



In the case of M.L.L.

v.

Secretary General

STAY OF EXECUTION ORDER

15 January 2024

THE FACTS

1. The complainant, M.L.L., was recruited by the Organisation on 1 December 2020 on a fixed-term contract as a grade B2 support assistant. She had previously been employed by the Organisation since 2002 as an administrative assistant or project assistant for consecutive periods of varying length, on a number of temporary contracts and one five-year fixed-term contract. The appointment which began in December 2020 was subject to the complainant completing a two-year probationary period. By decision of the Deputy Secretary General, acting by delegation of the Secretary General, this initial period was extended by one year, i.e. until 30 November 2023.
2. In a memorandum from the Directorate of Human Resources dated 20 November 2023, the complainant was informed of the decision of the Deputy Secretary General, acting on behalf of the Secretary General, to terminate her appointment at the end of her fixed-term contract, i.e. on 31 January 2024, on the ground that her probationary period had not been successfully completed.
3. On 18 December 2023, the complainant lodged an administrative complaint pursuant to Article 14.6 of the Staff Regulations, in which she contested the decision to terminate her appointment and asked the Secretary General to reconsider her decision and “to confirm her in her current employment”.
4. 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.
5. On 21 December 2023, the Secretary General submitted her observations on the request for a stay of execution.
6. On 5 January 2024, the complainant submitted her observations in reply.

THE LAW

7. In accordance with 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 a staff member against an administrative act adversely affecting them and taken personally by the Deputy Secretary General.
8. Under the terms of Article 14.8 of the Staff Regulations, filing a complaint 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.
9. According to Article 12.1 of the Statute of the Administrative Tribunal, the Secretary General is to, unless there are duly justified reasons, suspend the execution of the contested administrative decision until the Tribunal has ruled on the request.
10. According to Article 12.2 of the same Statute, the Chair, on behalf of the Tribunal, is to rule within 15 days on requests 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.

11. Article VI of the Statute of the Tribunal states that the time limits provided for therein are to be suspended during any annual closure of the Council of Europe headquarters fixed by decision of the Secretary General.

I. THE PARTIES' SUBMISSIONS

12. In her request, the complainant asks the Chair to suspend the execution of the decision to terminate her appointment on the expiry of her fixed-term contract, in view of the particular urgency of her situation. To justify her request for a stay of execution, the complainant states that the contested decision would cause her serious and irreparable damage.

13. With regard to the seriousness of the damage that the contested decision would cause her, the complainant points out that as a result of this decision, she finds herself, after more than twenty years in the employ of the Organisation, with no means of support and no prospect of employment because the professional experience gained at the Council of Europe is not easily transferable. Since she is no longer earning a salary, the complainant also finds herself obliged to leave Strasbourg and return to the area where she was born, and where she would have the support of her family.

14. As to the irreparable nature of the damage, the complainant submits that she is unable to stay on at the Council of Europe, meaning that she will suffer a "sudden and unjustified rupture with everything that has been [her] life over the last twenty years".

15. The Secretary General begins by noting the facts relating to the complainant's inadequate performance, which, she submits, justified the contested decision to terminate the complainant's employment. She then notes, firstly, that the complainant's request for a stay of execution should be rejected insofar as its purpose is not to preserve but to change the status quo. In the Secretary General's opinion, the balance that must be maintained between the parties and their respective interests would be upset if the complainant were to, by means of a request for a stay of execution, succeed in having her contract renewed, thereby changing the legal situation resulting from the expiry of her fixed-term contract.

16. Secondly, the Secretary General notes that the complainant has provided no evidence of serious and irreparable harm.

17. In the Secretary General's opinion, the complainant cannot claim to have suffered serious and irreparable harm since she was informed, from the outset of her employment, that the probationary period must be successfully completed for her to be confirmed in employment at the end of the period, and for her contract to be renewed. In addition, the complainant was informed throughout her probationary period – which, incidentally, was extended by a year – of the shortcomings in her performance and of the need to make further efforts to reach the required level.

18. In any event, the Secretary General considers that the damage the complainant cites in support of her request for a stay is not such that it could not be remedied through the payment of compensation as provided for in Article 14.2 of the Tribunal's Statute. In addition, the

Organisation offered to support the complainant in her search for a new job through one-to-one coaching.

19. The Secretary General further notes that the complainant's employment with the Organisation has been interrupted several times, thereby contradicting the complainant's allegation that the damage she would suffer as a result of her alleged inability to stay on at the Council of Europe would be irreparable.

20. In view of the foregoing, the Secretary General asks the Chair to dismiss the complainant's request for a stay as unfounded.

21. In her observations in reply, the complainant first contests the facts as reported by the Secretary General concerning the assessment of her performance. She points out that these facts need not be taken into account in the present proceedings insofar as they relate to the merits of the case.

22. The complainant then observes, with regard to the serious and irreparable damage that she alleges, that the decision to terminate her employment deprived her of any possibility of renting accommodation in Strasbourg, given that all landlords require prospective tenants to have a long-term employment contract.

23. As to the difficulty of finding a new job, the complainant reiterates that the experience gained at the Council of Europe is not easily transferable to other jobs outside the Council. She states that she was seldom able to secure contracts on the French employment market, despite actively looking for work between temporary contracts.

24. Next, the complainant notes that the decision to terminate her employment has significant consequences for her pension rights. By leaving the Organisation on 31 January 2024, the complainant will be reimbursed the equivalent of almost eight years of contributions to the Council of Europe pension system. She will then have the option of transferring these to the French pension system, but in that case she will find herself in a far less favourable position.

