



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

File number: SA-06-J
Before: Judge for Staff Appeals
Judge Thomas Laker
Date: 8 July 2019
Language: English
Classification: Public

PUBLIC REDACTED VERSION OF THE 5 JULY 2019 DECISION ON APPEAL

Appellant:

[REDACTED]

Legal Assistant to the Appellant:

[REDACTED]

Respondent:

The Registrar

I. INTRODUCTION

1. This case concerns the termination of the employment contract of [REDACTED] (“the Appellant”), a citizen of the United Kingdom (“UK”), with the Specialist Prosecutor’s Office (“SPO”), which was subsequently rescinded. The decision to terminate the Appellant’s employment contract was taken in context with the decision by the government of the UK to invoke Article 50 of the Treaty of the European Union for withdrawal from the European Union (“EU”).

2. The Appellant [REDACTED] had an employment contract until 14 June 2019.¹ [REDACTED].² On 19 February 2019, the Registrar terminated the Appellant’s employment with the SPO, effective 30 March 2019, and notified the Appellant accordingly.³ The Termination Decision—which was based on Rule 67(a)(4) and (7) of the Staff Rules of the Specialist Chambers and Specialist Prosecutor’s Office (“Staff Rules”), the Appellant’s contract and the job description—stated, *inter alia*, that in the absence of a withdrawal agreement between the EU and the UK, there was no legal basis for continuation of secondments or employment of UK nationals at the SPO and KSC as of 29 March 2019.⁴

3. On 18 March 2019, the Appellant requested the Registrar to review the Termination Decision, pursuant to Rule 84(a) of the Staff Rules.⁵

4. On 27 March 2019, the Registrar rescinded the termination of the Applicant’s employment contract, on the basis that the European Council agreed to an extension

¹ F001/A02, Letter from [REDACTED] to the Registrar, Ms. Fidelma Donlon, 18 March 2019 (confidential) (“Request for Review”), p. 1.

² See F004, Response to Registrar’s Application Dated 15 May 2019 and Associated Application for Order or Direction, 21 May 2019 (confidential).

³ F001, Appeal of [REDACTED] Against the Decision of the Registrar dated 24 April 2019, 8 May 2019 (confidential) (“Appeal”), para. 6; F001/A01, Decision of the Registrar, 19 February 2019 (confidential) (“Termination Decision”).

⁴ Termination Decision.

⁵ Appeal, para. 7; F001/A06, Letter from [REDACTED] to the Registrar, Ms Fidelma Donlon, 18 March 2019 (confidential) (“Request for Review”).

of the proceedings related to the UK's withdrawal from the EU until 12 April 2019, and, in the event of a withdrawal agreement, until 22 May 2019.⁶

5. On 24 April 2019, the Registrar denied the Appellant's Request for Review, on the basis that the Termination Decision had no effect and had no impact on the rights and obligations deriving from the contract of employment as a result of the rescission of the Termination Decision.⁷

II. PROCEEDINGS

6. On 8 May 2019, the Appellant filed the Appeal,⁸ which was communicated on 10 May 2019.

7. On 13 May 2019, the President of the Specialist Chambers assigned the undersigned Judge to serve as Judge for Staff Appeals in this case.⁹

8. On 15 May 2019, the Registrar filed an application for direction pursuant to Rule 17(5) of the Rules of Procedure for Staff Appeals ("Staff Appeals Procedure") and a request for an extension of time to file her response to the appeal.¹⁰

9. On 22 May 2019, the undersigned Judge suspended the deadline for the Registrar's response to the Appeal until further notice, given that the parties' submissions had not been communicated to him in due time for technical reasons.¹¹

⁶ Appeal, para. 8; F001/A08, Rescission of Termination, 27 March 2019 (confidential) ("Rescission Decision").

⁷ Appeal, p. 2; F001/A03, Registrar's Review of an Administrative Decision, 24 April 2019 (confidential) ("Review Decision").

⁸ Appeal.

⁹ F002, Decision Assigning a Judge for Staff Appeals, 13 May 2019 (confidential).

¹⁰ F003, Application for Direction and Request for an Extension of Time, 15 May 2019 (confidential, with 1 confidential annex).

¹¹ F004, Decision on Case Management and Extension of Time, 22 May 2019 (confidential).

