



Before: Judge Jean François Cousin

Registry: Geneva

Registrar: René M. Vargas M.

SKOURIKHINE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Nathalie Defrasne, UNOG

Introduction

1. By application filed on 8 March 2014 and registered under Case No. UNDT/GVA/2014/008, the Applicant seeks suspension of action, pending management evaluation, of the decision to proceed to fill the vacancy advertised under Job Opening No. 3144, in the Russian Translation Section (“RTS”), Languages Service (“LS”), Division of Conference Management (“DCM”), United Nations Office at Geneva (“UNOG”). The Applicant identified 28 February 2014 as the date of said decision, namely the date on which he was sent an invitation for an interview pursuant to his application to the above-mentioned post.

Facts

2. The Applicant entered the service of the Organization in 1982. He currently works as a Translator, at the P-4 level, at the RTS, LS, DCM, UNOG.

3. Further to an earlier application filed by the Applicant (UNDT/GVA/2013/007), the Tribunal issued, on 4 September 2013, Judgment *Skourikhine* UNDT/2013/113, rescinding two non-selection decisions related to two posts of Senior Revisers (Russian) at the P-5 level.

4. The Applicant alleges that, as from the filing of this earlier application to the Tribunal, he has been subjected to harassment by his supervisor, the Chief, RTS, LS, DCM, UNOG. In this connection, on 12 November 2013, he filed a complaint against the latter, under Secretary-General’s bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment including sexual harassment, and abuse of authority). The investigation into this complaint is currently still ongoing.

5. On 28 November 2013, Job Opening No. 31441 for the position of Senior Reviser (Russian), P-5, was advertised in Inspira and the Applicant applied to it on 29 November 2013.

6. On 2 December 2013, he sent a letter to the Chief, Human Resources Management Service (“HRMS”), UNOG, expressing concern that his candidature might not be considered fairly in the context of the selection process for the post to which he had applied since the Chief, RTS, LS, DCM, UNOG, was acting as hiring manager in said process.

7. On 7 February 2014, after the Applicant’s complaint for prohibited conduct under ST/SGB/2008/5 was transmitted to him, and upon consultation with HRMS, the Chief, RTS, LS, DCM, UNOG, withdrew from the selection procedure for Job Opening No. 31441. Henceforth, the Chief, LS, DCM, UNOG, took up the role of hiring manager for the advertised post.

8. On 28 February 2014, the Applicant was invited for an interview as a candidate for the above-referenced post, scheduled on 14 March 2014. The invitation specified the names of the five members of the assessment panel that would conduct the interview; the panel did neither include the Chief, RTS, LS, DCM, UNOG, nor the Chief, LS, DCM, UNOG.

9. On 8 March 2014, the Applicant requested management evaluation of the contested decision. On the same day, he filed the application presently before the Tribunal.

10. On Monday, 10 March 2014, the application was transmitted to the Respondent, who filed his reply on 12 March 2014, with annex 3 thereto submitted *ex parte*, on the grounds that the non-disclosure of the documents would ensure a fair and impartial continuance of the selection procedure, without affecting the interests of justice.

11. Also on 12 March 2014, the Applicant submitted, upon the Tribunal’s request, annex 5 to his application.

Parties’ contentions

12. The Applicant’s primary contentions may be summarized as follows:

Prima facie unlawfulness

- a. No corrective measures have been taken on the Applicant's complaint of prohibited conduct in connection with the selection procedure for Job Opening No. 31441, despite such measures being specifically provided for in para. 5.3 of Secretary-General bulletin ST/SGB/2008/5;
- b. Proceeding to fill the vacancy under such conditions also constitutes an act of retaliation for the Applicant having had recourse to the Tribunal and having reported managerial abuses;

Urgency

- c. Given that the interviews for the position will take place on 14 March 2014, the post may be expected to be filled in a short time thereafter;

Irreparable damage

- d. Under the present circumstances, in which the Applicant has been harassed and his reputation questioned, the contested decision puts him at a clear disadvantage;
- e. The vacancy in question represents the Applicant's last chance of promotion during his expected remaining period of service. If he is not promoted at this occasion he will no longer have any realistic opportunity of career development.

13. The Respondent's primary contentions may be summarized as follows:

Prima facie unlawfulness

- a. The Chief, RTS, LS, DCM, UNOG, has entirely withdrawn from the selection procedure. He has been replaced as hiring manager and does not sit in the assessment panel tasked with conducting the interviews for the post;

- b. Appropriate measures were taken to ensure full and fair consideration of the Applicant's candidacy throughout the selection procedure;
- c. The application is hence moot and should be dismissed as irreceivable.

Consideration

14. Article 2.2 of the Statute of the Dispute Tribunal and art. 13 of its Rules of Procedure provide that it may order the suspension, during the pendency of management evaluation, of the implementation of a contested administrative decision that is the subject of an on-going management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

15. It is well-settled jurisprudence that only a "unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces *direct legal consequences to the legal order*" is appealable before the Tribunal. In other words, administrative decisions are characterized, *inter alia*, by the fact that they "carry *direct legal consequences*" (emphasis added) (*Andronov*, United Nations Administrative Tribunal Judgment No. 1157 (2003), as confirmed by the Appeals Tribunal, see *Hamad* 2012-UNAT-269; *Al Surkhi et al.* 2013-UNAT-304).

16. The Tribunal has consistently ruled that preparatory decisions, namely decisions constituting merely one of the steps and findings leading to an administrative decision, do not in themselves adversely affect a staff member's legal situation, since they modify neither the scope nor the extent of his or her rights. Consequently, an application against a preparatory decision must be considered irreceivable *ratione materiae* (*Ishak* UNDT/2010/085; *Elasoud* UDNT/2010/111; *Price* UNDT/2011/095; *Gehr* UDNT/2011/178; *Payman* UNDT2011/193; *Bajnoci* UNDT/2012/028; *Balakrishnan* UNDT/2012/041; *Oummih* UNDT/2014/004).

17. The Appeals Tribunal has confirmed this finding and emphasised, referring specifically to selection procedures, that a selection process involves a series of preparatory decisions and that “[t]hese steps may be challenged only in the context of an appeal against the outcome of the selection process, but cannot alone be the subject of an appeal to the UNDT” (*Ishak* 2011-UNAT-152).

18. In the present case, the Applicant challenges the decision to proceed to fill the vacancy by convening the candidates to an interview. That decision is clearly preparatory and, as such, not appealable under the terms of the Tribunal’s Statute. Therefore, the Tribunal cannot but reject the application as irreceivable. Only the decision to select another candidate or that of not to select the Applicant for the advertised vacancy would constitute administrative decisions open to formal contestation by the Applicant.

19. Having declared the application irreceivable, and for the sake of procedural economy, it is not necessary for the Tribunal to pronounce itself on the Respondent’s claim that the application is moot. For the same reason, the Tribunal is not required to ascertain whether the three cumulative conditions set forth in art. 2.2 of its Statute are met in the case at hand.

20. Lastly, concerning the Respondent’s request to keep annex 3 to his reply *ex parte*, the Tribunal finds no compelling reasons to order disclosure of such documents to the Applicant, inasmuch as it did not base its ruling on these documents.

Conclusion

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

(Signed)

Judge Jean-François Cousin

Dated this 13th day of March 2014

Entered in the Register on this 13th day of March 2014

(Signed)

René M. Vargas M., Registrar, Geneva