

CONSEIL DE L'EUROPE————— —————**COUNCIL OF EUROPE**

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

ORDER OF THE CHAIR of 29 January 2010

In the case of Natalia KRAVCHENKO v. Secretary General

THE FACTS

1. The complainant, Ms Natalia Kravchenko, has worked for the Organisation as a temporary member of staff in the Directorate of Cooperation. In November 2009 she 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 complainant a three-month contract (January to March 2010) in Kiev, in a post corresponding to her profile. The complainant refused the offer.
2. On 18 January 2009, the complainant lodged an administrative complaint under Article 59 of the Staff Regulations. She requested the Secretary General to annul the decision adopted by the Directorate of Cooperation and to allow her to remain in her post in Strasbourg.
3. On the same date, the complainant applied to the Chair of the Administrative Tribunal for a stay of execution (Article 59 paragraph 7 of the Staff Regulations).
4. On 22 January 2010, the Secretary General submitted his observations on the application for a stay of execution.
5. On 25 January 2010, the complainant submitted her memorial in reply.

THE LAW

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

7. By her application, the complainant requests the Chair to take a decision staying the execution of the Director of Cooperation’s decision to terminate her contract within the

Organisation with effect from January 2010 and to offer her a contract for a maximum of three months in Kiev, pending the Secretary General's response to her administrative complaint.

8. The complainant states that, on 26 January 2009, she was the victim of a work accident which affected her physical and psychological integrity and resulted in her being on sick leave for six months. She adds that a course of treatment was put in place in Strasbourg and that she is in the process of following that course of treatment, which cannot be interrupted. According to the doctors, a change of occupation would be counter-indicated, as her recovery would be jeopardised.

9. According to the complainant, the decision to terminate her contract in Strasbourg was taken and notified to her in circumstances which have caused grave and irreparable prejudice to her health.

10. After setting out argument which relates rather to the merits of the administrative complaint, the complainant requests a stay of execution of the decision in issue in order to allow her to remain in her post in Strasbourg, even on half time, in order to have access to the medical services and, in particular, not to interrupt the course of medical treatment which was put in place following her accident at work and which she has thus far followed.

11. Consequently, the complainant requests the Chair to adopt a decision staying the execution of the Directorate of Cooperation's decision to terminate her contract with effect from January 2010 and to offer her a contract for a maximum of three months in Kiev.

12. 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 complainant has not established such prejudice. She has the benefit of monthly temporary contracts, renewable according to the needs and resources of the service to which she was assigned. As indicated on all monthly temporary contracts, which are signed by the members of staff concerned (including the complainant's contracts), these contracts come to an end without notice, on the date fixed. The complainant cannot therefore rely on any prejudice, in that she has always been informed that temporary contracts are by definition precarious and that they are not necessarily renewed. By entering into such contracts, the complainant has accepted all the conditions thereof. Furthermore, she refused an offer of a post in Kiev, in Ukraine, the country of which she was a national, which had been offered to her, in particular, in order to facilitate her return to her country. That attempt to reassign her therefore remained unsuccessful, but that is in no way the responsibility of the Administration, let alone the Secretary General. Many temporary staff members are in the same position as the complainant as their contracts expired at the end of December 2009, in the absence of posts to which they could be reassigned.

13. That having been said, and without prejudice to any argument which he reserves the right to raise in response to the complainant, the Secretary General informs the Chair that it was decided, exceptionally and on the medical grounds to which the complainant refers, that she should be offered a new contract for six months in Strasbourg. On this point, it should be pointed out that the complainant's appointment, 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. On the expiry of that period of six

months, no temporary contract can therefore be offered to her. It follows from those elements that Ms Kravchenko's administrative complaint has therefore become devoid of purpose.

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

15. 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.

16. In her memorial in reply, the complainant maintains, as regards the Secretary General's objection that her application for a stay of execution is inadmissible, that this assertion is uncorroborated by any factual or legal argument and should be rejected.

As for the Secretary General's arguments relating to the merits of the application for a stay of execution, the complainant claims that either they bear no relationship to her administrative complaint or her application for a stay of execution (which are based solely on the medical situation resulting from her work accident), or they wholly fail to respond to the reasons given in order to substantiate the existence of grave prejudice that would be difficult to redress, or they respond in part to her complaint and her application for a stay of execution. On this last point, she notes that in so far as the envisaged response – since up to the time when she lodged her memorial in reply she received no confirmation from the Directorate of Human Resources of the information communicated to the Chair of the Administrative Tribunal that she would be offered a six-month contract in Strasbourg – is limited in time, it does not constitute a complete response to her application for a stay of execution.

17. The complainant reiterates that she was the victim of a work accident while on an official mission of the Council of Europe and that, furthermore, the Secretary General does not dispute that.

18. In order to prove the gravity of the prejudice, the complainant refers to her medical file, which is known to the medical service of the Council of Europe, and to the medical certificates attached to her administrative complaint and elaborates on the grave and irreparable consequences of any interruption of her employment relationship.

19. Consequently, the complainant requests the Chair to:

- take note of the Secretary General's undertaking to offer her a contract for six months and order a stay of the execution of any decision or omission of the administration of the Council of Europe that would deprive that decision of its effects,
- order a stay of execution of the decision not to grant her a contract of employment at the end of that six-month period, in so far as and for such time as the consequences of the work accident of which she was a victim require that the current treatment be continued.

20. The Chair must examine in the first place the question of the admissibility of the application for suspension of execution raised by the Secretary General.

21. The Chair notes that the Secretary General has decided to offer the complainant a contract as a temporary staff member for six months in 2010. He notes that, as the complainant observes, the Secretary General has provided no proof of that assertion. However, the Chair sees no reason not to trust the Secretary General or to doubt that he will quickly implement his decision – if, moreover, he has not already done so without so informing the Tribunal – without even awaiting the ruling on the administrative complaint. The Chair notes, however, that that measure does not render the application devoid of purpose, since the complainant maintains her application, amending her claims according to the new fact that has arisen in the meantime.

22. It follows that the plea of inadmissibility raised by the Secretary General must be rejected.

23. 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 admissibility and/or the merits of the complainant'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*).

24. The Chair notes that the arguments put forward by the complainant to substantiate the existence of grave prejudice that would be difficult to redress even after the decision to offer her a contract as a temporary staff member in Strasbourg relate to the consequences that she is likely to suffer upon the expiry of that contract. However, that decision deprives the application of any currency, since the medical practitioners refer to the need to continue the treatment but do not indicate its foreseeable duration. It is thus impossible to adjudicate now on a situation that may arise in six months' time.

25. Thus, the complainant does not establish that the consequences to which she refers constitute at present a "grave prejudice difficult to redress". Furthermore, the complainant has stated that she is prepared to work half time, which would mean that the six-month contract would be spread over the entire year.

26. 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. Since that is not so in the present case, it is not appropriate to grant the stay of execution sought.

27. It is clearly for the complainant to decide later whether she must lodge a fresh application for a stay of execution if in her view the situation justifies it.

For these 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 Strasbourg on 29 January 2010.

The Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

Sergio SANSOTTA

Luzius WILDHABER