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

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeal No. 390/2007 (X v. Secretary General of the Council of Europe)

The Administrative Tribunal, composed of:

Mr Georg RESS, Deputy Chair,
Mr Angelo CLARIZIA,
Mr Hans G. KNITEL, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant lodged her appeal on 24 May 2007. The appeal was registered the same day under N°. 390/2007. At the appellant's request, the Chair of the Tribunal granted anonymity.

2. On 23 July 2007, the appellant's representative, Mr J.-P. Cuny, lodged further pleadings.

3. On 3 October 2007, the Secretary General lodged his observations concerning the appeals. The appellant submitted observations in reply on 31 October 2007.

4. The public hearing in the present appeal was held in the Administrative Tribunal courtroom in Strasbourg on 11 December 2007. The appellant was represented by Mr J.-P. Cuny, and the Secretary General by Ms B. O'Loughlin, Deputy Head of the Legal Advice Department, Directorate of Legal Advice and Public International Law, assisted by Ms M. Junker-Schreckenberg, an assistant in the same department.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. Appointed in November 2001, the appellant was a temporary member of staff of the Council of Europe until 10 January 2007.

6. On 20 June 2006, the appellant's line manager informed her orally that her contract would not be renewed beyond the stipulated expiry date, 31 December 2006.

7. On 10 August 2006, the Directorate of Human Resources wrote to the appellant as follows:

> "Further to your interview with […] and […], I am sorry to confirm that your contract cannot be renewed beyond 31 December 2006.
>
> The fact is that your profile and qualifications do not match the needs of the department in the new structure to be introduced from 1 January 2007.
>
> As far as possible we shall try to reassign you to a temporary post matching your qualifications. To that end, I would suggest that you contact […] in Human Resources (…).
>
> Should no reassignment prove possible, your temporary contract will end once and for all on 31 December 2006."

8. On 8 September 2006, the appellant lodged an administrative complaint under Article 59 of the Staff Regulations, contesting the decision of 10 August 2006 not to renew her contract.

9. The appellant requested that her administrative complaint be submitted to the Advisory Committee on Disputes (Article 59, paragraph 4, of the Staff Regulations).

10. The complaint read as follows (original version):

> "I acknowledge receipt of the letter of the Directorate General of Administration and Logistics of 10 August 2006 announcing that my contract will not be renewed after 31 December 2006.
>
> I wish to emphasise that I have been carrying out my duties fully satisfactorily for almost 5 years and that the financial resources needed to ensure my current employment will also be available after 31 December 2006.
>
> Furthermore, in so far as there would be a need for me to change functions, I have a broad range of skills and experience - drafting, translating, web-publishing, giving lectures - that are fully relevant to the work of the Directorate.
>
> I therefore vigorously contest that my profile and qualifications do not correspond to the needs of the new structure to be put in place as per 1 January 2007.
>
> For the above reasons, I believe that the decision contained in the letter of 10 August 2006 is wrong and I hereby request you to review it.
>
> Should you be inclined not to review the decision as requested, I ask that this administrative complaint be referred to the Advisory Committee on Disputes in accordance with Article 59 paragraph 4 of the Staff Regulations."

11. In the meantime, the appellant was informed that her contract had been extended until 11 January 2007.

12. On 14 December 2006, the appellant applied to the Chair of the Administrative Tribunal for a stay of execution of the decision of 10 August 2006, informing her that her contract was not to be renewed.

13. On 22 December 2006, the Chair rejected the said application.

14. On 11 January 2007, the appellant made a further application to the Chair of the Administrative Tribunal for a stay of execution of the decision of 10 August 2006, informing her that her contract was not to be renewed.

15. On 25 January 2007, the Chair rejected this application as well.

16. In an opinion given on 5 March 2007, the Advisory Committee on Disputes found that the administrative complaint was unfounded.