10. On 29 May 2019, the undersigned Judge granted the Registrar leave to respond to the Appeal by 4 June 2019.¹²
11. On 4 June 2019, the Registrar responded to the Appeal (“Response”).¹³ On that same day, the undersigned Judge rejected the Appellant’s request for an extension of time to file a reply to the Response.¹⁴
12. The Appellant did not file a reply.
13. On 14 June 2019, the undersigned Judge informed the parties that he did not intend to hold a hearing as provided for in Rule 18(1) of the Staff Appeals Procedure, but invited the parties to file reasoned submissions in case they considered that a hearing would nevertheless be necessary for the proper determination of the Appeal.¹⁵
14. The parties have not filed any submission concerning a hearing in this case.

III. APPLICABLE LAW

15. Rule 5 of the Staff Appeals Procedure sets out, in part:
 - (1) Time limits are prescribed by the Rule or may be set by the Judge. Unless otherwise specified, they are calculated by calendar days.
 - (2) Time limits run from the first working day after the notification of the relevant filing [...]
 - (3) [...]
 - (4) Unless otherwise specified, time limits may be varied by the Judge *proprio motu* or upon showing of good cause.
16. Rule 10(1) of the Staff Appeals Procedure provides that

¹² F007, Decision on Case Management and Extension of Time, 29 May 2019 (confidential).

¹³ F008, Response to Appeal Against the Decision of the Registrar, 4 June 2019 (confidential).

¹⁴ F009, Decision on Extension of Time, 4 June 2019 (confidential).

¹⁵ F010, Order on Case Management, 14 June 2019 (confidential).

the Judge for Staff Appeals is competent to receive and decide on an appeal against a decision of the Registrar whereby the Appellant alleges that the Registrar has:

- (i) exceeded his or her responsibilities or competence;
- (ii) failed to exercise his or her responsibilities;
- (iii) erred on a question of law;
- (iv) committed an error in procedure, such as to affect the decision of the case; or
- (v) erred on a question of fact, resulting in a manifestly unreasonable decision.

17. Rule 15(2) of the Staff Appeals Procedure sets out, in part:

An Appeal shall be in writing and shall include: [...]

- (ii) where applicable, the initial Decision of the Registrar and the request for review filed in this respect by the Appellant in accordance with Staff Rule 84(a);
- (iii) the contested Decision of the Registrar or Disciplinary Decision, as applicable [...]

18. Rule 16(2) of the Staff Appeals procedure sets out, in part, that “an Appeal against a Decision of the Registrar shall be filed within fourteen (14) days of the date of receipt of the Registrar’s answer to the request for review”. Rule 16(4) of the Staff Appeals Procedure further provides that “[a]ppeals filed after the prescribed time limits shall not be admissible unless the Appellant demonstrates exceptional and compelling circumstances warranting an extension of time”.

19. Rule 20(2) of the Staff Appeals Procedure provides that

[a]s part of the Decision on Appeal, the Judge for Staff Appeals may order the revocation or annulment of the contested Decision of the Registrar [...], the performance by the Registrar of the obligations invoked, or any other remedy which the Judge for Staff Appeals deems appropriate in the circumstances.

20. Rule 29(3) of the Staff Appeals Procedure provides that final decisions shall, to the extent possible, be public and may only be redacted where this is deemed necessary by the Judge, *proprio motu* or upon request by the Appellant for the purpose of protecting the Appellant’s identity.

21. Rule 37 of the Staff Rules sets out, in part:

(a) Employment contracts for contracted staff shall only be concluded for a fixed term. They shall normally be granted for a one year period but may be issued for a different period for operational needs.

(b) The renewal of a contract shall not give rise to any right or expectation of further renewal or conversion into a contract of indefinite duration, even if the same type of work is required by the [Kosovo Relocated Specialist Judicial Institution ("KRSJI")] thereafter.

(c) The particular temporary nature and the specific needs of KRSJI do not allow providing contracted staff with permanent employment and this is reflected in the level of remuneration.

22. According to Rule 67 of the Staff Rules, "[t]he Registrar may terminate the contract of a contracted staff member [...] (1) if objective necessities of service require abolition of the post or a reduction in staff [...] (7) if, in the Registrar's opinion, such termination would be in the interest of the KRSJI."

23. Rule 68 of the Staff Rules sets out, in part:

(a) A staff member whose appointment is to be terminated shall be given at least thirty calendar days' written notice of such termination. [...]

(c) The thirty calendar days' notice period is considered to start from the day of the reception by the staff member of the Registrar's Decision. Where notification cannot be effected personally, the notice shall be sent to the staff member's official electronic address. The working day after receipt of the opening of the electronic mail shall be considered as the day of service.

