

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

## TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

**Appeal No. 400/2007 (Marie-Louise WIGISHOFF 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,

has delivered the present decision after due deliberation.

### PROCEEDINGS

1. The appellant, Ms Marie-Louise Wigishoff, lodged his appeal on 27 September 2007. The appeal was registered on the same day under No. 400/2007.
2. On 28 February 2008, the Secretary General sent his observations about the appeal. The appellant submitted a memorial in reply on 3 April 2008.
3. The public hearing in the present appeal took place in the Administrative Tribunal Hearing Room in Strasbourg, on 23 April 2008. The appellant was represented by M<sup>c</sup> J-P. Cuny, while the Secretary General was represented by Mrs B. O'Loughlin, Deputy Head of the Legal Advice Department in the Directorate of Legal Advice and Public International Law, with the assistance of Mrs Christina Olsen, Mrs M. Junker-Schreckenber and Mr Nicola-Daniele Cangemi, all of the same department. The hearing also dealt with another five appeals (No. 394/2007 - Christopher Sawyer, No. 396/2007 - Giuseppe Cortese, No. 397/2007 - Patrick Buchmann, No. 398/2007 – Nadine Bolender and No. 404/2007 - Alfred Sixto), which relate to issues connected with those raised by the present case.
4. After the hearing, at the request of the Tribunal, the Secretary General submitted a number of documents concerning the procedures before the ad hoc Committee set up to advise the Secretary General in the post classification exercise. By decision of 23 April 2008,

the Tribunal decided that, in view of the confidential nature of these documents, it would study them without disclosing them to the appellants. The appellant, for his part, submitted comments.

## **THE FACTS**

5. Recruited in August 1992, the appellant, a French national, is a permanent member of the Organisation's staff. She is assigned to the Directorate General of Human Rights and Legal Affairs. The appellant works in the Constitutional Justice Division of the Secretariat of the Enlarged Agreement on Democracy through Law (Venice Commission).

6. In the course of the year 2004, the Secretary General decided to initiate a post classification exercise.

Staff were informed of the launch of this exercise, in 2005, and of its subsequent progress.

In a document designed to address a number of recurrent questions, it was explained that:

“The objective of the exercise is not to promote or demote individuals. In some limited cases it can lead to the identification of some roles that have more or less impact in the organisation than was originally thought. In the future it will help the Organisation to coach you in your personal development and career and to give you information how to grow by competency management and self- development.”

In a document dated 10 March 2006, the Secretary General said that he was “determined to find the necessary funding and [had] already discussed this point with the Director General of Administration and Logistics”. In the same document, it was made clear that “if a member of staff is not satisfied with the grade of his/her post, a review can be requested under existing provision of the Staff Regulations”.

In a document dated 27 June 2006 on information for staff members, it was explained that “the Directorate General of Administration and Logistics is finalising the detailed procedures and timetable to allow staff members employed on reclassified posts to be considered for promotion to the grade of the post in question.”

In a communication dated 16 July 2007, the Secretary General told staff that any interested staff members would have until 15 September 2007 to lodge an administrative complaint under Article 59 of the Staff Regulations

At the end of the exercise, the Secretary General reached the conclusion that the appellant's post should not be upgraded from grade B2 to grade B3.

7. On 27 June 2007, the appellant was informed in writing that the Secretary General had decided to maintain the post at its current grade, namely grade B2.

8. On 16 July 2007, the appellant lodged an administrative complaint in pursuance of Article 59 of the Staff Regulations. She stated that the impugned decision was arbitrary, and therefore requested that it be set aside and her post be upgraded to grade B3.

9. In a letter dated 27 July 2007, the Secretary General rejected the administrative complaint. He considered that the complaint was unfounded and dismissed it.
10. On 27 September 2007, the appellant lodged the present appeal.

## **THE LAW**

11. In her appeal, the appellant requested firstly that the Tribunal order the upgrading of her post to LIN/B3, and alternatively that it set aside the Secretary General's decision not to upgrade the post to the grade in question.

12. The Secretary General, for his part, asks the Tribunal to declare the appeal unfounded and to dismiss it.

### **I. ARGUMENTS OF THE PARTIES**

13. The appellant relies on two grounds in support of her appeal: absence of a statement of reasons and arbitrary classification.