17. On 28 March 2007, the Secretary General dismissed the administrative complaint as follows:

> "You request that the decision not to renew your temporary contract be annulled.
>
> You have been awarded renewable, monthly temporary contracts according to the needs and resources of the Department to which you were assigned. As stated in all monthly temporary contracts which are signed by the staff members concerned (including yours, therefore), these contracts end without prior notice, on the date stipulated. You cannot, therefore, claim to have suffered prejudice, as you were always aware that temporary contracts are by definition precarious and that they are not necessarily renewed. In signing these contracts, you agreed to all the conditions attached thereto.
>
> Furthermore, paragraph 4 of Rule 821 laying down the conditions of recruitment and employment of temporary staff states: "*These different types of temporary contract shall all be concluded for specified periods. They may be renewed in accordance with the conditions laid down in this Rule, but renewal shall not confer entitlement to further renewal or to conversion into another type of contract.*"
>
> According to this provision, no temporary contract confers entitlement to renewal. The Council of Europe is under no obligation, therefore, to renew your contract and there are no procedures or conditions which must be observed when terminating a temporary contract.
>
> The case-law of the Administrative Tribunal is clear and consistent on this point. There is no entitlement to renewal of a temporary contract. See in this context Appeal No. 256/1999, Grassi v. Secretary General, decision of 7 June 2000, paragraph 27: "The Tribunal is of the opinion, despite the case-law of other international administrative tribunals (…) that *a temporary member of staff does not have the right to automatic renewal of contracts. To conclude otherwise would effectively lead, in the long term, to the creation of a new "category of permanent staff" within the Council in relation to the permanent complement of staff provided for in the Staff Regulations. In view of the now undeniable fact that the recruitment of temporary staff is subject to less stringent criteria than the recruitment of permanent staff, to agree to there being a category of temporary staff who are employed on a permanent basis would be to twist the rules on the recruitment of permanent staff. Under Article 14 para. 1 f) of the Staff Regulations, such staff must be recruited according to the selection procedure laid down in the Regulations on Appointments (Appendix II to the Staff Regulations), in order to clearly and effectively secure the aims and objectives of the organisation as set out in the Council of Europe's Statute.*"
>
> This case-law was confirmed in Appeal No. 308/2002, Lévy v. Secretary General, decision of 28 March 2003.
>
> The Advisory Committee on Disputes shares this view, as indicated in its opinion: "*The Committee considers that the Administrative Tribunal's case-law clearly establishes the absence of a duty for the Organisation to renew a temporary contract beyond its term or to offer to the person concerned a contract on another position after the expiry of that term.*"
>
> The material referred to thus shows that the decision not to renew your contract was well-founded and that there has been not the slightest departure from the relevant statutes and regulations.
>
> Alternatively, it will further be observed that, even though neither Rule No. 821 nor the case-law of the Administrative Tribunal requires prior notice to be given, you were informed orally on 20 June 2006 and by

mail on 10 August 2006 that your contract would come to an end on 31 December 2006 and that it would not be renewed. It was nevertheless extended until 11 January 2007. You thus received five months' notice.

In this connection, you cite a document entitled "Principles to be applied in the case of non-renewal of temporary contract". It should be pointed out that the document in question is an internal document and has no legal force (it does not even have a number, which it should have if it is intended to have general application). It has no statutory or regulatory basis and has never been published or in any way brought to the attention of Council of Europe staff. Although not binding, this document provides information on the principles to be followed when a temporary contract is not renewed. While the Directorate of Human Resources (hereinafter "DHR") endeavours to observe these procedures, it is under no obligation to do so.

The Advisory Committee on Disputes, having stated that it need not decide whether the document in question established binding notice periods or whether 20 June 2006 or 11 August 2006 should be taken into consideration for the running of the relevant notice period, holds that: "*It suffices to note that at the time when written notice of non-renewal was given to the complainant on 11 August 2006, she had worked for the Council of Europe for less than five years, and, therefore, according to the above mentioned "Principles" a five-month notice period was applicable. In these circumstances, even if it is considered that the Administration was bound to give the complainant an advance notice on non-renewal and that 11 August was the relevant starting date, the notice period was observed as the complainant's contract was terminated on 11 January 2007, five months after 11 August 2006.*"

It follows from this material that even supposing the document which you produced may be regarded as binding, something that is not allowed, the notice period to which you would have been entitled under the terms of this document would have been observed.

