

# CONSEIL DE L'EUROPE

---

# COUNCIL OF EUROPE

## TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

**CHAIR'S ORDER of 13 August 2010**

**In the case of R. V. (I) v. Governor of the  
Council of Europe Development Bank**

### **THE FACTS**

1. The complainant, Mr R. V., has been a permanent staff member of the Council of Europe Development Bank since 15 July 1996, and after evolution of his post, is currently serving as Director of General Administration.

In July 2001, the complainant was assigned responsibility for the Directorate of Human Resources, in addition to responsibility for the Communication Department. Other duties were subsequently attached to the complainant's directorate and his post therefore gradually evolved to its current form.

2. At the time of the impugned decision, the complainant was responsible for six departments: the Department of Human Resources, management control, the communication and documentation department, the security and general resources department, the official journeys department and the institutional relations department.

3. By a decision dated 21 June 2010, the Governor of the Bank relieved the complainant of responsibility for the management and leadership of Human Resources so as to split the Department of Human Resources from the Directorate of General Administration and make it a directorate in its own right.

4. The complainant maintains that "Human Resources functions are his core activity".

5. On 19 July 2010, the complainant lodged an administrative complaint.

6. In a letter dated 29 July 2010, which reached the registry of the Tribunal by email the same day and in the original on 3 August 2010, the complainant applied to the Chair of the Administrative Tribunal for a stay of execution of the administrative act of 21 June 2010.

7. On 4 August 2010, the Governor submitted his observations concerning the application for a stay of execution.

8. On 6 August 2010, the complainant submitted observations in reply.

## **THE LAW**

9. Under Article 59, paragraph 9 (former paragraph 7), of the Staff Regulations as applicable to staff of the Bank, an application to stay the execution of the contested act may be lodged if execution is likely to cause “grave prejudice difficult to redress”. According to the same provision, the Governor 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”.

10. The complainant lodged his application for a stay of execution to obtain the suspension of the administrative act of 21 June 2010. He contends that the execution of this act is likely to cause him grave prejudice difficult to redress both in professional terms and in physical and mental health terms.

11. He maintains that, from a professional point of view, there can be no doubt that, with this decision, he lost professional credibility both within and outside the Bank.

As to credibility within the Bank, he maintains that the reduction of the Directorate of General Administration to a limited collection of services and departments that are now disconnected from their uniting factor (i.e. management and leadership of Human Resources) entails an obvious credibility issue for him. In his view, the sudden breakup without proper justification (which the Governor surprisingly called “modernisation”) of a coherent unit amounted to a direct attack on the structure of his responsibilities. He maintains that what is left of his directorate is now a disjointed entity that could well be broken up further, and it can legitimately be asked whether that is not already planned by the person responsible for the impugned administrative act.

As to credibility outside the Bank, the complainant asserts that, from one day to the next, he was shut out of a range of mechanisms he had patiently built up in terms of co-operation with international financial institutions and with the Council of Europe, which had involved enhanced solidarity and credibility for the benefit of the Bank. He adds that relevant meetings are due to be held in the coming weeks. The prejudice resulting from the execution of the impugned administrative act is therefore likely very quickly to be irreparable.

12. As to the damage to health, the complainant maintains that the decision to relieve him of responsibility for Human Resources without any prior consultation and under circumstances that were brutal to say the least clearly had a devastating impact on him, leaving him deeply affected by the harshness meted out and this public disavowal, as a

result of which he had to be signed off sick on account of his “burnout and bouts of hypertension”. This was followed by a major episode of depression confirmed by a doctor.

13. As to the difficulty of redressing the prejudice, the complainant argues that execution of the impugned decision means that he is no longer able to discharge his responsibilities with dignity. In his view, the Directorate of General Administration has been reduced to an incoherent, poorly structured entity on account of the removal of its core element. It may even be asked whether this breakup of its structure does not foreshadow more radical moves to come, which it is designed merely to facilitate.

