



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON MOTION
FOR INTERIM MEASURES**

Counsel for Applicant:

Mohamed Abdou, OSLA

Counsel for Respondent:

Bettina Gerber, HRMS, UNOG

Cornelius Fischer, HRMS, UNOG.

Notice: This Order has been anonymized as per order of the United Nations Dispute Tribunal.

Introduction

1. On 9 October 2017, the Applicant filed an application contesting the decision of the Under-Secretary-General of the Office of Internal Oversight Services (“USG/OIOS”), not to pursue disciplinary action against the Deputy Director, Investigations Division (“ID”), OIOS, pursuant to a complaint that the Applicant had made under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment and abuse of authority). The application was registered under Case No. UNDT/GVA/2017/075.

2. On 22 June 2018, the Applicant filed a “Motion for Interim Measures pending proceedings” requesting the Tribunal to order “the Respondent ... to immediately refrain from involving the Deputy [Director], [ID, OIOS], in any supervisory or managerial role vis-a-vis the Applicant pending resolution of [his] case [(UNDT/GVA/2017/075)]”.

3. The motion was served to the Respondent who filed his reply on 28 June 2018.

Facts

4. On 18 March 2015, the Applicant submitted to the then USG/OIOS a complaint of harassment and abuse of authority against the Deputy Director, ID, OIOS.

5. By letter dated 19 April 2017, the Applicant was informed that after the conduct of an investigation, there was factual basis for his allegations against the Deputy Director, ID, OIOS, and that, however, it was not sufficient to justify the institution of disciplinary proceedings but rather warranted the USG/OIOS to take managerial action vis-à-vis the Deputy Director, ID, OIOS.

Consideration

6. In his motion for interim measures, the Applicant argues that he has been subject to the supervision of the subject of his complaint, i.e., the Deputy Director, ID, OIOS, without any legal provision that allows for it. Consequently, he claims that he is subject to three layers of supervision and has to comply with contradictory instructions, that he has been victim of negative comments and that unrealistic achievements are requested of him. The Applicant further asserts that this situation has caused him stress and anxiety and has led to a deterioration of his health.

7. In view of the above, the Applicant, who is currently on sick leave, requests the Tribunal to order the Respondent to stop the Deputy Director, ID, OIOS, from constantly interfering with his work, so that he can resume his functions.

8. The Respondent argues that the motion for interim measures is not receivable because it goes far beyond the scope of the application of the merits currently before the Tribunal. Additionally, he contends that interim measures under art. 10.2 of the Tribunal's Statute are intended to shield applicants from irreparable harm due to the implementation of an administrative decision prior to the final decision of the Tribunal.

9. In the case at hand, the Tribunal has to address the issue of receivability and secondly, subject to a positive finding on receivability, to decide if the cumulative legal requirements to order an interim measure are met.

Receivability

10. Pursuant to art. 10. 2 of the Tribunal's 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.

11. Art. 10.2 requires the existence of an application on the merits before the Tribunal can consider a motion for interim measure.

12. It follows from the above mentioned legal provisions that an order on interim measures may be granted at the request of any of the parties when the following cumulative conditions are met:

- a. The motion for interim measures is filed in connection with a pending application on the merits before the Tribunal and at any time during the proceedings;
- b. The application on the merits does not concern issues of appointment, promotion or termination;
- c. The interim measure(s) ordered by the Tribunal must provide solely a temporary relief to either party, such relief being neither definitive by nature nor having the effect of disposing of the substantive case in relation to which the motion for interim measures is filed;
- d. The contested administrative decision appears *prima facie* to be unlawful;
- e. There is particular urgency in requesting the interim measures; and
- f. The implementation of the contested administrative decision would cause irreparable damage.

13. In the case at hand, the contested administrative decision does not pertain to issues relating to appointment, promotion or termination (see para. 1 above).

14. The Tribunal notes that a request for interim measures has to be connected to the application on the merits in that if the interim measure is not granted, an applicant's *status quo* will change to his/her detriment before the Tribunal adjudicates on the merits of an application.

15. In his application on the merits, the Applicant challenges the decision of the USG/OIOS not to initiate disciplinary proceedings against the subject of his complaint, namely the Deputy Director, ID, OIOS. In his motion for interim measure, the Applicant seeks an order from the Tribunal to prevent the Deputy Director, ID, OIOS, from exercising any supervisory role on the Applicant's work (see also para. 2 above)

16. The Tribunal notes that the subject of the Applicant's complaint under ST/SGB/2008/5 and the subject of his motion for interim measures is the same person, i.e. the Deputy Director, ID, OIOS. There is an obvious common denominator between the main application and the Motion for Interim Measures, which is the factual context of the employment relationship between the Applicant and the Organization. Nonetheless, this commonality is not enough to establish the nexus required by art. 10.2 of the Tribunal's Statute.

17. Procedurally, the Tribunal finds that the Applicant's claims on the alleged interference by the Deputy Director, ID, OIOS, in his functions and duties, is a different administrative action that should be challenged separately (through a request for management evaluation and, eventually, a new application before this Tribunal).

18. Having found that there is not a clear connection between the Application and the Motion for Interim Measures, the Tribunal concludes that the motion is not receivable and, consequently, it will not proceed to examine whether the other cumulative conditions to grant interim relief have been met.

Conclusion

19. In view of the foregoing, IT IS ORDERED THAT

The motion for interim measures pending proceedings is rejected.

(Signed)

Judge Teresa Bravo

Dated this 3rd day of July 2018

Case No. UNDT/GVA/2017/075

Order No. 115 (GVA/2018)

Entered in the Register on this 3rd day of July 2018.

(Signed)

René M. Vargas M., Registrar, Geneva