It should further be pointed out that the Directorate of Communication manages three non-official languages portals (German, Russian and Italian). Six staff members had been recruited in 2001 and 2002 to run them (two staff members per language), five at grade B2 and one at B5 (yourself). Following the job classification exercise, the six posts in question were found to correspond to grade B2/B3, in so far as the six staff members concerned performed similar tasks.

You were informed on numerous occasions that, in the context of the restructuring of the Directorate of Communication, no B5 post matching your qualifications would be maintained.

Also, and contrary to what you say, DHR did in fact try to reassign you. They contacted numerous departments, submitting your CV and indicating that you were available. Unfortunately, none of the departments responded positively as there were no posts matching your profile. The attempts to reassign you thus proved unsuccessful, but that is in no way the fault of DHR, still less of the Secretary General. Many temporary staff are in the same position as yourself, having had their contracts terminated at the end of December 2006 with no possibility of reassignment owing to the lack of posts.

When the Council was recruiting press officers, moreover, you were invited to take part in the competition to fill these posts, which you did in fact do, although your score was not high enough to secure one of the said posts. You were also informed that an A2/A3 post was being advertised and that you were free to apply for it, which you duly did, although you failed to turn up for the test. You were further informed that posts identified as B2/B3 posts following the classification exercise would be advertised and that you were free to apply for these.

As regards the possibility of offering you a temporary contract pending the outcome of the recruitment procedure for the B2/B3 posts which should be advertised in 2007, the Directorate of Communication is unable to make such an offer. It is worth pointing out that similar job cuts have occurred in many Council of Europe departments and that other staff, too, have not managed to secure contracts.

It follows from all of the foregoing that the Council of Europe has far exceeded its statutory and regulatory duties with the sole aim of helping you to find to find a job.

It appears from the above that no violation of statutes or regulations, general legal principles or practice can be considered to have occurred in the present case. Nor have there been any errors in assessing the relevant facts, false conclusions drawn from the documents in the file or improper exercise of authority.

In conclusion, your administrative complaint must be dismissed as unfounded."

18. On 24 May 2007, the appellant lodged the present appeal against the decision of 10 August 2006.

II. INTERNAL LAW

19. Rule No. 821 of 1 December 1992 lays down the conditions of recruitment and employment of temporary staff. Under the terms of paragraph 4:

> "These different types of temporary contract shall all be concluded for specified periods. They may be renewed in accordance with the conditions laid down in this Rule, but renewal shall not confer entitlement to further renewal or to conversion into another type of contract."

According to paragraph 5:

> "[Temporary contracts] shall terminate without prior notice on the date stipulated therein."

20. A Council document produced in October 2000 under the heading "*Principles to be applied in the case of non-renewal of temporary contracts, particularly due to the lack of funds"* states as follows:

> "1. Temporary staff whose contracts cannot be extended should be reassigned to other functions to the extent possible considering the requirements of such posts and the staff members' qualifications and experience.
>
> 2. Recruitment of temporary staff from outside the Organisation must remain an exception and must necessarily be preceded by an examination of current temporary staff available for reassignment.
>
> 3. Long-serving temporary staff have priority of retentions over staff in identical functions (e.g. secretaries, documentalists) with less than 2 years' seniority in the Organisation. This includes staff in other departments. They should be reassigned to posts for which funds are secured while the contracts of staff with low seniority should be terminated.
>
> *NOTE*: Staff placed on a valid reserve list for permanent employment will be considered alongside staff having served for more than two years.
>
> 4. Temporary staff at the end of their careers have lower priority of retention, in particular those already entitled to a pension.
>
> 5. Should the application of the above principles result in a group of staff with similar claims to retention, social factors (heads of household, dependants) will be taken into account.
>
> 6. If no solution can be found on the basis of these principles, conditions of terminating temporary employment will be as follows:
>
> a. Notice periods:
>
> | Completed years of service | notice period |
> |---|---|
> | 0 (after probationary period) | 1 month |
> | 1 | 3 months |
> | 2 | 3 months |
> | 3 | 4 months |
> | 4 | 5 months |
> | 5 and more | 5 months". |