24. Rule 83 of the Staff Rules sets out, in part, that "[e]very staff member shall have the right to appeal against a final administrative decision of the Registrar relevant to the rights and obligations of staff."

25. Rule 84 of the Staff Rules sets out, in relevant part:

(a) A staff member who wishes to appeal an administrative decision of the Registrar other than a decision taken as a result of a disciplinary action shall, as a first step, address a letter to the Registrar requesting that the administrative decision be reviewed; such letter must be sent with signature to the working email address of the

Registrar within one month from the date the staff member was notified of the administrative decision in writing.

(b) If the staff member wishes to appeal, the staff member shall submit the appeal by signed letter to the working email address of the Registrar within fourteen days from the date of receipt of the Registrar's answer to the request under sub-rule (a).

[...]

(g) The judge for staff appeals shall endeavour to bring about a speedy solution of the matter in conformity with the requirements of due process. The judge for staff appeals shall decide on the appeal in accordance with the highest standards of administrative practices in comparable fields and shall provide reasons for his or her decision that shall, to the extent possible, be made public. The judge for staff appeals shall issue his or her decision within thirty days after hearing from the parties, unless there are compelling reasons to request a delay.

IV. SUBMISSIONS BY THE PARTIES

26. The Appellant submits that the Registrar exceeded her authority when she prematurely terminated his employment contract on the basis of his citizenship as he was at the time and currently still is a citizen of the EU.¹⁶ The Appellant further contends that the premature issuance of the Termination Decision is contrary to the requirement that the KRSJI run smoothly and efficiently as reflected in Article 2 of the Host State Agreement and asserts that the rescission of the Termination Decision just three days before the expiry of his contract violated his right to be treated responsibly and with dignity.¹⁷

27. According to the Appellant, the Registrar further failed to exercise her responsibilities when relying on outside instructions to terminate his employment contract, rather than exercising her discretion as provided for in Rule 67 of the Staff Rules.¹⁸

¹⁶ Appeal, paras. 11-12.

¹⁷ Appeal, paras. 13-14. *See also* Appeal, para. 24.

¹⁸ Appeal, para. 18. *See also* Appeal, paras. 15-17, 19-21.

28. The Appellant contends that the Registrar failed to provide a reasoned answer when issuing the Review Decision and did not properly review the rationale behind the Termination Decision.¹⁹ The Appellant asserts that if the Registrar had properly taken into account the Appellant's arguments, she may not have continued to rely on her rationale that UK citizens cannot further be employed by the SPO-KSC and would instead have possibly issued an employment contract for a period beyond 31 October 2019.²⁰ The Appellant submits that the Registrar's errors violated the requirements set forth in Rule 77(a) of the Staff Rules and the procedural requirements of the Standard Operating Procedures on Review of Administrative Decisions.²¹

29. The Appellant also contends that the Registrar erred in law when basing the Termination Decision on his UK citizenship.²² According to the Appellant, there does not exist within the SPO-KSC's legal framework a nationality requirement for staff members and imposing such a requirement amounts to discrimination.²³ The Appellant asserts that by issuing decisions in relation to his employment at the SPO, including the decision extending his contract only until 31 October 2019, the Registrar violated his reasonable and legitimate expectation of continued employment at the SPO, at least until 14 June 2020.²⁴

30. Finally, the Appellant submits that the Registrar erred in fact by stating that the rescission of the Termination Decision meant that there has been no impact on the Appellant's rights.²⁵ According to the Appellant, he suffered prejudice as a result of the Termination Decision and this prejudice did not simply end when the Termination

¹⁹ Appeal, para. 22.

²⁰ Appeal, paras. 22-23.

²¹ Appeal, para. 23.

²² Appeal, para. 24.

²³ Appeal, para. 24. *See also* Appeal, paras. 25-28.

²⁴ Appeal, para. 30. *See also* Appeal, paras. 24, 29, 31.

²⁵ Appeal, para. 32.

