

Request for a stay of execution No. 1/2025

B. H.

v.

**Secretary General
of the Council of Europe**

STAY OF EXECUTION ORDER

31 March 2025

THE FACTS

1. The applicant was recruited on 1 April 2024 on a fixed-term contract (CDD) expiring on 31 December 2025 as a C5 staff member in the Directorate of General Services (DGS). He had previously been employed in the same directorate on a temporary contract from 4 May 2023 to 31 March 2024 as a C4 staff member.
2. Under Article 4120.1 of the Staff Rule on entry into service adopted on 30 December 2022, the applicant could be appointed only after completing a one-year probationary period.
3. Two assessment reports were made over the course of the applicant's probationary period. The assessment report drawn up for the first reference period, from 1 April 2024 to 31 July 2024, concluded that the applicant needed to improve all the competences assessed. The assessment report drawn up for the second reference period, from 1 August 2024 to 30 November 2024, found that there had been no improvement. Shortcomings were noted in terms of how the applicant performed his duties and his professionalism. Based on all the information gathered, the applicant's reviewing manager (N+2) and the Director General of Administration, as head of the Major Administrative Entity, issued an opinion to the effect that his probationary period should not be deemed to have been successfully completed and that he should not be confirmed in his employment.
4. On 29 January 2025, the Appointments Review Committee recommended, by a majority (two votes in favour and one abstention), terminating the applicant's employment at the end of his probationary period.
5. On 10 February 2025, the applicant lodged a formal harassment complaint against his direct manager (N+1), under Article 7.4 of the Policy on Respect and Dignity in the Council of Europe.
6. On 25 February 2025, the Deputy Secretary General, acting by delegation from the Secretary General, followed the advice of the Appointments Review Committee and decided to terminate the applicant's appointment.
7. In a memorandum from the Director of Human Resources dated 26 February 2025, the applicant was informed of the decision to terminate his appointment on the expiry of his CDD on 31 March 2025, on the ground that his probationary period had not been successfully completed. The memorandum stated that the applicant had not satisfied the requirements as his skills fell short of what the Organisation required.
8. On 24 March 2025, the applicant lodged an administrative complaint against the decision to terminate his employment at the end of his probationary period. This complaint is still pending before the Secretary General.
9. On the same day, the applicant filed a request with the Tribunal for a stay of execution of the contested decision, in accordance with Article 14.8 of the Staff Regulations and Article 12 of the Statute of the Tribunal. In this request, he asks for the decision terminating his employment as of 31 March 2025 to be suspended.
10. On 28 March 2025, the Secretary General submitted his observations on the request for a stay of execution.

THE LAW

11. Under Articles 14.3 and 14.4 of the Staff Regulations, read in conjunction with Articles 1440.5.2 and 1450.3.2 of the Staff Rule on grievance procedures adopted on 30 December 2022, an administrative complaint may be lodged with the Secretary General by staff members contesting an administrative decision taken by the Deputy Secretary General.

12. Under Article 14.8 of the Staff Regulations, filing a complaint does not suspend the contested administrative decision. The Administrative Tribunal may however be asked to suspend the implementation of an administrative decision in cases of particular urgency where the implementation of the said decision would cause serious and irreparable damage.

13. Under Article 12.2 of the Statute of the Tribunal, the Chair must rule on behalf of the Tribunal within 15 days of a request for a stay of execution. The decision must not rule on the merits of the complaint or any subsequent appeal. Decisions on a stay of execution are not subject to appeal.

I. THE PARTIES' SUBMISSIONS

14. In his request, the applicant asks the Chair to order the Secretary General to suspend the implementation of the contested decision terminating his employment with the Council of Europe as of 31 March 2025 for unsatisfactory performance, "ensuring that [his] contract would run until the specified end date, i.e. 31 December 2025".

15. To justify his request for a stay of execution, the applicant states that the contested decision would cause him serious and irreparable damage if it were to be implemented.

