



**Before:** Judge Rowan Downing

**Registry:** Geneva

**Registrar:** René M. Vargas M.

CASELLI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON AN APPLICATION FOR  
INTERIM MEASURES AND  
SUSPENSION OF ACTION AND CASE  
MANAGEMENT**

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**Counsel for Applicant:**

François Lorient, Esq.

**Counsel for Respondent:**

Simon Buettner, UNOG

## **Introduction**

1. By application filed on 23 March 2015, the Applicant contests “[d]ecisions by [the] Director to submit to the Board programme-budget amendments leading to A) Discontinuance of librarian services at the [United Nations interregional Crime and Justice Research Institute (“UNICRI”)] International Documentation Centre, B) Abolition of UNICRI sole librarian post and C) Non-renewal of [the] Applicant’s [Fixed-Term] contract”. The case was registered under Case No. UNDT/GVA/2015/117.

2. On 25 March 2015, the Applicant filed an application for suspension of action and motion for interim measures under art. 10.2 under the Tribunal’s Statute and art. 14 of its Rules of Procedure.

3. The application on the merits and the motion were served on the Respondent on 26 March 2015, who filed his reply on the application for suspension of action and motion for interim measures on 27 March 2015.

4. On 30 March 2015, the Applicant filed a motion to strike and for leave to adduce evidence.

## **Facts**

5. The Applicant has worked at the UNICRI International Documentation Centre since 1999.

6. On 13 and 14 November 2014, the UNICRI Board of Trustees held its 23<sup>rd</sup> session. During it, the Director, UNICRI, presented the biennium budget 2014-15, together with the programme of work and budget estimates for 2015, proposing the abolishment of the post of Senior Library Assistant (G-7), encumbered by the Applicant and the rendering of such services by a junior fellow.

7. According to communications on file from some members of the Board of Trustees, the latter had not taken a decision with respect to the abolition of the

post encumbered by the Applicant during its meeting, but had rather requested additional information in this respect.

8. By memorandum dated 1 December 2014, the Director, UNICRI, informed the Applicant of the “decision of the UNICRI Board of Trustees concerning the abolishment of the Library Assistant (GS-7) post, currently encumbered by [her], which [would] entail non extension of [her] contract beyond 31 December 2014”.

9. On 9 December 2014, the Applicant filed a request for management evaluation and for suspension of action of the decision to abolish her post and not to renew her appointment with the Management Evaluation Unit (“MEU”). The MEU responded on 12 December 2014, noting that since her appointment had been extended until 28 February 2014, beyond the deadline for completion of the management evaluation, her request for suspension of action had become moot.

10. On 23 February 2015, the Applicant was sent a letter of appointment and the personnel action pertaining to the extension of her fixed-term appointment (“FTA”) until 31 March 2015, as Library Assistant, UNICRI.

11. On the same day, the Applicant filed a new request for management evaluation, of the personnel action decisions of 19 January and 23 February 2015 relating to the abolition of the post she encumbered, and the “contract termination set on 31 December 2014, postponed to 28 February 2015, and then amended to 31 March 2015”.

12. By email of 3 March 2015, the Director, UNICRI, confirmed to the Applicant that the position she was encumbering had been abolished, that it would no longer be available beyond 31 March 2015, and, hence, that her contract would not be renewed beyond that date.

13. The Under-Secretary-General for Management responded to the Applicant’s request for management evaluation of 23 February 2015 on 12 March 2015, noting that the personnel actions were in fact notifications of the FTA extension until 28 February and 31 March 2015, respectively, and that the only administrative decision in front of the MEU was the decision of 3 March 2015, by

which the Applicant was informed that her FTA was not renewed beyond 31 March 2015. He noted that the Secretary-General had decided to uphold the decision not to renew the Applicant's appointment beyond 31 March 2015.

### **Parties' contentions**

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

a. She requests suspension of the discontinuation of librarian services at UNICRI International Documentation Centre, of the abolition of the UNICRI librarian post and of the transfer of duties to a Junior Fellow;

