

# CONSEIL DE L'EUROPE

---

# COUNCIL OF EUROPE

## TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

CHAIR'S ORDER of 30 October 2012

**In the case of Joan STAFFORD (II) v. Secretary General**

### THE FACTS

1. The appellant, Ms Joan Stafford, is a staff member of the Organisation.
2. On 12 April 2012, the appellant submitted an initial administrative complaint to the Secretary General under Article 59, paragraph 2, of the Staff Regulations. In it, she complained about the Director of Human Resources' response to her request under Article 59, paragraph 1, of the Staff Regulations to destroy files containing private and confidential information on a large number of staff.

On 14 May 2012, the Secretary General informed the appellant about measures taken to locate and identify any files which might contain private and confidential information. The Secretary General concluded that the administrative complaint required no further action.

On 13 July 2012, the appellant lodged an appeal (No. 532/2012) with the Tribunal, asking it to annul the Secretary General's decision not to destroy immediately any confidential information concerning her, which might be found in files other than administrative ones.

3. According to the information which the appellant supplied to the Tribunal, it appears that a file containing confidential information on all the staff in the appellant's department was in a cupboard which could be accessed by anyone walking down the corridor. That file is now in the possession of the appellant.

4. Following a telephone conversation on 26 July 2012 between the appellant and the Director of Human Resources, on 27 July 2012 the legal counsel of the Central Division of the Directorate General of Administration sent the appellant an email summing up the situation with regard to the paper file in question as follows:

*"The file is not your property and the fact that you don't hand it over is not acceptable.*

*Despite that, we can grant you a bit more time. We understood that you declared yourself ready to give us the folder and we count on this promise.*

*Due to the holiday time, the next meeting for the verification of the folder's content will not be scheduled before 20 August. We understand that you will give us the folder at the latest by then.*

*We will decide what to do with this folder after we have seen its content. In any case, we will keep you informed on the follow-up”.*

5. On 16 August 2012, the appellant lodged a new administrative complaint with the Secretary General pursuant to Article 59, paragraph 2, of the Staff Regulations. She asked him “to annul the decision of 27 July and introduce appropriate guarantees of [her] substantive and procedural rights”. No information has been provided as to the outcome of these proceedings.

6. On 16 August 2012, the appellant applied to the Chair of the Tribunal for a stay of execution (Article 59, paragraph 9, of the Staff Regulations). This request was made in connection with the administrative complaint lodged on 16 August 2012.

7. On 24 August 2012, the Chair made an initial order in which he rejected the said application for a stay of execution.

8. Following this order, the appellant handed the file over to the Council of Europe mediator for safekeeping.

The staff member tasked with the administrative investigation which had been opened, in the meantime, asked to be given access to the file but was told by the mediator that the Director of Human Resources would have to issue the appellant with a written instruction formally asking her to hand over the file to DHR.

9. On 4 October 2012, the appellant received an email from the Director of Human Resources instructing her to hand over the file to him. The Director pointed out that it was the duty of the appellant, as a Council of Europe staff member, to comply with this instruction.

10. This message having been sent in copy to the Mediator, the latter contacted the appellant to arrange for her to collect the file and hand it over to the Directorate of Human Resources.

11. The appellant collected the file but did not hand it over to the Directorate of Human Resources.

12. On 15 October 2012, the appellant lodged a second application for a stay of execution, with the Deputy Chair of the Tribunal. According to the appellant, this second request for a stay of execution was made in connection with appeal no. 532/2012 and not the second administrative complaint.

13. On 19 October 2012, the Secretary General submitted his observations on the application for a stay of execution.

14. On 23 October 2012, the appellant submitted observations in reply. At the same time, she also lodged the file in question with the Registry of the Tribunal for the purposes of appeal no. 532/2012.

## RELEVANT LAW

15. Under the terms of Article 59, paragraph 9, of the Staff Regulations, an application for a stay of execution of the act complained of may be lodged if its execution is likely to cause “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.

16. The appellant begins by pointing out that she lodged her appeal no. 532/2012 in order to complain *inter alia* about the Secretary General's violation of basic principles which protect the confidentiality of personal data and hence the privacy of staff members. She states that her appeal revolves around the existence of a paper file containing confidential information on all the staff in her department. She adds that the file was located in a cupboard which could be accessed by anyone walking down the corridor and that she had twice reported the matter to her line managers and asked them to inspect the file so that it could then be destroyed, but to no avail. Apparently, it was only after she lodged her administrative complaint on 12 April 2012 (paragraph 2 above) that the Administration showed an interest in recovering the file. The appellant adds that the file in question – in particular following the lodging of her appeal – has become incontrovertible evidence and that if it were now to fall into the sole possession of the respondent, no one could guarantee that major and substantive changes would not be made to it.

17. After noting the terms of the Chair's Order on her first application for a stay of execution, her dealings with the mediator and the email of 4 October 2012 from the Director of Human Resources, the appellant states that her only hope is that the Chair will suspend the execution of the injunction, so that the Administration can, in agreement with her, find a way to ensure that the file will not be tampered with or altered.

18. The appellant hopes that the Secretary General will make suitable suggestions to this effect as soon as possible. She takes this opportunity to express her surprise at the lack of constructive suggestions in this regard. In her view, this is hardly proof of the Administration's good faith or a sign that it sympathises with her motives, quite the contrary indeed.

19. The appellant adds that if the contested decision is not suspended, a major piece of evidence could fall into the sole possession of the respondent before the written phase is over. She goes on to say that the damage which she is liable to suffer as a result – in terms of the disputes procedure – would be difficult to redress, as the principle of equality of arms would be fatally undermined.

