



Before: Judge Thomas Laker

Registry: Geneva

Registrar: Víctor Rodríguez

ASWAD

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON SUSPENSION OF ACTION

Counsel for Applicant:
François Lorient

Counsel for Respondent:
Andreas Ruckriegel, UNFPA

Introduction

1. On 27 January 2010, the Applicant filed with the United Nations Dispute Tribunal (UNDT) an application requesting the Tribunal to suspend, during the pendency of management evaluation, the implementation of the decision not to renew her fixed-term appointment beyond 31 January 2010.

Facts

2. The Applicant entered the service of the United Nations on 5 January 2005. Since then, she has been serving with the UNFPA office in Amman, Jordan. At the time of issuance of this order, she works as Technical Advisor, at the P-5 level.

3. On 31 December 2009, as the Applicant's one-year fixed-term appointment came to expiration, she was granted an extension for one further month, i.e. until 31 January 2010. On 18 January 2010, at the Applicant's request, she was forwarded a copy of the Personal Action Report (PA) reflecting this decision.

4. On 26 January 2010, the Applicant submitted a request for management evaluation to the Management Evaluation Unit (MEU), UN Secretariat, also transmitted to UNFPA Executive Director.

5. On 27 January 2010, the Applicant's counsel filed a request for suspension of action pending management evaluation of the decision under review before the Tribunal. The application was transmitted to the Respondent for reply on the same date.

6. On 27 January 2010, the Applicant's fixed-term appointment was extended for five months, effective 1 February 2010 until 30 June 2010.

7. The Respondent submitted his reply to the application for suspension of action on 28 January 2010.

8. On 29 January 2010, the Applicant presented a new submission to the Tribunal on her own initiative.

Parties' Contentions

9. In her comments submitted after having been informed of the extension of her appointment until 30 June 2010, the Applicant argues that her current P-5 status (diplomatic residency) cannot be reinstated except with a one-year extension. Otherwise she will lose her privileges, which would cause her financial damages and family grief. Therefore, the Applicant requests the Tribunal to order a twelve-month extension of her contract.

10. The Respondent, in his reply dated 28 January 2010, requested the Tribunal to declare the application under review to be moot, based on the fact that the Applicant's fixed-term appointment had been extended until 30 June 2010.

Considerations

11. The Applicant submitted her request for management evaluation to MEU on 26 January 2010. Since MEU has not yet provided a reply on the matter and the statutory 45-day time limit for such a review to be conducted is still running, the procedure is at the management evaluation stage. Consequently, the present application may only be considered as a request for suspension of action under article 2, paragraph 2, of the Tribunal's statute, which reads:

“The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage ...”

12. It is evident from the above-quoted provision that suspension may only be sought with respect to a decision which deploys legal effects vis-à-vis the concerned staff member.

13. However, it appears from the documents and information made available to the Tribunal, and in particular from the PA dated 27 January 2010, that subsequent to the filing of the Applicant's request for suspension of action, the Organization decided to extend the Applicant's fixed-term appointment until 30

June 2010. By so doing, the Organization overruled the original challenged decision. Hence, the latter no longer has any effect on the Applicant's rights and status as a staff member and the present application has become moot.

14. The Applicant's last request that the Tribunal should order a twelve-month extension of her contract, exceeds the powers conferred to the Tribunal in a procedure of suspension of action under article 2, paragraph 2, of the statute. The Tribunal has already explained in UNDT/2009/071, *Corcoran*, that during the – rather short – pendency of the management evaluation it has the authority only to suspend an administrative decision, and by no means to dictate other kinds of interim measures or somehow modify the contested decision. Furthermore, it is worth recalling that the only purpose of the suspension of action procedure is to preserve the Applicant's rights during the management evaluation. Under no circumstances may it be used to prejudge the case on the merits.

Conclusion

15. For the reasons stated above, the Tribunal DECIDES that:

The application to suspend the implementation of the contested decision during the pendency of the management evaluation is rejected.

(Signed)

Judge Thomas Laker

Dated this 29th day of January 2010

Entered in the Register on this 29th day of January 2010

(Signed)

Víctor Rodríguez, Registrar, UNDT, Geneva