

# CONSEIL DE L'EUROPE

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# COUNCIL OF EUROPE

## TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

### ORDER OF THE CHAIR of 30 June 2010

**In the case of Natalia KRAVCHENKO (II) v. Secretary General**

#### THE FACTS

1. The appellant, Ms Natalia Kravchenko, is a Ukrainian national who works for the Organisation as a temporary staff member in the Directorate of Cooperation. In November 2009 the appellant was informed that her temporary contract in Strasbourg would not be renewed after the date on which it was due to expire, namely 31 December 2009. At the same time, that Directorate offered the appellant a contract for three months (January to March 2010) in Kiev, in a post corresponding to her profile. The appellant refused the offer.
2. On 18 January 2009, the appellant lodged an administrative complaint under Article 59 of the Staff Regulations. She requested the Secretary General to annul the decision of the Directorate of Cooperation and allow her to remain in her post in Strasbourg.
3. On the same date, the appellant submitted a first application to the Chair of the Administrative Tribunal for a stay of execution (Article 59 paragraph 7 of the Staff Regulations).
4. By an order made on 29 January 2010, the Chair rejected that application, but first noted that the Secretary General had decided, exceptionally and on the medical grounds invoked by the appellant, to offer her a new six-month contract in Strasbourg.
5. On 16 March 2010, the appellant lodged an appeal with the Administrative Tribunal (Article 60 of the Staff Regulations).
6. On 15 June 2010, the appellant lodged the present application to the Chair, seeking a stay of execution of the decision not to give her a contract after 30 June 2010.
7. On 21 June 2010, the Secretary General lodged his observations on the application for a stay of execution.
8. On 23 June 2010, the appellant lodged her memorial in reply.
9. On 24 June, the Secretary General, acting on his own initiative, lodged a rejoinder.

10. The Chair decided to accept that rejoinder and to allow the appellant to lodge any observations she might wish to make, and the appellant lodged her observations on 25 June 2010.

## **THE LAW**

11. Under Article 59 paragraph 7 of the Staff Regulations, an application for a stay of execution of an act of the Administration may be submitted 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.

12. By her new application, the appellant again requests the Chair to order a stay of execution of the Secretary General’s decision not to offer her a contract as a temporary staff member after 30 June 2010.

13. The appellant maintains that that decision is likely to cause her grave and irreparable prejudice to her health. She submits three certificates, drawn up by the specialist doctors who have been treating her since she returned to Strasbourg after the work accident which happened in Moldova. In the appellant’s submission, those certificates testify to the need, from a medical point of view, for her to continue with the treatment and indicate that the interruption of the treatment could cause irreversible harm to her health.

14. The appellant further submits that those certificates show that if she no longer had a contract and thus, deprived of resources, were forced to leave France and return to Ukraine, she would have to interrupt the treatment – both psychiatric and neurological – provided in Strasbourg, the duration of which exceeds that of the temporary contract, which will end on 30 June 2010. She asserts that those consequences would be likely to cause her grave prejudice which would be difficult to redress. In fact, her disease would be likely to have a serious and profound effect on her future existence, if she were required to interrupt, or indeed abandon, the course of treatment provided in Strasbourg.

15. Consequently, the appellant requests the Chair to take a decision to stay the execution of the decision not to grant her a contract of employment at the end of the six-month period, in so far and to the extent to which the consequences of the work accident of which she was the victim require that the current treatment be continued.

16. The Secretary General observes at the outset that 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 that is difficult to redress. In the present case the appellant has failed to show such prejudice. She has had the benefit of monthly temporary contracts, renewable according to the needs and resources of the service to which she was assigned. As stated on all the monthly temporary contracts which are entered into by the staff members concerned (including the appellant), those contracts terminate without notice, on the date fixed. The appellant cannot therefore rely on any prejudice, in that she has always been informed that temporary contracts are by definition precarious and are not necessarily renewed. By entering into those contracts, she accepted all

the conditions thereof. Furthermore, the appellant obtained a temporary contract for six months in Strasbourg, which will expire on 30 June 2010, like all the contracts of all the temporary staff members (more than fifty or so) still working for the Council of Europe.

17. That having been said, it should be pointed out that the appointment of the appellant, like that of all temporary staff members of the Council of Europe whose appointment is now subject to Rule No. 1232 of 15 December 2005, cannot exceed six months in any calendar year. The appellant has been aware of those provisions since that rule was adopted and she also received a notice clearly drawing attention to those provisions (in January 2010), and that situation was expressly stated at the time of her previous application for a stay of execution, in very clear terms: "On the expiry of that period of six months, no temporary contract can therefore be offered to her".

18. After noting that the appellant has produced medical certificates showing that her medical treatment must continue, the Secretary General recalls that he clearly has no objection whatsoever to her continuing to receive medical treatment. He observes that the appellant is covered by sickness insurance with the French social security and that insurance will last for twelve months after her last day of work. Her medical expenses will therefore be covered, and she will be able to continue her treatment. Furthermore, if she is on sick leave on 30 June 2010 and she complies with the procedures, she will receive daily allowances (from the social security) corresponding to a percentage of her current salary, any difference between the allowances paid by the social security and her current salary, moreover, being paid by the additional insurance for six months from 30 June 2010. She will therefore have the resources to provide for her other needs.