20. For his part, the Secretary General observes that, as with the previous application for a stay of execution, the appellant's situation does not present any of the elements that could be considered to result in a “grave prejudice difficult to redress”, a condition which is required for the granting of a stay of execution.

21. He goes on to note that the Chair, in his Order of 24 August 2012, stated that he “does not see how handing over the file in question to the Administration at this stage in the proceedings could cause the complainant grave prejudice difficult to redress. The complainant – who fears that major and substantive changes might be made to the file in question – is clearly

familiar with the file and could, possibly in agreement with the Administration, take any measures that might reassure her.”

22. In the view of the Secretary General, the situation has barely changed since the first request made by the appellant, who has once again failed to show in what respect she would be liable to suffer grave prejudice difficult to redress if she were to hand over the file to the Administration, even though she has familiarised herself with its contents. She could have, in agreement with the Administration, taken any measures that might have reassured her but has not done so.

23. The Secretary General points out that the appellant merely entrusted the file to the Mediator for safekeeping, without, however, suggesting any ways in which the Administration might have access to it. In any event, the attempt to involve the Mediator proved unsuccessful as he declined to act any further after telling DHR that he recommended issuing the appellant with a formal instruction to hand over the file to DHR. Despite that, the appellant decided to keep the file and, in what was clearly another stalling tactic, submitted the present application.

24. The Secretary General submits that, unlike the appellant, who has failed to show how she would be harmed if she were to hand over the file to the Administration, the latter does have a clear interest in this file being returned to its possession, rather than allowed to remain in the hands of the appellant. In effect, the Administration finds itself in a situation where it still does not have access to the file, even though it needs to inspect the contents in order to be able to carry out the “six-eyes principle” investigation ordered in the wake of the appellant’s administrative complaint of 12 April 2012. It is likewise unacceptable that the appellant should keep a file which does not belong to her, especially if it contains private and confidential information on the Organisation’s staff. The Director of Human Resources therefore ordered the appellant to hand over the file to him, pointing out that it was her duty, as a Council of Europe staff member, to carry out this instruction.

25. At the same time, the Secretary General objects to the appellant’s insinuations about the Administration’s intentions and its willingness to alter or tamper with the file. As was pointed out to the appellant in the reply of 14 September 2012 to her administrative complaint of 16 August 2012, the investigation based on the six-eyes principle was ordered following her initial complaint in this connection, and this procedure includes all the necessary safeguards. The purpose of the investigation is to establish whether the appellant’s allegations are justified and, if so, to remedy the situation. The team tasked with the investigation has already carried out the first part of the exercise based on the electronic files of the Directorate to which the appellant belongs, in a manner that was both independent and impartial. In the opinion of the Secretary General, this is an entirely appropriate procedure and one that could be deemed to constitute a “suitable suggestion” of the kind called for by the appellant in her application.

26. With regard to the proceedings under way in connection with appeal no. 532/2012, the Secretary General expresses surprise that the appellant did not see fit to include the said file in her written submissions. It is difficult to see why this should have been so, especially if the appellant believes this file is a “major piece of evidence” in the case. If, in her opinion, it was evidence that could support her appeal, logically, she should have submitted it to the Tribunal. Clearly, therefore, there has been a violation of the principle of equality of arms to the detriment of the Secretary General as he has no idea what is in the file being discussed before the Tribunal.

27. Lastly, the Secretary General wishes to point out that there can be no question at this stage of any assessment of the arguments concerning the substance of the complaints made by the appellant in her appeal. These matters are not for discussion, let alone examination, in the current proceedings, which are concerned only with urgent measures.

28. In these circumstances and in the light of these elements, the Secretary General asks the Chair to dismiss the application for a stay of execution as ill founded.

29. In her observations in reply, the appellant puts forward, *inter alia*, arguments as to the reasons for her decision not to hand over the file to the Tribunal. In her opinion, producing the file would render the Secretary General's order – for the execution of which a stay has been sought – devoid of purpose. She concludes from this that her application for a stay of execution would thus also become devoid of purpose.

30. The Deputy Chair notes firstly that the appellant lodged the present application for a stay of execution in the context of the proceedings relating to appeal no. 532/2012 which is pending before the Tribunal.

31. The Deputy Chair takes note of the fact that the file in question has been lodged with the Registry of the Tribunal for the purpose of the proceedings relating to appeal no. 532/2012. He notes that the appellant, on this occasion and in her latest written submissions, has not stated that she intends to withdraw her application for a stay of execution (Chair's Order of 2 March 2010 in the case of Klein v. Secretary General) but merely indicated that the application had become devoid of purpose (Chair's Order of 26 March 2008 in the case of Pace Abu-Ghosh (II) v. Secretary General). He cannot assume, therefore, that the application is being withdrawn by the appellant because she is satisfied with the current situation and is duty-bound to give a ruling on its merits.

32. As far as the merits are concerned, however, the Deputy Chair must dismiss the application because, at present, there is nothing in the evidence adduced by the appellant to indicate that she is liable to suffer "grave prejudice difficult to redress". Also, in stating that the application has become devoid of purpose, the appellant has herself shown that she now has no fears that would justify granting the stay of execution in question.

33. The Deputy Chair points out that the exercise of his exceptional power under Article 59, paragraph 9, 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). 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 Article 21 of the Rules of Procedure of the Administrative Tribunal,

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

Decide

- that the application for a stay of execution submitted by Ms Stafford is dismissed.

Done and ordered in Geneva, on 30 October 2012.

The Registrar of the  
Administrative Tribunal

The Chair of the  
Administrative Tribunal

S. SANSOTTA

Giorgio MALINVERNI