14. Firstly, the appellant argues that the very purpose of the classification exercise is to establish objective information to provide a basis on which decisions to reclassify or not to reclassify posts may be taken. In so far as the work of the experts or of the Ad hoc Review Board is crucial to the decision taken, the reasons underlying it have to be communicated in accordance with the case-law of the Tribunal in respect of the reasons for decisions (cf. appeal No. 316/2005 *Kling v. Secretary General*, judgment of 7 March 2004, paragraph 45). Nor does the reply to the administrative complaint provide an answer to the appellant's questions, and she indicates that she has been unable to assess whether all the arguments in favour of upgrading have been taken into account.

The appellant emphasises the fact that the giving of reasons for decisions is fundamental to the rule of law and to the right to effective judicial protection, insofar as the requirement for sufficient reasons is first and foremost a vital safeguard for plaintiffs. Thanks to this safeguard, one may be certain that the solution found to each specific case follows a reasoned appraisal of the law and is not the result of an arbitrary judgment. Thus the Secretary General's communications infringe the vital procedural safeguards.

15. In her second argument, the appellant points out that the arguments put forward by her Director General in support of her request for upgrading were not dealt with in any communication addressed to her. But the description of the post corresponds exactly to the reference job which she claims to be doing.

16. The Secretary General, meanwhile, after providing some background information on the classification exercise, notes that each request for a review was examined separately, both by an independent classification expert and by the Directorate of Human Resources. The requests were submitted to an ad hoc board made up of two staff representatives, the director of Human Resources or her representative, a person representing the Secretary General and a representative from the main administrative entity concerned. Afterwards, the board made a recommendation to the Secretary General on whether or not the post should be upgraded (indicating the opinions expressed if a consensus had not been reached).

17. In the opinion of the Secretary General, this review procedure was objective and rigorous and conducted in the proper manner.

18. The Secretary General adds that, in the appellant's case, the Ad hoc Review Board did not reach a consensus. It is therefore on the basis of all the positions expressed by members of the Ad hoc Review Board, and after taking cognisance of the whole file relating to the appellant, that the Secretary General decided to maintain the post held by the appellant at grade B2. He took the view, as he had discretionary power to do, that the appellant's post, in the light of all the information at his disposal and of the positions expressed by the members of the Ad hoc Review Board, was not at the level of grade B3.

19. The Secretary General argues that it is not possible to go into the details of the points raised by the appellant because the experts, the Directorate of Human Resources and the ad hoc board carried out this exercise (analysis of the post and of the arguments put) in respect of all of the posts, his included. It would not be appropriate to review the entire exercise that was carried out by the experts in this area. It would not make sense to conduct an a posteriori review of each staff member's arguments and the profile of each post, as this has already been done by persons with expertise in such matters. Where a procedure has been conducted in a rigorous manner, as in the present case, its findings should be heeded.

20. With regard to the appellant's claim that no reasons were given for the decision not to upgrade his post to grade B3, the Secretary General submits that there is no foundation for this allegation. Staff members were kept informed as the classification exercise progressed and with due regard, obviously, for the confidential nature of the ad hoc board's work, the methods and results of the exercise, and the review procedure described above, not least through the numerous news items that appeared on the Council of Europe intranet site. The Secretary General further maintains that, with all this detailed information at their disposal, as well as the information in the memorandums that were sent out, advising them that their requests for upgradings had not been granted, and the information contained in the replies to their administrative complaints, staff could hardly claim to be unaware of the reasons behind the decision to upgrade a particular post to one grade rather than another, or to keep it at the same grade. The procedure is clear. In this particular instance, it was decided that the appellant's post should remain at grade B2 and not be upgraded to B3, as the appellant requested.

21. The Secretary General further observes that throughout the procedure and afterwards, all staff members had the opportunity to seek further information and explanations both from their superiors and from the Directorate of Human Resources.

22. According to the Secretary General, the case-law of international administrative courts does not require such detailed reasons as those provided to the appellant. On this point, he refers to judgments Nos. 1113 and 1808 of the Administrative Tribunal of the International Labour Organisation

23. The Secretary General notes that, in any event, the Secretary General, being vested with authority to make appointments, has discretionary powers in matters of staff management. In exercising those powers, he is qualified to ascertain and assess the Organisation's operational needs and staff members' professional abilities.

