

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

## **TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL**

**Decision of the Administrative Tribunal of 28 September 1995  
in the case of TESSIER v. Governor of the Council of Europe Social Development Fund**

The Administrative Tribunal, composed of:

Mr Carlo RUSSO, Chair,  
Mr Kåre HAUGE,  
Mr Hans G. KNITEL, Judges,

assisted by:

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

has delivered the following decision after due deliberation.

### **PROCEEDINGS**

1. Mr Tessier lodged an appeal against the decision dated 25 March 1994 of the Governor of the Council of Europe Social Development Fund to institute disciplinary proceedings against him and suspend him. The appeal was lodged on 26 May 1994 and registered on 30 May 1994 under file number 180/1994.
2. The appellant filed a supplementary memorial on 24 June 1994 and on 1 August 1994 the Governor submitted his observations in reply.
3. In a letter dated 19 June 1995 the appellant informed the Tribunal that he withdrew his appeal. The Governor was informed of the letter that same day and raised no objection.

### **THE LAW**

4. The Administrative Tribunal accordingly notes that there is no objection to its striking

Appeal No. 180/1994 out of its list of cases.

For these reasons the Administrative Tribunal:

Under Rule 20 para.1 (a) of its Rules of Procedure,

Decides to strike Appeal No. 180/1994 out of its list of cases.

Done in French at Strasbourg on 28 September 1995 and notified to the parties in writing under Rule 35 para. 1 of the Rules of Procedure.

The Registrar of the  
Administrative Tribunal

The Chair of the  
Administrative Tribunal

S. SANSOTTA

C. RUSSO

## **Appendix**

### **CHAIR'S ORDER OF 25 APRIL 1994**

#### **in the case of TESSIER, ERNOULD and LELEGARD v. GOVERNOR of the Council of Europe Social Development Fund**

### **THE FACTS**

1. The applicants are three officials of the Council of Europe Social Development Fund against whom disciplinary proceedings have been instituted. They hold grade A6, A5 and B6 posts as Director of Research and Loans, Head of Administration and Personnel and Head of General Services.
2. On 25 March 1994 the Governor of the Fund ordered the suspension of the three officials in accordance with the Council of Europe Staff Regulations, which apply to the staff of the Fund.
3. On 11 April 1994 Mr Ernould and Mr Lelégard lodged a complaint with the Governor, pursuant to Article 59 para. 1 of the Staff Regulations objecting to the aforementioned decision.
4. In a letter dated 11 April 1994 which reached the registry on 13 April 1994, the applicants filed an application to the Chair of the Administrative Tribunal for a stay of execution of the suspension orders.
5. On 14 April 1994 the Chair of the Administrative Tribunal invited the Governor to submit any comments he wished to make on the application for a stay of execution.
6. The Governor submitted his comments in a fax dated 15 April 1994. These comments were forwarded to the applicants on 18 April 1994.
7. On 21 April 1994 the applicants submitted their comments in reply. On 22 April, Mr Tessier indicated that he had submitted an administrative complaint on 21 April 1994. On 25 April, the remaining two applicants indicated the date on which they had lodged their complaints.

### **THE LAW**

8. Under Article 59 para. 7 of the Council of Europe Staff Regulations, which according to Resolution 4 (1956) of the Fund's Administrative Council, also apply to Fund staff member, an application for a stay of execution of an administrative act may be lodged if the execution of the decision is likely to cause "grave prejudice difficult to redress".
9. The applicants made the application for a stay of execution on the grounds that the execution of the suspension orders in question would cause them grave prejudice difficult to

redress. After questioning the validity and, in particular, the impartiality of the measures taken, the applicants maintain that any compensation or damages, if awarded, would come too late, the harm having already been done in psychological terms.

They further maintain that there can be no possible redress for the prejudice caused to them by public rumour.

In conclusion, the applicants argue that, even if their innocence is ultimately established, they will have no option but to seek other employment, this being extremely difficult given the unemployment situation and their age.

10. The Governor questions the admissibility of Mr Tessier's application, stating that he has requested a stay of execution without asking for his suspension to be annulled. The Governor also argues that it is impossible to rule on the application for a stay of execution without prejudging the main case, in other words, without making an assessment of the nature and gravity of the offences committed by the applicants. In his view, the Disciplinary Board has sole responsibility for such an assessment and its rights would be infringed if the Administrative Tribunal made either an implicit or an explicit assessment of the merits of the case.

The Governor also points out that he has sole responsibility for staff management and disciplinary decisions and that the measures complained of were taken following audits and inspections. He adds that, if it was established that the applicants were not guilty of any disciplinary offence, they would receive appropriate compensation.

11. The Chair of the Administrative Tribunal notes that Mr Tessier lodged his application for a stay of execution before submitting his administrative complaint. He thus requested a stay of execution of an administrative act which he had not yet challenged, and he produced no evidence justifying this course of action. His application must therefore be declared inadmissible.

12. As to the application by Mr Ernould and Mr Lelégard, the Chair observes that the existence of disciplinary proceedings does not present an obstacle to his examining the application. The latter's purpose is to obtain a stay of execution of an administrative act affecting the applicants and against which a complaint may be lodged.

13. The Chair considers that the ordering of suspension does not as such, and in the absence of specific elements, constitute grounds for assuming that the applicants would suffer "grave prejudice difficult to redress" within the meaning of Article 59 para. 7 of the Staff Regulations.

14. The Chair notes that the grounds put forward by the applicants are not sufficient to prove that the execution of the act complained of would cause them "grave prejudice difficult to redress". In particular, it should be noted that the Governor stated in his comments that, if it was established that the applicants were not guilty of any disciplinary offence, they would receive appropriate compensation for any prejudice which might be caused to them by the proceedings undertaken.

15. The Chair points out that his exceptional power under Article 59 para. 7 of the Staff Regulations also calls for some self-restraint in his exercise (cf. Chair's Order of 31 July 1990,

para. 12, in the case of Zaegel v. Secretary General). Furthermore, there is no question at this stage of examining the arguments put forward by the applicants their administrative complaints.

16. It follows from the above that the application for a stay of execution is unfounded in the instant case.

For these reasons,

Exercising my jurisdiction to make interim orders under Article 59 para. 7 of the Staff Regulations, Article 8 of the Statute of the Administrative Tribunal and Article 21 of the Rules of Procedure of the Administrative Tribunal/Appeals Board,

Having regard to the urgency of the matter,

**I, CHAIR OF THE ADMINISTRATIVE TRIBUNAL,**

decide

- to declare inadmissible the application for a stay of execution submitted by Mr Tessier;
- to reject the application for a stay of execution submitted by Mr Ernould and Mr Lelégard.

Done and ordered in Savona, 25 April 1994.

The Registrar of the  
Administrative Tribunal

The Chair of the  
Administrative Tribunal

S. SANSOTTA

C. RUSSO