

# CONSEIL DE L'EUROPE

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# COUNCIL OF EUROPE

## TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

ORDER OF THE CHAIR of 20 December 2016

BRANNAN v. Secretary General

### THE FACTS

1. The complainant, Mr James Brannan, is a staff member of the Organisation on grade L3. He is assigned to the Registry of the European Court of Human Rights.
2. The current Council of Europe collective insurance contract expires on 31 December 2016.
3. Following renegotiation with the insurers, on 21 November 2016 the Directorate of Human Resources published a news item on the Organisation's intranet portal entitled "Collective insurance contract 2017 to 2019", concerning the contract that had been negotiated between the Organisation and its insurer on behalf of staff members and pensioners covered by the Organisation's private medical insurance. The notice gave details of the adjustment measures that had been adopted.
4. In his administrative complaint (see paragraph 6) and the present application for a stay of execution, the complainant challenges two measures referred to in the notice, which require amendments to Appendix XII of the Staff Regulations and which like the other measures are scheduled to come into force on 1 January 2017: the reduction in benefits applicable to invalidity or death and the fact that the supplementary insurance has become "optional" and an additional charge is to be made for dependent spouses.
5. On 1 December 2016, the Directorate of Human Resources contacted the complainant as it did all the staff members concerned. It asked him to confirm that his spouse was still wholly and solely dependent on him and to state, by 22 December 2016, the date on which the Council of Europe would close for the end-of-year holidays, whether he wished to continue to insure his spouse for supplementary medical coverage from 1 January 2017.
6. On 6 December 2016, he lodged an administrative complaint with the Secretary General under Article 59, paragraph 1 of the Staff Regulations. He sought (original version):

"the annulment of the measures complained of, through the withdrawal of the declaration procedure announced in the e-mail of 1 December, together with the immediate suspension of any amendments to Appendix XII of the Staff Regulations and the withdrawal of the draft implementing Rules. The status quo

must be maintained from 1 January 2017, if necessary by using the balance account, in respect of the full medical insurance cover for my dependent spouse (without the payment of any supplementary contribution), and in respect of the rate of the death grant and disability benefits that have hitherto also been enshrined in the said Staff Regulations.”

7. According to the information available to the Chair, the administrative complaint is currently being considered.

8. On 7 December 2016, the complainant made an application to the Chair of the Appeals Board for a stay of execution of the disputed measures.

9. On 12 December 2016, the Secretary General submitted his observations on the application for a stay of execution.

10. On 15 December 2016, the complainant submitted his observations in reply.

## **THE LAW**

11. Under Article 59, paragraph 9 of the Staff Regulations, applications for stays of execution may be lodged if that execution is likely to result in “grave prejudice difficult to redress”.

The same provision states that the Secretary General shall, 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.

12. The complainant lodged his application to secure a stay of execution of two disputed measures of 1 January 2017, concerning the “optional extension [to the insurance] carrying a premium” and the reduced level of benefits for invalidity or death. However, in his observations in reply to the Secretary General’s observations, he stated that, in the light of the points made by the Secretary General, he would withdraw the part of his application for a stay of execution relating to the spouse’s optional supplementary insurance.

13. The arguments relating to the remaining part of the application may be summarised as follows.

14. The complainant refers to the unlawfulness of the disputed measures, the fact that the new supplementary insurance arrangements are deemed to be “optional”, the discriminatory and arbitrary nature of these measures and the fact that they infringe his acquired rights, and maintains that the situation is urgent and entails “grave prejudice difficult to redress”.

15. To establish the urgency of the situation, the complainant states that the Administration has asked him to make a decision on his spouse’s supplementary insurance before 22 December, the date on which the Organisation closes for the end-of-year holidays, and that this would be a final decision, applicable for one year. The reduction in the death and invalidity benefits would also take effect on 1 January 2017. He claims that, even if the measures are lawful, the brevity of the period before the holidays would not allow him to make the necessary alternative arrangements to ensure the same level of benefits.

