



**In the case of M. M. N.**

**v.**

**Secretary General  
of the Council of Europe**

**\*\*\***

**STAY OF EXECUTION ORDER**

**27 March 2024**

## **FACTS**

1. The complainant, M. M. N., is a grade-C2 staff member who was recruited on 1 July 2022 on a fixed-term contract (CDD) with a two-year probationary period. The complainant's job is a turnover profile with a maximum five-year duration. Since 25 September 2023 the complainant has been on sick leave.
2. On 10 November 2023, the complainant received an e-mail from his manager informing him that he had asked the Directorate of Human Resources (DHR) to call a meeting of the Appointments Review Committee to look into the possibility of terminating his contract early.
3. In its opinion of 15 December 2023, the Appointments Review Committee invited the complainant's manager to consider initially the possibility of redeploying him to another team, or otherwise to terminate his contract while proposing to offer him assistance in finding another job.
4. As attempts to redeploy the complainant were unsuccessful, the complainant was informed in a memorandum from DHR dated 16 February 2024, that the Deputy Secretary General had decided to terminate his employment at the Council of Europe on 16 April 2024 for unsatisfactory performance.
5. On 12 March 2024, the complainant lodged an administrative complaint in which he contested the decision to terminate his contract during his probationary period.
6. On the same day, the complainant applied to the Chair of the Administrative Tribunal for a stay of execution of this decision, in accordance with Article 14.8 of the Staff Regulations.
7. On 18 March 2024, the Secretary General submitted her observations on the request for a stay of execution.
8. On 22 March 2024, the complainant submitted observations in reply.

## **THE RELEVANT LAW**

9. 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.
10. Under Article 14.8 of the Staff Regulations, complaints do not suspend the contested administrative decision. However, a request for a stay of execution may be filed with the Administrative Tribunal in cases of particular urgency where the implementation of the administrative decision would cause serious and irreparable damage.
11. Under Article 12.1 of the Statute of the Administrative Tribunal, the Secretary General must, unless there are duly justified reasons, suspend the execution of an administrative decision for which a stay of execution has been requested until the Tribunal has ruled on the request.

12. 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 and is not subject to appeal.

13. If a complaint has been lodged, the Tribunal has jurisdiction under Article 14.2 of its Statute, to annul the contested administrative decision and, where appropriate, to order the payment of compensation to the appellant for any resultant damage.

## **I. THE PARTIES' SUBMISSIONS**

14. In his request, the complainant asks the Chair to stay the execution of the decision to terminate his employment with the Council of Europe because this decision is likely to cause him serious and irreparable damage. He describes the decision in question as brutal and unexpected because not only are cases of early termination of employment contracts before the end of a probationary period extremely rare, or so he understands, but also because he believes that a probationary period has never been cut short during a period of sick leave before, "the DHR's sound practice usually being to extend the probationary period to cover the duration of sick leave".

15. With regard to the serious and irreparable nature of the damage, the complainant points out that following this decision, he will be unemployed and incapable of working. He gives an estimate of his household income and his routine expenses as evidence that he will no longer be able to meet his or his family's needs unless he drastically rethinks the way he organises his family life, including selling the family home and moving. He also highlights the difficulty of finding a new home for somebody who does not have a sufficiently stable income to serve as a guarantee. He argues therefore that the loss of remuneration would have an irreversible impact on his and his family's life as it would expose them to the risk of becoming homeless or at least being seriously overindebted.

16. In the complainant's view, the damage is made all the more irreparable by the fact that DHR blocked any other avenue through which he might have been able to keep a job within the Organisation. He refers in this respect to DHR's decision of 2 February 2024 not to select him for a category-C competition whereas he satisfied all the conditions set in the job vacancy. The complainant infers from this that there is no chance of his being reinstated in his post or a similar post at the Council of Europe before suffering the financial consequences of the decision to terminate his employment.

17. The Secretary General for her part considers that the complainant's request for a stay of execution must be rejected in order to preserve the proper balance between the parties and their respective interests. This balance would be destroyed if the complainant succeeded in having the termination of his contract suspended, thereby requiring the Organisation to continue his employment contract although his inadequate performance was undermining the proper functioning of the department concerned.

18. The Secretary General then mentions a series of circumstances which she considers to contradict the complainant's assertion that the contested decision was brutal and unexpected and that it was only after he was given notice of the termination of employment, on 16 February 2024, that he could have anticipated the consequences of the loss of his job.

