

# CONSEIL DE L'EUROPE

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# COUNCIL OF EUROPE

## TRIBUNAL ADMINISTRATIF

## ADMINISTRATIVE TRIBUNAL

**Appeal No. 403/2007 (Ljiljana STOJISAVLJEVIC v. Secretary General)**

The Administrative Tribunal, composed of:

Mrs Elisabeth PALM, Chair,  
Mr Angelo CLARIZIA and  
Mr Hans G.KNITEL, Judges,

assisted by:

Mr. Sergio SANSOTTA, Registrar,

delivered the present decision after due deliberation.

### THE PROCEEDINGS

1. Mrs Ljiljana Stojisavljevic lodged her appeal on 3 December 2007. On the same day it was registered as file No. 403/2007.
2. On 4 February 2008, her counsel, Ms Gaia Giappichelli, lodged a supplementary memorial. On 21 February 2008, she gave the Tribunal a further document to be added to the appellant's file.
3. On 12 March 2008, the Secretary General submitted his observations on the appeal.
4. The appellant submitted observations in reply on 12 April 2008.
5. 24 April 2008 was set as the date for the opening of the oral proceedings and on 21 April 2008 the Secretary General requested that the hearing be postponed to a later date with a view to reaching an out of Court settlement. The Chair agreed to postpone the hearing.

As the parties were unable to reach an agreement, the hearing was finally held in the Administrative Tribunal courtroom in Strasbourg on 28 May 2008. The appellant was represented by Ms Gioia Giappichelli, while the Secretary General was represented by Ms Bridget O'Loughlin, Deputy Head of the Legal Advice Department at the Directorate of Legal Advice and Public International Law, assisted by Ms Christina Olsen and Ms Maija Junker-Schreckenber, from the same department.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The appellant, Mrs Ljiljana Stojisavljevic, is a temporary member of the Council of Europe staff of Croatian nationality.

7. She was taken on by the Council of Europe in April 2007 and is currently working on Grade B2 at the Directorate General of Human Rights and Legal Affairs (DGHL).

8. On 27 June 2007, the appellant submitted a request for the payment of the education allowance in respect of her son for the school year 2007/2008. She requested the reimbursement of educational costs at the “exceptional rate”, in keeping with Article 7 of the Regulations on the payment of staff salaries and allowances Appendix IV of the Staff Regulations – see paragraph 15 below).

9. On 6 August 2007, the Directorate of Human Resources informed the appellant that she had not, in her application, established that she fulfilled the requirements of Article 5 of Rule No. 1277, which lays down the conditions under which education allowance is granted at the exceptional rate (up to 90% of total educational costs up to a ceiling of 6 times the annual rate of the dependent child allowance).

10. On the other hand, the Directorate of Human Resources considered the educational costs incurred by the appellant to be “*excessively high*” within the meaning of Article 7, paragraph 6.c.i, of the Regulations, as stipulated in Article 3 of the said Rule, and that it was also possible to consider that they had been incurred for “imperative educational reasons”, pursuant to Article 7, paragraph 6.c.iii, of the Regulations, supplemented by Article 4 of the Rule. The DGHL acknowledged that the appellant was entitled to the increased rate of reimbursement, i.e. up to 70% of educational costs up to a ceiling of 4 times the annual amount of the dependent child allowance.

11. On 29 August 2007, the appellant lodged an administrative complaint under Article 59 of the Staff Regulations.

12. On 1 October 2007, the Secretary General dismissed the administrative complaint.

13. On 3 December 2007, the appellant lodged the present appeal.

14. During the proceedings before the Tribunal on 27 May 2008, the Secretary General informed the appellant that he was now convinced that the conditions fixed by Article 5 of Rule No. 1277 had been met and that he had issued instructions for the educational costs of her son to be reimbursed at the “exceptional rate”.

### II. THE REGULATIONS IN FORCE

15. Education allowance is granted under the conditions set out in Article 7 of Appendix IV (Regulations on the payment of staff salaries and allowances) to the Staff Regulations. Since its amendment on 16 May 2007 by the Committee of Ministers, this article reads as follows:

### **Article 7 –Education allowance**

“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:

- a. in respect of children in compulsory education up to completion of secondary level of education;
- b. in respect of children at post-secondary level of education for studies carried out in the country of which the staff member or the child's other parent is a national or in the duty country. If duly justified by the staff member, for reasons of continuity in following an educational cycle or if educational costs are lower in a third country, an exception to this rule can be granted by the Secretary General..

(...)

