

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

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

ORDER OF THE SUBSTITUTE CHAIR OF 8 June 2011

**In the case of Gilles CORON v. Governor
of the Council of Europe Development Bank**

THE FACTS

1. The complainant, Mr Gilles Coron, has been a permanent staff member of the Council of Europe Development Bank since 1997. His grade is A2, step 11 and he currently holds the post of Head of General Services in the Directorate of General Administration.
2. In this capacity, the complainant was asked to oversee the renovation work on five floors of the Bank's headquarters.
3. In a report dated 27 October 2010, the Governor of the Bank instituted disciplinary proceedings against the complainant and submitted a report referring the matter to the Disciplinary Board. The proceedings were governed by Articles 54-58 of the Staff Regulations and Appendix X (Regulations on disciplinary proceedings) to the Staff Regulations in the text applicable to Bank staff.
4. On 28 October 2010, the Governor suspended the complainant under Article 57, paragraph 1, of the said Regulations.
5. On 28 January 2011, the Disciplinary Board delivered its opinion. It concluded that the acts of which the complainant was accused should carry a disciplinary measure and proposed a reprimand (Article 54, paragraph 2 b. of the Staff Regulations).

On 21 February 2011, the Governor sent a letter to the Chair of the Disciplinary Board, informing him that he was compelled to re-open disciplinary proceedings under Article 12 of Appendix X (Regulations on disciplinary proceedings) to the Staff Regulations.

He said that alongside the launch of disciplinary proceedings, a specialist firm had been asked to make further inquiries. The Governor explained that since the evidence

uncovered by this firm had not been able to be included in the material submitted to the Disciplinary Board, he was obliged to make use of the aforementioned Article 12 and to ask the Disciplinary Board to expand its opinion to include the new facts disclosed in the report which the specialist firm had submitted on 18 February 2011.

The Governor said that neither he nor the Disciplinary Board had been aware of this new information during the disciplinary proceedings instituted on 27 October 2010. He added that given that these facts were in addition to the failures already noted in the report referring the matter on 27 October 2010, the complainant had committed a series of offences such as to warrant one of the measures provided for in Article 54, paragraph 2.c., d., and e. (relegation in step, downgrading and dismissal), of the Staff Regulations.

6. By a decision taken on 15 April 2011, the Disciplinary Board decided that the conditions for re-opening disciplinary proceedings against the complainant had not been met.

7. An exchange of correspondence took place from 21 April to 10 May 2011 between the Governor and the complainant. This exchange concerned, in turn, the hearing of the complainant by the Governor under Article 8, paragraph 2, of Appendix X (Regulations on disciplinary proceedings) to the Staff Regulations, the opening of new disciplinary proceedings (with a new hearing for this purpose), a request for explanations concerning a series of fifteen questions, the complainant's inability to comply with the summons for health reasons and a request for documentation.

8. By a decision taken on 12 May 2011, the Governor downgraded the complainant to grade A1/A2 with effect from 1 June 2011, as a disciplinary measure. In his decision, the Governor referred to the Disciplinary Board's opinion of 28 January 2011.

9. On 20 May 2011, the complainant lodged an administrative complaint (Article 59, paragraph 2, of the Staff Regulations).

10. In a letter dated 23 May 2011, which reached the registry of the Tribunal on 25 May 2011, the complainant applied to the Chair of the Administrative Tribunal for a stay of execution of the administrative act of 21 June 2010 (Article 59, paragraph 9, of the Staff Regulations).

11. On 30 May 2011, the Governor submitted his observations concerning the application for a stay of execution. He explained that, in accordance with the last sentence of Article 59, paragraph 9, of the Staff Regulations, execution of the measure imposed on the complainant on 12 May 2011 was being stayed.

12. On 1 June 2011, the complainant submitted comments in reply.

THE LAW

13. 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”.

14. The complainant lodged his application for a stay of execution to obtain the suspension of the administrative act of 12 May 2011. He contends that the execution of this act is likely to cause him grave prejudice difficult to redress on three fronts: professional, health-related and pecuniary.

15. As regards professional damage, the complainant submits that demotion would also mean relieving him of some of his duties. It would have repercussions both internally (line management in the team which the complainant heads) and externally (professional credibility vis-à-vis the outside parties with which the complainant has had professional dealings over the past fourteen years). This reputation, he alleges, has already been tarnished by his suspension from duties followed by his absence due to ill-health directly related to the procedural harassment to which he was subjected.