THE LAW

21. In her appeal, the appellant asks the Tribunal to annul "the decision whereby the Secretary General decided not to renew the appellant's temporary contract beyond 10 January 2007". She also asks the Tribunal to order the Secretary General to pay her a sum equivalent to the pay which she would have received had the said decision not been taken. Finally, the applicant asks the Tribunal to award her the sum of €6,000 to cover the costs incurred in the present appeal.

22. The Secretary General asks the Tribunal to dismiss the appeal as ill-founded.

I. SUBMISSIONS OF THE PARTIES

23. The appellant relies on three arguments. She alleges that there has been a violation of the general legal principle as regards giving reasons for administrative acts, a violation of the Organisation's administrative practice and, lastly, a violation of the general legal principle prohibiting any abuse of process.

24. With regard to the first argument, the appellant maintains that the reasons given were contradictory and inconsistent and that the decision complained of should therefore be annulled. The appellant claims that when notified orally, she was given not even the slightest explanation for the decision not to renew her contract.

The appellant states that, in the letter which she received on 10 August 2006, the Directorate of Human Resources peremptorily and bluntly informed her that her qualifications did not match "the needs of the department in the new structure to be introduced from 1 January 2007."

She further maintains that under the Council's job classification exercise, the functions performed by the appellant were found to correspond to those of a lower grade. The appellant infers from this that she was overqualified for those functions, but certainly not unfit to perform them. Nor were the functions that she had been performing abolished after 1 January 2007. This fact is confirmed by the Secretary General who, in a letter to the Advisory Committee on Disputes, writes that lower grade posts corresponding to the functions currently performed by the appellant would be advertised in the first half of 2007. According to the appellant, this statement leaves no doubt as to the fact that there were sufficient funds in the 2007 budget to pay for these posts.

The appellant underlines the fact that neither during the disputes procedure nor prior to the decision of the Advisory Committee on Disputes did the Secretary General ever explain why the appellant's administrative entity did not have the necessary funds, if provision had been made for these posts in the 2007 budget and in what sense the administrative entity did not have "sufficient room for manoeuvre" to extend the appellant's contract.

25. According to the appellant, it appears from the foregoing and from the evidence in the file that the explanation which she was given for the failure to extend her contract was inadequate and inconsistent. She further maintains that the contradictions noted by herself and by the Chair of the Administrative Tribunal in his order of 22 December 2006 (paragraph 13 above) have never been explained or resolved.

Adequate and appropriate reasons must be given for an administrative act in order for the Tribunal to be able to review the legality of that act. The same applies to discretionary decisions, as this Tribunal has repeatedly pointed out (see the Council of Europe Appeals Board decision no. 76/1981, Pagani v. Secretary General, of 21 April 1982, paragraphs 25-26).

26. As regards the second argument (violation of the Organisation's administrative practice), the appellant cites a Council of Europe document produced in October 2000 under the heading "*Principles to be applied in the case of non-renewal of temporary contracts, particularly due to the lack of funds*" (paragraph 19 above). According to this document, contracts will not be renewed in either of the following circumstances: the staff member's competence is called into question or the Council's budget does not contain the necessary appropriations to finance the post held by the temporary staff member.

27. In this particular instance, the Secretary General merely stated that the administrative entity was "unable" to renew the appellant's contract and never elaborated on the statement made by Human Resources in the letter of 10 August 2006 that there would be no room for the appellant in the new structure.