Decision was rescinded.²⁶ The Appellant contends that this prejudice continues with the extension of his contract only until 31 October 2019.²⁷

31. The Appellant seeks the following relief: (i) a declaration regarding the unlawfulness of the Termination Decision; (ii) annulment of the Termination Decision and the Review Decision; (iii) annulment of the continuing decisions to terminate the Appellant's employment; (iv) suspensive effect of any current termination decisions, including the 15 April 2019 decision extending his contract until only 31 October 2019; (v) an order for costs in obtaining legal assistance; (vi) an order for privacy regarding the Appellant's name and details; and (vii) damages in lieu if not awarded the remedies set forth above.²⁸

32. The Registrar responds that the sole issue before the undersigned Judge is whether the Review Decision correctly determined that the Appellant's requests for relief had become moot.²⁹ According to the Registrar, she correctly found and sufficiently reasoned in the Review Decision that, as a result of the rescission, the Termination Decision had no impact on the rights and obligations deriving from the Appellant's employment contract, as the matter has become effectively moot.³⁰ The Registrar submits that any unlawfulness occasioned by the Termination Decision was eliminated as soon as it was rescinded and the Appellant's employment contract continued to be in force,³¹ and asserts that the undersigned Judge should therefore dismiss any arguments raised in relation to the Termination Decision.³²

²⁶ Appeal, para. 32.

²⁷ Appeal, para. 32.

²⁸ Appeal, para. 33.

²⁹ Response, para. 20. *See also* Response, para. 34.

³⁰ *See* Response, paras. 16-17, 28-30. *See also* Response, para. 50.

³¹ Response, para. 18.

³² Response, para. 33. The Registrar requests that if the undersigned Judge does not consider that the question surrounding the reasonableness of the Termination Decision has become moot, that she be allowed to respond to any arguments raised by the Appellant in relation to the lawfulness of her initial decision. *See* Response, paras. 36, 50.

33. The Registrar contends that any requests for relief, whether raised in the Appellant's request for review, or *de novo* on appeal, were rendered moot following rescission of the Termination Decision.³³ The Registrar asserts that even if the Appellant were allowed to raise new requests for relief *de novo* on appeal, he has not substantiated these claims and provided no further detail in relation to the alleged injury suffered.³⁴ The Registrar further submits that any harm caused related to her intent to offer a contract beyond 14 June 2019 lies beyond the scope of this appeal, which concerns only the Termination Decision.³⁵

34. The Registrar also contends that her obligation to communicate with staff in accordance with Rule 77(a) of the Staff Rules is an obligation that is distinct from her obligations in relation to requests for review of administrative decisions.³⁶ The Registrar submits that the Appellant failed to exhaust all internal means of redress in relation to the rescission of his contract, including by requesting review of the Rescission Decision, and asserts that any arguments raised in the Appeal in this regard should thus be dismissed.³⁷ The Registrar further contends that the decision taken on 15 April 2019 to extend the Appellant's contract until 31 October 2019 is currently the subject of review before the Registrar and cannot therefore not be raised in the present proceedings.³⁸

35. Finally, the Registrar submits that to the extent the Appellant's request an order for privacy is a request that his name and identifying information be redacted in the final decision, the Registrar does not oppose the Appellant's request in this regard.³⁹

³³ Response, paras. 18-20. *See also* Response, paras. 32, 35.

³⁴ Response, paras. 21-23. *See also* Response, para. 46.

³⁵ Response, para. 24. *See also* Response, paras. 42.

³⁶ Response, para. 31.

³⁷ Response, para. 38. *See also* Response, para. 39.

³⁸ Response, para. 43. *See also* F001/A09, Summary of meeting with staff on 14 April 2019, 15 April 2019 (confidential).

³⁹ Response, para. 49.

V. CONSIDERATIONS

A. SCOPE OF THE APPEAL

36. It is noted that the Appellant only sought review of the Termination Decision in accordance with Rule 84(a) of the Staff Rules.⁴⁰ Accordingly, the only administrative decision that is properly before the undersigned Judge is the decision of 19 February 2019 to terminate the Appellant's employment with the SPO. The undersigned Judge will thus only consider arguments directly related to the Termination Decision and the ensuing Review Decision. Therefore, any arguments concerning other decisions rendered by the Registrar in relation to the Appellant's employment, including his current and potential future employment contracts, cannot be assessed in the context of the present appeal.

B. ADMISSIBILITY OF THE APPEAL

37. Rule 84(b) of the Staff Rules provides that an appeal shall be submitted within 14 days from the date of the receipt of the Registrar's decision on the request for review.

38. In the present case, the Review Decision was communicated to the Appellant on 24 April 2019 and the Appellant filed the Appeal within the 14-day time limit, namely on 8 May 2019. To the Appeal, the Appellant attached the documentation required pursuant to Rule 15(2) of the Staff Appeals Procedure.

39. The undersigned Judge therefore considers that the requirements for an appeal as set out in Rule 15 of the Staff Appeals Procedure have been met and finds the Appeal admissible.

