

CONSEIL DE L'EUROPE_____

_____COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

ORDER OF THE CHAIR OF 20 July 2017

in the case of SD v. Secretary General

THE FACTS

1. The applicant, SD, is a staff member in her probationary period, with a fixed-term contract that expires on 31 August 2017.
2. She has been informed that her employment is to be terminated at the end of the probationary period.
3. On 5 July 2017, the applicant lodged an administrative complaint under Article 59 of the Staff Regulations. She challenges the decision to terminate her contract and asks for her probationary period to be extended for a year in another department.
4. According to information available to the Administrative Tribunal, the Secretary General has not so far formally ruled on the administrative complaint.
5. On 5 July 2017, the applicant applied to the Chair of the Administrative Tribunal, under Article 59, paragraph 9 of the Staff Regulations, for a stay of execution of the contested administrative decision. This would enable her to remain in the Organisation until the end of the present dispute.
6. On 10 July 2017, the Secretary General submitted his observations on the application for a stay of execution.
7. On 12 July 2017, the applicant submitted her observations in reply.
8. On the same day, these observations were forwarded to the Secretary General.

THE LAW

9. Under Article 59, paragraph 9 of the Staff Regulations, applications may be lodged for a stay of execution of an administrative act if that execution is likely to cause “grave prejudice difficult to redress”.

The same provision stipulates that 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.

10. The applicant has lodged her application to obtain a stay of execution of the decision to terminate her contract.

11. She states that the proceedings in question will certainly extend over several months. If, following the Secretary General's decision, she leaves the Organisation on 31 August 2017, she will clearly suffer grave prejudice difficult to redress within the meaning of Article 59, paragraph 9 of the Staff Regulations. She says that in practice this would leave her in a very difficult situation, because the likelihood of finding work in Strasbourg, outside the Council of Europe, that matches her qualifications is almost nil. Her husband also works for the Council and their two children, aged 12 and 6, are at school in Strasbourg. It will therefore be necessary for her either to cease working, in order to maintain the family unit, in which case their income would be halved, or to find work in another international organisation based abroad, with all the problems that would entail for their family life.

12. For all these reasons, the applicant asks that the Secretary General be ordered to stay the execution of the decision to terminate her contract, to enable her to remain in the Organisation until the end of the proceedings relating to her administrative complaint.

13. The Secretary General has informed the Chair that he has decided to accede to the applicant's request for an extension to her probationary period, accompanied by a renewal of her fixed-term contract, pursuant to Article 20, paragraph 3 of the Regulations on Appointments (Appendix II of the Staff Regulations). He adds that she will receive a response to her administrative complaint to that effect in the next few days and that the related measures will follow in due course.

14. He considers that the applicant can no longer claim to be suffering any detriment. Since the applicant's request has been accepted, this application for a stay of execution ceases to have any purpose and must be dismissed.

15. In her observations in reply, the applicant notes that the Secretary General has accepted her administrative complaint. She states that once she has received official notification of the decision she will withdraw her application for a stay of execution.

16. The Chair notes that by the final day of the fifteen days he is granted, under Article 8 of the Tribunal's Statute (Appendix XI of the Staff Regulations), to rule on an application for a stay of execution, he had not received the request to withdraw the current application, nor any notification that the applicant had been formally advised of the decision to accept the administrative complaint.

17. Since the applicant has not submitted any request to withdraw her application, therefore, the Chair must rule on the substance of the stay of execution application on the basis of the information at his disposal.

18. The Chair notes that there can be no question at this stage of assessing the arguments on the merits adduced by the applicant in support of her administrative complaint, which it is inappropriate to discuss, far less examine, in the present proceedings, which only concern the

taking of urgent action (see paragraph 10 of the Chair's Order of 3 July 2003 in the case of Timmermans v. Secretary General). In this case, he notes, like the Secretary General, that the applicant can no longer suffer grave prejudice difficult to redress pending the settlement of her dispute.

19. Admittedly, as far as the Chair is aware, the Secretary General has not yet notified the applicant officially of his decision to find in her favour in her administrative complaint. However, the Chair has no reason to fear that the Secretary General will fail to abide by what he has announced in these proceedings. Besides, if the Secretary General were to change his mind, the applicant could lodge a new application for a stay of execution.

20. The Chair reiterates 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 Chairman's Order of 31 July 1990 in the case of Zaegel v. Secretary General, paragraph 12; Chairman's Order of 1 December 1998 in the case of Schmitt v. Secretary General and order of the Chair of 14 August 2002, paragraph 16). Since the purpose of the urgent procedure is to ensure that administrative proceedings are fully effective, applications for a stay of execution must establish that the measure requested is necessary to avoid causing grave prejudice difficult to redress. Otherwise, this could undermine not only the smooth running of departments but also the management of important sectors of the Organisation. Since this does not apply in this case, the requested stay of execution should not be granted.

For these reasons,

Exercising my jurisdiction to make interim orders under Article 59, paragraph 9 of the Staff Regulations, Article 8 of the Statute of the Administrative Tribunal and Article 21 of the Rules of Procedure of the Administrative Tribunal,

I, CHAIR OF THE ADMINISTRATIVE TRIBUNAL,

Decide:

- To reject SD's application for a stay of execution.

Done and ordered in Kifissia (Greece), 20 July 2017.

The Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

S. SANSOTTA

C. ROZAKIS