28. According to the appellant, the Secretary General invented a third reason for not renewing the contract but was unable to elaborate on it in any way. The question of why the administrative entity was "unable" to renew the appellant's contract thus remained unanswered throughout the proceedings.

29. With regard to the third argument, the appellant maintains that the Administration covered up and endorsed a decision taken by her line manager who was, as it were, anxious to get rid of the appellant even though she had continued to perform her duties satisfactorily, even though the funds needed to continue paying her were available and even though the functions that she performed were still necessary to the Organisation.

30. The appellant maintains that the Secretary General never explained why her profile and qualifications would not match "the needs of the department in the new structure to be introduced from 1 January 2007."

31. The appellant reaffirms that the tasks which she performed are still needed in the department. She further maintains that the principles set out in the October 2000 document were infringed and that no effort was made to reassign her.

32. In these circumstances, the appellant believes that there are a number of facts pointing in the same direction which would readily lead the Tribunal to conclude that the Organisation's treatment of her amounted to improper exercise of authority. In effect, a decision not to renew her contract was taken even though the conditions for such a decision had not been met, and the explanation given was no more than an empty formality.

33. The appellant is confident, therefore, that the Tribunal will find that the Secretary General acted wrongly.

34. For his part, the Secretary General recalls that, under the terms of Rule No. 821 laying down the conditions of recruitment and employment of temporary staff (paragraph 19 below), no temporary contract confers entitlement to renewal. The Council of Europe is under no

obligation, therefore, to renew the appellant's contract and there are no procedures or conditions which must be observed when terminating a temporary contract. He refers here to the Tribunal's case-law (ATCE, Appeal No. 256/199 Grassi v. Secretary General, decision of 7 June 2000, Appeal No. 308/2002 Lévy v. Secretary General, decision of 28 March 2003, and Appeal No. 309/2002, Belayev v. Secretary General, decision of 4 July 2003).

35. The Secretary General goes on to make the point that the contracts of temporary staff are not renewed not only in cases where there are doubts as to the staff member's competence or where the budget does not contain the necessary funds to finance the position occupied by the temporary staff member, but also when the department to which the staff member is assigned no longer requires him or her, irrespective of his or her competence.

36. The job classification exercise and the restructuring of the administrative entity led to the abolition of a post occupied by the appellant and its probable replacement by a post of a lower grade. In the view of the Secretary General, the appellant's profile quite simply no longer matched the needs of the department. Her qualifications and profile were no longer suited to those posts which were to be maintained as a matter of priority.

37. With regard to the "Principles to be applied in the case of non-renewal of temporary contract", the Secretary General emphasises that the document in question is an internal document and has no legal force. It has no statutory or regulatory basis and has never been published or in any way brought to the attention of Council of Europe staff. Although not binding, this document provides information on the principles to be followed when a temporary contract is not renewed. While the Directorate of Human Resources endeavours to observe these procedures, it is under no obligation to do so. In any case, the notice period stipulated in the Principles was ultimately observed.

38. With regard to the attempts to reassign the appellant, the Secretary General notes that these proved unsuccessful, but that that was by no means his fault. Many temporary staff (34) are in the same position, having had their contracts terminated at the end of December 2006 with no possibility of reassignment owing to the lack of posts.

39. As regards the appellant's allegation that there was improper exercise of authority, in the Secretary General's view, it is not enough to make allegations: there must also be evidence to support them. Apart from some vague, unsubstantiated claims, the appellant provides no evidence whatsoever to support her contention that there was a desire to "get rid" of her "at all costs". As she herself has stated, her skills and qualifications were recognised by her appraisers. As indicated above, furthermore, attempts (albeit unsuccessful) were in fact made to reassign her. If the appellant was not contacted as a result of these attempts, that is simply because the departments concerned were not interested in her or preferred someone else.