16. In this regard, the applicant argues that if the contested decision were to be implemented, he would find himself unemployed and unable to find another job, leading to a reduction in his household income. The remaining income would be insufficient to enable him and his wife, who suffers from health problems, to support their two children and repay the mortgage taken out to buy their house. It would therefore be necessary to sell their home and move. The applicant underlines the sudden and unexpected nature of the decision, contending that he was not given time to prepare for it.

17. The applicant adds that implementing the decision to terminate his appointment "would render the harassment investigation meaningless, since the findings of the external [investigators] could not usefully be taken into account in the administrative complaint".

18. The Secretary General, for his part, points out that in contentious proceedings, a fair balance must be maintained between the parties and their respective interests. He considers that this balance would be upset if the applicant were to obtain a stay of the decision to terminate his contract, thereby requiring the Organisation to continue his employment contract even though the repeated shortcomings in his performance and conduct are detrimental to the proper functioning of the department to which he is assigned and are incompatible with his remaining in post, and under the applicable regulations, an appointment cannot continue beyond an unsuccessful probationary period.

19. The Secretary General further notes that the applicant is not justified in claiming that the contested decision was sudden and unexpected. Firstly, he was aware that an unsuccessful probationary period could result in the termination of his appointment. Secondly, he had been advised as early as 9 January 2025 of the Director General of Administration's recommendation that he not be confirmed in his appointment at the end of his probationary period.

20. According to the Secretary General, not only is the applicant's request for a stay of execution not supported by concrete and precise evidence, but also the applicant has failed to prove his allegation that he would suffer serious and irreparable harm. More specifically, with regard to the financial prejudice alleged by the applicant, the Secretary General mentions the fact that, in view of the remunerated outside activities in which he has engaged throughout his employment at the Council of Europe, it has not been shown that the applicant would be unable to find another job quickly.

21. The Secretary General submits that any prejudice which the applicant might rely on cannot be such as to be incapable of being redressed through compensation for the damage sustained.

22. In response to the applicant's argument that implementing the decision to terminate his appointment would "render the harassment investigation meaningless", the Secretary General argues that the proper conduct of the investigation into the harassment complaint does not require the applicant to remain in the employ of the Organisation. The same would apply even if the investigation concluded that harassment had occurred, in which case it would be for the Secretary General to take all appropriate measures arising from the findings of the investigation, including those relating to the possibility of redress for the applicant.

23. In view of the foregoing, the Secretary General asks the Chair to dismiss the applicant's request for a stay of execution as unfounded.

II. THE CHAIR'S ASSESSMENT

24. Under Article 14.8 of the Staff Regulations, the Administrative Tribunal may be asked to suspend the implementation of an administrative decision in cases of particular urgency where this would cause serious and irreparable damage. The Tribunal may stay the contested decision only if both requirements, i.e. particular urgency and serious and irreparable damage, are satisfied.

25. With regard to the particular urgency requirement, the Chair begins by noting that the decision to terminate the applicant's employment was communicated to him on 26 February 2025, to take effect from 31 March 2025. The Chair then notes that the applicant, who had 30 days to lodge an administrative complaint contesting the decision not to confirm his appointment (paragraph 1450.2 of the Staff Rule on grievance procedures), lodged his complaint and the present request for a stay of execution on 24 March 2025, a few days before his CDD was due to expire.

26. In these circumstances, the Chair considers that in the instant case, the urgency requirement was met, something which the Secretary General, moreover, does not appear to deny.

27. As to serious and irreparable damage, the Chair notes firstly that, for the purpose of assessing whether the prejudice incurred would be irreparable, it must be determined whether financial compensation would represent an adequate remedy for the damage caused. It must be borne in mind here that purely financial damage cannot in principle be regarded as being difficult to redress, still less as irreparable, since, as a general rule, it can be the subject of financial compensation in a subsequent appeal (Administrative Tribunal of the Council of Europe (ATCE), Chair's Order of 23 December 2021, in the case of [D v. Secretary General of the Council of Europe](#), paragraph 34, and case law cited).

