

Request for a stay of execution No. 5/2024

C. V.

v.

**Secretary General
of the Council of Europe**

STAY OF EXECUTION ORDER

30 December 2024

THE FACTS

1. The complainant, C. V., was recruited on 1 April 2021 on a two-year fixed-term contract (hereinafter “CDD”) as a B4 scientific assistant in the European Directorate for the Quality of Medicines and HealthCare (hereinafter “EDQM”). The job was a turnover profile with a maximum five-year duration. The appointment was subject to the complainant successfully completing a two-year probationary period expiring on 31 March 2023. This initial probationary period having been deemed satisfactory, the complainant was awarded a second CDD until 31 March 2026, at which point she would have reached the maximum 5-year duration for employment.
2. Following the EDQM’s decision to turn the scientific assistant posts into permanent posts, an external recruitment procedure was held further to vacancy notice no. e9/2023 published on 11 May 2023, for the purpose of recruiting B4 scientific assistants, in accordance with Article 490 of the Staff Rule on entry into service. The complainant applied and, having been successful in the recruitment procedure, was awarded a new one-year CDD, from 1 January 2024 to 31 December 2024. This new contract replaced the CDD under a turnover profile, on which the complainant had previously been employed and which had been due to run until 31 March 2026. This new appointment was subject to the complainant successfully completing a one-year probationary period, in accordance with Article 4120 of the Staff Rule on entry into service, which came into force on 1 January 2023.
3. The complainant’s first probationary period assessment report for her new CDD, covering the period from 1 January 2024 to 30 April 2024, concluded that the complainant had experienced difficulties in maintaining consistent performance, and in meeting priorities and organising her work. The second assessment report, covering the period from 1 May 2024 to 31 August 2024, concluded that, while the complainant had achieved her objectives quantitatively and qualitatively in more straightforward matters, there remained significant problems with the quality of her work in longer, more complex projects, with major errors and omissions, as well as a problem with her understanding of the relevant regulatory texts and scientific principles.
4. On 16 September 2024, in line with the recommendations of the direct manager and the reviewing manager, the director of the EDQM, as head of the Major Administrative Entity, advised against confirming the complainant’s appointment at the end of her probationary period.
5. On 30 September 2024 and 4 November 2024, the Appointments Review Committee met to consider the complainant’s file. In its opinion adopted by a majority of votes (two votes in favour and one abstention), the committee recommended that the complainant’s appointment not be confirmed, and proposed that she be offered assistance in finding another job.
6. On 25 November 2024, the Deputy Secretary General followed the advice of the Appointments Review Committee and decided not to confirm the complainant’s appointment. He also took up the recommendation to offer the complainant assistance in finding a new job.
7. In a memorandum from the director of Human resources dated 27 November 2024, the complainant was informed of the decision to terminate her appointment on the expiry of her CDD on 31 December 2024, on the ground that her probationary period had not been successfully completed. The memorandum stated that she had not achieved the level of performance and conduct required of a permanent scientific assistant in the EDQM.

8. On 2 December 2024, the complainant lodged a formal complaint of harassment against her direct manager under paragraph 7.4 of the Policy on Respect and Dignity at the Council of Europe.
9. On 3 December 2024, the director of Human resources acknowledged receipt of the complainant's complaint and informed her that the investigation would be entrusted to an external investigator who would contact her in due course.
10. On 20 December 2024, the complainant lodged an administrative complaint against the decision not to confirm her appointment at the end of her probationary period. This complaint is still pending.
11. On the same day, the complainant applied to the Tribunal for a stay of execution of the contested decision in accordance with Article 14.8 of the Staff Regulations and Article XII of the Statute of the Tribunal. In this request, she asked for the decision to terminate her employment on the expiry of her CDD, on 31 December 2024, to be suspended.
12. On 24 December 2024, the Secretary General submitted his observations on the application for a stay of execution.
13. On 27 December 2024, the complainant submitted observations in reply.

THE RELEVANT LAW

14. 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.
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, by 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 of the Tribunal to suspend the execution of the contested decision terminating her CDD with the Organisation on 31 December 2024 on the ground that she failed to successfully complete her probationary period.
17. With regard to the urgency of her request, the complainant cites the fact that she was given only one month's notice of the contested decision, and the fact that the loss of her job was unexpected, leading to difficulties in reorganising her personal and professional life, as well as debilitating psychological distress.
18. With regard to serious and irreparable damage, the complainant submits that a stay of the contested decision is necessary to allow the proceedings relating to her formal complaint of harassment to be completed and to show that there was wrongful conduct on the part of her direct manager, whose unjustified negative assessments led to the decision in question.