19. The Secretary General adds that, furthermore, the appellant is married to a French national and, in that capacity, can also benefit from sickness insurance from the French social security as a person entitled to claim under her husband. In addition, the spouses owe each other mutual assistance and if the appellant were not to receive daily allowances or a salary, it must be borne in mind that her needs would be taken care of by her husband.

20. The Secretary General asserts that, still in so far as the appellant is married to a French national, she is entitled to remain in France for as long as she wishes and/or needs to do so; and therefore, if she is not on sick leave, and is thus able to work, she will be able to find employment (outside the Council) and thus provide for her needs.

21. In the Secretary General's submission, it follows from those elements that the appellant cannot claim that the fact that the rules of the Organisation limit temporary contracts to six months per annum causes her grave prejudice that would be difficult to redress. The interruption of her medical treatment might possibly be considered to cause such prejudice, but the fact that she no longer has contracts within the Council of Europe could not. As seen above, whether she has a contract within the Council of Europe or not, the appellant will be able to continue her treatment and will have the means to provide for her needs.

22. According to the Secretary General, in any event, there is no internal legal basis on which the appellant could be offered a contract. The Administration is unable to state what the appellant's legal status would be and what rules and provisions of the Staff Regulations would be applicable to her, nor is it able to charge her salary to any budget; and, moreover, it would not know how to calculate her salary.

23. In that regard, the Secretary General observes that there can be no question at this stage of any assessment of the arguments concerning the merits of the appellant's complaint. These matters are not for discussion, let alone examination, in the current proceedings, which are only concerned with urgent measures.

24. In those circumstances, and in the light of those elements, the Secretary General requests the Chair to reject the application for a stay of execution as both inadmissible and ill-founded.

25. In her memorial in reply, the appellant, after contradicting the Secretary General's assertions, disputes his claim that she would be able to remain in France and receive comfortable allowances and that her medical costs would be covered even without any more contracts.

26. The appellant therefore maintains her application for a stay of execution.

27. On 24 June 2010, the Secretary General submitted, on his own initiative, a rejoinder containing comments on certain facts put forward by the appellant in her reply. He contends that the appellant would be able to remain in France, receive "comfortable allowances" and have her medical costs covered for twelve months after the end of her contract of employment.

28. The Chair decided to admit that pleading and to authorise the appellant to respond and on 25 June 2010 the appellant lodged her observations, also relating to certain facts. She maintains that the act complained of would be likely to cause her grave and irreparable prejudice.

29. The Chair must first of all examine the question of the admissibility of the application for a stay of execution, since in his pleadings (paragraph 24 above) the Secretary General requested that the application be rejected "as inadmissible and ill-founded", even though he had not previously submitted any argument on any question of inadmissibility or even raised a plea to that effect.

30. The Chair considers that that represents a *lapsus calami* (a slip of the pen). However, even on the assumption that the Secretary General did intend to raise a plea of inadmissibility, the Chair finds nothing in the file to suggest that the application for a stay of execution would be inadmissible. Therefore, any plea of inadmissibility would have to be rejected.

31. As regards the merits of the application for a stay of execution, the Chair recalls that, as the parties have correctly observed, there can be no question at this stage of any assessment of the arguments concerning the merits of the appellant's complaint. These matters are not for discussion, let alone examination, in the current proceedings, which are only concerned with urgent measures (see Order of the Chair of 3 July 2003, paragraph 10, *Timmermans v. Secretary General*).

32. The Chair notes that the arguments which the appellant puts forward in order to establish the existence of grave prejudice that would be difficult to redress if she does not secure the suspension of the decision not to give her any temporary staff contracts after 30 June 2010 are based on three elements: the need to continue to receive treatment in France, the danger that she will be unable to remain in France if she does not continue to work for the Organisation and cover for her medical costs.

33. On the basis of the factual elements brought to his notice and which, in order not to encroach on the appellant's private life, there is no need to set out here, the Chair notes that the medical costs will continue to be covered for twelve months after the end of the contract, and the appellant – who at present is on sick leave for a period extending beyond the end of her contract – will be able to continue to receive allowances which will enable her to provide for her needs for six months from 30 June 2010. In addition, the appellant is not in danger of having to leave France for the time being.

34. Thus, and in spite of the assertions which sometimes go beyond the medical certificates, the appellant has not established that the termination of the contracts constitutes a “grave prejudice difficult to redress” which would affect her between now and the pronouncement of the decision which the Tribunal must deliver in her action.

35. The Chair recalls that the exercise of his exceptional power under Article 59, 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). 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 that is difficult to redress. Otherwise, it would jeopardise not only the smooth running of Council departments but also the management of significant sectors of the Organisation.

36. Since that is not the position in the present case, the requested stay of execution should not be granted.

For those reasons,

Ruling on the urgent application in accordance with 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 Administrative Tribunal,

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

Decide

- the application for a stay of execution lodged by Ms Kravchenko is rejected.

Done and ordered in Oberwil on 30 June 2010.

Le Greffier du  
Tribunal Administratif

Sergio SANSOTTA

Le Président du  
Tribunal Administratif

Luzius WILDHABER