16. In support of his contention that the situation regarding death and invalidity benefits entails “grave prejudice difficult to redress”, the complainant maintains that, in the absence of

a stay of execution, his dependent would only receive half the sum otherwise due in the event of his death or the onset of invalidity after 1 January 2017.

17. Turning to the fact that his spouse's supplementary insurance has become optional, the complainant states that he cannot subscribe to this insurance arrangement using the form concerned because ticking the relevant box would entail his acceptance of the disputed measure for a period of one year. Since it is impossible to enter a reservation to this decision on the computerised form he would therefore suffer if he failed to subscribe to the new insurance policy, since his wife would not be entitled to supplementary medical cover for one year as of 1 January 2017, unless the Chair ordered a stay of execution.

18. For all these reasons, the complainant asks the Chair to order a stay of execution of the disputed measures of 1 January 2017.

19. The Secretary General notes first that the complainant's situation does not justify suspension of the disputed measures. The latter totally fails to establish in this application that there has been grave prejudice difficult to redress, within the meaning of Article 59, paragraph 9 of the Staff Regulations. According to the Administrative Tribunal's case-law, the person introducing the application for a stay of execution must prove that he or she is exposed to a risk of virtually irreparable harm if the stay of execution is not granted. Yet, the applicant has not supplied the least evidence that he risks virtually irreparable harm.

20. The Secretary General notes first that:

"In so far as the applicant bases his request for a stay of execution on the reduced level of death and invalidity capital sums payable to his dependent spouse, the application is inadmissible because he cannot show that he has a direct and existing interest in submitting an administrative complaint, within the meaning of Article 59, paragraph 2 of the Staff Regulations, or therefore in lodging an application for a stay of execution.

The applicant does not satisfy any of the conditions establishing entitlement to the payment of death or invalidity benefits to his dependent spouse and therefore has no interest in taking such action in the absence of an administrative decision causing him personal and current harm. In this case, the applicant's arguments amount to the introduction of an *actio popularis*, which is not admissible in the Tribunal."

21. With regard to the sole argument formulated by the applicant to justify the need for urgent action, namely that his spouse would only receive half the sum otherwise due in the event of his death or the onset of invalidity after 1 January 2017, the applicant fails to take account of the facts that, first, Article 60, paragraph 2 of the Staff Regulations grants the Administrative Tribunal unlimited jurisdiction in disputes of a pecuniary nature and, second, under articles 59 and 60 of the Staff Regulations dependents of Council of Europe staff and former staff are themselves entitled to challenge administrative acts adversely affecting them.

22. The Secretary General considers that in the unlikely event that the Tribunal had to find in favour of the applicant or his dependents following an admissible application, it could order full compensation for pecuniary losses suffered by the payment of the amount of the death or invalidity benefit not paid initially.

23. Finally, the Secretary General draws the Chair's attention to the harmful consequences for benefit recipients as a whole of any suspension of the disputed measures, and states that if

it is admitted, this application will have undesirable consequences for all the recipients of the medical and social benefits concerned.

24. Given these circumstances and having regard to these considerations, the Secretary General asks the Chair to reject the applicant's request for a stay of execution as inadmissible and/or ill-founded.

25. In his observations in reply, the applicant maintains that the specific grounds for arguing that there could be grave prejudice difficult to redress, necessitating a stay of execution, have been clearly stated.

26. He considers the Secretary General's arguments concerning the admissibility of his complaint regarding the death/invalidity capital sum to be somewhat confused. It cannot be maintained that a staff member could only challenge the lower rate of death grant in the event of his or her actual death. Besides, if, in the event of a dispute following a staff member's death, the dependents had to lodge an administrative complaint or an application to the Tribunal, they would run the risk of being out of time, having regard to the publication of the general measure in November 2016. Even if their hypothetical action were admissible, they would be unable to offer an effective challenge to these measures.