19. In the Secretary General's view, the complainant fails to establish the existence of serious and irreparable damage against him. Any damage which he actually incurred could be made good through compensation offsetting it, which the Tribunal is entitled to order under Article 14.2 of its Statute. In addition, the complainant's allegations regarding the reduction in his household's income actually shows that the contested decision does not imperil his livelihood and his capacity to meet his and his family's essential needs.

20. With regard to the rejection of the complainant's application for an external competition, the Secretary General states that this circumstance is not such as to cause or accentuate the alleged irreparable damage caused. The Secretary General stresses that the complainant has no entitlement whatsoever to be retained by the Organisation and observes that this decision not to select him for the competition in no respect affects his chances of being selected in the context of another future competition.

## II. THE CHAIR'S ASSESSMENT

21. The Chair wishes to point out from the outset that she is required to rule only on whether, during the processing of the administrative complaint or the examination of any subsequent application to the Tribunal, the execution of the contested administrative decision is liable to cause the complainant "serious and irreparable damage" even if he ultimately wins his case. There can be no question, at this stage, of analysing arguments attaching to the substance of the complainant's administrative complaint as these matters are not for discussion, let alone examination, in the current proceedings, which are concerned only with urgent measures (see Order of the Chair of 3 July 2003, paragraph 10, in the case of *Timmermans v. the Secretary General*). Accordingly, it is not necessary for the Chair to examine the complainant's submissions concerning the merits of the case.

22. Under the settled case law of the Tribunal, the purpose of the urgent procedure is to ensure that the administrative disputes procedure is wholly effective and that the judgment on the substance of the case takes full effect. To achieve this purpose, the measures sought must be urgent in so far as, in order to avoid serious and irreparable damage, they must be adopted and produce their effects before a decision is reached in the main action (ATCE, Order of 23 December 2021 in the case of *D v. Secretary General*, paragraph 33, and case law cited). Were it otherwise, this would impair both the proper running of departments and the management of the Organisation.

23. Furthermore, 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. In that regard, it must be borne in mind that purely financial damage cannot, save in exceptional circumstances, be regarded as being difficult to redress, still less as irreparable, since, as a general rule, it can be the subject of subsequent financial compensation (*ibid.*, paragraph 34 and case law cited).

24. In the instant case, the complainant highlights the financial difficulties linked to the decision to bring an early end to his probationary period, a decision he deems to be brutal and unexpected. He mentions that he does not have enough income to meet his routine expenses in the immediate future and that it was impossible to retain a job within the Organisation by taking part in other external recruitment procedures. He also talks of the impact that this will have on his personal and family situation.

25. Although these circumstances are not without significance, they do not constitute reasonable grounds for staying the execution of the measure complained of.

26. On the subject of the financial consequences of the contested decision, the complainant alleges that the loss of wages paid by the Organisation would undermine his financial stability and his ability to meet his and his family's essential needs. The Chair accepts that the drop in income may cause substantial difficulties for the complainant and his family which may be compounded because of his current state of health. However, she considers that a stay of execution cannot be used as a solution to remedy this situation. Of course, in the short term, it is likely that the complainant will have to make new arrangements in his day-to-day life. However, such consequences cannot be considered irreversible as it may be possible, under Article 14.2 of the Statute of the Tribunal, for the damage to be offset by financial compensation in a subsequent appeal.

27. As to the rejection of the complainant's application for a competition to fill a similar post at the Council of Europe, this shows the complainant's difficulty in maintaining an employment relationship with the Organisation, but it demonstrates neither the existence of the damage required nor, by extension, that preserving this employment relationship is essential to prevent such damage. At all events, the complainant's submissions in his administrative complaint contesting the merits of the decision do not require examination in the current proceedings.

28. In the light of the foregoing, the Chair concludes that in the present case, the complainant provides no evidence of real and certain damage or of the serious and irreparable nature of such damage if he were not granted the stay of execution.

29. The Chair points out that the exercise of her exceptional power under Article 14.8 of the Staff Regulations calls for some self-restraint (Appeals Board of the Council of Europe (ABCE), Chair's Order of 31 July 1990 in the case of *Zaegel v. Secretary General*, paragraph 12; ATCE, Chair's Order of 1 December 1998 in the case of *Schmitt v. Secretary General*, paragraph 26).

30. 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 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 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 Zagreb (Croatia), on 27 March 2024, the French text being authentic.

The Registrar of the  
Administrative Tribunal

The Chair of the  
Administrative Tribunal

Christina Olsen

Nina Vajić