



**Before:** Judge Francesco Buffa

**Registry:** Geneva

**Registrar:** René M. Vargas M.

QUATRINI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER  
ON MOTION FOR INTERIM  
MEASURES PENDING  
PROCEEDINGS**

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**Counsel for Applicant:**

Maria Teresa Cirelli

**Counsel for Respondent:**

Cornelius Fischer, LPAS, UNOG

## **Introduction**

1. By application filed on 7 May 2018, the Applicant, a former Coordinator (P-5), Policy and Investment Analysis, United Nations Convention to Combat Desertification (“UNCCD”), challenged the decisions (1) not to renew his contract at the P-5 level for a two-year period; (2) to offer him an appointment at the P-3 level; and (3) to not make effective efforts to identify a suitable alternative position for him while excluding him from the selection process for a D-1 position at the Global Mechanism, UNCCD. The Applicant was separated from service on 30 June 2018.

2. On 10 January 2020, the Applicant filed a motion for interim measures pending proceedings. In his motion, the Applicant informs the Tribunal that the Organization issued vacancy announcement CCD/19/P/INT&EXT/13 for the post of Senior Partnerships and Resource Mobilization Coordinator (P-5), Global Mechanism, UNCCD.

3. The Applicant claims that the advertised position corresponds to the position he encumbered and requests the Tribunal to order the Respondent to withdraw the vacancy announcement and to order his reinstatement to that position or, alternatively, to put the selection process on hold pending a decision on his case.

4. On 15 January 2020, the Applicant’s case was reassigned to the undersigned Judge. On the same day, the above-mentioned motion was transmitted to the Respondent who filed his reply on 17 January 2020.

## **Consideration**

5. Interim measures during the proceedings are governed by art. 10. 2 of the Tribunal’s Statute and art. 14.1 of its Rules of Procedure. The latter, which replicates almost completely the former, provides 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”.

6. For the Tribunal to consider interim measures, several cumulative conditions set forth in the above-mentioned provisions must be met (see *Nadeau* Order No. 116 (NY/2015), *Awomeyi* Order No. 165 (GVA/2015), *Kazagic* Order No. 20 (GVA/2015) and *Auda* Order No. 156 (GVA/2016)):

- a. The motion for interim measures must have been filed in connection with a pending application on the merits before the Tribunal and at any time during the proceedings;
- b. The order for interim measures requires an administrative decision directly impacting the actual or former applicant’s terms of employment;
- c. The required temporary relief must not concern appointment, promotion or termination;
- 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.

7. In the case at hand, the Applicant contests the publication of a vacancy announcement in connection with his alleged right to keep the position he encumbered and therefore with his claim challenging the non-renewal of his contract.

8. The application on the merits that the Applicant filed concerns a matter of separation and, consequently, the motion does not meet the condition spelled out in para. 6.c above. It follows that the Tribunal cannot order a temporary relief in this matter (see *Siri* 2016-UNAT-609, *Auda* 2016-UNAT-671, *Benchebbak* 2012-UNAT-256, and *Chemingui* 2016-UNAT-641).

9. In addition, the decision to publish the vacancy announcement is without direct connection to the decisions contested by the Applicant before the Tribunal and is not directly challenged by the Applicant in his application on the merits; therefore, the motion for interim measures not being related to a decision properly contested before this Tribunal in the proceedings on the merits, it does not meet the condition mentioned in para. 6.a above.

10. Finally, even assuming that the announcement concerns the position once encumbered by the Applicant, it has to be noted that the vacancy announcement is a general decision that is not specifically related to and has no direct impact on the position of a single (former) staff member. Consequently, the Applicant is not entitled to challenge this kind of decision. A staff member, indeed, could be impacted by a general decision by the Administration to advertise the post he/she encumbers only if this decision amounts to an implicit dismissal or prelude to it, or, if it impedes the enforcement of a judicial reinstatement in the same post. In the case at hand, the Applicant was not in active service at the time of the publication of the vacancy announcement and no enforceable judicial reinstatement is conceivable according to the Tribunal's Rules of Procedure. Therefore, the motion does not meet the condition recalled in para. 6.b above.

11. In this situation, there is no need to examine if the other conditions required for the consideration of interim measures are met.

12. For the above-mentioned reasons, the Tribunal finds that the motion must fail as inadmissible.

IT IS ORDERED THAT:

13. The motion for interim measures pending proceedings is inadmissible.

*(Signed)*

Judge Francesco Buffa

Dated this 22<sup>nd</sup> day of January 2020

Entered in the Register on this 22<sup>nd</sup> day of January 2020

*(Signed)*

René M. Vargas M., Registrar, Geneva