According to the complainant, the proper administration of the Organisation requires that a stay of execution be ordered so that the lawfulness of the contested decision may be reviewed in the context of her formal harassment complaint. The complainant adds that failure to order a stay would jeopardise her right of “defence” in these proceedings, by impeding her from effectively participating in the investigation, in particular for the purposes of accessing documents.

19. The complainant adds that this damage would be aggravated by the following circumstances.

20. From a professional standpoint, the premature termination of her appointment would adversely affect her future career, insofar as her period of employment at the EDQM would be reduced to less than four years, as opposed to the five years envisaged when she was first recruited. Also, given the short notice period, she would likely experience a period of unemployment because of the time required to find another job, and this would adversely affect her professional advancement and reintegration.

21. On the financial front, the complainant argues that, as someone with family responsibilities, the loss of the main income would lead to immediate difficulties (insufficient income, probable difficulties in repaying debt from 2025). She states that the one-month notice period was not sufficient to enable her to prepare, and that the leaving allowance would not compensate for this damage.

22. Lastly, on a mental and physical level, the complainant refers to the impact which the harassment she has suffered has had on her health since February 2024, as well as the worrying deterioration in her health as a result of the contested decision. The complainant observes that the failure to extend her probationary period for the duration of her absence on medical grounds during this period, i.e. 3.5 weeks, is such as to call into question the validity of her assessments.

23. The Secretary General, for his part, submits that the complainant has failed to provide 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 granted the requested stay.

24. Firstly, with regard to the complainant’s argument that granting a stay would enable her to contribute to the investigation into her harassment complaint, the Secretary General observes that the complainant should have already submitted the relevant documents in support of her complaint. He further observes that she was invited on 3 December 2024 to send the director of Human resources any other documents that might be helpful in substantiating her complaint. Should it nevertheless become necessary in the course of the investigation to have access to certain documents, the external investigators could ask for them to be produced, in accordance with paragraph 35 of the Rule on investigations. The Secretary General concludes that the proper conduct of the investigation into the complainant’s harassment complaint does not require her to remain in the employ of the Organisation.

25. Secondly, the Secretary General argues that the complainant’s request for a stay is intended not to preserve but to change the status quo, and that this would run counter to the very purpose of the stay of execution procedure, which is to adopt emergency measures to preserve the current state of affairs. The Secretary General notes in this regard that insofar as the complainant’s last fixed-term contract expires on 31 December 2024, granting a stay of execution of the decision to terminate her employment at the end of her probationary period

would mean that the Secretary General would be required to adopt a measure whereby the complainant would be awarded a new fixed-term contract to run from 1 January 2025. The Secretary General points out that, from the outset of her appointment, the complainant had been aware that her employment would end on its expiry date unless it was renewed, and that any such renewal depended on her successfully completing her probationary period. He also points out that the complainant was kept informed throughout her probationary period of the shortcomings in her performance and of the need to make more effort to reach the required standard.

26. Thirdly, the Secretary General maintains that the complainant has not provided proof that she would suffer serious and irreparable damage. He denies the allegedly sudden and unexpected nature of the contested decision, pointing out that the complainant was informed as early as 16 September 2024 of the EDQM director's recommendation not to confirm her in her post. The Secretary General goes on to observe that any damage which the complainant might incur as a result of loss of earnings cannot be considered irreparable, since the Tribunal could order redress through compensation, pursuant to Article 14.2 of its Statute. As to the seriousness of the damage which, the complainant maintains, would result from the loss of the main household income, these are allegations which, in the opinion of the Secretary General, have not been substantiated. The Secretary General observes that the complainant will receive a leaving allowance upon termination of her employment, in accordance with Article 11 of the Third Pension Scheme, and that the Organisation has offered her assistance in finding another job.

27. In her observations in reply, the complainant insists that the decision for which she is seeking a stay is based on unjustified negative assessments, stemming from inappropriate behaviour on the part of her direct manager, which the ongoing investigation could expose. Accordingly, it is alleged, not only would the definitive termination of her employment before the conclusions of the external harassment investigation are known be at odds with the protection of her dignity, but it would also constitute serious and irreparable harm, in the absence of confirmation of the possibility of her being reinstated as a follow-up measure to her harassment complaint. The complainant reiterates her argument that financial compensation would be insufficient to compensate for the loss of opportunity that terminating her employment would entail, given her career prospects in the EDQM. She also mentions, for the first time, the fact that "placing her on unpaid leave could be an emergency measure that would enable [her] to preserve [her] rights without compromising the smooth running of the departments or the proper management of the Organisation" pending the outcome of the ongoing proceedings concerning her administrative claim and her harassment complaint.

