



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

CHULUUNBAATAR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Daniel Trup, OSLA

Counsel for Respondent:

Federica Midiri, UNFPA

Introduction

1. By application filed on 3 September 2015, the Applicant, a staff member of the United Nations Population Fund (“UNFPA”), Mongolia, contests the decision of 29 April 2015 not to renew his fixed-term appointment.

Facts

2. The Applicant is a National Programme Officer, UNFPA, in Ulan Bator, Mongolia.

3. By letter dated 29 April 2015 from the Director of Human Resources, UNFPA, the Applicant was notified that as part of the UNFPA Strategic Plan 2014-2017, his position was being abolished and that, as a consequence, his fixed-term appointment would not be renewed beyond 31 May 2015.

4. The Applicant filed a request for management evaluation of said decision on 15 May 2015.

5. By letter dated 20 May 2015, the Executive Director, UNFPA, to whom the authority to conduct management evaluation has been delegated, informed the Applicant that the decision not to renew his contract had been suspended for three months, “to allow the Organization a proper review of the matter”.

6. By letter dated 27 August 2015, the Executive Director, UNFPA, informed the Applicant that “the Organization in its management evaluation of the decision at issue ... has, *inter alia*, solicited assistance by external third party (consultant) in reviewing the rational and merits of the restructuring of the UNFPA Country Office in Mongolia”, and that an investigation by the Office of Audit and Investigation Services (“OAIS”) into matters connected to the restructuring of the Country Office in Mongolia was ongoing. He noted that as a consequence, the Administration had decided to extend the Applicant’s contract on a month-by-month basis until completion of the investigation and the management evaluation.

7. The Applicant filed the present application on 3 September 2015, requesting that it be put in abeyance, pending the outcome of these two procedures.

Consideration

8. Article 2.1 of the Tribunal's Statute provides that it is competent to hear and pass judgment on an application filed by an individual against the Secretary-General to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment.

9. According to settled case law, an "administrative decision" is a unilateral decision taken by the Administration in a precise individual case which produces direct legal consequences to the legal order (*Al Surkhi et al.* 2013-UNAT-304; *Tintukasiri et al.* 2015-UNAT-526, relying on Judgment No. 1157 of the former UN Administrative Tribunal in *Andronov* (2003)).

10. In cases where the contested decision is rescinded by the Administration during or prior to the proceedings before the Tribunal, the applicant's allegations may become moot (cf. *Gehr* 2012-UNAT-253).

11. The foregoing in mind, the Tribunal considered the terms of the letter from the Executive Director, UNFPA, dated 27 August 2015, which states:

Therefore ... and in order to fully grant you due process rights as well as not to prejudice the outcome of the OAIS investigation, the Organization has decided to extend your appointment on a monthly basis until such time as the investigation as well as the management evaluation will be concluded. A final determination will be made at that time.

12. In light of the foregoing, the Tribunal cannot but find that the initial decision, of 29 April 2015, was superseded by a new decision, as reflected in the above-quoted letter of 27 August 2015, in that the Applicant's fixed-term appointment has been, and will be, extended, on a monthly basis, until conclusion of the OAIS investigation and the respective management evaluation.

13. The successive renewals of the Applicant's appointment until today superseded the decision of 29 April 2015 and deprived it of its effect; it follows

that its contestation has become moot (cf. *Osman* UNDT/2010/158) leading the Tribunal to conclude that the present application is irreceivable.

14. The Tribunal notes that, pursuant to the letter of 27 August 2015, the Administration intends to take a new decision, on the basis of new considerations, which may or may not result in the non-renewal of the Applicant's appointment. It goes without saying that the above findings of the Tribunal are without prejudice to the possibility for the Applicant to contest such a future decision, if any, following the established procedures of the UN internal justice system.

15. The above is a matter of law, which may be adjudicated even without serving the application to the Respondent for reply, and even if it was not raised by the parties (see *Gehr* 2013-UNAT-313, *Christensen* 2013-UNAT-335). Indeed, the Appeals Tribunal has confirmed in *Kazazi* 2015-UNAT-557 that in addressing issues of receivability, it is appropriate for the Dispute Tribunal to proceed by way of summary judgment under art. 9 of its Rules of Procedure.

Conclusion

16. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

Judge Thomas Laker

(Signed)

Dated this 8th day of September 2015

Entered in the Register on this 8th day of September 2015

(Signed)

René M. Vargas M., Registrar, Geneva