⁴⁰ It is noted that the Appellant submitted the request for review on 1 March 2019, which is within the one-month deadline prescribed by the Rule 84(a) of the Staff Rules.

C. MERITS OF THE APPEAL

40. Rule 83(a) of the Staff Rules provides that every staff member shall have the right to appeal a final administrative decision of the Registrar relevant to the rights and obligations of staff.

41. The subject of the current proceedings is the Review Decision, wherein the Registrar denied the Appellant's request for review of the Termination Decision on the basis that, as a result of its rescission, the Termination Decision had no impact on the rights and obligations deriving from the Appellant's employment contract.⁴¹

42. It is recalled that Rule 84(a) of the Staff Rules requires that the first step within the internal legal framework is the review by the Registrar of an administrative decision taken by her. For an administrative decision to be appealed by staff, this decision must, in turn, be "relevant to the rights and obligations of staff", as set forth in Rule 83(a) of the Staff Rules. While neither the Staff Rules nor the Staff Appeals Procedure define what constitutes an administrative decision, the undersigned Judge considers, and the parties do not dispute, that the Termination Decision qualifies as such a decision.

43. The Termination Decision was rescinded by letter from the Registrar to the Appellant, dated 27 March 2019. It follows that as of 27 March 2019, the Termination Decision, which was the subject of review before the Registrar, ceased to exist. In other words, from 27 March 2019 onward, the Appellant's request for review had lost its subject.

44. In such a situation, the process of review normally comes to an end. There is no duty of the Registrar to continue with the review procedure and neither the Staff Rules

⁴¹ See Review Decision, p. 3.

nor the Staff Appeal Procedure provide for a right to a reasoned examination of the legality of a rescinded decision.

45. Nor is it for the Judge for Staff Appeals to assess abstract legal questions or problems which may arise within future administrative procedures. It follows from Rule 20(2) of the Staff Appeals Procedure that the Decision on the Appeal has to be linked to an administrative decision.

46. There may be cases where the rescinded decision continues to produce such direct legal effects so that a further review may be justified and appropriate. However, in the present case, the rescission of the Termination Decision resulted in the full restoration of the Appellant's contractual situation to where it previously had been before the issuance of the Termination Decision. Following rescission of the Termination Decision, any discussion regarding the basis for the Termination Decision became moot and lies beyond the jurisdiction of the Judge for Staff Appeals.

47. Finally, it is noted that the request for review had indeed reached its ultimate goal, namely the rescission of the initial administration decision. That is exactly what the Appellant asked for in his request for review of 26 February 2019.⁴²

48. Turning to the relief sought by the Appellant, it is noted that he has not provided any details or substantiated his claim regarding prejudice caused as a result of the Termination Decision. In fact, with the rescission of the Termination Decision and the extension of his contract thereafter, the Appellant is no worse off than he was before the issuance of the Termination Decision. While the difficulties associated with the uncertainty created by the UK's withdrawal from the EU and the Appellant's future employment with the SPO are recognized, the scope of this Appeal is limited to propriety of the Termination Decision, which, as set forth above, has been

⁴² Request for Review, p. 8.

rescinded. The Appellant's requests for relief, insofar as they relate to the prejudice suffered by him as a result of the Termination Decision, are therefore dismissed.

49. Accordingly, and based on the totality of the above, the Appellant has failed to demonstrate that the Registrar acted in such a way as set forth in Rule 10(1) of the Staff Appeals Procedure.

50. The determination in the present case is without prejudice to the Appellant filing an appeal against any other administrative decision rendered by the Registrar pursuant to the applicable legal framework.

51. Finally, it is noted that Rule 29(3) of the Staff Appeals Procedure provides that final decisions shall, to the extent possible, be public and may only be redacted where this is deemed necessary by the Judge, *proprio motu* or upon request by the Appellant for the purpose of protecting the Appellant's identity. It is further noted that the Appellant has requested that information identifying the Appellant be redacted when a public version of a final decision is issued, to which the Registrar has not objected. Accordingly, a public version of this Decision will be issued in due course, redacting any information identifying the Appellant.

VI. CONCLUSION

52. In view of the foregoing, the undersigned Judge finds that the Appellant has failed to demonstrate that the Registrar, in reaching the Review Decision, acted in a manner set forth in Rule 10(1) of the Staff Appeals Procedure. The Appeal, including the relief sought therein, is therefore **DISMISSED**.



**Judge Thomas Laker,
Judge for Staff Appeals**

Dated this 8 July 2019
At The Hague, the Netherlands.