

**Request for a stay of execution  
No. 3/2024**

**L. D.**

**v.**

**Secretary General  
of the Council of Europe**

**\*\*\***

**STAY OF EXECUTION ORDER**

**22 May 2024**

## THE FACTS

1. The complainant, 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. 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 complainant could be appointed only after completing a one-year probationary period. Two appraisal reports had been drawn up in this respect, one covering the period from 1 May to 31 August 2023, the other that from 1 September to 31 December 2023, in accordance with Article 4130 of the Staff Rule on entry into service. Both reports highlighted shortcomings in the complainant's professional skills and conduct.
3. On 29 January 2024, the complainant was placed on sick leave, which was subsequently extended up to 1 April 2024.
4. On 19 February 2024, the complainant lodged a formal complaint of harassment with the Directorate of Human Resources (DHR) against her line manager under Article 7.4 of the Policy on Respect and Dignity in the Council of Europe.
5. On 22 March 2024, the complainant received an e-mail from DHR proposing that she should be temporarily assigned to another entity of the Organisation. She agreed to this proposal and returned to work on 25 March 2024, cutting short her sick leave and taking up her new assignment.
6. On 15 April 2024, the Director General of Administration decided to place the complainant on secondment with the other entity from 25 March to 30 April 2024. His decision specified that her salary would be covered by the Registry of the European Court of Human Rights for the duration of the secondment. She was notified of this decision the same day.
7. On 29 April 2024, the Deputy Secretary General decided not to confirm the complainant in her employment following the probationary period. The complainant 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 DHR memorandum. The memorandum stated that the complainant'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. The memorandum specified that she would be paid compensation in lieu of notice for the appropriate period beginning on the date of the memorandum.
8. On 6 May 2024, the complainant filed an administrative complaint against the Deputy Secretary General's decision to terminate her employment following her probationary period.
9. On 7 May 2024, the complainant filed a request to 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 she asked for the decision to terminate her employment at the end of her probationary period, on 30 April 2024, to be suspended. This request is the subject of the current order.
10. On 15 May 2024, the Secretary General submitted her observations on the request for a stay of execution.

11. On 16 May 2024, the complainant lodged a second administrative complaint against the aforementioned decision of the Director General of Administration of 15 April 2024. The complainant asserted that secondment was not admissible in her case.

12. On 21 May 2024, the complainant submitted observations in reply.

## **THE RELEVANT LAW**

13. 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, an administrative complaint may be lodged by staff members contesting an administrative decision adversely affecting them taken personally by the Deputy Secretary General.

14. Under Article 14.8 of the Staff Regulations, complaints do 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.

15. 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**

16. In her request, the complainant asks the Chair to stay the execution of the decision to terminate her employment with the Council of Europe. In support of her request the complainant invokes a single ground based on the need for her to be retained in service either through reinstatement in her temporary assignment or through the extension of her probationary period.

17. In her request, the complainant argues that if she is not retained in service, a problem could arise if her complaint or her application to the Tribunal was upheld but in the meantime another person had filled her post. In this connection, the complainant refers to the impact of the contested decision on the proper functioning of the entity to which she was temporarily assigned, arguing that, in view of its workload, this entity might replace her without waiting for the outcome of the administrative complaint or, if there was one, the Tribunal's decision. She adds that if she were to win the case, compensation would not amount to sufficient satisfaction.

18. In the light of these circumstances, the complainant considers that her request is not only admissible but also justified by the serious and irreparable damage which she would suffer if the contested decision were to be executed. She emphasises that the Organisation has not given her any assurance that such damage will not ensue.

19. The Secretary General begins by asserting that because the complainant's contract expired on 30 April 2024, her request for a stay of execution of the decision to terminate her

employment submitted on 7 May 2024 is impossible to grant as such a request can only be satisfied if the contested decision has not yet been implemented, which is not the case here.

20. The Secretary General also points out that the complainant's request for a stay is not intended to preserve the status quo but to change it, and this would run counter to the very purpose of the stay of execution procedure, which consists in adopting emergency measures to preserve the current state of affairs. Furthermore, in the Secretary General's view, granting the complainant's request would upset the proper balance which must be maintained between the parties and their respective interests. She points out that since the beginning of her contract, the complainant had been aware that her employment would end on its expiry unless it was renewed, and that any such renewal depended on the success of her probationary period. She also emphasises that the complainant was kept informed throughout her probationary period of the shortcomings of which she was accused and the need to make more effort to reach the required level.

