

# CONSEIL DE L'EUROPE

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# COUNCIL OF EUROPE

## TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

ORDER OF THE CHAIR OF 11 August 2015

in the case of **Costas SKOURAS v. Secretary General**

### THE FACTS

1. The appellant, Mr Costas Skouras, is a United Kingdom national employed by the Organisation on a fixed-term contract (“CDD”). He is Director (grade A6) of the Directorate of Information Technology.
2. The appellant was recruited by the Organisation on 1 September 2010 on a fixed-term contract corresponding to the probationary period; this contract was renewed for a period of three years ending on 31 August 2015.
3. On 30 April 2015, the appellant was informed during a meeting that the Secretary General was unable to offer him a new contract and that his employment would be terminated on 31 August 2015.
4. On 15 May 2015, the appellant received a letter of notice informing him that his current contract as Director of Information Technology would end on 31 August 2015.
5. On 2 June 2015, the appellant submitted an administrative complaint under Article 59 of the Staff Regulations. He sought the annulment of the decision not to renew his contract.
6. On 2 July 2015, the Secretary General dismissed the administrative complaint.
7. During the month of July, the Organisation published vacancy notice no. e82/2015 for the purpose of filling the post of Director of Information Technology (grade A6) and set the deadline for applications on 10 August 2015.
8. By letter posted on 27 July 2015 and by email sent the same day, the appellant lodged an appeal (No. 567/2015) with the Tribunal pursuant to Article 60 of the Staff Regulations.
9. At the same time, he applied to the Chair of the Administrative Tribunal for a stay of execution of the decision complained of.
10. On 31 July 2015, the Secretary General’s observations on the application for a stay of execution were filed at the Registry.

11. On 3 August 2015, the appellant submitted his observations in reply.

## **THE LAW**

12. According to the Secretary General, it is clear from the documents on file that the appellant was fully aware that his contract was of fixed duration; he was also aware of its date of termination and of the fact that it would not be automatically renewed beyond that date. He adds that, at this stage, he refrains from commenting on the merits and confines himself to observing that the request for a stay of execution is unfounded.

13. The Secretary General considers in the first instance that the appellant's request for a stay of execution falls outside the scope of Article 59, paragraph 9, of the Staff Regulations because its purpose is not to preserve the status quo, but to change it.

14. In contentious proceedings, a fair balance must be maintained between the parties and their respective interests. This balance would be upset if the appellant were to obtain a new contract by means of an urgent procedure, thus modifying the legal situation arising from the expiry of his contract. In this connection, the Secretary General refers to the terms of the Order of the Chair of the Administrative Tribunal of 22 December 2006 in a similar case.

15. In substance, the appellant's application amounts to a request to the Tribunal to force the Secretary General to renew a fixed-term contract. This emerges very clearly from the wording of his application ("*I request that my employment as Director IT is continued until such time as the decision of the Tribunal on this case is concluded*"). What is being requested is not a stay of execution of the act complained of, but an order requiring the Secretary General to modify the appellant's contractual status. Such a request is inadmissible in the context of an application for a stay of execution of the act complained of as provided for in Article 59, paragraph 9, of the Staff Regulations.

16. The Secretary General further notes that if the appellant's argument were to be accepted, any staff member of the Organisation whose fixed-term contract was coming to an end would merely need to submit an application for a stay of execution in order to remain in post until the Administrative Tribunal gave its decision, although he or she would not have a contract.

17. Secondly, the Secretary General considers that, in this application, the appellant does not establish the existence of "grave prejudice difficult to redress". In fact, the appellant offers no proof in support of his allegation that he would be likely to suffer grave prejudice difficult to redress.

On the contrary, it should be noted that the appellant cannot claim to be the victim of grave prejudice difficult to redress because he was informed from the start of his employment at the Council of Europe that fixed-term contracts are by definition of limited duration, are not necessarily and automatically renewed, and end on the date of expiry. In signing these contracts, he accepted all their terms and conditions and cannot now claim to have suffered any prejudice.

18. The Secretary General then focuses on the appellant's submissions to the effect that the measures taken by the Administration (publication of a vacancy notice for the post of Director of Information Technology and re-allocation of his salary) constitute grave prejudice difficult

to redress. He notes that the appellant claims that the only way of not bringing about an irreversible situation is to keep him in post until the Administrative Tribunal has given a decision on his appeal.

In reply to this, the Secretary General states that if the Tribunal were exceptionally to decide in his favour, there are various possible forms of redress. These include compensation, which is the most common method.

In the instant case, any prejudice claimed by the appellant could be properly remedied through the award of compensation for the damage suffered.

19. In the Secretary General's opinion, these factors show that the appellant's situation lacks all the ingredients of "grave prejudice difficult to redress", which is the prerequisite for granting a stay of execution. It has to be acknowledged that if the prejudice claimed by the appellant were found to exist, it would not be such as to justify the granting of a stay of execution in proceedings brought to challenge the Secretary General's decision not to offer the appellant a new contract on expiry of his current contract.

Under these circumstances and in the light of these elements, the Secretary General therefore requests the Chair to reject the appellant's application for a stay of execution as being inadmissible and/or ill-founded.

20. In his observations in reply, the appellant, in response to the Secretary General's submissions concerning the fact that he signed a fixed-term contract, points out that the long-standing practice of the Council of Europe is that contracts of this nature are renewed if the organisational needs of the post continue to exist and if the Organisation is satisfied with the staff member's performance.