#### *Prima facie unlawfulness*

b. The Director, UNICRI, has no delegation of authority to terminate or separate UNICRI staff members appointed under an established programme and under budgeted posts adopted by the Board of Trustees, such as the post encumbered by the Applicant;

c. The Applicant's terms of appointment are governed by the Staff Rules and Regulations of the United Nations, including Chapter IX (separation from service), which require a formal decision by the Secretary-General, which does not exist in the case at hand; the Secretary-General has never delegated his authority under Chapter IX to the Director, UNICRI; as such, the latter could not unilaterally decide the abolition of the post she encumbered;

d. At its 2014 session, the Board of Trustees clarified that the International Documentation Centre is a core programme of UNICRI, necessitating the G-7 post encumbered by the Applicant; there is no evidence that the conditions of staff regulations 9.3a(i), according to which "the Secretary-General may ... terminate the appointment of a staff member who holds a ... fixed-term ... appointment ... if the necessities of service require abolition of the post or reduction of the staff" were fulfilled in the present case;

e. The Director, UNICRI, in unilaterally taking the contested decisions abused his authority, in contravention of ST/SGB/2008/5;

f. The decision of 3 March 2015 does not comply with the statutory requirement of 30 day notice;

*Urgency*

g. After they had initially been set to 31 December 2014, and then postponed to 28 February 2015, the decisions will be implemented on 31 March 2015;

*Irreparable damage*

h. After 16 years of dedicated service, and still a few years from retirement, the Applicant will find herself without employment with less than 30 days of notice; the implementation of the decision would cause damage to her health, reputation and career, which would be greater than the amount of compensation she could obtain as per the statutory two-year limitation of compensation of the Tribunal's Statute;

i. If the decisions are not suspended, the members of the Board of Trustees, who have exclusive power in this respect, will see their budgetary and programmatic authority under the UNICRI Statute undermined;

j. The implementation of the unilateral decisions of the Director without the Board's prior approval will tarnish the public image and reputation of UNICRI and of its staff;

k. Suspension of these decisions is required until the Director, UNICRI, discloses evidence of the official minutes and of a formal decision to abolish the G-7 Librarian post by the UNICRI Board of Trustees;

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

a. The application is irreceivable, *ratione materiae*;

- b. The Applicant clearly seeks the suspension of the implementation of the non-renewal of her FTA beyond the management evaluation period and pending the proceedings before the Tribunal, which, under the terms of its Statute, the latter has no competence to grant;
- c. UNICRI is entirely funded by extra-budgetary contributions and does not have any “established” posts that could be abolished; as such, the post encumbered by the Applicant is one funded by voluntary contributions and she can be kept on contract only upon the Director, UNICRI, request to the Board of Trustees to fund her post in a given year;
- d. In fact, the International Documentation Centre is not being discontinued, but remains a Digital Centre, assisted by a Junior Fellow whose functions differ from that of the G-7 post of Library Assistant; the Junior Fellow was already on board in 2014; as such, the transfer of functions has already been implemented;

*Prima facie unlawfulness*

- e. Heads of departments have delegated authority to renew or not FTAs of general service staff members; hence, the decision by the Director, UNICRI, not to extend the Applicant’s FTA was lawful;
- f. The approved budget for 2015 does not contain a post of G-7, Library Assistant; hence, the contested decision was based on a valid reason, as supported by the facts;
- g. Staff rule 9.4 does not provide for a 30-day notice in case of non-renewal of an FTA, and staff rule 9.7 does not apply to the case at hand;
- h. The Applicant does not provide any evidence that the actions by the Director, UNICRI, would amount to an abuse of authority, and she has not filed a complaint under ST/SGB/2008/5;

i. The decision to restructure the work of UNICRI was a valid exercise of discretion, and the Tribunal cannot substitute its assessment to that of the Secretary-General;

*Irreparable damage*

j. The Applicant did not show how the rejection of the motion would cause her irreparable harm;

k. The Tribunal is precluded from suspending the decision not to renew the Applicant's FTA, and any interim measure otherwise ordered by the Tribunal would not change the Applicant's contractual status; the Tribunal does not have the power to change the post structure or budget of the Organization.

**Consideration**

*Preliminary matters*

16. In view of its conclusions below, the Tribunal decides that the Applicant's motion to strike and for leave to adduce evidence be rejected.

*Motion for interim measures and suspension of action*

17. The Appeals Tribunal noted in *Massabni* 2012-UNAT-238 that it is the duty of the presiding Judge to adequately comprehend an application before him/her:

25. The duties of a Judge prior to taking a decision include adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content, as the judgment must necessarily refer to the scope of the parties' contentions. Otherwise, the decision-maker would not be able to follow the correct process to accomplish his or her task, making up his or her mind and elaborating on a judgment motivated in reasons of fact and law related to the parties' submissions.

26. Thus, the authority to render a judgment gives the Judge an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being

contested and subject to judicial review, which could lead to grant, or not to grant, the requested judgment.

18. In her application, the Applicant identified the contested decisions as follows:

- a. “Discontinuance of librarian services at the UNICRI’s International Documentation Centre”;
- b. “Abolition of UNICRI’s sole librarian post and its transfer to a Junior Fellow”; and
- c. “Non-renewal of [her] FT contract”.

