



**Before:** Judge Jean-François Cousin

**Registry:** Geneva

**Registrar:** René M. Vargas M.

TERRAGNOLO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON MOTION FOR INTERIM  
MEASURES**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Alan Gutman, ALS/OHRM, UN Secretariat

## **Introduction**

1. On 3 July 2013, the Applicant, an Editorial and Desktop Publishing Assistant, Department for General Assembly and Conference Management, filed a request for interim relief under art. 10.2 of the Tribunal's Statute and art. 14 of its Rules of Procedure. He contests the decision "not to enforce the applicable 4-year term limit on ... three staff representatives of the [United Nations] Staff Pension Committee ... and to not take action on reports of an apprehended/undisclosed conflict of interest and electoral violations on the part of one of them ..."

2. As interim measures under art. 10.2, during the determination of the case on the merits, the Applicant asks the Tribunal to order the Respondent to deny these three staff members:

time release and any other form of administrative assistance, including but not limited to travel authorizations, the grating of UN laissez-passer, the payment of daily substance allowance and transportation in connection with [United Nations Joint Staff Pension Fund ("UNJSPF")] and Pension Board activities.

## **Background**

3. From 13 to 18 December 2012, the elections for the United Nations Staff Pension Committee ("UNSPC") took place. The Applicant, who was a candidate in these elections, was ranked in place seven, behind four candidates elected as members and two elected as alternate members of the UNSPC.

4. On 17 June 2013, the Applicant submitted an application on the merits to the New York Registry, which upon the Registry's request, he re-submitted on 25 June 2013. On the cover page of the application, the Applicant notes that he contests the decision

to grant time release and related administrative assistance to ineligible staff representatives to UN Staff Pension Committee in breach of applicable term limits, and [the refusal] to take action on the notification that one [of] these members was officing under an insufficiently disclosed conflict of interest to the favour of the Respondent and broke electoral regulations during the polls.

5. On 3 July 2013, the Applicant re-submitted the above-referenced motion for interim relief, which he had previously submitted on 21 June 2013 with almost identical terms. The same day, the Applicant informed the New York Registry that he had no objections to the reassignment of the case to another Registry.

6. The application and the motion for interim relief were served to the Respondent offices on 5 July 2013. Both were transmitted to the United Nations Secretariat (ALS/OHRM), the United Nations Development Programme (“UNDP”) and the United Nations Children’s Fund (“UNICEF”), which are the three offices the Applicant had referred to in his motion. The replies by ALS/OHRM, UNDP and UNICEF were filed on 9 July 2013. The Applicant submitted two motions for leave to respond to these replies on 9 July 2013.

7. By Order No. 168 (NY/2013) on change of venue, of 10 July 2013, the case was transferred to the Geneva Registry, where it was registered under case No. UNDT/GVA/2013/035.

### **Arguments of the parties**

8. The Applicant’s arguments can be summarized as follows;

a. The decision is *prima facie* illegal, *inter alia*, since it was taken in violation of staff rule 1.2 (c), General Assembly resolution A/RES/51/226 (Human resources management), sect. II, paras.10-12 and staff rule 8.1 (d); the decision was influenced by improper considerations; the Respondent erred in stating that General Assembly resolution A/RES/51/226 does not apply;

b. The criterion of urgency is met, *inter alia*, since the Pension Board is going to meet from 15 to 19 July 2013 with the participation of members in breach of term limits; the Applicant has been alerting the Respondent since 27 December 2012 through all channels suggested by the Ethics Office hence the urgency was created by the Respondent;

c. He will suffer irreparable harm since the final resolution of the case will not produce retroactive effects; he will therefore be precluded from

serving on the UNSPC, the Pension Board and its possible subcommittees, which will cause harm to his reputation and negatively impact on his career prospects; also, since essential decisions are to be made during this term, irreparable harm and considerable legal uncertainty may arise if defect decisions are made at the Pension Fund Board and its subcommittees.

9. The Respondent's arguments can be summarized as follows:
  - a. The application and the associated request for interim measures are not receivable under art. 8 of the Tribunal's Statute hence the Tribunal has no jurisdiction to grant the interim relief;
  - b. The application and the motion for interim measures do not involve an administrative decision taken by the Secretary-General, who has no role in the administration of the UNJSPF; the contested decision does not affect the Applicant's terms of appointment or contract, since the composition of the UNSPC and of the UNJSPF is not a term of condition of the Applicant's terms of appointment under the United Nations Staff Regulations and Rules;
  - c. The elections and terms of office of members of the UNSPC and of the Pension Board are exclusively governed by the Regulations of the UNJSPF; the Secretary-General has no role in the elections;
  - d. The Applicant does not have standing to contest the granting of time release and administrative support to other staff members, since this does not relate to his terms of appointment;
  - e. The Applicant does not demonstrate that the decision was *prima facie* unlawful: the term limitations for staff representatives acting under the United Nations Staff Regulations and Rules, under General Assembly resolution A/RES/51/226, do not apply to the elected representatives of participants in service of the United Nations under the Regulations of the UNJSPF; staff regulation 8.1 and staff rule 8.1 are inapplicable to the UNSPC;

