

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

## **TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL**

**CHAIR'S ORDER OF 11 July 2018**

**In the case of Stephanos STAVROS v. Secretary General of the Council of Europe**

### **THE FACTS**

1. The complainant, Mr Stephanos Stavros, has been a permanent staff member of the Council of Europe since 1994. He currently occupies the post of Principal Administrative Officer with the functions of a Senior Legal Adviser in DGI (Human Rights and Rule of Law).
2. On 15 January 2018, four staff members submitted a memorandum to the Health and Safety Committee (CHS). One of the staff members had been the complainant's line manager, another her assistant and the other two had worked with him in different departments.
3. A copy of the memorandum was sent to the medical officer, the Staff Committee and two trade unions.
4. In this memorandum, the four staff members complained about the complainant's behaviour towards them and other colleagues, and asked that the CHS take up the matter.
5. They asked that the CHS carry out an inquiry and propose appropriate measures to put an end to the complainant's alleged harmful behaviour and prevent him from treating other staff members the same way in the future.
6. The Chair of the CHS informed the Director of Human Resources of the memorandum, but the Director warned the four complainants that in view of the terms of reference of the CHS, it did not have the authority to examine complaints about the behaviour of individual staff members. The Director of Human Resources interviewed three of the staff members who had signed the memorandum. No information has been provided as to the reason why the fourth signatory was not interviewed. As for the complainant, he was not summoned.
7. The Director of Human Resources informed the signatories that they could either file a complaint with the Commission against Harassment (Secretary General's Rule No. 1292 of 3 September 2010 on the protection of human dignity at the Council of Europe) or let her decide on the appropriate follow-up to be given to their allegations.
8. After having been informed by the complainants that they did not wish to file a complaint with the Commission against Harassment and after having obtained from them additional

evidence in support of their allegations, on 29 March 2018, the Director of Human Resources recommended that the Secretary General carry out an internal inquiry to establish the relevant facts (Secretary General's Instruction No. 51 of 10 June 2006 on internal inquiries).

9. On 10 April 2018, the Deputy Secretary General asked the Director of Internal Oversight to carry out an internal inquiry in accordance with Instruction No. 51. In her memorandum, she specified that it was not desirable that the inquiry be conducted by the Directorate General of Administration.

10. The Director of Internal Oversight took a certain number of steps.

11. However, in a memorandum dated 30 May 2018, the Secretary General informed him that he was cancelling the internal inquiry requested by the Deputy Secretary General on 10 April 2018 in view of the Tribunal's judgment of 17 May 2018 in appeals 582-583/2017 (Brillat (III) and Priore v. Secretary General).

12. The Secretary General took into account the risk that the Deputy Secretary General's authority to launch an inquiry under Instruction No. 51 would be called into question because the Secretary General had not effected a proper delegation of powers to that effect.

13. In the same memorandum, the Secretary General asked the Director of Internal Oversight to carry out a new inquiry into the same allegations which was to be completed by 29 August 2018. He pointed out the reasons why the internal inquiry had been entrusted to the Director of Internal Oversight rather than to the Director General of Administration, saying it had been done to avoid any risk of a conflict of interests or the appearance thereof.

14. The Director of Internal Oversight took a certain number of steps.

15. On 12 June 2018, the complainant lodged an administrative complaint with the Secretary General under Article 59, paragraph 2, of the Staff Regulations. He asked that the internal inquiry be terminated.

16. On 29 June 2018, the complainant applied to the Chair of the Tribunal for a stay of execution of the act complained of (Article 59, paragraph 9, of the Staff Regulations).

17. On 4 July 2018, the Secretary General submitted his observations on the application for a stay of execution.

18. On 6 July 2018, the complainant submitted observations in reply. In view of the circumstances, he asked to be granted anonymity.

## **THE LAW**

19. Under Article 59, paragraph 9, of the Staff Regulations, an application for a stay of execution may be lodged if that execution is likely to result in "grave prejudice difficult to redress".

According to the same provision, the Secretary General must, save for duly justified reasons, stay the execution of the act until the Chair of the Administrative Tribunal has ruled on the application in accordance with the Tribunal's Statute.

20. The complainant made his request for a stay of execution of the administrative measure that he contested in his administrative complaint of 12 June 2018.

21. The complainant states from the outset that it is in close connection with the fourth allegation made in his administrative complaint (violation of the Secretary General's obligation to respect the dignity and reputation of staff members) that he is seeking a stay of execution of the decision of 30 May 2018.

22. According to him, this violation is a consequence of the disclosure of highly defamatory allegations against him to persons who were not entitled to be informed of them. In accordance with international case law, such disclosure constitutes a blatant violation of the Administration's obligation to respect the dignity and reputation of its staff members (see ILOAT, Judgment No. 2371, Standing (2004) §§11 to 15).

23. The claimant adds that this violation has already been established. Nevertheless, if the Directorate of Internal Oversight continues the inquiry, this will aggravate the violation and therefore cause irreparable harm to his reputation.

