

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

ORDER OF THE CHAIR OF 24 January 2017

In case DEMIR SALDIRIM v/ Secretary General

THE FACTS

1. The complainant, Ms Sibel Demir Saldirim, is judge rapporteur at the High Council of Judges and Prosecutors of Turkey (hereinafter “the HCJP”).
2. She was one of twelve candidates for a post of seconded lawyer, who were identified and notified by the European Court of Human Rights (hereinafter “the Court”) to pass an exam scheduled for 24-25 November 2016. One candidate was exempted from the exam upon a decision of the Registry of the Court on the grounds that he had been successful in a recruitment procedure for assistant lawyers carried out in May 2016. This candidate and other two candidates, but not the complainant, were subsequently selected for the post.
3. On 1 December 2016, the Registrar of the Court informed the Permanent Representation of Turkey to the Council of Europe that the evaluation procedure had been closed and communicated the names of the candidates who were considered having the competency level required for the secondment at the Registry of the Court. The complainant was not selected as she did not demonstrate to have the competency level required.
4. The Turkish authorities and the Registry of the Court reached an agreement in respect of four Turkish judges and prosecutors to be seconded at the Registry with starting date of 1 May 2017.
5. According to the complainant, she was not notified of the outcome of the examination and about the fact that she had not been selected.
6. On 29 December 2016, the complainant lodged an administrative complaint with the Secretary General challenging the decision not to be selected for secondment at the Registry. On the same day, she applied to the Chair of the Administrative Tribunal for a stay of execution under Article 59, paragraph 9 of the Staff Regulations, asking in particular not to execute the decision approving the four candidates for secondment. Her request seeking to stay the execution reached the Tribunal on 9 January 2017.
7. On 16 January 2017, the Secretary General submitted his observations in respect of her request.

8. On 19 January 2017, the complainant presented her observations in reply.

EN DROIT

9. Under Article 59, paragraph 9 of the Staff Regulations, applications for stays of execution may be lodged if that execution is likely to result in “grave prejudice difficult to redress”.

The same provision states that the Secretary General shall, 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.

10. The complainant justifies her request for stay of execution by the fact that the circumstances could change and prevent her from be seconded at the Registry of the Court in case of a favourable decision of the Tribunal, especially if she were to be appointed to other duties at the breasts of the Turkish public service or if the Turkish authorities would no longer allow provision of such secondments in the future.

11. The complainant refers to irregularities during the examination, irregularities through violation of gender equality principle, irregularity in recruiting a candidate who did not take part to the secondment examination, the merit of the case, and maintains that the situation is urgent and entails “grave prejudice to redress”

12. To establish the urgency of the situation, the complainant states that

“Even if a decision is made in her favour as a result of her administrative complaint lodged with the Secretary General, or in a subsequent action at the Administrative Tribunal upon a dismissal of her complaint; it may well occur that [she] may not work as a seconded at [the Court] because [she] may be appointed to other positions or undertake other public responsibilities in the meantime, or the Turkish authorities may possibly not allow such a posting due changing circumstances. This will cause grave prejudice [to her] difficult to redress, both in pecuniary and non-pecuniary sense. In addition, if the examination or selection is annulled, the posted three judges who may have then commenced duties as secondees will have to return to Turkey, which will cause serious amounts of costs, and loss of time and labour.”

13. For all these reasons, the complainant requests the Chair to order the stay of execution of the decision concerning the appointment of the seconded Turkish lawyers at the Registry of the Court.

14. From his side, the Secretary General notes, first of all, that the complainant does not have quality to introduce an administrative complaint, being a Turkish official suggested by the national authorities as a candidate for seconded post at the Registry of the Court. Accordingly, her request to stay execution is manifestly inadmissible.

15. Moreover, the complainant does not substantiate the existence of grave prejudice difficult to redress as provided for in Article 59, paragraph 9, of the Staff Regulations. The only consequence of the suspension would be the difficulties in the good functioning of the Registry. The Secretary General therefore asks the Chair to declare the complainant’s request inadmissible and ill-founded.

