

# CONSEIL DE L'EUROPE

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# COUNCIL OF EUROPE

## TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

ORDER OF THE CHAIR OF 31 March 2009

In the case of **STAFF COMMITTEE v. Secretary General**

### THE FACTS

1. The appellant is the staff committee of the Council of Europe.
2. The present request for stay of execution concerns the exercise by the Secretary General's power to consult the appellant, who contests the manner of its execution.
3. According to Article 8 of the Staff Regulations:

“1. The Staff Committee shall represent the general interests of the staff”.

“It shall be elected by the members of staff in accordance with the provisions of Appendix I to these [Staff] Regulations [Regulations on Staff Participation] which also determines its membership and attributions”.
4. Article 6 of the said Appendix I reads:

“Article 6 – Regulations within the competence of the Committee of Ministers

  1. The Secretary General and the Staff Committee shall consult each other on any draft that either intends to submit to the Committee of Ministers on matters which come within the competence of the Committee of Ministers under Article 16 of the Statute of the Council of Europe, and which relate to:
    - alteration or amendment of the Staff Regulations,
    - alteration, amendment or adoption of other regulations concerning the staff.
  2. The Secretary General shall keep the Staff Committee informed of any proceedings before the Committee of Ministers in pursuance of Article 16 of the Statute of the Council of Europe which relate to the matters referred to in paragraph 1 above.

3. The Staff Committee will be consulted on all proposals regarding general guidelines for staff policy.”
5. On 4 March 2009, the Secretary General submitted to the Staff Committee for opinion a draft concerning the status and conditions of service of judges at the European Court of Human Rights, and on 5 March he presented it to the Committee of Ministers for examination by the latter on 26 March 2009.

6. On 23 March 2009, the appellant lodged an administrative complaint under Article 59 of the Staff Regulations. That complaint reads as follows:

“The Staff Committee (CdP) has the honour to request you by way of the present complaint to set aside the administrative decision by which you transmitted to the Committee of Ministers (specifically, its Rapporteur Group on the Programme, Budget and Administration, GR-PBA) on 5 March 2009 the draft concerning the conditions of service of judges at the European Court of Human Rights.

The CdP considers that this draft unquestionably falls into the category of texts relating to the “alteration, amendment or adoption of other regulations concerning the staff” within the meaning of Article 6 paragraph 1 of the Regulations on Staff Participation (Appendix I to the Staff Regulations). Moreover, in the Administration’s covering letter [of 5 March 2009] to the CdP, it is expressly stated that it was transmitted in the context of statutory consultation.

In the above-mentioned letter, the Administration allowed the CdP a time-limit expiring on 24 March 2009 to convey its opinion.

Consultation of the Staff Committee as provided for in the relevant texts is a substantive formality. In other words, the Secretary General must give the CdP the opportunity to influence the decision in order for it fully to discharge its role as representative of the staff’s interests. Such a conception of the consultative function precludes the possibility of a draft resolution being submitted to the decision-making body before the CdP has had a chance to formulate its opinion. Consultation must in fact make it possible, where appropriate, for the Secretary General to incorporate the CdP’s opinion in his draft, and to do so before it is submitted to the Committee of Ministers.

Transmission to the Committee of Ministers of a draft which is submitted at the same time to the CdP for opinion is likely to:

- a) enable the Deputies to begin their deliberations and move towards a decision well before the CdP has given its opinion.
- b) enable them to distinguish between the initial position of the Secretary General and the one which he might perhaps reach after receiving the CdP’s opinion, thus weakening the CdP’s possible influence on the text.

The CdP believes that such a situation is at variance with both the letter and the spirit of Articles 6 and 11 of Appendix I cited above, and that it largely empties of substance the mandatory consultation of the CdP on texts coming under Article 6 § 1 of the Regulations on Staff Participation.

Furthermore, the CdP considers that you have also infringed Article 2, paragraph 2 of Instruction 38 of 19 May 1998 – “Supervisory Board” of the group insurance contract (COS).

According to that text, the Supervisory Board must be consulted on any change in staff regulations and in regulations or instructions with implications for the medical and social protection of staff members and their families.