40. In conclusion, it follows from the above that no violation of statutes or regulations, general legal principles or practice can be considered to have occurred in the present case. Nor, in the Secretary General's opinion, have there been any errors in assessing the relevant facts, false conclusions drawn from the documents in the file or improper exercise of authority.

II. TRIBUNAL'S ASSESSMENT

41. The Tribunal is generally of the view that the current system of temporary contracts which allows total periods of employment of more than several years is apt, when the periods

involved are very long, to pose problems in terms of compliance with the principle of legitimate expectation, which is one of the basic tenets of the rule of law. A period longer than several years is scarcely an appropriate way of dealing with temporary contracts. Even if there is no automatic renewal of these contracts, the obligation on the personnel department to find the person concerned another suitable position becomes increasingly onerous. At the same time, the person concerned may see themselves having to accept a post of a lower grade, if an administrative reform leaves them with no other option.

The Tribunal must refrain, however, in this particular case, from examining the issue of consecutive renewal of temporary contracts in greater depth as this question has been specifically excluded from the proceedings by the appellant. In addition, Rule No. 821 laying down the conditions of recruitment and employment of temporary staff has been replaced by a new regulation.

42. The Tribunal further notes that whether or not the appellant is entitled to be offered other temporary contracts is not the issue here for, as the Secretary General rightly points out, according to the Council's rules and the current case-law of the Tribunal, temporary staff members have no such right. Nor does the appellant invoke this right: her arguments are directed either against the merits of the decision not to offer her further contracts or against the manner in which that decision was implemented.

43. With regard to the appellant's first argument, the Tribunal finds that the explanation given in the letter of 10 August 2006, while undoubtedly brief, was not inadequate or inconsistent and was adequate for the purposes of the decision. This letter, moreover, was merely intended to confirm what the appellant's immediate superior and line manager had already said on 20 June 2006, when the appellant was asked to stay on under a contract at a lower grade. The Tribunal fails to see, however, how such information could have been conveyed without making it clear that the post occupied at the time by the appellant was going to be abolished.

44. The Tribunal finds that this argument is unfounded.

45. With regard to the second argument, the Tribunal notes that the Secretary General clearly indicated to the appellant that the post in which she was employed was going to be abolished, to be replaced after the job classification exercise by another post of a lower grade and more in line with the skills required for the work in question. He also made it clear that the appellant did not have the qualifications that would enable her to stay on in the department. Whatever the legal force of the October 2000 document therefore – which was nevertheless a set of guidelines issued by Human Resources – it is clear that the Secretary General did not depart from the Council's administrative practice. At one point, moreover, it was envisaged that the appellant could be employed in 2007 at a lower grade. Irrespective of whether the appellant was ready for such a downgrading at that point, it appears that this new post was not in fact available.

46. As regards the third argument, the Tribunal notes that the appellant failed to back up her claims that her line manager was "as it were, anxious to get rid [of her] even though she had continued to perform her duties satisfactorily, even though the funds needed to continue paying her were available and even though the functions that she performed were still necessary to the Organisation."

47. The material which the appellant has submitted to the Tribunal is intended rather to support the argument that the tasks which the appellant performed continued to be necessary within her department, and her claim that no effort had been made to reassign her. In her further pleadings, moreover, the appellant herself refers to "a number of facts pointing in the same direction" that would lead the Tribunal to "conclude that the Organisation's treatment of her amounted to improper exercise of authority" (paragraph 47 of the further pleadings). According to the Tribunal's case-law, however, the onus was on the appellant to prove her claims (ATCE, Appeal No. 314/2003, Lupas v. Secretary General, decision of 27 May 2004, paragraph 36).

48. In conclusion, the three arguments are unfounded, and the appeal must be dismissed.

For these reasons,

The Administrative Tribunal:

Declares the appeal unfounded;

Dismisses it;

Orders that each party bear its own costs.

Delivered in Strasbourg, 7 March 2008, the French text being authentic.

The Registrar of the Administrative Tribunal	The Vice-Chair of the Administrative Tribunal
S. SANSOTTA	G. RESS