16. In her observations in reply, the complainant disputes the argument of the Secretary General that she would not be qualified to submit the administrative complaint, relying on Article 59, paragraph 8 d), of the Staff Regulations according to which “The complaints procedure set up by this articles shall be open on the same conditions *mutatis mutandis*: ... to staff members and candidates outside the Council of Europe, who have been allowed to sit a competitive recruitment examination, provided the complaint relates to an irregularity in the examination procedure”.

17. The complainant also disputes the argument of the Secretary General that the change of opinion by the Turkish authorities had no effect on the outcome. According to her, it is always probable that the Turkish authorities would not approve the selection made by the Court. In respect of the lack of grave prejudice difficult to redress as submitted by the Secretary General, the complainant notes that the first round of voting on the constitutional amendment that changed the structure of the HCJP was concluded affirmatively in the Turkish Grand National Assembly. If and when the amendment is enacted, the term of office of the HCJP members will come to an end. In such case, it is highly probable that the complainant’s assignment at the HCJP will end. The act that she is working at this judicial institution has been decisive for her nomination by the Turkish Government to take the secondment examination. Even if her application to the Administrative Tribunal is successful, she may not be seconded by the Government because she will most have left her assignment at the HCJP. Therefore, there is prejudice to the complainant difficult to repair.

18. The Chair notes that the arguments in support of the plea of inadmissibility relate to the merits of the dispute. He considers that these arguments cannot be taken into account in the specific context of the application for a stay of execution.

19. The plea of inadmissibility must therefore be rejected.

20. Turning to the merits of the application, the Chair notes at the outset that it is a necessary condition for a stay of execution order that execution of the act complained of before a final decision on the dispute “is likely to cause ... grave prejudice difficult to redress” (Article 59, paragraph 9 of the Staff Regulations).

21. There is no question at this stage of entering into the arguments pertaining to the merits of the complainant’s grievances, since these issues do not have to be discussed, let alone examined, (see Order of the Chair of 3 July 2003, paragraph 10, Timmermans v. Secretary General). In this case, the Chair concludes that the complainant has not established the existence of any “grave prejudice difficult to redress” (Article 59, paragraph 9 of the Staff Regulations). Thus, the arguments she adduces to support her request for a stay of execution concern merely a hypothetical situation and as far as they concern financial aspects these latter can be remedied if the complainant wins her case on the merits. Finally, the arguments concerning the secondees cannot be validly invoked by her.

22. The Chair has reached this conclusion without the need to rule on the Secretary General’s warnings about the would-be harmful consequences for benefit recipients as a whole of any suspension of the disputed measure.

23. The Chair recalls that the exercise of his exceptional power under Article 59, paragraph 7 of the Staff Regulations calls for some self-restraint on his part (see ABCE, Chairman’s Order of 31 July 1990, paragraph 12, Zaegel v. Secretary General; and ATCE, Chairman’s Order of

1 December 1998, paragraph 26, Schmitt v. Secretary General, Chairman's Order of 14 August 2002, paragraph 16). Since the purpose of the urgent procedure is to ensure that administrative dispute proceedings are fully effective, applications for stays of execution must demonstrate that the requested measure is necessary to avoid grave prejudice which is difficult to redress. This could otherwise undermine the smooth running of departments as well as the management of important sectors of the Organisation. Since this does not apply in the present case, it is unnecessary to order the requested stay of execution.

For these reasons,

Exercising my jurisdiction to make interim orders under Article 59, paragraph 9 of the Staff Regulations, Article 8 of the Statute of the Administrative Tribunal and Article 21 of its Rules of Procedure,

I, CHAIR OF THE ADMINISTRATIVE TRIBUNAL,

Decide that

- the application for a stay of execution presented by Mrs DEMİR SALDIRIM is rejected.

Done and ordered in Kifissia (Greece), 24 January 2017.

The Deputy Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

E. HUBALKOVA

C. ROZAKIS