

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF

ADMINISTRATIVE TRIBUNAL

Appeal No. 344/2005 (Catherine EMEZIE v. Secretary General)

The Administrative Tribunal, composed of:

Mr Kurt HERNDL, Chair,
Mr José da CRUZ RODRIGUES,
Mr Angelo CLARIZIA, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar, and
Ms Marialena TSIRLI, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. Ms Catherine Emezie lodged her appeal on 17 February 2005. On the same day, the appeal was registered as file 344/2005.
2. On 11 April 2005, her counsel, Mr J.-P. Cuny, lodged a supplementary memorial.
3. On 11 May 2005, the Secretary General submitted his observations concerning the appeal.
4. The appellant lodged observations in reply on 22 June 2005.
5. The Chair having authorised it to intervene in the proceedings (Article 10 of the Statute of the Tribunal), the Council of Europe Staff Committee lodged written observations on 17 October 2005.
6. The public hearing in the present case took place in the Administrative Tribunal courtroom in Strasbourg on 19 October 2005. The appellant was represented by Mr J.-P. Cuny, and the Secretary General by Mr P. Titun, Deputy Head of the Legal Advice Department, Directorate General I – Legal Affairs.

THE FACTS

The facts internal to the Organisation

7. The appellant is a permanent staff member with British nationality. She was recruited on 1 September 1999 as a secretarial assistant (grade B2). She is married to a Nigerian national. The facts which gave rise to the present dispute may be summarised as follows.

8. On his arrival in Strasbourg, the appellant's husband – probably at his request rather than automatically – was issued with a “carte spéciale de séjour” (special residence permit) by the French Ministry of Foreign Affairs, through the Council of Europe. The permit entitled him to live in France for as long as the appellant was employed by the Council of Europe but did not allow him to work in France.

9. The appellant states that, at the time of her recruitment she, “of course”, asked the relevant Council of Europe departments for information about her own legal status and her husband's. In particular, she allegedly enquired about the possibility of his working in France.

10. According to the appellant, the Council's welfare office told her orally that her husband was not entitled to work in France because he was not a national of a European Union member state.

11. On 28 October 2003, her husband was issued with a one-year work permit in exchange for his special residence permit. The appellant states that this decision was further to an agreement between the Council of Europe and Bas-Rhin prefecture.

On 16 September 2003, the following information item appeared on the Council's intranet portal:

“Work permits for spouses of European Union staff members

The Directorate General of Administration and Logistics and the Legal Advice Department inform staff that the Prefecture has now confirmed in writing that spouses of staff members who are European Union nationals are fully entitled to receive a ‘carte de séjour’ with full rights to work, even if the spouse is a non-EU national. While recognising this decision does not solve the problem for staff members who are not EU nationals, it nevertheless marks an important step forward. For further questions as to the procedure to be followed, please contact ...”

Correspondence with the European Commission

12. On 7 June 2004, the appellant wrote to the competent department of the Commission of the European Union requesting clarification of her own rights and her husband's in Community law.

13. The department replied on 2 July 2004 informing her that, under Community law, her husband was entitled to work in France and did not need a work permit or work visa.

The compensation claim

14. On 1 September 2004, the appellant applied, under Article 59.1 *in fine* of the Staff Regulations for compensation for injury caused by the Council of Europe administrative services' inability to inform her of her own and her husband's rights.

15. On 27 September 2004, the Secretary General rejected the claim. He expressed the view that the administrative services' conduct towards the appellant had been beyond reproach.

The dispute proceedings

16. On 29 November 2004, the appellant lodged an administrative complaint under Article 59.1 (first sentence) of the Staff Regulations.

17. On 20 December 2004, the Secretary General rejected the complaint.

18. On 17 February 2005, the appellant lodged the present appeal.

THE LAW

19. The appeal is directed against the Secretary General's decision not to grant her compensation for injury resulting from the administrative services' inability to inform her of her own and her husband's rights. She alleges a breach of the duty of assistance laid down in Article 40 of the Staff Regulations and of the principle of sound administration. She accordingly seeks compensation for injury suffered, which she puts at 56,587.96 euros. She likewise claims 5,000 euros in costs occasioned by the present appeal.

20. The Secretary General asks the Tribunal to find the appeal unfounded and dismiss it.

21. Under her first ground of appeal the appellant draws attention to Article 40 of the Staff Regulations, which provides:

Article 40 - Protection of staff members in their official capacity

"1. Staff members may seek the assistance of the Secretary General to protect their material or non-material interests and those of their family where these interests have been harmed without fault or negligence on their part by actions directed against them by reason of their being a staff member of the Council.