According to the complainant, demotion to a lower grade is liable to ruin this reputation, yet the grounds on which it is based are highly contentious and substantively contested in the parallel administrative complaint proceedings against the decision of 12 May 2011.

16. As regards damage to health, the complainant observes that he had never taken sick leave for any significant length of time in the fourteen years of his career and yet now he has been on continuous sick leave since 28 February 2011 and is receiving medical treatment. In his view, therefore, the damage is clear.

17. With regard to pecuniary damage, the complainant points out that the disciplinary measure was adopted on 12 May 2011, with effect from 1 June 2011. He says that he had never expected to have to deal, at his age and with his family responsibilities, with a 40% or so drop in income. In his view, therefore, the pecuniary damage is imminent and would be considerable if the disciplinary measure were to be applied.

The complainant adds that this measure would have a truly drastic and irremediable effect on the amount of his retirement pension. It would also be a very strong incentive to take early retirement in view of this additional damage.

The pecuniary damage would be two-fold and irreversible, therefore.

18. As to the difficulty of redressing the prejudice, the complainant argues that executing the contested decision would mean that he would no longer be able to discharge his responsibilities as Head of General Services with the degree of freedom that the role demands, or to support his family. He argues that there is no urgent need to execute the downgrading, as he is on sick leave until 9 July 2011. A stay of execution, therefore, would help to avoid this “mess” in the twilight years of his working life. Waiting for the Governor’s decision on his administrative complaint (which must be taken within 30 days as from 20 May 2011, i.e. after the entry into force of the measure announced on 1 June 2011) is not an option, in his view.

19. These are the circumstances in which the complainant asks the Chair to order a stay of execution of the Governor's decision of 12 May 2011 and to order the Bank to pay all costs.

20. Finally, in accordance with the provisions of Article 59, paragraph 9, of the Staff Regulations, the complainant recalls that the Governor is required to stay the execution of his decision of 12 May 2011 without delay, until the Chair has ruled on the present application.

21. In his observations, the Governor notes firstly that, in accordance with the last sentence of Article 59, paragraph 9, of the Staff Regulations, the measure which was imposed on the complainant on 12 May 2011 has not been executed.

He goes on to point out that, given the time required to authorise Bank staff’s pay, for the measure in question to take effect from the prescribed date, 1 June 2011, the relevant administrative and accounting operations had to commence straightaway. On receipt of the application for a stay of execution, these operations had been suspended, with the result that the complainant would receive the remuneration corresponding to the grade held the day before the contested decision of 12 May 2011.

22. After commenting on the disciplinary proceedings, the Governor argues that, even supposing one or other of them were shown to have occurred, none of the three heads of damage invoked by the complainant is likely to cause him “grave prejudice difficult to redress” within the meaning of Article 59, paragraph 9, of the Staff Regulations, and thus such as to justify granting the requested stay of execution.

23. Concerning the damage alleged by the complainant, the Governor notes with regard to professional damage within the Bank itself, that he is bound to execute the decisions handed down by the Tribunal; the complainant’s claim that he would have serious difficulty regaining his previous grade must be dismissed, therefore.

24. As to the responsibilities to be assigned to the complainant should he win his case, the Governor submits three arguments to show that there is no way of knowing in advance what duties would be assigned to the complainant. Consequently, this complaint must be dismissed.

25. As to external professional damage, the Governor states that the Bank's suppliers are selected under procedures which mean there is no guarantee whatsoever that the complainant's "usual interlocutors" will continue to act as suppliers to the Bank in the future; accordingly, if the complainant is called upon to perform the same type of role as before, he may have dealings with some of them but he will also have dealings with other interlocutors.

26. The Governor thus does not accept that there has been the slightest damage here and does not see, therefore, how there could be an issue with redressing damage.

27. In any event, the professional prejudice invoked by Mr Coron is all prejudice that is capable of being quantified in monetary terms and easy to redress, if necessary, through the award of damages.

28. As regards damage to health, without it being necessary to examine the information brought to his attention concerning the complainant's medical condition, information which, incidentally, pertains to his private sphere, the Governor notes that it will be open to the complainant to seek pecuniary compensation that would redress the prejudice sustained if he wins on the substance of the dispute, either in connection with his administrative complaint or, if necessary, under a disputes procedure before the Tribunal.