By infringing that rule, you have violated the right of the Staff Committee - a right conferred on it by Article 3 of the instruction cited above - to take part in the deliberations of the Supervisory Board through 3 members appointed by itself.

In these circumstances, the CdP is of the opinion that the text submitted to the GR-PBA must be withdrawn and that no new text may be submitted to the Ministers’ Deputies until the CdP and GIC have been fully consulted.”

7. In a request lodged on 23 March 2009, the appellant requested the Chair of the Administrative Tribunal to grant a stay of execution of the decision complained of (Article 59 paragraph 7 of the Staff Regulations).

8. On 26 March 2009, the Secretary General submitted his observations on the request for a stay of execution.
9. On 27 March 2009, the appellant submitted its observations in reply.

## **THE LAW**

10. Under Article 59 paragraph 7 of the Staff Regulations, application may be made for a stay of execution of an act of the Administration if its execution is likely to cause “grave prejudice difficult to redress”.
11. The same paragraph 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 appellant gives the following reasons for its request for a stay of execution:

“The Staff Committee (CdP) lodged an administrative complaint on 23 March 2009 against the Secretary General’s decision to transmit to the Committee of Ministers (specifically, its Rapporteur Group on the Programme, Budget and Administration, GR-PBA) the text which it submitted on the same day to the Staff Committee in accordance with Article 6 of Appendix I to the Staff Regulations.

The CdP requests the Secretary General to withdraw that text until the CdP submits an opinion to him. If the Secretary General ignores that request and maintains the text, thus enabling the Committee of Ministers to continue examining it, the CdP’s powers could suffer “grave prejudice difficult to redress”.

The purpose of the relevant provisions of Appendix I is to enable the Secretary General to take into account, if he so wishes and sees fit, the CdP’s opinion on a legislative text entailing the “alteration, amendment or adoption” of regulations concerning the staff (or affecting their conditions of employment).

The opportunity afforded to the CdP to “influence” the Secretary General’s decision concerning a draft for submission to the Committee of Ministers is not a mere formality with which the Secretary General may dispense as he wishes. After setting the CdP a time-limit for submitting its opinion, he must take a minimum of time to examine that opinion and, where appropriate, to revise the first version of the legislative text before transmitting it to the decision-making body.

In the case in point, the Secretary General sent his draft reform to the Committee of Ministers at the same time as he copied it to the CdP. If the draft is not withdrawn from the Committee of Ministers agenda, and if the latter begins to discuss it, consultation of the Staff Committee as envisaged in the Statute is bypassed. The Committee of Ministers can then seize upon such of the Secretary General’s proposals as are convenient to it and the CdP’s opinion, which may differ from the proposals contained in the first draft, would have no chance of influencing the course of events.

It should be remembered that consultation of the CdP takes place before reference to the Committee of Ministers. If this sequence – which is required by the Statute, in common with the staff regulations of other international organisations – is not respected, consultation of the CdP becomes a mere formality and is emptied of all substance.

The “grave prejudice difficult to redress” is therefore clear: the Committee of Ministers might adopt a resolution which takes no account of the legitimate concerns expressed by the CdP about respect for the interests of staff. There is an even greater risk of their being left out of account as the Committee of Ministers may separate the Secretary General’s original draft from the draft which may perhaps be amended following the CdP’s opinion. The risk of the CdP’s powers being seriously infringed in this matter is thus very high.

For this reason, the CdP has the honour to request a stay of execution of the act complained of, and consequently requests you to instruct the Secretary General to withdraw the draft in question from the agenda of the GR-PBA for 26 March.”

13. For his part, the Secretary General informs the Chair that, following the lodging of the request for a stay of execution, he withdrew the resolution at issue from the agenda for the GR-PBA meeting. He adds that a new time-limit of three weeks was granted to the appellant to present its comments. Consequently, the Secretary General considers that the request has lost all purpose.

14. The Secretary General stresses in this connection that he was not able to act differently. Because the request for a stay of execution was lodged barely three days before the GR-PBA meeting, the Chair could not rule on the request for a stay of execution before that meeting took place. According to the Secretary General, in those circumstances it was right to comply strictly with the wording of Article 59 paragraph 7 of the Staff Regulations.

