellant of the obligation to comply with the time-limit laid down in Article 59(2) of the Staff Regulations.

17. The appellant maintains that, on closer consideration, the factual and legal circumstances of the case defeat the inadmissibility objection.

18. In this connection she points out that the decisions of 7 March and 24 June 1997 were concerned with grant of a residence allowance under Article 14 of Rule No.821 on temporary staff's conditions of employment and recruitment.

She submits that while the conditions governing grant of residence allowance to temporary staff "are the same as those laid down in the Regulations governing Staff Salaries and Allowances (Appendix IV of the Staff Regulations)", from the legal standpoint the allowance is different from the one payable to permanent staff. She maintains that her administrative complaint of 3 April 2001 could quite easily be treated as a request to the Secretary General, under Article 59(1) of the Staff Regulations, for a decision on award of the residence allowance provided for in Appendix IV of the Staff Regulations. The Administration, she says, was wrong to regard her request as reactivating the requests submitted in January and May 1997.

19. She further contends that she would meet the admissibility requirements even if the administrative complaint of 3 April 2001 were regarded as concerning the March 2001 pay slip - that is, the pay slip of a permanent staff member who had never applied for the allowance following appointment to a permanent post.

20. Secondly she maintains that her discovery, in her administrative file, of an undated administrative officer's memorandum (see paragraph 11 above) constitutes an exceptional circumstance relieving her of the requirement to meet the time-limit.

21. The Tribunal's case-law on interpretation of Articles 59 and 60 of the Staff Regulations, in particular the Kakaviatos decision (ATCE, No.263/2000, decision of 12 October 2001, paras.27 and 28 and paras 30, 34 and 39) establishes the following principles:

a. The disputes procedure laid down in Articles 59 and 60 of the Staff Regulations stipulates that the administrative complaints and appeals which staff members may lodge against administrative acts adversely affecting them must comply with certain time-limits. The formalities and procedures laid down in the Staff Regulations are designed to ensure observance of the principle of legal certainty inherent in the Council of Europe system, in the interests of both the Organisation and its staff. Observance of the principle of legal certainty requires that the time-limit after which the Administrative Tribunal may no longer review an administrative act be a known date.

b. According to Article 60(1) of the Staff Regulations, an appeal cannot be lodged until after the administrative complaint concerning the dispute has been dismissed. Hence the provisions of Part VII ("Disputes") complement each other. Article 60(1) not only requires that the complaint have been lodged with the Secretary General but also requires that within the time-limits prescribed in Article 59 the person concerned raise the heads of complaint which it is intended to lay before the Tribunal.

c. Non-compliance with the time-limit for lodging the administrative complaint renders the appeal inadmissible.

d. An application asking the Secretary General to take a decision or measure may be submitted at any time, as Article 59(1) of the Staff Regulations specifies no time-limit.

e. Pay slips constitute acts which can have an adverse effect and may thus be the subject of a complaint and, as the case may be, appeal. However, the provisions of the Staff Regulations and the requirement of legal certainty preclude any possibility of a final decision of the Organisation's being indirectly challengeable in an administrative complaint against an act subsequently, albeit recurrently, executed when the decision was not contested in due time. This likewise applies to pay slips in so far as they reflect an earlier decision that was not validly contested.

22. In the present case the Secretary General argues that the decisions unfavourable to the appellant were notified to her in memoranda of 7 March and 24 June 1997. The appellant disputes the relevance of those decisions, contending that the residence allowance provided for in Rule No.821 and that provided for in Article 6bis(5) of Appendix IV are not the same.

23. The Tribunal notes that in June 1996 the Council of Europe Administration offered the appellant a long-term temporary contract in which there was no provision for payment of residence allowance. The appellant set in motion the administrative procedure concerning grant of the residence allowance with her request dated 22 January 1997 to the head of the Human Resources Division. On 7 March 1997 the Head of Human Resources refused the request on the ground that the appellant had decided to "seek work in Alsace ... for personal reasons" and had "left [her] Paris employment before receiving [our] official written notification". He restated the same position in a further exchange of memoranda in May/June 1997.

24. In the appellant's view those decisions dealt only with grant of the residence allowance under Article 14 of Rule No.821, grant of a residence allowance after her recruitment as a permanent staff member being a separate matter.

25. The Tribunal cannot agree with that contention. It observes that, under Article 14 of Rule No.821, the remuneration of a staff member recruited on a long-term contract comprises "a basic salary and, where appropriate, one or more of the following allowances, payable on the conditions set out in the Regulations governing Staff Salaries and Allowances (Appendix IV to the Staff Regulations): ... expatriation allowance ...". The Tribunal takes the view that the provision in question provides for a single entitlement to residence allowance where the requirements laid down in Article 6bis of Appendix IV to the Staff Regulations are met at the time of the staff member's original recruitment, whether on the basis of a long-term temporary contract or after appointment to a permanent post.

26. The appellant's change of status when she was appointed to a permanent post thus did not give rise to any requirement that the Administration reconsider the case and reassess the facts on which its initial assessment, in 1997, had been based.

27. Thus it is the Head of Human Resources' refusal dated 7 March 1997 of the appellant's initial request that is the measure adversely affecting her. Notification of that duly reasoned decision thus had the effect of setting running the period laid down in Article 59(2) of the Staff Regulations for submitting an administrative complaint to the Secretary General. The administrative complaint lodged on 3 April 2001 was therefore out of time.

28. Not having validly disputed the final decision, the appellant cannot take proceedings to dispute the March 2001 pay slip in so far as it reflects that previous decision.

29. Lastly, it follows that even if the complaint dated 3 April 2001 were to be treated as a request under Article 59(1), second sentence, of the Staff Regulations, it would fall foul of the final decision dated 7 March 1997. In the event of its being so treated, the Tribunal would in any case have to find that there had been a failure to exhaust the administrative channels, the appellant having failed to lodge a proper administrative complaint.

30. The Tribunal discerns no exceptional circumstance that would relieve the appellant of the obligation to comply with the time-limit (Article 59(2) of the Staff Regulations). Although her discovery, in March 2001, of a memorandum in her administrative file concerning the refusal of residence allowance was an additional factor, it cannot be made out to have amounted to an exceptional circumstance (see *mutatis mutandis* ATCE, No.217/1996, *Ary v. Secretary General*, decision of 2 December 1996, paras.25 and 26).

31. In the light of all the foregoing considerations, the present appeal is inadmissible.

Consequently the Tribunal cannot examine the case on the merits.

For these reasons,

The Administrative Tribunal:

Dismisses it; and

Orders that each party bear its own costs.

Delivered in Strasbourg on 27 March 2002, the French text being authentic.

The Registrar of the
Administrative Tribunal

S. SANSOTTA

The Chair of the
Administrative Tribunal

K.HERNDL