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 Secretary General's contention that the complainant's request for a stay is intended not to preserve but to change the status quo, and that this would run counter to the very purpose of the stay of execution

procedure, which is to adopt emergency measures to preserve the current state of affairs (see paragraph 25).

30. In this regard, the Chair points 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 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*). Insofar as any stay of execution that may be granted would require the Secretary General to reconsider his decision not to confirm the complainant in her employment, drawing the relevant conclusions from the stay ordered and pending his decision on the administrative complaint and the Tribunal's decision in the event of an appeal without, however, imposing any particular decision on him, 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 (ATCE, Chair's Order of 22 May 2024, in the case of *L.D. v. Secretary General*, paragraph 32).

31. 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.

32. 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 27 November 2024, to take effect from 31 December 2024. The Chair then notes that the complainant lodged her administrative complaint contesting the decision not to confirm her in her post, together with her request for a stay of execution, on 2 December 2024, only a few weeks before her CDD was due to expire.

33. In these circumstances, the Chair considers that in the instant case, the urgency requirement was met. Nor, it seems, does the Secretary General deny this.

34. As to serious and irreparable damage and, in particular, the complainant's arguments pertaining to the impact of the contested decision on her career and financial status (see paragraphs 20 and 21), the Chair considers that any harm which the complainant might suffer if the Secretary General upheld her administrative complaint, or the Tribunal found in her favour on the merits, and if her employment in the EDQM had already ended at that point, would not be irreparable. In such an event, financial compensation could form adequate reparation for the damage caused by immediate execution of the decision to terminate her employment. Likewise, the Administrative Tribunal could order redress through compensation for any other damage, including notably non-pecuniary damage, resulting from the annulled decision, so any repercussions that the contested decision might have on the complainant's state of health (see paragraph 22) would not expose her to the risk of irreparable harm either.

35. As to the complainant's argument regarding the conduct of the investigation into her formal complaint of harassment (see paragraph 18), the Chair notes that the complainant's allegations of harassment are such as to call into question the objective and impartial nature of

the assessments of her performance during her probationary period, as well as the decision to terminate her contract taken on the basis of those assessments. The Chair notes, however, that while he has the power to order a stay of execution of the contested decision to terminate the complainant's employment, he does not have the power, under the regulations in force, to impose other precautionary measures, such as, for example, suspending the administrative complaint procedure pending the outcome of the investigation into the complainant's harassment complaint.

36. That said, it is undeniable that, even after her employment with the Organisation has ended, the complainant will retain her full right to have her complaint effectively examined within the framework of the formal procedure initiated. This right requires the Secretary General to take all necessary measures arising from the conclusions of the investigation, including, where appropriate, redress, should it be established that the complainant has been the victim of harassment (see, in particular, paragraph 7.4.7 of the Policy on Respect and Dignity at the Council of Europe and paragraph 82 of the Rule on investigations).

37. Similarly, the complainant will retain her full right to usefully contribute to the investigation of her harassment complaint, and the cessation of her employment with the Organisation would not restrict that right. In this connection, the Chair notes the assurances provided by the Secretary General concerning the possibility for the complainant to file relevant documents to substantiate her complaint, and also the power of the external investigators to order the production of documents (see paragraph 24).

38. In the light of the foregoing, the Chair concludes that the complainant's arguments concerning the conduct of the investigation into her harassment complaint do not point to any damage that staying the contested decision would avert. It should nevertheless be pointed out that in the event of a breach of the complainant's prerogatives under the formal procedure initiated following the lodging of her harassment complaint (see paragraphs 36 and 37), she might be entitled to exercise the remedies available to her, with the Administration's compliance with these prerogatives remaining, in any event, subject to review by the Tribunal. In addition, the complainant may lodge an appeal against any conclusions which the Secretary General might draw from the investigation report (see in particular Articles 14.6 and 14.10.1 of the Staff Regulations).

39. In these circumstances, the enforcement of the contested 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.

40. 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.

41. 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 XII of the Statute of the Administrative Tribunal and Rule 20 of the Rules of Procedure,

THE CHAIR OF THE ADMINISTRATIVE TRIBUNAL

dismisses the request for a stay of execution.

Done and ordered in Leuven (Belgium), on 30 December 2024, the French text being authentic.

The Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

Christina Olsen

Paul Lemmens