24. The complainant states that the false and defamatory claims were first propagated when the matter was referred to the CHS, an internal body which clearly has no authority to examine allegations of harassment. All the persons to whom the memorandum was addressed (the members of the CHS, the 27 members of the Staff Committee, and a few hundred trade union members) were thus informed that a group of staff members considered him to be an inveterate and dangerous harasser.

25. After making points which relate more to the substance of the case, the complainant asserts that the Director of Internal Oversight and his colleagues are preparing to hear a large number of witnesses. According to him, there are around 19 witnesses likely to be heard in the coming days, and until the inquiry is over.

26. The complainant considers that in view of the large number of people likely to be involved in the hearings, it is clear that he is about to be subjected to a new wave of allegations of harassment, or even find himself at the centre of "gossip that is very harmful to his dignity".

27. As an indication of the extent to which these allegations have been spread, he points out that the Secretary General has not established the parameters of the inquiry; secondly, that this inquiry appears to concern the entirety of his long career at the Council of Europe; and lastly, that the purpose of and justification for the testimonies of some of the persons who are to be heard remain excessively vague.

28. The claimant states that if the inquiry were to continue, it is likely to seriously damage his reputation in the future considering the large number of persons involved and the fact that the Secretary General, the Administration and the Director of Internal Oversight do not attach much importance to the principle of confidentiality.

29. The complainant concludes that all the conditions exist for the upcoming inquiry to cause irreparable damage to his reputation, his dignity and, secondarily, his career prospects. Only a decision by the Chair of the Tribunal to suspend the inquiry could prevent the damage

already caused from being aggravated and the potential damage from materialising to the point where it becomes irreparable.

30. For his part, the Secretary General contends that the complainant has not established, in the present application, the existence of any “grave prejudice difficult to redress”.

31. He points out that an internal inquiry is a preparatory act which seeks merely to establish facts likely to constitute a breach of the Organisation’s internal rules. It aims, in particular, to gather reliable evidence about how third parties might judge those facts. The inquiry could potentially lead to disciplinary proceedings and a disciplinary sanction, but the two procedures are independent of one another.

32. The Secretary General adds that initiating and carrying out an inquiry cannot, as such and in themselves, be considered as acts likely to adversely affect a staff member within the meaning of Article 59, paragraph 2, of the Staff Regulations. It is only when any final decision that might be made by the Secretary General, taking into account the report produced on completion of the inquiry, is contested – insofar as that decision would adversely affect the complainant – that the latter could challenge the legality of the different preparatory acts in an incidental manner. The inquiry alone, therefore, would not be likely to cause the complainant grave prejudice difficult to redress simply because accusations have been levelled against him and witness accounts are gathered with a view to establishing the facts relating to those accusations.

33. The inquiry is being conducted in the interest of the Organisation to establish facts that might constitute breaches of its internal rules. If the measures taken in the context of an internal inquiry were able to be contested and potentially accompanied by a request for a stay of execution aimed at impeding the proper conduct of that inquiry, the latter could not be carried out with the required efficiency, independence and confidentiality.

34. The Secretary General considers that the need for confidentiality has been fully taken into account by the staff members in charge of the inquiry who have informed all those participating in it of their duty to respect the confidentiality of the proceedings in accordance with Article 9 of Instruction No. 51.

35. In addition, the staff members in charge of the inquiry respect the principles of necessity and proportionality in the acts carried out in the context of the inquiry and, pursuant to those principles, are hearing only those witnesses who, in their view, might have information relevant for establishing the facts.

36. The Secretary General considers that the complainant merely states, without proof, that the mere fact of hearing witnesses, in addition to the ones who have been questioned thus far, is likely to cause him prejudice difficult to redress.

37. In any event, any harm caused to the complainant’s reputation could be compensated through proceedings to challenge any final decision that might be taken against the complainant. It would be prejudice easy to redress.

38. If the Chair were to accept the complainant’s arguments on the basis of such vague allegations, this would bear negatively on the course of any inquiry or investigation which might subsequently be launched.

39. Lastly, the Secretary General notes that the complainant relies on the grounds put forward in support of his administrative complaint, without adding anything specific that might demonstrate the necessity of the requested stay.

40. Under these circumstances and in view of these considerations, the Secretary General asks the Chair to reject the application for a stay of execution submitted by the complainant as unfounded.

41. In his observations in reply, the complainant clarifies a few points regarding the Secretary General's outline of the facts and presents a series of arguments reiterating that he would suffer prejudice difficult to redress if the stay is not granted.

42. He asserts, in particular, that there is a need to consider two assessment criteria used in international case law in such matters: the extent to which the accusations have been divulged and the inadequacy of the measures taken by the Organisation.