6. Reimbursement of educational costs mentioned in paragraph 5 above shall be made according to the rates, ceilings and conditions below, each case being treated individually:

- a. Standard rate: 70% of the educational costs up to a ceiling of 2.5 times the annual amount of the dependent child allowance;

- b. Country of nationality rate (if different from country of duty): 70% of educational costs up to a ceiling of 3 times the annual amount of the dependent child allowance if the child is educated in a country of which the staff member or the other parent is a national;;

- c. increased rate: 70% of educational costs up to a ceiling of 4 times the annual amount of the dependent child allowance provided that:

- i) educational expenditure as defined in paragraph 5 a. and b. is excessively high;

- ii) such costs are for education up to completion of the secondary cycle;

- iii) are incurred for imperative educational reasons

- d. . Exceptional rate: up to 90% of total educational costs up to a ceiling of 6 times the annual rate of the dependent child allowance provided that::

- i) educational costs as defined in paragraph 5 a. and b. are exceptional, unavoidable and excessively high, according to the judgement of the Secretary General;

- ii) such costs refer either to education up to completion of the secondary cycle or are costs as defined in paragraph 5 a. and b. for the post-secondary cycle;

- iii) costs are incurred for imperative educational reasons..

(...)

14. The Secretary General shall establish instructions for implementation of the provisions of this Article.”

16. On 25 June 2007, the Secretary General adopted Rule No. 1277 on the education allowance. The purpose of this rule was to “clarify a number of questions concerning the education allowance and set out the conditions for granting it”. It reads as follows:

### **Article 1**

“Where a staff member claims an exception based on educational costs being lower in a third country, pursuant to Article 7 paragraph 1 b) of the Regulations, the comparison shall be made between registration fees and general fees for schooling and education applicable for the first year in the educational cycle in either the duty country or the country of which the official or the child’s other parent is national (the staff member concerned having the choice).

(...)

### **Article 5**

The educational costs shall be reimbursed at the exceptional rate within the meaning of Article 7 paragraph 6 d) of the Regulations when incurred for children with special educational needs resulting from their medically certified physical, developmental or behavioural condition.

(...)

### **Article 10**

This rule shall enter into force on the first day of the month following its signature by the Secretary General and shall revoke Instruction No. 27 of 7 April 1993 on the application of Article 7.7 of the Regulations governing staff salaries and allowances (Appendix IV to the Staff Regulations).”

## **THE LAW**

17. When the appellant lodged her appeal, she requested the annulment of the decision not to grant reimbursement of her son’s educational costs at the “exceptional rate” under Article 7, paragraph 6 d., of the Regulations on the payment of staff salaries and allowances (Appendix IV of the Staff Regulations). She gave two grounds for her appeal: violation of Article 7 of the Regulations on the payment of staff salaries and allowances; violation of the general principles of law: respect for legitimate expectations, good faith and prohibition of all forms of discrimination. In her supplementary memorial of 30 January 2008, the appellant also requested 5,000 euros by way of reimbursement of all the costs incurred by the appeal.

18. In his observations, the Secretary General asked the Tribunal to find the appeal ill-founded and to dismiss it.

19. At the hearing before the Tribunal and after having taken note of the Secretary General’s decision of 27 May 2008, the appellant did not present any conclusions concerning the merits of her appeal but simply asked for reimbursement of the costs of the proceedings.

20. The Secretary General left the decision concerning the appellant’s request for reimbursement of the costs of the proceedings to the discretion of the Tribunal.

21. Following the decision taken by the Secretary General on 27 May 2008 to fully accede to the appellant’s request for the reimbursement of educational costs at the exceptional rate, the Tribunal considers that the present appeal no longer serves any purpose. It therefore follows that the Tribunal cannot rule on the merits of the request and, *a fortiori*, the Secretary General’s decision. It is not therefore necessary to rule on the merits of the case.

22. The Tribunal considers it reasonable, given the circumstances of the case, that the Secretary General should reimburse the sum of 5,000 euros (Article 11, paragraph 2, of the Statute of the Tribunal – Appendix XI of the Staff Regulations).

For these reasons, the Administrative Tribunal:

Decides that the Council of Europe must pay the appellant the sum of 5,000 euros to cover the costs and expenses incurred;

Decides to strike the remainder of the appeal out of its list of cases.

Adopted by the Tribunal in Strasbourg, on 27 November 2008, and issued in writing in accordance with Rule 35, paragraph 1, of the Rules of Procedure of the Tribunal on 19 December 2008.

The Registrar of the  
Administrative Tribunal

The Chair of the  
Administrative Tribunal

S. SANSOTTA

E. PALM