



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

LONGONE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
ALS/OHRM, UN Secretariat

Introduction

1. By application filed on 27 February 2013, the Applicant, a Legal Officer at the International Criminal Tribunal for the former Yugoslavia (“ICTY”), seeks suspension of action, pending management evaluation, of the decision not to renew his fixed-term appointment beyond 28 February 2013.

Facts

2. The Applicant joined the ICTY in 1999. Since March 2011, he worked as a Legal Officer at the P3 level, at the Office of the Prosecutor (“OTP”), ICTY, on the *Prlic et al* case.

3. At the end of 2011, the Applicant was informed that his appointment was not going to be renewed beyond 31 December 2011. Since the Applicant went on medical leave, his appointment was extended, as of 1 January 2012, solely to allow him to utilize his sick leave entitlements, under ST/AI/2005/3 (Sick leave).

4. By email dated 13 February 2013, the Senior Medical Officer, ICTY, informed the Applicant that he had advised ICTY Human Resources that he was able to return to work as of 1 March 2013. He further conveyed to the Applicant that in view of his contractual situation, he should contact Human Resources to discuss his situation.

5. As per the Applicant’s assertion, he was informed orally on 14 February 2013 that his fixed-term appointment would not be renewed beyond 28 February 2013. This was confirmed to him in writing by a memorandum from the Head, Staff Administration Unit (“SAU”), ICTY, of the same day, noting that since on the basis of a report from an independent physician the ICTY Medical Unit had informed SAU that the Applicant’s sick leave could no longer be certified after 28 February 2013, his contract could not be renewed beyond that date. In that memorandum, the Head, SAU, recalled that after the abolition of the Applicant’s post in 2011, the Applicant’s contract had only been extended

effective 1 January 2012 for the purpose of allowing him to utilize his sick leave entitlements.

6. On 25 February 2013, the Applicant requested management evaluation, *inter alia*, of the decision not to extend his fixed-term appointment beyond 28 February 2013. In said request, he also asked to suspend the implementation of the decision, pending management evaluation.

7. At 3.20 p.m. (Geneva time) on 27 February 2013, the Applicant filed with this Tribunal the present application for suspension of action of the decision not to extend his appointment beyond 28 February 2013. He subsequently submitted additional documents through the Tribunal's eFiling Portal at 4.41 p.m. and 5.09 p.m. (Geneva time) on 27 February 2013.

Applicant's contentions

8. The Applicant's primary contentions may be summarized as follows:

Prima facie unlawfulness

- a. The Administration, in the framework of the proceedings leading to judgement *Longone* UNDT/2012/130, acknowledged that his post was foreseen to last until December 2014 and not December 2011;
- b. The post and functions he was performing at the OTP on the *Prlic et al* case are still ongoing and the date for the conclusion of the trial has not yet been determined;
- c. On the basis of the operational realities and approved downsizing plans of the OTP and ICTY, the nature of the Applicant's work, his qualifications and competencies, the OTP/ICTY recommended the conversion of the Applicant's appointment into a permanent appointment;
- d. Relevant reports from the ICTY and from the Secretary General to the ACABQ, the 5th Committee and the General Assembly show that the number of P3 posts at the OTP, including the post of the Applicant, was not

changed for the approved budget periods 2010/11 and 2012/13, hence his appointment should be extended;

e. During his leave, new, inexperienced staff was recruited by the OTP to work on the *Prlic et al* case, which is a clear violation of the downsizing policies of the ICTY.

Urgency

f. He was never provided with any information concerning the decision not to extend his appointment, despite the fact that other posts, for his current functions, including a new P3 post, are being advertised at the OTP;

g. Despite the operational needs of the ICTY and the Applicant's experience, the Administration did not consider to reassign or laterally transfer him within the ICTY;

h. On 26 February 2013, the Applicant sought management evaluation and suspension of action of the decision by the Management Evaluation Unit and at the time of filing the present application he had not yet received an official response to his request;

i. The implementation of the decision would result in the non-renewal of his contract beyond 28 February 2013, which in itself establishes the urgency to rule on his application.

Irreparable damage

j. Without a fair and transparent review, the implementation of the decision would cause the Applicant and his family irreparable damage, as he would be unemployed, after over fourteen years of service with the United Nations.