21. With regard to the objection of inadmissibility, the appellant points out that what he is asking for here is not full acceptance of his demands as set out in his appeal, but the maintenance of his current contractual condition until such time as the Tribunal gives a final decision.

22. As to the merits of his application for a stay of execution, the appellant notes that every legal system must guarantee full legal protection; he says that justice cannot be done unless the Tribunal takes all possible steps to keep him in office until a final decision is given on the merits of his appeal.

23. For this reason, the appellant reiterates his request for a stay of execution of the decision not to renew his contract and asks for his contract to be renewed until such time as the Tribunal gives its final decision.

24. Regarding the Secretary General's objection as to the admissibility of the application for a stay of execution, the Chair notes that the arguments put forward by the Secretary General focus on the merits of the application rather than its admissibility. Moreover, the decision cited by the Secretary General in support of his arguments concluded that the application made to the Tribunal for a stay of execution should be rejected, not that it was inadmissible. This objection must accordingly be dismissed.

25. As to the merits of the application, the Chair first notes that the precondition for granting a stay of execution of the act complained of is that its execution before the final decision on the

case “is likely to cause (...) grave prejudice difficult to redress” (Article 59, paragraph 9, of the Staff Regulations).

In his application, the appellant requests a stay of execution of the decision not to renew his contract and argues his case with reference to measures taken by the Secretary General to re-allocate his salary and organise the procedure for filling his post, without, however, formally requesting a stay of execution of the latter procedure. Clearly, however, the two issues are linked insofar as the appellant is already a member of the Organisation’s staff.

26. The Chair stresses that there can be no question at this stage of analysing arguments relating to the merits of the appellant’s appeal: these issues should not be discussed, let alone analysed, in the context of the present procedure, whose sole purpose is the adoption of urgent measures (see Order of the Chair of 3 July 2003, paragraph 10, in the case *Timmermans v. Secretary General*). The Chair notes that the appellant has established the existence, in his case, of “grave prejudice difficult to redress” (Article 59, paragraph 9, of the Staff Regulations). Indeed, the arguments he gives in support of his request to be kept in post focus on the possibility of his continuing to work for the Organisation if the Tribunal finds in his favour on the merits.

27. Clearly, if the appellant is not kept in post, a problem might arise if he wins his case, but his post has meanwhile been filled by another person (see in this connection, *mutatis mutandis* and *a contrario*, the orders of 26 September 1985 and 28 January 1992 in the two *Muller-Rappard* cases). If that were the case, compensation could not be regarded as a normal means of executing an annulment decision because, under the terms of Article 60, paragraph 7, of the Staff Regulations, the payment of compensation constitutes an alternative to execution and, furthermore, is not automatically granted, but may be ordered by the Tribunal following a procedure specifically for that purpose.

28. Moreover, independently of the fact that the appellant is not formally requesting a stay of execution of the recruitment procedure – stays of execution have been granted in other cases involving recruitment issues – it has to be remembered that the appellant has already lodged an appeal with the Tribunal and, consequently, in accordance with Article 60, paragraph 5, of the Staff Regulations:

“While an appeal is pending, the Secretary General shall avoid taking any further measure in respect of the appellant which, in the event of the appeal being upheld, would render unfeasible the redress sought.”

29. In the opinion of the Chair, there is no doubt that the decision to recruit another person to the post of an appellant challenging the non-renewal of his contract would constitute a measure in respect of the appellant within the meaning of the above provision. However, the Secretary General has offered no argument in support of the view that there would be no prejudice difficult to redress if the stay of execution is not granted, as the compensation argument is not a valid one.

30. The Chair is of the opinion that, at the present juncture, and bearing in mind the wording of Article 60, paragraph 5, of the Staff Regulations, keeping the appellant in his post is a justified measure whose *raison d’être* lies in the previous orders in which the Chair has granted a stay of execution requested in connection with a recruitment procedure (Order of 26 February 2009 granting a stay of execution in the case *GOLUBOK (2) v. Secretary General*).

31. The Chair points out that the exercise of his exceptional power under Article 59, paragraph 9, of the Staff Regulations calls for some self-restraint (see CRCE, Order of the Chair of 31 July 1990, paragraph 12, in the case *Zaegel v. Secretary General*; ATCE, Order of the Chair of 1 December 1998, paragraph 26, in the case *Schmitt v. Secretary General*; Order of the Chair of 14 August 2002, paragraph 16). The purpose of the urgent procedure is to guarantee 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. Otherwise, it would jeopardise not only the smooth running of Council of Europe departments but also the management of significant sectors of the Organisation. Since that is the position in the present case, the requested stay of execution should be granted.

32. It is of course for the Secretary General to provide at all stages of the proceedings the appropriate guarantees to ensure that there is no grave prejudice difficult to redress, which are currently lacking, and to request the lifting of the stay of execution which the Chair decides to grant today.

For these reasons,

Ruling on the urgent application in accordance with Article 59, paragraph 9, of the Staff Regulations, Article 8 of the Statute of the Administrative Tribunal and Rule 21 of the Rules of Procedure,

Having regard to the urgency of the matter,

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

- grant the stay of execution requested;

- decide that the stay of execution will expire at the latest on the day of delivery of the Administrative Tribunal's decision.

Done and ordered in Kifissia (Greece) on 11 August 2015.

The Registrar of the  
Administrative Tribunal

Sergio SANSOTTA

The Chair of the  
Administrative Tribunal

Christos ROZAKIS