2. Where the Secretary General deems that the conditions set forth in the above paragraph are met, he or she shall decide what form such assistance may take and the amount up to which the Council shall pay the costs incurred in the defence of the interests referred to in paragraph 1, including the costs of any legal action taken. If the Secretary General considers that legal action may harm the interests of the Council, he or she may ask the persons concerned not to take such action; in such cases, if they do not take legal action, the Council shall make good the material damage suffered by the persons concerned, provided that they assign their rights to the Council."

In the appellant's view, that provision applies to her case. She adds that her husband received a special permit under Part VI of the General Agreement on Privileges and Immunities of the Council of Europe.

In her view, the relevant staff of the Council of Europe's administrative services, by omission, caused serious damage to her, her husband and her household. Referring to the Tonna decision (ATCE, Tonna v. Secretary General, Appeal No.241/1997, decision of 9 November 1998, paragraph 60), which states that protection of staff in their official capacity cannot be existent and effective unless it includes a duty of the Secretary General to assist a staff member who complains that a member state has infringed his or her rights, the appellant adds that that duty of assistance above all includes a duty to provide information of benefit to the staff member him- or herself and ensuring that it is possible for a staff member to foresee the legal and private implications of taking up his or her duties (*ibid.*). The Tribunal held as follows:

“As far as information is concerned, the Tribunal takes the view that, in any internal competition procedure, staff need information concerning the post to be filled and any special features of it, particularly when the post is not at the Organisation's headquarters in Strasbourg but outside France. Sufficiently precise information must be provided to enable staff to regulate their conduct, not only at the time of applying for the post but also, as the case may be, on taking up their duties.”

22. The appellant next points out that the principle of sound administration includes an obligation on the administrative services to take into account, when taking a decision, not only of the interests of the service but also the interests of the staff member concerned. She draws attention to Community case-law, Recommendation (2000)10 Of the Council of Europe of 11 May 2000 on codes of conduct for public officials and the European Mediator's Code of Good Administrative Behaviour.

Here the conduct of the administrative services was, she maintains, contrary to that general principle for the reasons already stated. The Secretary General does not accept that information errors were made and rejects all responsibility for any injury which the appellant suffered.

23. Regarding her claim for compensation, the appellant states that she is pursuing it in the absence of any possibility of full redress (*restitutio in integrum*) and that it covers non-material injury as well as financial injury.

24. For his part the Secretary General highlights the fact that the scope of protection of staff members in their official capacity is set by Article 40 of the Staff Regulations and is highly circumscribed. Article 40 requires that the Organisation assist staff members or their family when they fall victim to such behaviour as threats, abuse, insult or defamation. In addition, Article 40 is concerned with protecting not only the staff member but also the Organisation's own interests. In the present case the appellant did not find herself in a situation of that kind and does not complain of any infringement of the rights conferred on her in the Organisation's interests. The Secretary General points out that the appellant complains of alleged failure by the Organisation to provide her with proper information and not of any actions by a state such as would have warranted his intervening under Article 40 of the Staff Regulations.

Consequently, he did not fail in his duty of assistance to the appellant.

25. With regard to the alleged infringement of the duty to provide information, the Secretary General states that he provides a range of information to new staff and he notes that the appellant provides no evidence that the Organisation behaved dishonestly towards her. In addition, the

appellant should, he says, have applied to the appropriate French authorities for the desired information.

26. On the second ground of appeal, the Secretary General reaffirms that there was no dishonesty on his part towards the appellant and that he in no way misled her.

27. Lastly, he maintains that if the Tribunal were to find that he failed in his duties, it should nonetheless dismiss the compensation claim, which does not set any figure on the alleged non-material injury but merely refers to the “frustration” which her husband suffered, offering no detailed evidence.

28. With regard to material injury the claim is to be rejected because, he maintains, the appellant was barred from submitting it under Article 59 of the Staff Regulations, lacking any direct interest in the matter. Any injury was to her husband and she cannot claim compensation on her husband’s behalf. In any event he maintains that no injury has been established. He advances further arguments in support of his request that the claim be rejected even if the Tribunal were to find that injury was proven.

