



**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** René M. Vargas M.

KAZAGIC

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON AN APPLICATION FOR  
INTERIM MEASURES**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

ALS, OHRM

## **Introduction**

1. By application emailed to the New York Registry of the Tribunal on 26 November 2015, and forwarded by said Registry to the Geneva Registry by email of 27 November 2015, the Applicant contests the decision:

- a. to dismiss him in accordance with staff rule 10.2(a)(ix); and
- b. to impose on him a fine equivalent to three months net salary, in accordance with staff rule 10.2(a)(v).

2. Upon the Tribunal's request, the application was filed through the Tribunal's eFiling Portal (CCMS), on 25 December 2015, together with, *inter alia*, a request for interim measures. The Applicant, in his request for interim measures, requested that the "decision ... imposing ... [the] two disciplinary measures ... [be] annulled and ignored".

## **Facts**

3. The Applicant worked as Programme Management Assistant at the United Nations Peacekeeping Mission in Kosovo.

4. By judgment of the Basic Court of Mitrovica dated 12 February 2015, the Applicant was convicted of various criminal offences under the Criminal Code of Kosovo.

5. By memorandum of 15 June 2015, the Assistant Secretary-General for Field Support referred the Applicant's case to the Office of Human Resources Management, for appropriate action.

6. By memorandum dated 25 June 2015, and delivered to the Applicant on 9 July 2015, the latter was requested to respond to allegations that:

- a. In or about November 2010, [he had] engaged in sexual intercourse with S.T., who was under 18 years of age at the time;

b. In or about June 2011, [he had] engaged in sexual intercourse with S.N., who was under 18 years of age at the time; and

c. [he had] violated the national criminal laws of the Republic of Kosovo relating to sexual abuse, rape, attempted sexual assault and attempted facilitation of prostitution.

7. The Applicant filed his comments on the allegations of misconduct on 22 July 2015.

8. By letter dated 13 October 2015—notified to the Applicant on 21 October 2015—the Assistant Secretary-General for Human Resources Management informed the Applicant of the decision by the Under-Secretary-General to impose on him the two above-referred disciplinary measures.

#### **Parties' contentions**

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

##### *Prima facie unlawfulness*

a. The contested decision was based on unacceptable facts and evidences, and an unfair trial;

##### *Urgency*

b. The urgency results from the fact that he had to retire in November 2015;

##### *Irreparable damage*

c. The aim of the disciplinary measures is to reduce the amount of his lump sum from the budget of the United Nations Joint Staff Pension Fund.

## Consideration

10. Article 10.2 of the Tribunal's Statute states:

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** (emphasis added).

11. In addition, art. 14 of the Dispute Tribunal's Rules of Procedure provides, along the same lines that:

At any time during the proceedings, the Dispute Tribunal may order interim measures to provide temporary relief 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** (emphasis added).

12. The Tribunal notes that the application for interim measures is addressed against two decisions, namely the dismissal of the Applicant under staff rule 10.2(a)(ix), and the imposition of a fine under staff rule 10.2(a)(v). It will therefore, in turn, examine whether the request for interim measures can be granted for both, or either of the decisions.

### *Dismissal*

13. It follows from the wording of art. 10.2 of the Tribunal's Statute and art. 14 of its Rules of Procedure, that suspending the implementation of a decision, at any time during the proceedings, related to appointment, promotion or termination goes beyond the jurisdiction of the Tribunal.

14. The Tribunal recalls that staff rule 9.6 provides, in its relevant parts, the following:

**Termination**

**Definitions**

(a) A termination within the meaning of the Staff Regulations and Staff Rules is a separation from service initiated by the Secretary-General.

...

**Reasons for termination**

(c) The Secretary-General may, giving the reasons therefor, terminate the appointment of a staff member who holds a temporary, fixed-term or continuing appointment in accordance with the terms of the appointment or on any of the following grounds:

...

(iv) Disciplinary reasons in accordance with staff rule 10.2 (a) (viii) and (ix).

15. As per the above definitions, the Applicant's dismissal under staff rule 10.2(a)(ix) constitutes a termination for the purpose of art. 10.2 of the Tribunal's Statute. The Tribunal is therefore not competent to review the request for interim measure with respect to that first decision.

*Imposition of a fine*

16. However, with respect to the request for interim measures as far as it concerns the fine imposed on the Applicant under staff rule 10.2(a)(v), the Tribunal finds itself competent to review the matter; hence, it has to review its merits.

17. Based on the language of the above-quoted provisions of its Statute and of its Rules of Procedure, the Tribunal has the power to order interim measures only if all three cumulative conditions, namely *prima facie* unlawfulness, particular urgency and irreparable damage, are fulfilled. It is well-settled jurisprudence that

in case one, or more conditions, is missing, no interim measures can be ordered (*Awoyemi* Order No. 165 (GVA/2015)).

Irreparable damage

18. In arguing that he would suffer irreparable harm should the litigious decision be given effect, the Applicant refers to the reduction of the amount of his pension.

19. While the Tribunal is uncertain to what extent the imposition of the fine would impact the Applicant's pension, it recalls what it held in *Moise* Order No. 208 (NY/2014), namely, that “[i]t is generally accepted that mere economic loss only is not enough to satisfy the requirement of irreparable damage.”

20. In light of the foregoing, and without prejudice to the question of whether the decision has already been implemented (cf. *Nair* Order No. 027 (GVA/2015), referring to *Applicant* Order No. 87 (NBI/2014); *Kawas* Order No. 297 (NY/2014); *Smoljan* Order No. 43 (GVA/2013); *Applicant* Order No. 167 (NBI/2014)), the Tribunal cannot but find that the implementation of the imposition of a fine is not susceptible to cause the Applicant irreparable damage for the purpose of the present proceedings.

21. Having reached this finding, the Tribunal does not need to examine the remaining cumulative requirements for granting a request for interim measures.

22. Since the application for interim measures remains without success for evident reasons of law, there is no need to serve it to the Respondent for reply prior to ruling on it.

**Conclusion**

23. In view of the foregoing, the application for interim measures is rejected.

*(Signed)*

Judge Thomas Laker

Dated this 15<sup>th</sup> day of January 2016

Entered in the Register on this 15<sup>th</sup> day of January 2016

*(Signed)*

René M. Vargas M., Registrar, Geneva