

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

CHAIR'S ORDER of 17 April 2020
In the case of Leonid ANTOHI and Others v. Secretary General

THE FACTS

1. The four complainants, Mr Leonid Antohi, Mr Mahir Mushteidzada, Ms Illknur Yuksek and Ms Clotilde Talleu, applied for competition no. e20/2018 for the recruitment of Programme Managers (grade A1/A2) on fixed-term contracts.

2. It was stated in the vacancy notice that:

“Following this competition, a reserve list of successful candidates, in order of merit, may be established. This list will be valid for two years with the possibility of extending it to a maximum of four years. It should be noted that placement on a reserve list does not give candidates the right to an appointment within the Council of Europe. The choice of candidates from a reserve list is not made solely according to the order of merit but also takes into account the requirements of the position to be filled and the qualifications of the candidates.

During the period of validity of the reserve list, candidates on the list may be offered employment on a fixed-term contract, which may be renewed one or several times. There is a statutory probationary period of two years.”

3. The letter inviting the candidates to the written examination informed them that it would include three parts: a professional paper, a budgetary exercise and a job simulation.

4. In the letter, it was also specified that:

“The papers will be marked on a range of 0 to 20. Papers 1 and 2 are eliminatory. Candidates must obtain a minimum mark of 10/20 in Paper 1 (Professional paper) for Paper 2 (Budgetary exercise) to be marked. A minimum mark of 10/20 in Paper 2 is required for Paper 3 (Job simulation) to be marked. Please note that each of the above-mentioned minimum marks may be increased depending on the number of successful candidates.

The overall average mark will be calculated using the following weighting: Paper 1 - 50% of overall average mark, Paper 2 - 30% of overall average mark and Paper 3 - 20% of overall average mark. Those candidates with the best marks will be invited to an interview with the Appointments Board at a later date.”

5. The complainants were invited to sit the written examination which took place on 1 July 2019.

6. On 6 March 2020, the complainants were informed that they had not been selected for the oral part of the competition.

7. On 3 April 2020, the first two complainants submitted an administrative complaint to the Secretary General under Article 59, paragraph 2, of the Staff Regulations. They applied to the Chair of the Administrative Tribunal for a stay of execution of the decision complained of (Article 59, paragraph 9, of the Staff Regulations) in an application submitted the same day.

8. On 6 April 2020, the two other complainants submitted an administrative complaint to the Secretary General under Article 59, paragraph 2, of the Staff Regulations. They also applied to the Chair of the Administrative Tribunal for a stay of execution of the decision complained of (Article 59, paragraph 9, of the Staff Regulations) in an application submitted the same day.

9. The four complainants asked the Chair to order the Secretary General to suspend the implementation of the decision not to select them for the interviews of competition no. e20/2018 until the end of the administrative complaint procedure and any subsequent appeal to the Tribunal, since this decision was based on irregularities likely to lead to the cancellation of the written examination, and to therefore allow them to attend these interviews on a provisional basis.

10. On 9 April 2020, the Secretary General submitted her observations on the applications for a stay of execution.

11. On 14 April 2020, the complainants submitted their observations in reply.

THE LAW

12. Under 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.

13. The purpose of the complainants’ application for a stay of execution was to prompt the Chair to order the Secretary General to suspend the implementation of the decision not to select them for the interviews of competition no. e20/2018 until the end of the administrative complaint procedure and any subsequent appeal to the Tribunal, since this decision was based on irregularities likely to lead to the cancellation of the written examination, and to therefore allow them to attend these interviews on a provisional basis.

14. For her part, the Secretary General informed the Chair that, with a view to enabling the rapid finalisation of the competition and the recruitment as soon as possible of urgently and crucially needed programme managers for Council of Europe departments to carry out important co-operation programmes/projects, she had decided to cancel the written examination for competition no. e20/2018 and to hold a new one as soon as possible.

15. The Secretary General adds that, as a result, the applications for a stay of execution of the decision not to select the complainants for interviews with the Appointments Board would be irrelevant, since those interviews have, inevitably, also been cancelled.

16. For their part, the complainants informed the Chair that they were withdrawing their applications for a stay of execution. In their view, these had become irrelevant in view of the decision to cancel the written examination at issue and to invite the four complainants and all the other originally selected candidates to sit a new written examination, the date of which had not yet been set.

17. The Chair noted that the complainants, having been informed of the decision to cancel the written examination of the competition, had ultimately withdrawn their applications for a stay of execution. Accordingly, the Chair considers that there is no need to rule on the applications for a stay of the decision disputed by the administrative complaints submitted by the complainants.

For these reasons,

THE CHAIR OF THE ADMINISTRATIVE TRIBUNAL,

Notes that:

- the applications for a stay of execution submitted by the four complainants have been withdrawn.

Done and ordered in Zagreb, on 17 April 2020.

The Registrar of the
Administrative Tribunal

S. SANSOTTA

The Chair of the
Administrative Tribunal

N. VAJIĆ