15. In conclusion, the Secretary General requests the Chair to dismiss the request for a stay of execution submitted by the Staff Committee.

16. In its observations in reply, the appellant emphasises that in communicating his decision to stay referral to the Committee of Ministers, the Secretary General relies only on procedural grounds for that purpose. It argues that this is shown by the letter from the Secretary General to the Chair of the GR-PBA and his observations on the present request for a stay of execution.

The appellant is bound to conclude that it has not won the substantive argument. First of all, the failure to acknowledge – either explicitly or implicitly – the arguments it has put forward is very unsatisfactory and worrying for the future.

Furthermore, the stay of execution granted by the Secretary General relates only to statutory consultation of the CdP and takes no account of mandatory consultation of the COS (Supervisory Board of the group insurance contract), a body on which the appellant is represented by three of its members. That being so, the appellant considers that its request has not been met. In its opinion, its powers are at risk of suffering prejudice difficult to redress, because in the circumstances the Secretary General’s proposal to the Committee of Ministers will not take account of the point of view of the COS.

For this reason, the appellant requests the Chair to order the act complained of to be stayed until such time as all the substantive formalities have been conducted, including consultation of the COS.

17. The Chair notes that the appellant maintains its request for an emergency measure.

18. The Chair accordingly finds that, by reason of the fact that the Secretary General has withdrawn the draft resolution from the GR-PBA’s agenda and that a new time-limit of three weeks has been granted to the appellant to present its comments, there can be no question of granting the stay of execution requested because at the present time there is no risk of “grave prejudice (to the appellant) difficult to redress”. True, the appellant complains that it has not won the argument on the merits and that the mandatory consultation of the COS would not be taken into account. However, in view of the Secretary General’s decision to withdraw the draft resolution from the GR-PBA’s agenda for 26 March 2006, these arguments cannot lead to a

change of opinion as to the existence or otherwise, at the present time, of “grave prejudice difficult to redress”. Moreover, they relate rather to the merits of the case.

19. The Chair points out that that there can be no question of analysing at the present juncture the arguments relating to the merits of the complaint submitted by the appellant in this context, since there is no cause for these questions to be discussed, still less examined, in the context of the present procedure which is aimed only at the adoption of emergency measures (cf. the Chair’s order of 3 July 2003, paragraph 10, in the *Timmermans v. Secretary General* case). In the instant case, the Chair notes that the complainant has not established the existence of “grave prejudice (to itself) difficult to redress” (Article 59 § 7 of the Staff Regulations). The consequence of the Secretary General’s decision to withdraw the draft text was that the request for stay of execution lost all purpose. The arguments put forward by the appellant are not such as to show that the appellant is at risk, at the present time, of suffering “grave prejudice difficult to redress”.

20. The Chair reiterates that the exceptional power conferred on her under Article 59, paragraph 7, of the Staff Regulations calls for some self-restraint in its exercise (see *ABCE, Chair’s Order of 31 July 1990, paragraph 12, in the case of Zaegel v. Secretary General*; and *ATCE, Chair’s order of 1 December 1998, paragraph 26, in the case of Schmitt v. Secretary General*). The purpose of the urgent procedure being to ensure that the administrative disputes procedure is wholly effective, the request for a stay of execution must demonstrate that the measure sought is necessary to prevent grave prejudice difficult to redress. Otherwise, this would compromise not only the proper functioning of departments but also the management of important sectors of the Organisation.

21. It follows from the considerations set out above that the request for a stay of execution is unfounded in the present case.

For these reasons,

Exercising my jurisdiction to make interim orders under Article 59, paragraph 7, of the Staff Regulations, Article 8 of the Statute of the Administrative Tribunal and Rule 21 of the Rules of Procedure of the Tribunal,

Having regard to the urgency of the matter,

**WE, CHAIR OF THE ADMINISTRATIVE TRIBUNAL,**

Decide

- to reject the appellant’s request for a stay of execution.

Thus, done and ordered in Göteborg, on 31 March 2009.

The Registrar of the  
Administrative Tribunal

The Chair of the  
Administrative Tribunal

S. SANSOTTA

E. PALM