27. Turning to the urgency of a stay of execution, the applicant maintains that if he dies after 1 January and before appealing to the Tribunal on the merits of the case – in other words a period when he has not yet lodged an appeal – it is not certain that his dependents would be able to take up his complaint or submit a new one, on account of the time limits concerned. This creates a certain unpredictability and legal uncertainty, as a result of which the dependents would not have an effective remedy.

28. In answer to the Secretary General's *actio popularis* claim, the applicant states that there is no reason for him not to complain about a general measure that is, in itself, intolerable.

29. As for the allegation that there could be harmful consequences for benefit recipients, he states, with particular regard to the application for a stay of execution, that if there is now an urgent need to order such a stay of execution to maintain the *status quo*, this is entirely the result of the Administration's inaction, since it was only in late November that it announced measures that could have been decided on and published much earlier. The Administration has therefore placed itself in this situation and created the urgent need for action that justifies the request for a stay of execution.

30. In the light of the above, the applicant is pursuing his request for a stay of execution, but only in relation to the measure that would halve the capital sum paid in the event of death or invalidity.

31. The Chair notes that the applicant is only pursuing one part of his application for a stay of execution.

32. In connection with this part of the application for a stay of execution and, specifically, the Secretary General's plea of inadmissibility, the Chair notes that the arguments in support of the latter's claim that the complainant has no direct and existing interest in the matter relate, as the Secretary General himself acknowledges, to the merits of the dispute. However, unlike the

Secretary General, the Chair considers that these arguments cannot be taken into account in the specific context of the application for a stay of execution.

33. The same applies to the argument that it constitutes an *actio popularis*.

34. The plea of inadmissibility must therefore be rejected.

35. Turning to the merits of the application, the Chair notes first 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).

36. There is no question at this stage of entering into the arguments pertaining to the merits of the applicant’s complaint, since these issues do not have to be discussed, let alone examined, (see Order of the Chair of 3 July 2003, paragraph 10, *Timmermans v. Secretary General*). In this case, the Chair concludes that the applicant has not established the existence of any “grave prejudice difficult to redress” (Article 59, paragraph 9 of the Staff Regulations). Thus, the arguments he adduces to support his request for a stay of execution concern financial aspects that can be remedied if the complainant wins his case on the merits. Nor are these arguments such as to prove the existence of potentially grave prejudice difficult to redress, and this applies equally to circumstances in which it would unfortunately be necessary to apply the invalidity/death provisions before a decision had been reached on the merits of the case.

37. The Chair has reached this conclusion without the need to rule on the Secretary General’s warnings about the would-be harmful consequences for benefit recipients as a whole of any suspension of the disputed measure.

38. The Chair recalls that the exercise of his exceptional power under Article 59, paragraph 7 of the Staff Regulations calls for some self-restraint on his part (see ABCE, Chairman’s Order of 31 July 1990, paragraph 12, *Zaegel v. Secretary General*; and ATCE, Chairman’s Order of 1 December 1998, paragraph 26, *Schmitt v. Secretary General*, Chairman’s Order of 14 August 2002, paragraph 16). Since the purpose of the urgent procedure is to ensure that administrative dispute proceedings are fully effective, applications for stays of execution must demonstrate that the requested measure is necessary to avoid grave prejudice which is difficult to redress. This could otherwise undermine the smooth running of departments as well as the management of important sectors of the Organisation. Since this does not apply in the present case, it is unnecessary to order the requested stay of execution.

For these reasons,

Exercising my jurisdiction to make interim orders under Article 59, paragraph 9 of the Staff Regulations, Article 8 of the Statute of the Administrative Tribunal and Article 21 of its Rules of Procedure,

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

Note that

- the part of the application for a stay of execution concerning the spouse's optional supplementary insurance has been withdrawn;

Decide that

- the remainder of the application for a stay of execution presented by Mr Brannan is rejected.

Done and ordered in Kifissia (Greece), 20 December 2016.

The Registrar of the  
Administrative Tribunal

The Chair of the  
Administrative Tribunal

S. SANSOTTA

C. ROZAKIS