28. The Chair does acknowledge that, even in the event of purely financial harm, the suspension of the contested decision might be justified in certain exceptional circumstances. However, to be able to assess whether such circumstances justify suspending the execution of the contested decision, the judge must always be provided with concrete and precise indications, supported by detailed evidence making it possible to assess the consequences likely to result from the absence of the measure requested. In any case, it is for the party requesting the suspension of the contested decision to show that they cannot wait until the outcome of the proceedings without suffering harm of a kind that would justify the requested suspension (ATCE, Chair's Order of 13 July 2023, in the case of [L. C. v. Secretary General of the Council of Europe](#), § 37 and case law cited).

29. The Chair notes that, in this case, the application in question is based on general assertions that the applicant would find himself unemployed and unable to find another job if the contested decision were to be implemented. The Chair observes, however, that the applicant is currently employed on a casual or part-time basis by a private company and that he has provided no indication of the income he receives or could receive in this capacity if he were to cease to be employed by the Organisation. In the absence of sufficient evidence to assess his financial situation, nor has the applicant shown that the loss of income from the Council of Europe would force him to sell his home or prevent him from finding alternative accommodation.

30. The Chair therefore considers that the damage in question is not such as to be incapable of being redressed through financial compensation, the applicant having provided no evidence to the contrary.

31. Secondly, as to the applicant's argument regarding the conduct of the investigation into his formal complaint of harassment, the Chair notes that the applicant's allegations of harassment, if proven, are such as to call into question the objective and impartial nature of the assessments of his performance during his probationary period, as well as the decision to terminate his contract based on those assessments. The Chair notes, however, that while he has the power to order a stay of execution of the contested decision to terminate the applicant's employment, he does not have the power, under the regulations in force, to impose other protective measures, such as, for example, suspending the administrative complaint procedure pending the outcome of the investigation into the applicant's harassment complaint.

32. That said, it is undeniable that, even after his employment with the Organisation has ended, the applicant will retain his full right to have his complaint effectively examined within the framework of the formal procedure initiated. This right requires the Secretary General to take all necessary measures arising from the conclusions of the investigation, including, where appropriate, redress, should it be established that the applicant has been the victim of harassment (ATCE, Chair's Order of 30 December 2024, in the case of [C. V. v. Secretary](#)

[General of the Council of Europe](#), §§ 35 and 36). If the Secretary General were to make his decision on the administrative complaint before receiving the investigation report on the harassment complaint, it would open to him to correct that decision if the applicant's harassment complaint were to be upheld (ATCE, [judgment of 25 March 2025](#), Appeals Nos. 761/2024 and 762/2024, L.D. (I and II) v. Secretary General of the Council of Europe, § 123).

33. In the light of the foregoing, the Chair concludes that the applicant's arguments concerning the conduct of the investigation into his harassment complaint do not point to any irreparable damage.

34. In conclusion, it is not apparent that the implementation of the Deputy Secretary General's contested decision would cause the applicant to suffer damage so serious and irreparable that it could not be redressed even if the said decision were subsequently amended or annulled.

35. As the existence of serious and irreparable damage has not been established, the applicant's request for a stay of execution must be dismissed.

36. This conclusion is without prejudice to the Tribunal's decision on the merits of the case or to the applicant's ability to refer during the contentious proceedings to any harm he might suffer as a result of execution of the contested decision and, if successful, to seek compensation for such harm.

For these reasons,

Ruling in accordance with Article 14.8 of the Staff Regulations, Article 12 of the Statute of the Administrative Tribunal and Rule 20 of the Rules of Procedure of the Administrative Tribunal,

THE CHAIR OF THE ADMINISTRATIVE TRIBUNAL,

dismisses the request for a stay of execution.

Delivered on 31 March 2025, the French text being authentic.

The Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

Christina Olsen

Paul Lemmens