19. In her application for interim measures and suspension of action, the Applicant requests suspension of the “[d]iscontinuance of librarian services at the UNICRI’s International Documentation Centre” leading to the “[a]bolition of UNICRI’s sole librarian post” and to “the transfer of [its] functions to a Junior Fellow”

20. The Tribunal recalls that for an application to be receivable, the contested decision has to be an “administrative decision” under the provisions of its Statute (art. 2.1(a)). The Appeals Tribunal has adopted the definition of an administrative decision (see *Al Surkhi et al.* 2013-UNAT-304, *Lee* 2014-UNAT-481, *Wasserstrom* 2014-UNAT-457) as developed by the former Administrative Tribunal in *Andronov* (Judgment No. 1157 (2003)):

It is acceptable by all administrative law systems, that an administrative decision is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.



21. The Appeals Tribunal held in *Lee* 2014-UNAT-481 that while an Applicant “cannot challenge the discretionary authority of the Secretary-General to restructure the Organization or to abolish a post, [he/she] may challenge an administrative decision resulting from the restructuring once that decision has been made”. It found that the budgetary proposal by the Secretary-General and the General Assembly’s adoption of it by resolution “[were] merely acts prefatory to or preceding an administrative decision that would ‘produce direct legal consequences’ to [the Applicant’s] employment”.

22. The Tribunal notes that in the case at hand, the Applicant contests:

- a. the discontinuance of librarian services at the UNICRI International Documentation Centre;
- b. the abolition of UNICRI sole librarian post and the transfer of its functions to a Junior Fellow; and
- c. the non-renewal of her FTA, while seeking suspension of 22.a and 22.b above.

23. In view of the above-referenced jurisprudence of the Appeals Tribunal in its above-referenced Judgement *Lee*, the Tribunal cannot but find that both the discontinuance of librarian services at the UNICRI International Documentation Centre and the abolition of UNICRI sole librarian post and the transfer of its functions to a Junior Fellow do not “produce direct legal consequences” for the Applicant. Hence, they do not constitute administrative decisions for the purpose of the Tribunal’s Statute. Rather, they constitute prefatory acts, which ultimately led to a subsequent decision not to renew the Applicant’s FTA. Therefore, the application is not receivable *ratione materiae* with respect to the decisions under paras. 22.a and 22.b above.

24. The foregoing notwithstanding, the Tribunal considers that by her motion of 25 March 2015, the Applicant seeks the suspension of the decision not to renew her appointment pending a determination of the application on the merits.

25. With this in mind, the Tribunal recalls the scope of its competence to suspend the implementation of an administrative decision beyond the date of completion of management evaluation, under the terms of art. 10.2 of its Statute:

At any time during the proceedings, 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. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

26. As such, the Tribunal is not competent to suspend the implementation of the contested administrative decision in cases of appointment, promotion or termination.

27. The Tribunal therefore has to determine whether the decision not to renew the Applicant's FTA has to be characterized as a matter of "appointment" in the context of the above-referenced article. In this regard, the Appeals Tribunal stated in Judgement *Benchebbak* 2012-UNAT-256:

32. Finally, Order No. 142 decided a suspension in a matter of appointment but failed to follow the clear and reiterated jurisprudence of the Appeals Tribunal.

33. The Statute clearly prohibits the adoption of such suspension in cases of appointment, promotion, or termination. The appeals are receivable because the UNDT exceeded its jurisdiction in ordering the suspension of contested decision beyond the date of completion of management evaluation in a matter concerning an appointment.

28. It follows that, under art. 10.2, the Tribunal does not have jurisdiction to order suspension of the decision not to renew the Applicant's fixed-term appointment beyond the completion of the management evaluation.

29. Therefore, and in view of its findings with respect to the non-receivability of the application for suspension of action filed on 25 March 2015 as far as it is directed at suspending the discontinuance of librarian services at the UNICRI International Documentation Centre, the abolition of UNICRI sole librarian post,

and the transfer of its functions to a Junior Fellow, the application for suspension of action and for interim measures has to be rejected.

30. As a result of the above, the Tribunal does not need to examine the cumulative requirements for granting a suspension of action, namely *prima facie* unlawfulness, urgency and irreparable damage.

**Conclusion**

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

*(Signed)*

Judge Rowan Downing

Dated this 30<sup>th</sup> day of March 2015

Entered in the Register on this 30<sup>th</sup> day of March 2015

*(Signed)*

René M. Vargas M., Registrar, Geneva