43. The complainant adds that the procedure which has been followed has already caused great harm to his honour and reputation and that continuing this procedure can only aggravate the situation because the number of persons who should have no knowledge of the accusations is bound to increase. He considers that only one staff member should be in charge of the inquiry. The Organisation, moreover, would still have discretion as to whether or not to institute disciplinary proceedings for failure to observe confidentiality. The complainant then raises doubts as to whether the inquiry is being carried out in a way that avoids propagating the defamatory allegations.

44. Lastly, the complainant does not believe that any prejudice suffered could be easily redressed through compensation.

45. The complainant therefore reiterates his request for a stay of execution.

46. The Chair has to consider firstly whether anonymity should be granted. She considers that the reasons – details of which need not be given here – put forward by the complainant are not such as to warrant anonymity and departing from the usual procedure.

47. Secondly, the Chair notes from the outset that she must only rule on the issue of whether the enforcement, during the administrative complaint stage and, possibly, the appeal stage, of the administrative decision to launch an internal inquiry is liable to cause the complainant "grave prejudice difficult to redress" even if he is ultimately successful. There can be no question at this stage of entering into the arguments pertaining to the admissibility and merits of the applicant's complaint, since these issues do not have to be discussed, let alone examined, in the current proceedings, which are concerned only with urgent measures (see Order of the Chair of 3 July 2003, paragraph 10, *Timmermans v. Secretary General*). As a result, there is also no need to consider the points made by the complainant regarding the scale of the inquiry for which the Secretary General has not set out the parameters and which appears to concern the entirety of his long career in the Organisation.

48. Turning to the merits of the application for a stay of execution, the Chair would point out firstly that it is a necessary condition for a stay of execution order that execution of the act complained of before a final decision on the dispute "is likely to cause ... grave prejudice difficult to redress" (Article 59, paragraph 9, of the Staff Regulations).

49. In that sense, the Chair notes that, as the Secretary General has pointed out, launching an internal inquiry does not, in itself and in the absence of specific elements, constitute grounds for assuming that the complainant would suffer “grave prejudice difficult to redress”. Consequently, the Chair must assess whether the complainant’s arguments in support of his application may constitute specific elements which would justify granting the requested stay. The complainant refers to the disclosure of highly defamatory allegations against him to persons who were not entitled to be informed of them and to the fact that if the inquiry were to continue, it would aggravate the situation and so cause irreparable harm to his reputation.

50. It is quite clear that the specific elements are facts or situations which occur during the dispute and which show that if there is no stay of execution, the complainant will suffer prejudice difficult to redress.

51. As regards the disclosures which have already occurred, however, any stay of execution that might be granted would not be effective.

52. As regards any disclosures which might occur, the Chair notes that pursuing the internal inquiry cannot constitute in itself a fact or situation which would fall into that category because it is a natural part of the process that persons be heard and it is unacceptable that an internal inquiry should be impeded simply because some elements of that inquiry may be brought to the attention of persons involved in the said inquiry.

53. The way in which the inquiry is carried out could pose a problem, however. It is worth pointing out here that, according to Article 9 of Instruction No. 51, the inquiry must be confidential and that this confidentiality is binding on all participants, whatever their capacity. Leaving aside the fact that it is not certain that disclosures will occur, confidentiality is already ensured by the fact that any disclosure of information obtained in this context “shall”, and not merely “could” be subject to a disciplinary procedure. This means that there is an obligation to sanction any breach, without there being any room for a discretionary decision. Any stay of execution that might be granted would not provide more protection compared to the current situation.

54. Moreover, as the Secretary General accepts, if the complainant is successful, he may be able to obtain compensation for any harm caused to his reputation. The Chair therefore considers that there is no prejudice that would justify granting the stay of execution despite the assertions made by the complainant, especially in his comments on the Secretary General’s observations, to the effect that there would be prejudice in the instant case.

55. The Chair points out that the exceptional power conferred on her under Article 59, paragraph 9, of the Staff Regulations calls for some self-restraint in its exercise (cf. ABCE, Order of the Chair of 31 July 1990, paragraph 12, in the case of Zaegel v. Secretary General; and ATCE, Order of the Chair of 1 December 1998, paragraph 26, in the case of Schmitt v. Secretary General, Order of the Chair of 14 August 2002, paragraph 16). The purpose of the urgent procedure is to ensure that the administrative proceedings are fully effective so any application for a stay of execution must show that the requested measure is necessary to avoid grave prejudice difficult to redress. Were it otherwise, this would impair not only the proper running of the services but also the management of major sectors of the Organisation. As this is not so in the instant case, there is no reason to grant the requested stay of execution.

For these reasons,

Making a provisional ruling in accordance with Article 59, paragraph 9, of the Staff Regulations, with Article 8 of the Statute of the Administrative Tribunal, and with Rule 21 of the Rules of Procedure of the Administrative Tribunal,

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

Reject the present application for a stay of execution.

Done and ordered in Supetar (Croatia) on 11 July 2018.

The Registrar of the  
Administrative Tribunal

The Chair of the  
Administrative Tribunal

S. SANSOTTA

N. VAJIĆ,