21. As to the complainant's submission that she may suffer serious and irreparable damage because the post that she occupies as a result of her temporary assignment may have been filled during the time needed to complete the dispute proceedings, the Secretary General notes that the complainant's assignment was not a transfer to a vacant job as no such job existed in the entity to which she was assigned. Instead, this was a secondment, financed by the entity from which the complainant came, by means of the job she occupied there – an *ad hoc* solution designed to protect the complainant following her allegation of harassment. As to the possibility of the job she occupied in her entity of origin being filled in the future, the Secretary General states that it is not planned to do so in the forthcoming months.

22. The Secretary General points out that in any event, if the Tribunal were to find in favour of the complainant, any harm she suffered could be made good by awarding compensation under Article 14.2 of the Statute of the Tribunal.

23. In these circumstances, the Secretary General considers that the execution of the contested decision, which has already taken effect, cannot cause serious and irreparable damage to the complainant and that she has not provided any evidence to the contrary. The Secretary General concludes that the complainant's request for a stay of execution is devoid of purpose or, in the alternative, unfounded.

24. In her submission in reply, the complainant argues firstly that the Secretary General failed to respect her right to one month's notice from 30 April 2024, in breach of Article 4130.3 of the Staff Rule on entry into service. This notice period should enable the staff member concerned, among other things, to exercise her right to appeal against the decision not to renew her fixed-term contract. Failure to give notice should not prevent a staff member from applying an effective remedy enabling him or her to request a stay of execution. Therefore, since the one-month notice period has not lapsed, she considers that the decision to terminate her employment can form the subject of a request for a stay of execution.

25. In reply to the Secretary General's objection that her request is intended to change the status quo (see paragraph 20 above), the complainant argues that her temporary assignment, resulting from DHR's e-mail of 22 March 2024 (see paragraph 5), is still under way, as there has been no decision to end this activity. In this connection, she contests the assertion that her temporary assignment, which began on 25 March 2024, was based on the secondment decision which she was informed of retrospectively on 15 April 2024 (see paragraph 6). She refers the

Tribunal to the administrative complaint which she has lodged against this decision, contesting its lawfulness (see paragraph 11).

26. As to the serious and irreparable damage, the complainant submits that, despite the fact that she was not transferred to a job of B3 assistant lawyer by her temporary assignment, it is impossible to be sure that no job will be filled in future within the Directorate General including the entity to which she was transferred.

27. Consequently, the complainant maintains in full the arguments set out in her application for a stay of execution.

## II. THE CHAIR'S ASSESSMENT

28. 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.

29. Before ascertaining whether in the instant case the complainant's request for a stay of execution meets these conditions, the Tribunal must examine the matter raised by the Secretary General concerning the purpose of the request. Whereas the Secretary General considers that the complainant's request of 7 May 2024 is devoid of purpose because the complainant's contract ended before this, on 30 April 2024, the complainant rejects this argument on the ground that if her right to notice had been respected, her contract would not yet have expired as it would not have come to an end until a month after 30 April 2024.

30. The Chair notes that in the instant case, it is undisputed that the complainant was not informed that her probationary period was considered unsuccessful and therefore that she would not be confirmed in her employment only on 30 April 2024, that is the same day on which her contract came to an end. This is the result of the Administration's choice not to apply the provisions of Article 4130.3 of the Staff Rule on entry into function, under which the decision whether to confirm a staff member in post must be brought to the staff member's notice at the latest one month before the end of their probationary period.

31. Although he is not obliged to rule in the context of these proceedings whether the procedure followed in this case complied or not with the Organisation's rules, the Chair notes that this manner of proceeding had the effect of denying the complainant any tangible possibility of lodging a request for a stay of execution of the decision to terminate her employment before it had already come to an end. The complainant could not reasonably have been expected to lodge her administrative complaint and, on the same occasion, her request for a stay of execution, on the day that she learnt that her employment was being terminated. In these circumstances, and with a view to ensuring respect for the complainant's right of effective access to the available remedies, there is reason to consider that at the point at which she lodged her request for a stay of execution, the latter was not devoid of purpose and that the same applies at the time of the delivery of this order.