29. Lastly, on the subject of pecuniary damage, the Governor argues that the purely pecuniary nature of this damage prevents it from being considered difficult to redress.

In his view, if the disciplinary measure were set aside by the Governor in the context of the administrative complaint – by 20 June 2011 at the latest -, there would be no financial damage, either immediate or delayed. If, on the other hand, the measure were to be set aside by the Tribunal ruling on the merits of an appeal, the complainant's previous grade would immediately be restored, with retroactive effect. If, moreover, the complainant were then able to demonstrate the existence of additional pecuniary damage, he would be justified in claiming damages.

The Governor contends that, in any event, all of the prejudice would thus be easy to redress.

30. In conclusion, the Governor requests that the Chair dismiss the application for a stay of execution.

31. In his observations in reply, the complainant states that, given the timeframes involved in an appeal, the retroactive nature of any decision by the Administrative Tribunal setting aside the impugned decision would have no effect against professional damage arising at the time when this decision was implemented.

32. The complainant then repeats his assertion that the doctors have established a link between the deterioration in his health and the disciplinary proceedings.

33. Lastly, the complainant points out that the Governor himself confirms that, should

the disciplinary measure not be set aside at the administrative complaint stage, the financial damage would indeed be immediate. The complainant adds that this is precisely why he has made an application for a stay of execution, whose validity the Governor himself has underlined in acknowledging the damage. He further contends that the Governor has sidestepped the issue of the disparity in financial resources between the Bank and the staff member, who, owing to the “sprawling” disciplinary case, has been subjected to exceptional legal costs, which nothing in his Bank career to date could have prepared him for.

34. In conclusion, the complainant reiterates his request for a stay of execution of the impugned act.

35. The Chair notes firstly that there can be no question at this stage of any assessment of the arguments attaching to the substance of the complainant’s administrative complaint. These matters are not for discussion, let alone examination, in the current proceedings, which are concerned only with urgent measures (Order of the Chair of 3 July 2003, paragraph 10, *Timmermans v. Secretary General*).

36. 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 (both within and outside the Bank), the existence of damage to health and the existence of pecuniary damage.

37. Where the first element is concerned, the Chairman observes that the arguments adduced by the complainant are not such as to prove that he would suffer prejudice difficult to redress if the disputed measure were not suspended until his dispute with the bank is settled. In effect, these arguments stem from the very nature of the disciplinary measure in question rather than from the execution of the measure during the litigation phase of the dispute between himself and the Bank. And if the complainant wins his case on the merits, he will automatically be awarded compensation for the damage which he alleges.

38. As to the second element (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 not because they bear no relation to the contested act but rather 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.

39. With regard to the third element, the Chair notes that the complainant claims to have suffered pecuniary damage on two counts (lower salary and reduced retirement pension). Neither argument, however, can justify staying execution of the contested measure because if the applicant wins on the substance of the dispute, the damage can be redressed by paying what is owed to him and, equally, by calculating compensation under

Article 60, paragraph 2, of the Staff Regulations. Furthermore, the fact that the disciplinary measure of 12 May 2011 provided for downgrading with effect from 1 June 2011 (i.e. the first full month following its adoption) cannot in itself constitute grounds for granting a stay of execution of the impugned act. In any event, the existence of prejudice difficult to redress has not been established. And in the present proceedings, only effects which would be difficult to redress if the complainant wins his case may be taken into consideration, irrespective of any effects inherent in the measure per se.

40. The Chair points out that the exercise of his exceptional power under Article 59, paragraph 9 (former paragraph 7), of the Staff Regulations calls for some self-restraint (ABCE, paragraph 12 of the Chair's Order of 31 July 1990 in the case of Zaegel v. Secretary General; ATCE, paragraph 26 of the Chair's Order of 1 December 1998 in the case of Schmitt v. Secretary General; and paragraph 16 of the Chair's Order of 14 August 2002). Since the purpose of summary procedure is to ensure the full effectiveness of administrative litigation, the application for stay of execution must demonstrate that the requested measure is necessary to avert 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.

41. 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, DEPUTY CHAIR OF THE ADMINISTRATIVE TRIBUNAL,

Decide that

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

Done and ordered at Sarrebrücken, on 8 June 2011.

The Registrar of the
Administrative Tribunal

The Substitute Chair of the
Administrative Tribunal

S. SANSOTTA

Georg RESS