Consideration

9. Article 2.2 of the Statute of the Tribunal and staff rule 11.3(b)(i) provide that it may suspend the implementation of a contested administrative decision, during the pendency of management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The Tribunal can suspend the contested decisions only if it finds that all three requirements have been met.

10. Staff rule 11.3(b)(ii) provides that

In cases involving separation from service, a staff member may opt to first request the Secretary-General to suspend the implementation of the decision until the management evaluation has been completed and the staff member has received notification of the outcome. The Secretary-General may suspend the implementation of a decision where he or she determines that the contested decision has not yet been implemented, the decision appears *prima facie* to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage to the staff member's rights. If the Secretary-General rejects the request, the staff member may then submit a request for suspension of action to the Dispute Tribunal under paragraph (b) (i).

11. The Applicant requested suspension of action of the decision under staff rule 11.3(b)(ii) on 26 February 2013. On the basis of the information available at the moment of the signing of this order, the Tribunal found that the Secretary General had not yet decided on the Applicant's request and, as a result, an application for suspension of action under staff rule 11.3(b)(i) and art. 2.2 of the Tribunal's statute could, in principle, be deemed premature.

12. The foregoing notwithstanding, and in view of the particular circumstances of this case, the Tribunal considers it necessary to address the question whether the case at hand is one of particular urgency under art. 2.2 of its Statute.

13. In this respect, this Tribunal held in *Woinowsky-Krieger* Order No. 59 (GVA/2010) and reiterated in *Suliqi* UNDT/2011/120 and *Majoul-Hunter* UNDT/2012/117, that:

[A]n applicant ... has the obligation to enable the Tribunal to give the other party the possibility to reply within a reasonable period of time. If the applicant does not comply with this obligation, he has to bear the consequences from the fact that a full and fair assessment of the application is not possible because of the applicant's own delay. Normally, such an application cannot be successful.

14. Moreover, this Tribunal recalled in *Maloka Mpacko* UNDT/2012/081, reiterated in *Majoul-Hunter* UNDT/2012/117, that:

If an applicant seeks the Tribunal's assistance on an urgent basis, she or he must come to the Tribunal at the first available opportunity, taking the particular circumstances of her or his case into account (*Evangelista* UNDT/2011/212). The onus is on the applicant to demonstrate the particular urgency of the case and the timeliness of her or his actions. The requirement of particular urgency will not be satisfied if the urgency was created or caused by the applicant (*Villamorán* UNDT/2011/126, *Dougherty* UNDT/2011/133, *Jitsamruay* UNDT/2011/206).

15. The Applicant was informed orally on 14 February 2013 and by memorandum of the same date of the decision that his contract was not going to be extended beyond 28 February 2013. Nevertheless, it was only on 26 February 2013, i.e. twelve days after the notification of the decision and only two days before the expiration of his contract, that he submitted his request for management evaluation and suspension of action to the Management Evaluation Unit, under staff rule 11.3(b)(ii). The next day, namely on 27 February 2013, he submitted his application for suspension of action to this Tribunal, under art. 2.2 of its Statute, in three batches: at 3.20 p.m., 4.41 p.m. and 5.09 p.m. (Geneva time) noting that the urgency resulted from the imminent non-renewal of his appointment and from the fact that he had not yet received a response from the Management Evaluation Unit.

16. It is the Tribunal's view that the Applicant could not reasonably expect the Management Evaluation Unit to decide on his request within 24 hours. Moreover, the Applicant failed to substantiate why he submitted his request to the Management Evaluation Unit and his application to this Tribunal only twelve and thirteen days respectively after the notification of the contested decision, and only two days and one day respectively before the end of his appointment. Under the circumstances of this case, the Tribunal finds that the urgency is self-created and, accordingly, that the Applicant has failed to meet the test of urgency under art. 2.2 of the Tribunal's Statute.

17. Since one of the three cumulative conditions required for temporary relief under art. 2.2 of the Statute has not been met, the Tribunal does not need to examine the two remaining conditions, namely *prima facie* unlawfulness and irreparable damage.

IT IS ORDERED THAT:

18. In view of the foregoing, the application for suspension of action is rejected.

(Signed)

Judge Thomas Laker

Dated this 28th day of February 2013

Entered in the Register on this 28th day of February 2013

(Signed)

René M. Vargas M., Registrar, Geneva