

# CONSEIL DE L'EUROPE

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# COUNCIL OF EUROPE

## TRIBUNAL ADMINISTRATIF

## ADMINISTRATIVE TRIBUNAL

**CHAIR'S ORDER OF 10 April 2012**

**in the case of Ivana d' ALESSANDRO v. Secretary General**

### **THE FACTS**

1. The appellant, Ms Ivana d'Alessandro, is a permanent member of staff on a fixed-term contract who began work for the Organisation on 1 September 2004. When she lodged this application for a stay of execution, she was Secretary to the Bern Convention (grade A2) in the Directorate of Democratic Governance, Culture and Diversity and had been since 1 May 2010. She had been assigned to a position (no 2705) funded out of the budget for the post of Secretary to the Bern Convention (post no 466), after the previous incumbent had been transferred to a position.
2. On 16 March 2012, she lodged an appeal (no 526/2009) with the Tribunal challenging the Secretary General's decision of 19 January 2012 not to replace her fixed-term contract with an indefinite-term contract.
3. On 19 March 2012, the appellant told her line manager (the acting Director General for Democracy) that she had done this.
4. Her line manager then told the appellant that she had just appointed someone to the post in question but gave no further details.
5. In an email sent on 23 March 2012, the hard copy original of which was sent a first time on 27 March 2012 and received on 3 April 2012, and sent a second time on 29 March 2012 and received on 30 March 2012, the appellant requested the Chair of the Administrative Tribunal to grant a stay of execution of her line manager's decision to appoint someone else to the post in question (Article 59, paragraph 9 of the Staff Regulations). She asked him to order a stay of the Administration's decision to appoint a staff member to the post in question (post no 466). According to the details provided by the Secretary General, this appointment was made with effect from 1 April 2012.
6. On 30 March 2012, the Secretary General forwarded his observations on the request for a stay of execution, which he had received in electronic form on 26 March 2012.
7. On 2 April 2012, the appellant submitted her comments in reply.

## THE LAW

8. Under Article 59, paragraph 9 of the Staff Regulations a complainant may apply for a stay of execution of an administrative act “if its execution is likely to cause him or her grave prejudice difficult to redress”.

Under this same provision 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.”

9. Where an appeal has already been lodged with the Tribunal, as is the case here, Article 60, paragraph 5 of the Staff Regulations says that “While an appeal is pending, the Secretary General shall avoid taking any further measure in respect of the appellant which, in the event of the appeal being upheld, would render unfeasible the redress sought”.

10. She asks the Tribunal to order a stay of execution of the decision to appoint another staff member to the post in question (post no 466). According to the Secretary General, that decision “was made on 19 March 2012”. The appellant for her part says that she was told of this appointment on 21 March 2012 during her interview with her line manager who said she “had just, that day, appointed another staff member to the post [...] but gave no further details”.

11. The appellant believes that this decision was taken purely to thwart her in her appeal.

12. After considering the facts and referring to the aforementioned Article 60, paragraph 5, the appellant claims that the appointment of a staff member to post no 466 deprives her of any chance of securing an indefinite-term contract for this same post.

13. The appellant concludes, for these reasons and in the interests of the sound administration of justice, that execution of the decision to appoint another staff member to post no 466 should be stayed until the Tribunal has ruled on the merits of the dispute.

14. The Secretary General comments from the outset that the appellant cannot justifiably claim any “grave prejudice difficult to redress”, under Article 59 of the Staff Regulations.

15. He says, firstly, that the appellant cannot justifiably claim to have a direct interest in challenging the decision to appoint a staff member to post no 466, and that her request is thus inadmissible on this count. The Secretary General adds that the appellant has no direct interest because the impugned measure is an administrative act which does not concern her, namely the appointment of a staff member to a post that was not occupied and which, *a fortiori*, she did not hold.

The Secretary General then outlines a number of arguments more closely concerned with the merits of the case.

16. Secondly, the Secretary General also argues that the appellant’s situation lacks any of the elements which would constitute “grave prejudice difficult to redress” and which had to be present in order for a stay of execution to be granted. He adds that it will be his job, if necessary, to act on the consequences of the annulment of a decision and to find the best way of executing a Tribunal judgment, with due regard for the imperatives of the situation. The decision to

appoint a staff member to post no 466 is not something that would prevent this in the context of the present case.

17. In these circumstances and in the light of these facts, the Secretary General asks the Chair to reject the appellant's request for a stay of execution as inadmissible and/or unfounded.

18. In her observations in reply the appellant claims that she does have a direct interest in acting against this decision.

19. After also submitting arguments, more closely concerned with the merits of the case, the appellant vigorously claims that the hasty appointment which she is seeking to have stayed was taken purely in order to thwart her appeal. Ultimately, the Secretary General was unable, she says, to demonstrate either the urgent need to fill post no 466 with the staff member appointed or that person's qualifications for the post, particularly as the appellant had just been offered a new fixed-term contract in respect of the same duties, namely those of Secretary to the Bern Convention (fixed-term contract from 1 April 2012 to 31 December 2012).

20. The appellant believes that for the Chair to reach a fully informed decision, the Secretary General should divulge the impugned appointment decision in respect of post no 466.