According to the applicant, his professional credibility can still be saved if a stay of execution is granted. His moral authority within the Bank, which is now seriously dented, must be restored. Moreover, as his credibility in relation to his outside partners is likely imminently to be ruined for good, irreparable damage is on the point of being committed. In his view, only a stay of execution would restore his moral authority and external credibility, as allowing the situation to continue for many months pending the opinion of the Advisory Committee on Disputes and the Governor’s decision on the complaint would have disastrous effects on his career and state of health, which has already been seriously compromised.

These are the circumstances in which the complainant asks the Chair to order a stay of execution of the Governor’s decision of 21 June 2010.

14. Lastly, in accordance with the provisions of Article 59, paragraph 9, of the Staff Regulations, the complainant notes that the Governor is required to stay the execution of his decision of 21 June 2010 without delay, until the Chair has ruled on the present application.

15. In his observations, the Governor argues that the application for a stay of execution is inadmissible because the impugned decision has been implemented in full.

16. Regarding the point made by the complainant that he was required to stay the execution of the impugned acted until the Chair issued a ruling, the Governor adds that his decision has been implemented in full but the complainant is on sick leave until 30 August and the Director of Human Resources on annual leave until 15 August. Consequently, the Governor states that he can merely give an assurance that he will not take any initiatives regarding the operation or the activities of the two directorates until the Chair’s ruling.

17. As to the merits of the application for a stay of execution, the Governor stresses that, as regards reorganisation of the Bank, under the terms of Article XI, section 1 (a), of the Bank’s Articles of Agreement, he has the power to reorganise the Bank’s departments at any time to adapt them to changes in its activities, its needs and approaches deemed to be “best practices” of international financial institutions.

The Governor further states that it was against the background of constant structural changes at the Bank that he decided to make the Department of Human Resources a

directorate in its own right. Moreover, he is not subject to any procedural rules regarding decisions on internal reorganisation at the Bank.

18. Concerning the damage alleged by the complainant, the Governor notes with regard to the professional damage in terms of “internal credibility” that the complainant’s title, grade and remuneration remain unchanged; he further states that the complainant is still in charge of a key directorate comprising 23 staff members; naturally, he continues to take part in the General Management Committee and, contrary to the claims in his administrative complaint, he has not been excluded from any of the Bank’s internal committees which he attended previously. Moreover, the complainant has not been disavowed in any way by his line manager but, on the contrary, has been publicly praised by the Governor and the Vice-Governor Delegate. The Governor therefore takes the view that the complainant cannot reasonably claim that his “internal professional credibility” has been undermined by the reorganisation measure which he is challenging.

19. As to “external professional credibility”, the Governor maintains that the members of the professional networks in which the Bank participates cannot behave as if they “owned” their participation: it is obviously linked to the duties they perform and quite naturally ceases when those change. In this connection, it is not therefore acceptable for the complainant to claim that he was admitted to one of those networks “in his own name”.

20. Similarly, the Governor finds it very strange that the complainant is wondering about the reasons he should give to the other members of these networks for the Bank henceforth being represented on them by a different Director of Human Resources. The organisation charts of all international organisations change from time to time and the complainant is not and will not be required to give any reasons for the change. He will also continue to take part in managers’ networks in respect of his other duties. In the Governor’s view, there has not therefore been any appreciable impact on what the complainant calls his external professional credibility.

21. Nor, in the Governor’s view, can the complainant argue that grave prejudice has been caused to his future career, either in the Bank or in other institutions.

22. Lastly, as to the damage to health, the Governor maintains that the complainant has not provided any evidence in support of his claim. The Governor adds that, at the complainant’s request, further proceedings are under way, in the course of which he will show that this claim is unfounded and that the complainant has not suffered any psychological harassment and that, while he mentions the idea of a punishment in disguise, he is not even able to indicate the type of misconduct alleged against him.

23. In conclusion, the Governor takes the view that the complainant’s submissions regarding the professional damage he has allegedly suffered and its seriousness are unfounded.

