



**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

GOMEZ FERNANDEZ

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON RECEIVABILITY**

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**Counsel for Applicant:**  
Brandon Gardner, OSLA

**Counsel for Respondent:**  
Christine Graham, ALD/OHR, UN Secretariat

## **Introduction**

1. On 6 February 2020, the Applicant filed an application contesting the Administration's decision to terminate his continuing appointment following the abolishment of his post.
2. In the Respondent's reply dated 9 March 2020, the Respondent submits that the application is not "ready for adjudication" because the Administration has suspended the termination decision pending management evaluation.
3. For the reasons stated below, the application is rejected as non-receivable.

## **Consideration**

### *Relevant facts*

4. As the United Nations Mission for Justice Support in Haiti ("MINUJUSTH") prepared for downsizing, the Applicant was notified on 17 August 2019 that his continuing appointment was to be terminated effective 15 October 2019.
5. On 27 September 2019, the Administration suspended the decision to terminate the Applicant's appointment pending management evaluation and placed on Special Leave with Full Pay ("SLWFP").
6. On 18 December 2020, the Respondent confirmed that the Applicant remained on SLWFP.

### *Parties' contentions*

7. In essence, the Applicant argues that, since the abolition of his post with MINUJUSTH, the Administration has failed to fulfill its duty to make reasonable and good efforts to find an alternative post for him. He requests the rescission of the

decision to separate him or, in the alternative, he seeks payment of adequate compensation.

8. The Respondent argues that the present matter is not ready for adjudication because the Administration has suspended the decision to terminate the Applicant's appointment and continues, to this day, to make good faith efforts to find the Applicant a suitable position.

*Discussion*

9. Article 2.1(a) of the Tribunal's Statute states that the Dispute Tribunal has jurisdiction to pass judgment on:

... an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance ...

10. The Appeals Tribunal's well-established jurisprudence provides that an administrative decision is only capable of judicial review when it produces direct legal consequences for the applicant's terms of appointment (see, for instance, *Hassanin* 2017-UNAT-759, para. 37).

11. The Tribunal notes with concern that the Administration has failed to find a suitable post for the Applicant in over 14 months since it placed him on SLWFP pending management evaluation. This denotes, in the Tribunal's view, a serious managerial failure.

12. This notwithstanding, as the decision to terminate the Applicant's appointment remains suspended, it has no impact on the Applicant's terms of appointment.

13. The Tribunal therefore finds the application to be non-receivable *ratione materiae*.

14. However, the Tribunal notes that this finding is without prejudice. An eventual decision by the Administration to lift the suspension of the termination decision and proceed to separate the Applicant would constitute a reviewable administrative decision if all the requisites of art. 2.1(a) of the Statute were otherwise met.

15. In light of the above,

**Conclusion**

16. The application is rejected.

*(Signed)*

Judge Joelle Adda

Dated this 21<sup>st</sup> day of December 2020

Entered in the Register on this 21<sup>st</sup> day of December 2020

*(Signed)*

Nerea Suero Fontecha, Registrar, New York