24. The Secretary General concludes by pointing out that no staff member is entitled to have his or her post upgraded, still less to be promoted to the post occupied by him or her, should that post be upgraded.

25. Having regard to these factors, it is clear that there has been no breach, either in the regulations or in practice, of the general principle of law. Nor, in the Secretary General's view, 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. THE TRIBUNAL'S ASSESSMENT

26. Before considering the merits of the appeal, the Tribunal will examine a question that was not raised by the Secretary General and which relates to the admissibility of the appeal. For, in view of the nature of the act complained of and the purpose of the exercise undertaken by the Secretary General, the Tribunal, before seeking to establish whether the act in question is an "administrative act adversely affecting" the appellant, must ascertain whether the appellant had a "direct interest" in challenging the act in question (Article 59 of the Staff Regulations). In its decision of 19 January 2007 in appeals nos. 366 and 367/20006 (Jeannin (III) and Becret (III) paragraphs 33-44), the Tribunal concluded that an appellant does not have a direct interest when the act in question is a management decision which does not concern the appellant. In paragraph 42 of its decision, the Tribunal concluded as follows:

"In the Tribunal's view it is important to note that the upgradings and downgrading did not concern posts for which any appointment procedure had been started with the previous grading, let alone posts occupied by the appellants. Consequently, the Tribunal is dealing here with a management decision not concerned with the appellants, even though – indirectly – it does affect them. The appellants therefore have no direct interest in the classification of the posts and have not directly or immediately suffered any harm entitling them to bring contentious proceedings".

The Tribunal goes on to state (in paragraph 43):

"The Tribunal accepts that, in the present case, the appellants' promotion prospects may have been somewhat diminished because of the changes made. It arrives at that conclusion even though the appellants have not proved that their qualifications would have enabled them to apply if the classification of the posts had remained unchanged.

However, the appellants' interest in the posts' continuing to carry their original gradings is not an interest protected by Article 59 of the Staff Regulations.

The Secretary General is undoubtedly empowered to make changes to the Secretariat. When altering the classification of vacant posts, he is taking a decision on the Secretariat's general organisation which is concerned not with management of an individual staff member's career but with the Council's job structure.

If the manner in which the Secretary General performs that task poses a staff management problem at the general level, that problem cannot be solved by means of a judicial decision in an individual case."

27. The Tribunal notes that in the present case, the decision complained of concerned the post occupied by the appellant whereas in the Jeannin (III) and Becret (III) appeals, the decisions complained of concerned posts which were not occupied by the appellants (paragraph 43 of the above-mentioned decision). This fact, however, should not lead the Tribunal to reach a conclusion different from that reached in the Jeannin (III) and Becret (III) appeals.

The upgrading procedure as announced, described and completed by the Administration was an procedure pertaining to the organisation of the Council of Europe, and hence a general decision, not aimed directly at individual staff members. The Secretary General initiated this procedure within the scope of his power to make general changes and adjustments to the Council of Europe Secretariat, without conferring an automatic right to promotion, not even on the persons occupying the upgraded posts. This is amply demonstrated by the proviso which the Secretary General made with regard to funding, which would be liable to be affected by any such promotion.

28. The review of the classification of the appellant's post was indeed part of a wider exercise spanning the entire Organisation: it was not designed to ascertain whether a particular staff member should or should not be promoted to the upgraded post. The reclassification procedure was all about managing the Council's job structure. Even if this organisational exercise resulted in a decision to upgrade the appellant's post, the Council was under no obligation to consider whether the appellant should be promoted. The appellant's interest in the procedure was indirect and incidental to the aim and general purpose of the exercise as a whole, which was designed to assess the operational needs of the Organisation rather than the professional abilities of its staff (paragraph 23 above).

29. Having reached this conclusion, the Tribunal should declare that the appeal is in any case inadmissible.

30. Even if the Secretary General's very general statement, made in the document dated 10 March 2006, could be construed as entitling staff to contest his decisions by bringing contentious proceedings, the Tribunal considers that such a statement cannot alter the nature of the organisational decision. Reclassification is an objective decision, of general scope. It cannot, however, be deemed to constitute a general act adversely affecting staff under the terms of Article 59 (1) of the Staff Regulations.

31. The Tribunal considers it worth adding that even if it did not consider this appeal to be inadmissible, it would, by a very similar process of reasoning, conclude that the appeal was unfounded, even after rejecting the Secretary General's formal objections as to admissibility.

