

In the case of B. S.

v.

Governor of the Council of Europe Development Bank

STAY OF EXECUTION ORDER

14 May 2024

FACTS

1. The appellant, B. S., was employed by the Council of Europe Development Bank as an End User Systems Engineer from 2015 to 2024 on several fixed-term contracts. By letter of 8 September 2023, the appellant was informed that his employment at the Bank would cease when his latest fixed-term contract ended on 30 April 2024.
2. On 9 October 2023, the appellant lodged an administrative complaint concerning the decision to notify him that his contract was to be terminated. On 7 November 2023, the Governor dismissed the complaint. On 8 January 2024, the appellant lodged an appeal with the Administrative Tribunal in accordance with the provisions of Article 14.3 and 14.4 of the Bank's Staff Regulations. The appeal was registered under No. 743/2024.
3. On 29 April 2024, the appellant applied to the Chair of the Administrative Tribunal for a stay of execution of this decision, in accordance with Article 14.8 of the Bank's Staff Regulations.
4. On 6 May 2024, the Governor submitted his observations concerning the application for a stay of execution.
5. On 10 May 2024, the appellant submitted observations in reply.

THE RELEVANT LAW

6. In accordance with Article 14.3 of the Bank's Staff Regulations, an administrative complaint may be lodged with the Governor by staff members who have a direct and existing interest in so doing and who consider that an administrative decision is prejudicial to their interest and conflicts with their terms and conditions of appointment or with any pertinent provisions of the Staff Regulations, Rules, Instructions or Policies of the Bank.
7. Article 14.4 of the Bank's Staff Regulations states that the Governor's decision on the complaint may be appealed to the Administrative Tribunal of the Council of Europe in accordance with the provisions of the Tribunal's Statute. While an appeal is pending, the Governor is to refrain from taking any further measure in respect of the staff member which, if the appeal was upheld, would make the redress sought impossible.
8. Under Article 14.8 of the Bank's Staff Regulations, filing a complaint with the Governor or an appeal 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 to the staff member.
9. 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, giving a reasoned decision, which may be subject to certain conditions. The decision must not rule on the merits of the appeal or the complaint. Decisions on a stay of execution are not subject to appeal.

I. THE PARTIES' SUBMISSIONS

10. In his request, the appellant asks the Chair to stay the execution of the decision to notify him that his contract was to be terminated. In support of his request, he states that, if his appeal is upheld, the remedy for the damage he has suffered should be to allow him to continue working for the Bank or to offer him compensation. He goes on to argue that it would be impossible to keep him in post if that post were to be filled before the Tribunal gave its decision, a vacancy having been published by the Bank for that purpose.

11. The appellant adds that reinstatement would be further complicated by the fact that he has a special residence permit issued on the basis of the post he held at the Bank. As this residence permit would have to be surrendered when his last fixed-term contract expired, he would have to leave France. The same would apply to members of his family, whose continued presence in France depends on his employment with the Bank. He points out in this connection that his daughters are enrolled in a French school for the 2023-2024 academic year, and that his wife has obtained permission to work in France in consideration of his employment with the Bank.

12. According to the appellant, it follows from all of the foregoing that there is an urgent need to apply for a stay of execution and that there is serious and irreparable damage.

13. The Governor, for his part, considers that the conditions for granting a stay, relating to the urgency of the situation and the serious and irreparable nature of the damage, have not been met in the instant case.

14. The Governor observes that if the appellant considered that the execution of the contested decision needed to be stayed urgently, he should have submitted the said request at the time of his administrative complaint, or else when the vacancy notice for his post was published, in October 2023. The Governor also notes that the appellant cannot, by means of a stay of execution procedure, obtain a new contract, thereby modifying the legal situation arising from the expiry of his contract, since the very purpose of the stay of execution procedure is to preserve the status quo, and not to change it. On this point, the Governor further observes that an application for a stay of execution can be granted only where the contested decision has not yet been executed, which at the time the Governor submitted his observations (6 May 2024) was not the case here.

15. With regard to the serious and irreparable damage requirement, the Governor notes that the termination of the appellant's contract, and the consequences thereof, of which he was fully aware, cannot in themselves constitute serious and irreparable damage, and so justify the granting of a stay. The Governor goes on to recount the exchanges that took place between the appellant and the Bank after he was notified that his contract was to be terminated, which, the Governor submits, show that the damage the appellant is claiming in connection with his departure from France is in fact a matter of personal choice.

16. In addition, the Governor refutes the irreparable nature of the damage claimed, noting that if the Tribunal were to rule in favour of the appellant, any damage suffered could be remedied through payment of compensation.

17. Consequently, the Governor concludes that the requirements for granting an application for a stay of execution have not been met.