25. The complainant adds that, not least because of the regulatory changes that came into force at the Council of Europe on 1 January 2023, which limit the length of time for which an individual may be employed on a temporary contract to 12 months in total, with no possibility of renewal, the termination of her employment relationship with the Organisation will be definitive: she will not be offered any more temporary contracts and any application she might make for another B2 assistant competition would be rejected. Furthermore, in the event that she should lodge an appeal, any financial compensation that the Tribunal might award her if the appeal were successful would not lead to her being reinstated. In that sense, the damage incurred as a result of the execution of the contested decision would be irreparable.

II. THE CHAIR'S ASSESSMENT

26. The Chair notes firstly that under Article 14.8 of the Staff Regulations, her power to grant a stay of execution relates to any type of administrative decision that might be contested pursuant to the relevant provisions. In this respect, the Administrative 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 her 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*).

27. That being said, the Chair notes that there can be no question, at this stage, of assessing the submissions relating to the merits of the complainant's administrative complaint. These matters are not for discussion in the current proceedings, which are only concerned with urgent measures (see Chair's Order of 3 July 2003, paragraph 10, in *Timmermans v. Secretary General*). Accordingly, it is not necessary for the Chair to examine the considerations concerning the complainant's performance which the Secretary General cites as justification for the contested decision and which the complainant refutes.

28. The Chair also points out that, according to settled case law, 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. For the purpose of achieving that objective, the measures sought must be urgent insofar as, in order to avoid serious and irreparable harm, they must be adopted and produce their effects before a decision is reached in the main action (ATCE, Chair's Order of 23 December 2021, in the case of *D v. Secretary General*, paragraph 33 and cited case law). In any case, it is for the party requesting the suspension of the contested decision to show that they cannot wait until the outcome of the proceedings without suffering harm of a kind that would justify the requested suspension.

29. The Chair notes that the damage relied upon by the complainant to justify her request for a stay is mainly based on the fact that the contested decision would put an end to any possibility of her maintaining an employment relationship with the Organisation. In this regard, she cites a sudden and unjustified termination of her employment relationship (paragraph 14), which, she contends, is the consequence of a flawed and incomplete assessment process, as well as the loss of any future possibility of being employed, whether on a temporary contract or on a contract awarded following participation in a competition for B2 assistants (paragraph 25).

30. Without entering into an examination of whether the complainant's administrative complaint is founded or unfounded, the Chair notes that there is a general principle whereby a staff member under a fixed-term appointment is not entitled to the renewal of their contract, as "[t]he very nature of this type of contract precludes the existence of any such entitlement" (ATCE, Appeal No. 723/2023, *Zaytseva v. Secretary General*, decision of 12 June 2023, paragraph 40). This principle applies *a fortiori* when the staff member concerned is on probation and confirmation in employment is contingent on the outcome of that period. Even if they complete their probation successfully, a staff member cannot claim to be entitled to the renewal of their contract, or even to have a legitimate expectation of renewal, because "satisfactory performance is only one among other criteria which may come into play when adopting the discretionary decision to confirm in appointment" (ATCE, Appeals Nos. 722/2022, 731/2022, 732/2022 and 733/2022, *Orekhova and others v. Secretary General*, decision of 4 April 2023, paragraph 55).

31. With regard to the complainant's future employment prospects at the Council of Europe, the Chair notes the following. While it is true - as the complainant points out - that under the new provisions applicable to the Council of Europe since 1 January 2023, the maximum total duration of temporary contracts is 12 months over the temporary staff member's entire career,

none of these provisions prevents the complainant from being offered a temporary contract in the future. The complainant, moreover, still has the possibility of being recruited through another competition. It will be observed here that the complainant has been employed by the Council of Europe on several temporary and fixed-term contracts, without the breaks between her various contracts visibly harming her chances of being re-employed by the Organisation.

32. As to the complainant's assertion that the implementation of the impugned decision would also deprive her of any prospect of employment on the national labour markets, the Chair considers that any difficulty the complainant might have in changing direction professionally cannot be attributed to the Organisation. Nor has the complainant provided any proof that the professional experience she gained at the Council of Europe could not be put to good use in another context, although she mentions the difficulties she experienced in the past in finding employment in France between contracts with the Council of Europe. The complainant also acknowledges that she received one-to-one coaching from the Organisation to support her in her search for a new job.

33. As to the consequences of the non-renewal decision on the complainant's pension rights, the Chair considers that it is not possible, at this point in time, to accurately gauge these consequences since they will depend on the future career path of the complainant, who is only 46 years old.

34. In the light of the foregoing, the Chair concludes that, in the instant case, the complainant has provided no proof that she would suffer certain damage if the stay of execution were not granted, nor proof of the serious and irreparable nature of that damage.

35. The Chair notes that the exercise of her exceptional power under Article 14.8 of the Staff Regulations calls for some self-restraint (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).

36. The Chair's finding in these proceedings is without prejudice to the Tribunal's decision on the merits of the case or to the requesting party'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 the damage resulting from the act complained of.

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,

THE CHAIR OF THE ADMINISTRATIVE TRIBUNAL,

- dismisses the request for a stay of execution.

Done and ordered in Zagreb (Croatia), on 15 January 2024, the French text being authentic.

The Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

Christina Olsen

Nina Vajić