32. For as regards the merits of the appeal, the Tribunal considers that a job reclassification exercise spanning the entire Council of Europe is without doubt a one-off procedure and not comparable to ordinary procedures such as competitions, promotions, etc., nor to the procedure involving the appellants Jeannin and Bécet and which related only to specific, clearly defined posts. It follows that the discretionary powers enjoyed by the Secretary General in respect of these organisational measures is extremely wide. Such a procedure may be conducted without detriment to individual postholders. This objective procedure is an internal administrative matter and hence within the Secretary General's discretionary authority. There is no need to justify such decisions because the reclassification exercise, as the Tribunal has already stated, is an organisational act. The Tribunal has noted that the job classification procedure launched by the Secretary General in 2005/2006 was primarily an objective procedure, internal to the Council of Europe. It was during this phase that an ad hoc board made up of five members (including a staff representative) was set up and a number of independent experts brought in to assist it in its work. Staff members, moreover, were perfectly free to submit to the board – whose proceedings, in view of their nature, could not be conducted in the presence of the parties – comments and information regarding the work involved in the posts occupied by

them. The Tribunal can merely check to ensure that the board was properly constituted and that the proper procedures were followed. Having had an opportunity to study the records of the board's proceedings for the purpose of this appeal, the Tribunal finds nothing amiss in either its composition or the procedures followed. The records show that the board conducted an objective review of the posts, with no reference to the abilities of the persons currently in those posts.

33. The Secretary General, however, did not confine himself to an objective upgrading of posts but seems to have also sought to address requests from individuals, asking to be promoted to the upgraded posts, even though staff members' involvement related mainly to training for the purpose of framing the organisational act. This post-reclassification phase, although it is included in the same Secretary General document, is not entirely "objective" and may have given staff the impression that they had an individual right of correction or at least a legitimate expectation, as has already been pointed out. It appears from the Secretary General's document on the ramifications of the reclassification that any individual promotions of this kind were contingent on financial resources (ultimately, whether there were enough funds in the budget) and personal ability (as in promotion procedures). This shows that there is no automatic obligation for the administration to promote individual staff members in the light of the results of the reclassification exercise.

34. The Secretary General did nevertheless respond in rather general terms to individual requests for promotion to upgraded posts. Even though these replies do not provide the extensive justification that might be expected in appeals or promotions, the Tribunal considers that the references to objective reclassification procedures followed by the ad hoc board meet the requirements for this exceptional procedure. In the present cases, the ad hoc board made recommendations to the Secretary General, at times unanimously and at other times by a majority. The entire procedure followed by this ad hoc board, which was set up to assist the Secretary General with his reclassification project, suggests diligence and a concern to be objective. The fact that some of the recommendations were supported by the majority, rather than all, of the members is more an indication of the problematic nature of the classification system, which is not wholly rational but rather an evaluation of objectives, duties, etc. which, like all evaluations, involves an element of subjectivity. There was nothing irregular in the fact that the Secretary General appointed this board of experts whose professional qualities served as a sort of safeguard, ensuring that the procedure was objective. Nor was there anything irregular in the fact that the Secretary General based his decision on the opinion of this board.

35. In conclusion, the appeal is inadmissible for the reasons given in paragraphs 26-29 above, and the Tribunal has no need to examine the merits of the appeal.

36. Under Article 11, paragraph 3, of the Tribunal Statute:

"3. In cases where it has rejected an appeal, the Tribunal may, if it considers there are exceptional circumstances justifying such an order, decide that the Council shall reimburse in whole or in part properly vouched expenses incurred by the appellant. The Tribunal shall indicate the exceptional circumstances on which the decision is based."

The Tribunal finds that the appellant – who was assisted by a colleague in the presentation of her case – did not submit any request to the Tribunal. There is therefore no cause to issue a ruling on the possible application of paragraph 3 of Article 11 of the Statute of the Tribunal.

For these reasons,

The Administrative Tribunal:

Declares the appeal inadmissible;

Dismisses it;

Decides that each party shall pay its own costs.

Delivered at Strasbourg on 3 July 2008, the French text being authentic.

The Registrar of the  
Administrative Tribunal

The Deputy Chair of the  
Administrative Tribunal

S. SANSOTTA

G. RESS