21. Regarding the probability of grave prejudice difficult to redress, the appellant quotes Article 60, paragraph 5 of the Staff Regulations which says that while an appeal is pending, the Administration must avoid taking any further measure in respect of the appellant which, in the event of the appeal being upheld, would render unfeasible the redress sought.

22. To the appellant it is undeniable that the appointment of a staff member to post no 466 deprives her of any chance of securing an indefinite-term contract for that post. The Secretary General could not validly execute the forthcoming judgment if the Tribunal upheld the appellant's demands.

23. Consequently, if the impugned decision is not stayed, the appellant will suffer prejudice which will be difficult if not impossible to redress.

24. For these reasons and in the interests of the sound administration of justice, the appellant repeats her request that execution of the decision to appoint a staff member to post no 466 be stayed until the Tribunal has ruled on the merits of the dispute.

25. The Chair notes straight away that under the terms of Rule 21, paragraph 2 of the Tribunal's Rules of Procedure concerning stays of execution, "The Chairman shall rule within 15 days of the application, in accordance with Article 8 of the Statute. The decision shall be communicated in writing to the person concerned within 15 days."

26. In view of the circumstances of the lodging of the application for a stay (an electronic copy was sent by email, and a first hard copy was sent by post which took a very long time to reach the registry, arriving only after a second hard copy had been received), the Chair stipulates that the 15-day period allowed for a ruling must run in this case from 26 March 2012 (the date when the request for a stay was sent to the Secretary General), because requests for a stay are usually sent to the Secretary General on the same day the original request is received by the registry. In this case, a copy was first sent by email and it would have been reasonable to expect the hard copy original to arrive at the registry by 26 March 2012.

27. As already stated on numerous previous occasions, the Chair points out that there can be no question at this stage of analysing arguments about the admissibility and merits of the allegations which the appellant makes in her appeal, since the present proceedings – concerned only with the adoption of emergency measures – are not the proper place for discussing and *a fortiori* examining the matter. Thus, there can be no question of declaring the present request inadmissible due to the lack of a direct interest, as the Secretary General is asking, because knowledge of its content is not necessary for these proceedings.

28. And the Chair, having acquainted himself with the procedural documents, does not deem it necessary to ask the Secretary General to provide the text of the decision appointing the staff member to post no 466.

29. The Chair emphasises that it is for the party submitting an application for a stay to prove that he or she is likely to suffer prejudice difficult to redress if the stay is not granted.

30. The Chair finds that the arguments set forth by the appellant do not prove that she would suffer “grave prejudice difficult to redress” (Article 59, paragraph 9 of the Staff Regulations) if there were no stay of the decision to appoint another staff member to post no 466. Indeed, the appellant merely claims that the appointment of this other staff member deprives her of any chance of securing an indefinite-term contract for the post in question. She contends that the Secretary General could not validly execute the forthcoming judgment if the Tribunal upheld her claims.

31. Not to mention the fact that, in her appeal, in which, moreover, she challenges the decision not to convert her fixed-term contract into an indefinite-term contract, and not the (later) decision to make the impugned appointment, the appellant’s primary concern is whether or not her contract can be converted into an indefinite-term contract, even if she is claiming the right to return to the same post.

32. Subject to the provisions of Article 60, paragraph 7 of the Staff Regulations, the Chair notes that the Secretary General has recognised that if the appellant wins her case, the decision to appoint a staff member to post no 466 is unlikely to prevent the judgment from being executed. As the Secretary General acknowledges, it will be his job to “act on the consequences of the annulment of a decision and to find the best way of executing a Tribunal judgment, with due regard for the imperatives of the situation.” Judgments are executed under the scrutiny of the Tribunal.

33. Since the appellant – who currently has a fixed-term contract running till 31 December 2012 – has not raised the matter of her contract possibly ending before the Tribunal has given judgment, the Chair sees no need to examine this matter *ex officio*.

34. The Chair points out that the exceptional power conferred on him under Article 59, paragraph 9 of the Staff Regulations calls for some self-restraint in its exercise (see Appeals Board of the Council of Europe, Chair’s Order of 31 July 1990, paragraph 12, in *Zaegel v. Secretary General*; also ATCE, Chair’s Order of 1 December 1998, paragraph 26, in *Schmitt v. Secretary General*, and Chair’s Order of 14 August 2002, paragraph 16). Since the purpose of the procedure in question is to ensure the full effectiveness of administrative proceedings, any application for a stay of execution must show that the measure applied for is necessary in order to prevent grave prejudice which is difficult to redress. If it were, otherwise, that would

compromise not only the smooth functioning of the Organisation's services but also the management of major areas of the Organisation's operations.

For these reasons,

By way of a provisional ruling in accordance with Article 59, paragraph 9 of the Staff Regulations, Article 8 of the Statute of the Administrative Tribunal, and Rule 21 of the Rules of Procedure,

In view of the urgency of the matter,

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

Hereby decide as follows:

- Ms d'Alessandro's application for a stay of execution is dismissed.

Done and ordered at Kifissia (Greece), 10 April 2012.

The Registrar of the  
Administrative Tribunal

The Chair of the  
Administrative Tribunal

S. SANSOTTA

C. ROZAKIS