18. In his observations in reply, the appellant submits first that the requirement relating to the existence of a contested administrative decision which has not yet been executed must be assessed not - as the Governor claims - on the day on which the Chair makes their ruling, but rather on the day on which the application was lodged. Having submitted his application for a stay on 29 April 2024 before the decision to notify him of the termination of his contract took effect, the appellant considers that his application satisfies this requirement. The appellant further considers that it is inappropriate for the Governor to claim that it is now impossible for him to stay the execution of the contested decision, when he should have stayed its execution before the contract ended.

19. As to urgency, the appellant considers that this requirement is to be assessed in the light of the irreversible consequences for him in the event that the Tribunal should uphold his challenge on the merits and full redress for the damage he has suffered should prove impossible, and that no blame can attach to him for having been aware of the Bank's intention to terminate his appointment for several months. The appellant further points out that there is no time limit for lodging an application for a stay. In his view, the urgency of his situation is evident from the fact that it was not until 24 April 2024 - the date of the letter from the Registry notifying him of the date of the hearing in his appeal - that he learned that no Tribunal decision would be taken on the merits before his last contract expired, and that he would no longer be able to be reinstated in his post if that post were filled before the judgment was delivered.

20. As regards the requirement relating to the existence of serious and irreparable damage, the appellant counters that the damage is not linked to purely financial considerations, but to the fact that it would be impossible for him to be kept in post in the event that his appeal should be declared well founded, and that the post should no longer be vacant. In the appellant's view, the Bank's argument that the damage suffered as a result of an administrative decision being annulled can necessarily be remedied through the award of financial compensation has the effect of rendering the stay of execution procedure meaningless.

21. Consequently, the appellant stands by his request for a stay of execution of the decision to terminate his contractual employment at the end of his last fixed-term contract pending delivery of the judgment on the merits.

II. THE CHAIR'S ASSESSMENT

22. Article 14.8 of the Bank's Staff Regulations states that a request to suspend the implementation of an administrative decision may be made to the Administrative Tribunal in cases of particular urgency where the implementation of the decision 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.

23. As regards the requirement of particular urgency, the Chair notes that the applicable texts do not make the submission of an application for a stay of execution subject to specific time limits, merely stating that such an application is possible following the lodging of a complaint and an appeal. Nevertheless, the relevant case law has clarified the principle whereby if an appellant seeks the Tribunal's assistance on an urgent basis, they must come to the Tribunal at the first available opportunity, taking the particular circumstances of their case into account (United Nations Dispute Tribunal (UNDT), Judgment No. UNDT/2011/212 of 15 December 2011, *Evangelista v. Secretary-General of the United Nations*). Accordingly, the onus is on the

appellant to demonstrate the particular urgency of the case and the timeliness of their actions. The requirement of particular urgency will not be satisfied if the urgency was caused by the appellant (UNDT, Judgment No. UNDT/2011/126 of 12 July 2011, Villamorán v. Secretary-General of the United Nations; Judgment No. UNDT/2011/133 of 22 July 2011, Dougherty v. Secretary-General of the United Nations; judgment UNDT/2011/206 of 1 December 2011, Jitsamruay v. Secretary-General of the United Nations).

24. The Chair notes that the appellant was notified of the contested decision on 8 September 2023, the date on which he was informed that no request to convert his fixed-term contract into an indefinite-term contract had been made and that his contract would therefore expire on 30 April 2024. The appellant first lodged his administrative complaint against that decision on 9 October 2023 and then, when his complaint was dismissed, he lodged his appeal with the Tribunal on 8 January 2024. He offers no explanation, however, that might justify the fact that he waited until the day before his contract was due to expire, i.e. 29 April 2024, to apply for a stay.

25. The appellant's attempt to turn the length of the Tribunal proceedings to his advantage, claiming that it was not until 24 April 2024, when he was notified of the date of the hearing in his appeal, that he could be certain that no Tribunal decision on the merits of his appeal would be taken before his last contract expired, is futile. The Chair fails to see how the appellant could reasonably expect such a decision to be reached in the less-than-four-month period between the lodging of his appeal in January 2024 and the termination of his contract.

26. In these circumstances, the Chair considers that, in the instant case, the urgency was caused by the appellant and concludes, accordingly, that the appellant has not satisfied the requirement of particular urgency.

27. As the requirement of urgency is not satisfied, it is not necessary to consider whether the present application satisfies the requirement of serious and irreparable damage, as these two conditions are cumulative.

28. The Chair's conclusion in these proceedings is without prejudice to the Tribunal's decision on the merits of the case or to the appellant'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 redress in the event of such harm.

For these reasons,

Ruling in accordance with Article 14.8 of the Staff Regulations of the Bank, 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,

rejects the application for a stay of execution.

Done and ordered in Vienna (Austria), on 14 May 2024, the French text being authentic.

The Registrar of the
Administrative Tribunal

Christina Olsen

The Chair of the
Administrative Tribunal

Paul Lemmens