He therefore asks the Chair to declare the application for a stay of execution inadmissible or, in the alternative, to dismiss it.

24. In his observations in reply, the complainant contends that his application for a stay of execution is not inadmissible and maintains that the few steps taken to date to execute the impugned measure do not prevent the previous organisational arrangements from being restored. Moreover, in his view, a stay of execution would not have an impact on the proper operation of the Directorate of Human Resources, as it would merely enable that directorate to be attached to the complainant's directorate again. A stay would not therefore have any negative consequences.

25. As to the merits of a stay of execution, the complainant stands by his arguments in terms of the professional damage suffered within and outside the Bank; he further disputes the Governor's allegations concerning his arguments regarding damage to health.

26. The Chair must, firstly, consider the issue of the admissibility of the application for a stay of execution.

27. The Chair acknowledges that the impugned decision has already been implemented and administrative measures have been taken to carry it out. Nevertheless, this fact would not prevent the Chair from granting a stay of execution if he believed that said implementation caused prejudice to the complainant. Moreover, Article 59 of the Staff Regulations refers to "execution" which is "likely to cause (...) grave prejudice" without indicating whether a stay should be granted before actual implementation of the impugned administrative act.

Accordingly, the Chair must dismiss the Governor's preliminary objection of inadmissibility.

28. As regards the merits of the application for a stay of execution, the Chair notes that there can be no question at this stage of any assessment of the arguments pertaining to the validity of the grievances expressed by the complainant in his administrative complaint, as these issues need not be discussed, much less examined, in the context of this procedure, which concerns only the adoption of urgent measures (see paragraph 10 of the Chair's Order of 3 July 2003, in the case of *Timmermans v. Secretary General*).

29. The Chair notes that the complainant's arguments to the effect that there will be grave prejudice difficult to redress if he does not obtain a stay of execution of the decision complained of are based on three elements: the existence of professional damage within the Bank, the existence of professional damage outside the Bank and the existence of damage to health.

30. As to the first element, the Chair notes that, even after the restructuring complained of, the complainant's grade, title and remuneration remain unchanged. Admittedly, he no longer supervises a directorate which he believes to be important for his duties and which he describes as being the "linchpin" of the Directorate of General Administration. Nevertheless, this fact does not justify granting an urgent measure. Moreover, insofar as the complainant states that the impugned decision foreshadows further restructuring, the

Chair points out that, in any case, he could not base his decision on facts that have not been proven.

31. As to the second element, the Chair takes the view that the complainant's not taking part in international meetings – to represent the Bank – following the impugned restructuring does not constitute a prejudice difficult to redress. Moreover, as stated by the Governor, the complainant did not attend such meetings in his own name but as the representative of the Bank and he is still required to attend other meetings for senior staff from international organisations.

32. Consequently, the arguments put forward by the complainant as to the existence of professional damage cannot justify granting a stay of execution.

33. As to damage to health, the Chair notes, on the basis of the current factual elements which have been brought to his attention and need not be reiterated here in detail to avoid encroaching on the complainant's private sphere, that the execution of the measure complained of, during examination of the administrative complaint and of the appeal that could ensue, is not likely to cause "serious prejudice difficult to redress" that would justify staying execution of the said measure, since the complainant can seek pecuniary compensation that would redress the prejudice sustained if he wins on the substance of the dispute.

34. The Chair points out that the exceptional power conferred on him under Article 59, paragraph 9 (former paragraph 7), 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. Otherwise, it would jeopardise not only the smooth running of departments but also the management of significant sectors of the Organisation.

35. 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 Article 21 of the Rules of Procedure of the Administrative Tribunal,

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

Decide that

- Mr R.V.'s application for a stay of execution is dismissed.

Done and ordered in Berlin, on 13 August 2010.

Le Greffier du  
Tribunal Administratif

Sergio SANSOTTA

Le Président du  
Tribunal Administratif

Luzius WILDHABER