- f. Nothing in art. 6 (b) of the UNJSPF Regulations limits the length of service or terms of elected members of the UNSPF, including those elected by UNJSPF participants in service of the United Nations;
- g. The implementation of the contested decision will not cause harm to the Applicant that the Tribunal would not be able to repair with an award of damages;
- h. The request for interim measures is not urgent;
- i. The Respondent requests the Tribunal to determine the receivability of the application prior to determine the motion for interim relief; to enter summary judgement against the Applicant on the grounds that his application is not receivable and to reject the motion for interim relief on the grounds that it is not receivable and fails to meet the requirements for the granting of such relief; he further requests that the Tribunal award costs against the Applicant pursuant to art. 10.6 of its Statute.

### **Consideration**

10. As a preliminary matter, the Tribunal notes that this order responds exclusively to the Applicant's motion on interim measures, while the merits of the application and the question whether a summary judgement under art. 9 of its Rules of Procedure is appropriate will be decided at a later stage.

#### *Competence of the Dispute Tribunal*

11. Without prejudice to the Tribunal's determination of the receivability of the application on the merits, in light of the current state of the case file, the Tribunal finds that it is competent to decide upon the present motion for interim measures under art. 10.2 of the Statute of the Tribunal and art. 14 of its Rules of procedure, since the Applicant is contesting a decision of the Secretary-General, which he alleges to be in non-compliance with his terms of appointment.

#### *Criteria for granting interim relief under art. 10.2 of the Tribunal's Statute*

12. In accordance with art. 10.2 of its Statute,

the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage.

13. It follows that for a motion for interim relief to be granted, the three conditions have to be fulfilled and it has to be rejected if at least one of the conditions is not met.

*Urgency*

14. This Tribunal has previously held that a request for interim relief shall be rejected if the urgency of the matter is caused by the Applicant's own makings and is therefore self-inflicted (*Dougherty* UNDT/2011/133; *Evangelista* UNDT/2011/212).

15. The Tribunal notes that in the case at hand, the criterion of urgency is not met: the elections to the UNSPC were held in December 2012; in view of the fact that the Applicant submitted his motion for interim relief to the Tribunal only in July 2013, arguing that the urgency lies, *inter alia*, in the fact that the Pension Board is going to meet from 15 to 19 July 2013, the Tribunal notes that the urgency, if any, was clearly self created by the Applicant.

*Irreparable harm*

16. In principle, if one of the three cumulative conditions required for temporary relief under art. 10.2 of the Statute has not been met, the Tribunal does not need to examine the two remaining conditions, namely irreparable damage and *prima facie* illegality. It considers, however, that it is noteworthy that in the case at hand, if the motion for interim measures is rejected, no irreparable harm will be caused to the Applicant.

17. In *Fradin de Bellabre* UNDT/2009/004, the Tribunal held that "harm is irreparable if it can be shown that suspension of action is the only way to ensure that the Applicant's rights are observed". While mere financial loss is not enough to satisfy this requirement, the Tribunal held that harm to professional reputation

and career prospects may constitute irreparable damage (see *Villamorán* UNDT/2011/126). The same standards have to be applied to the case at hand.

18. The Tribunal notes that even in the hypothesis that the Applicant's request for interim measures – namely to deny the three staff members time release and any other form of administrative assistance in connection with the UNJSPF and Pension Board activities – was granted, this would neither result in the Applicant's appointment to the Pension Board, nor in his attendance of the Board's meeting next week. Also, granting the three elected members the relevant administrative support to attend the Pension Board cannot possibly impact on the Applicant's career prospects and reputation or in any other manner cause damage to the Applicant or to the Organization. On the contrary, the Tribunal finds that even in the hypothesis that the legality of the elections might be contested, at this stage, it's in the interest of the Organization that the Pension Board be held and that the elected participants are able to attend, and be provided the relevant administrative support.

*Costs*

19. The Tribunal does not find that the Applicant has manifestly abused the proceedings before it, hence the Respondent's request to award costs against the Applicant, under art. 10.6 of the Tribunal's Statute, has to be rejected.

IT IS ORDERED THAT:

20. In view of the foregoing, the request for interim relief is rejected.

21. The request for award of costs against the Applicant is rejected.

*(Signed)*

Judge Jean-François Cousin

Dated this 11<sup>th</sup> day of July 2013

Entered in the Register on this 11<sup>th</sup> day of July 2013

*(Signed)*

René M. Vargas M., Registrar, Geneva