

Request for a stay of execution No. 4/2024

L. D. (II)

v.

**Secretary General
of the Council of Europe**

STAY OF EXECUTION ORDER

10 September 2024

THE FACTS

1. The applicant, L. D., was recruited on 1 May 2023 on a one-year fixed-term contract (“CDD”) as a B3 assistant lawyer in the Registry of the European Court of Human Rights (hereinafter “the Registry of the Court”). The job formed part of the Junior Professional Programme, which is limited to a four-year period.
2. Under Article 4120.1 of the Staff Rule on entry into service, the applicant could be appointed only after completing a one-year probationary period.
3. On 29 April 2024 the Deputy Secretary General decided not to confirm the applicant in her employment following the probationary period. The applicant was informed of this on 30 April 2024, first orally, by the Head of the Recruitment and Employment Management Division, then in writing, through a memorandum by the Directorate of Human Resources. The memorandum stated that the applicant’s CDD would come to an end on its expiry, namely on 30 April 2024, on the ground that her probationary period had not been successful.
4. On 6 May 2024 the applicant lodged an administrative complaint against the Deputy Secretary General’s decision to terminate her employment following her probationary period.
5. On 7 May 2024 the applicant filed a request with the Tribunal for a stay of execution registered under No. 3/2024 (hereinafter “first request for a stay of execution”) in respect 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, she asked for the decision to terminate her employment at the end of her CDD, on 30 April 2024, to be suspended. The request was dismissed by order of the Chair of the Administrative Tribunal of 22 May 2024.
6. Following the dismissal of her administrative complaint of 6 May 2024 by decision of the Secretary General of 5 June 2024, the applicant lodged an appeal on 6 August 2024, pursuant to Article 14.6 of the Staff Regulations. On 7 August 2024, the appeal was registered under No. 761/2024.
7. On 29 August 2024 the applicant filed the present request for a stay of execution in which she seeks the suspension of the implementation of the decision to terminate her employment with the Organisation, and the suspension of the entry into service of the staff member who has allegedly been recruited to replace her in the Registry of the Court.
8. On 4 September 2024 the Secretary General submitted her observations on the request for a stay of execution.

THE RELEVANT LAW

9. Under Article 14.8 of the Staff Regulations, filing a complaint with the Secretary General or lodging an appeal with the Tribunal 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.

10. Article 14.5 of the Staff Regulations states that while an appeal is pending the Secretary General is to refrain from taking any further measure in respect of the staff member which, if the appeal were upheld, would make the redress sought impossible.

11. 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

12. The applicant submits that the fact that she is being replaced in the Registry of the Court by Ms S. A. justifies filing the present request by which she seeks, first, a stay of execution of the decision terminating her employment and, second, suspension of Ms S. A.'s entry into service.

13. The applicant points out that her first request of 7 May 2024 for a stay of execution of the decision terminating her employment with the Organisation was dismissed in view of the information provided by the Secretary General to the effect that it was not planned to fill her former post in the forthcoming months (see paragraphs 38 and 39 of the [order of the Chair of the Administrative Tribunal](#) of 22 May 2024). Since, contrary to this information, a recruitment procedure was implemented to fill this post, the applicant considers that this new circumstance justifies finding her request admissible.

14. In support of her request, the applicant points out that, if she were to win her case before the Tribunal, but in the meantime the Secretary General had filled her post, the judgment in her favour could not be enforced as reinstating her in the Organisation would no longer be possible. She also points to the risk that there might be no alternative posts available which could be offered to her. The applicant underlines the fact that compensation could not be considered normal enforcement of a Tribunal judgment setting aside the contested decision.

15. In support of her request, the applicant also relies on the obligation imposed on the Secretary General by Article 14.5 of the Staff Regulations (paragraph 10) to refrain from taking any further measure in respect of the appellant which, if the appeal were upheld, would make the redress sought impossible. According to the applicant, in stating, in the proceedings relating to her first request for a stay of execution, that it was not planned to replace her in the forthcoming months, the Secretary General gave a commitment to that effect and was bound to honour that commitment by virtue of her duty to act in good faith in the interests of the Organisation.

16. In these circumstances, the applicant considers that her request is not only admissible but also justified by the urgency of the matter and by the irreparable damage which she would suffer if the staff member who is to replace her entered into service.

17. The Secretary General begins by noting that the present request for a stay of execution is no more well founded today than it was on 22 May last, the date of the order by which the Chair of the Tribunal dismissed the applicant's first request for a stay of execution.

18. Quoting passages from that order, the Secretary General submits that the Chair did not base his decision to dismiss the applicant's first request for a stay on the information that it was

not planned to fill her former post in the forthcoming months. Instead, the decision was based on the fact that there would be no irreparable damage, even if the applicant could not be reinstated in the post in question. The Secretary General concludes from this that the present request for a stay of execution has already been decided, without any new factor having arisen to warrant calling into question the final nature of that decision. Any damage that the applicant might suffer as a result of a new staff member being recruited to her former post could, in the opinion of the Secretary General, be made good through the award of financial compensation.

19. The Secretary General goes on to reiterate that there are no plans to fill the post previously held by the applicant in the forthcoming months, as she stated in response to the first request for a stay of execution. The Secretary General observes that, contrary to the applicant's assertions, Ms S. A. was not recruited as a replacement for the applicant. Rather she was recruited as a replacement for Mr K. K., who also held a grade B3 assistant lawyer post in the Registry of the Court.