32. With regard to the Secretary General's argument that the complainant's request is not intended to preserve the status quo but to change it, and that this would be at odds with the purpose of the stay of execution procedure, which is to adopt emergency measures to preserve

the current state of affairs, the Chair would point out that under Article 14.8 of the Staff Regulations, his power to grant a stay of execution relates to any type of administrative decision that might be contested pursuant to the relevant provisions (see Administrative Tribunal of the Council of Europe (ATCE), Chair's Order of 15 January 2024 in the case of *M.-L. L. v. Secretary General*, paragraph 26). In this connection, the Tribunal has had occasion in the past to grant a stay of execution of a decision to terminate the employment of a staff member (see, for example, a case concerning a decision to terminate a contract following disciplinary dismissal, ATCE, Chair's Order of 27 August 1998, in the case of *Bouillon IV v. Secretary General*, and more recently, in a case concerning the non-renewal of a fixed-term contract, ATCE, Chair's Order of 11 August 2015, in the case of *Skouras v. Secretary General*). The Chair's power to suspend an administrative decision does not confer upon him the right to impose other types of provisional measures or to amend the disputed decision in any way (ATCE, Chair's Order of 21 December 2023, in the case of *P. M. C. v. Secretary General*). Insofar as any stay of execution that may be granted would require the Secretary General to reconsider her decision not to confirm the complainant in her employment, drawing the relevant conclusions from the stay ordered and pending her decision on the administrative complaint and the Tribunal's decision in the event of an appeal without nonetheless imposing any particular decision on her, the stay of execution procedure would not result in any direct change in the status quo, and its purpose, which is to preserve the current state of affairs, would be respected.

33. Having reached this conclusion, it is now necessary to determine whether the complainant's request for a stay of execution meets the requisite conditions of particular urgency and serious and irreparable damage.

34. With regard to the particular urgency requirement, the Chair would begin by noting that the decision to terminate the complainant's employment was communicated to her on 30 April 2024 and took effect the same day. As the disputed decision took immediate effect, the complainant suffered the harmful consequences thereof straight away. Given these circumstances, it can be accepted that the ruling on the request for a stay of execution should be made as soon as possible.

35. The Chair also notes that the complainant lodged her complaint on 6 May 2024 and her request for a stay of execution on 7 May 2024, hardly a week after having been told that it had been decided not to confirm her in her post. The complainant therefore showed due diligence in submitting her request.

36. In these circumstances, the Chair considers that in the instant case, the urgency requirement was met.

37. As to serious and irreparable damage and, in particular, the complainant's argument that it will be difficult to reinstate her in her temporary assignment if she has already been replaced by another staff member, it should be said, as the Secretary General argues and the complainant fails to prove otherwise, that this assignment did not give rise to a transfer to a vacant B3 assistant lawyer job and so there is no risk that any such job will be filled.

38. As to the alleged risk that the complainant's job as assistant lawyer in the Registry of the Court will be filled, the Chair takes note of the information provided by the Secretary General that it is not planned to fill this job in the forthcoming months.

39. Therefore, as things stand, the argument that the complainant might not be reinstated in her job is inoperative in this case. In any case, in view of the nature of the harm which the complainant would suffer if the Secretary General accepted her administrative complaint or the Tribunal found in her favour on the merits and she could not be reinstated in her job, the Chair considers that this would not be an irreparable form of damage given that if this were to occur, financial compensation could form adequate reparation for the damage caused.

40. In the light of the foregoing, the enforcement of the decision is not liable to cause the complainant serious and irreparable damage which even the setting aside of the decision at the end of the main proceedings could not make good.

41. As it has not been established that there is a possibility of serious and irreparable damage, the complainant's request for a stay of execution must be dismissed.

42. The Chair's conclusion in these proceedings is without prejudice to the Tribunal's decision on the merits of the case or to the complainant's ability to refer during the contentious proceedings to any harm she 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 Article 20 of the Rules of Procedure,

**THE CHAIR OF THE ADMINISTRATIVE TRIBUNAL,**

rejects the application for a stay of execution.

Done and ordered in Leuven (Belgium), on 22 May 2024, the French text being authentic.

The Registrar of the  
Administrative Tribunal

Christina Olsen

The Chair of the  
Administrative Tribunal

Paul Lemmens