29. At the hearing, the parties reiterated their arguments and stood by their submissions.

30. The Tribunal must consider two preliminary matters.

It notes firstly that the appellant asks it to set aside the decision refusing to recognise the Organisation’s liability for information it supplied to her concerning her husband’s being able to work in France. She maintains that her family suffered adverse effects which could have been avoided and claims compensation for non-material and financial injury. In support of that claim, however, she alludes only to her husband’s frustration and loss of the earnings to which he would have been entitled if he had been able to work.

The Tribunal must accordingly consider whether the appellant had a direct interest in claiming injury by the alleged breach and any personal entitlement to lodge her administrative complaint and thereafter the present appeal. It points out that, under Article 59.6b of the Staff Regulations, a complaint may also be lodged, on the same conditions, by persons claiming through staff members.

The Tribunal notes that it has already dealt with a similar matter (ATCE, Taner and Claire Beygo v. Secretary General, Appeals Nos.211/1995, 213-214/1995, 220/1996, 222-223/1996, 227-228/1997, 229-230/1997, 242-243/1998, decision of 28 April 1999, paragraphs 79-82 concerning the five appeals by Mrs Beygo). On that occasion, the Tribunal did not determine the issue because the five appeals were found to be inadmissible for lack of any prior administrative complaint.

31. Secondly, the Tribunal observes that it is likewise open to it to consider whether, in the light of the conduct of the case, the appellant was required to submit a request under Article 59.1 *in fine* (third and fourth sentences) so as to bring about a decision by the Secretary General on grant of compensation, or should have lodged an administrative complaint under the first sentence of Article 59.1 seeking annulment of decisions which had not satisfied her claims and claiming the

compensation in that context. That question is important from the standpoint of compliance with the 30-day period for challenging an administrative decision through the disputes system since that period would have to start running no later than the date – unknown to the Tribunal – on which the appellant received the European Commission letter of 2 July 2004 (see paragraphs 12 and 13 above).

32. Whatever the case, the Tribunal takes the view that it does not require to determine these questions since in any case the appeal must be declared ill-founded.

33. On the first ground of appeal the Tribunal agrees with the Secretary General that the present case does not come into the category of actions or situations calling for protection of a staff member in his or her official capacity. In addition, the present appeal differs from the above-mentioned Tonna appeal (see paragraph 12 above) in that the latter appeal was concerned with the consequences of delay in putting in place a headquarters agreement. Consequently, it is not possible to conclude that the Secretary General was in breach of his duties under Article 40 of the Staff Regulations.

34. As regards the right to information the Tribunal observes that the Secretary General cannot be held responsible for information which does not come under his obligations under the regulations: he can certainly be expected to draw attention – and here, in the light of the documentation supplied to the Tribunal, the Secretary General would not seem to have provided truly exhaustive or detailed information before or after the appellant's recruitment – to the normal implications of the host country's issuing a special residence permit entitling the recipient to the advantages enjoyed by diplomatic and consular staff while subjecting the recipient to the same restrictions (for example, in employment matters). However, the issue submitted to the Tribunal is different in content: it is concerned with information on whether it was possible for someone who was not an EU national – but married to a Council of Europe staff member who was an EU national – to work in France. The appellant's husband should have sought information from the French authorities – directly or, possibly, through the Council of Europe – and challenged any wrong or incomplete information before those same authorities. He did not do so, and it is not possible afterwards to claim against the Council of Europe. In actual fact, even though the information item of 16 September 2003 (see paragraph 11) referred to spouses of staff who were EU nationals, it was concerned less with the rights of such spouses than with the rights of EU nationals in general. In addition, the information was not concerned with whether it was possible for persons holding the special ("diplomatic") residence permit, but with obtaining an ordinary residence permit.

35. It follows that no negligence under Article 40 of the Staff Regulations can be imputed to the Council of Europe.

36. Having reached that conclusion on the first ground of appeal, the Tribunal regards the second ground as devoid of purpose since the appellant bases it on the same facts as supported the first and, in addition, does not submit any evidence allowing the Tribunal to consider whether there was a separate infringement.

37. Having found that there was no disregard by the Secretary General of his obligations under the regulations, the Tribunal is not required to determine the compensation claim.

38. In conclusion, the appeal must be dismissed.

For these reasons the Administrative Tribunal:

Declares the appeal ill-founded;

Dismisses it;

Orders that each party bear its own costs.

Delivered at Strasbourg on 20 January 2006, the French text being authentic.

The Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

S. SANSOTTA

K. HERNDL