20. In these circumstances, the Secretary General considers that, as in her first request for a stay of execution, the applicant has failed, in this second request, to provide any concrete and precise information, supported by evidence, that would demonstrate the serious and irreparable nature of the damage she is likely to suffer and, consequently, the necessity of granting the requested stay. She concludes that the applicant's present request for a stay of execution is manifestly inadmissible or, in the alternative, unfounded.

II. THE CHAIR'S ASSESSMENT

21. The Chair begins by noting that the present request seeks, first, the suspension of the decision to terminate the applicant's appointment and, second, the suspension of Ms S. A.'s entry into service in the Registry of the Court.

A. The request for a stay of execution of the decision to terminate the applicant's employment

22. With regard to the request to suspend the decision to terminate the applicant's employment, the Chair observes that that decision has already been addressed, in the [order](#) which he made on 22 May 2024.

23. This order noted, first, that the applicant's argument that she could not be reinstated in her post if the Secretary General upheld her administrative complaint or if the Tribunal found in her favour on the merits was inoperative since, according to the information provided by the Secretary General, it was "not planned to fill this post in the forthcoming months" (paragraphs 38-39 of the order).

24. In addition, the order concluded that "in any case", the harm which the applicant claimed she would suffer as a result of not being able to be reinstated in her post could not be described as serious and irreparable "given that if this were to occur, financial compensation could form adequate reparation for the damage caused" (see paragraph 39 of the order). The applicant's first request for a stay of execution was therefore dismissed, as it failed to meet one of the requirements for granting the stay sought.

25. The Chair notes that the present request for a stay does not provide any information that would be likely to alter the assessment of the applicant's situation that he made in connection

with her first request for a stay. In the present proceedings, the applicant alleges the same damage as that underlying her first request, in particular the impossibility of being reinstated in her original post in the event that she should be replaced. The Chair has already ruled, however, in his order of 22 May 2024, that such damage could not be regarded as serious and irreparable (see paragraph 24).

26. Furthermore, in the course of the present proceedings, the Secretary General maintained that it was still not planned to replace the applicant by filling the post she had held in the Registry of the Court (see paragraph 19) so, from that point of view as well, the present request does not introduce anything new.

27. Consequently, the Chair can only find, as he did in his order of 22 May 2024, that the serious and irreparable damage criterion has not been met in the instant case. The ground on which the first request for a stay of execution was denied still applies here, therefore, and is sufficient to conclude that the present request for a stay of execution is unfounded, without there being any need to rule on the question of *res judicata* (see paragraph 18).

28. As a subsidiary consideration, the Chair further notes that there is reason to doubt the urgency of the present request for a stay of execution, since it was made several months after the decision to terminate the applicant's employment took effect, on 30 April 2024. Admittedly, the applicant now claims that the request to suspend the decision to terminate her employment is urgent in view of the second, more recent decision to recruit Ms S. A., for which she is also seeking a stay. However, in the light of the interest at issue here, namely the applicant's interest in being able to return to her former post, this second decision is purely incidental to the earlier decision not to confirm her in her employment. In any event, since the criteria of particular urgency and serious and irreparable damage are cumulative, the absence of damage, as noted in the preceding paragraph, is in itself sufficient reason to refuse the requested stay.

B. The request to suspend the decision to recruit Ms S. A.

29. As a preliminary point, the President notes that, in the present proceedings, the applicant also seeks the suspension of "the entry into service of Ms S. A." in the Registry of the Court, without specifying which decision is at issue, and, above all, without indicating, or offering proof, that she has contested the decision. Yet the applicable provisions, in particular Article 14.8 of the Staff Regulations, make it very clear that the possibility of applying to the Administrative Tribunal for a stay of execution applies only in respect of an administrative decision that has been contested using the remedies available.

30. Irrespective of the fact that this finding alone would be sufficient to justify refusing to grant the requested stay, it should also be noted that the decision in question appears to have no connection whatsoever with the decision not to confirm the applicant in her post and, consequently, no connection with the damage of which she complains. It is clear from the Secretary General's statements added to the case file in the course of the proceedings (see paragraph 19) that Ms S. A. was recruited to replace Mr K. K., who likewise held a grade B3 assistant lawyer post in the Registry of the Court until 30 April 2024 and who was recruited as an A-grade lawyer on 1 May 2023. It is not a matter, therefore, of filling the post formerly held by the applicant but of filling a different vacant B3 assistant lawyer post in the Registry of the Court.

31. The applicant does not appear, then, to have demonstrated any interest in requesting a stay of execution of the decision to employ Ms S. A. That finding, admittedly provisional, is sufficient to dismiss the present request, without it being necessary to examine it in the light of the criteria of particular urgency and serious and irreparable damage.

III. CONCLUSION

32. In the light of the foregoing, the present request for a stay of execution is dismissed.

33. The Chair's conclusion in these proceedings 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 she might suffer as a result of execution of the contested decisions 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.

Done and ordered in Leuven (Belgium), on 10 September 2024, the French text being authentic.

The Registrar of the
Administrative Tribunal

Christina Olsen

The Chair of the
Administrative Tribunal

Paul Lemmens