



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

HARVEY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Cornelius Fischer, UNOG

Introduction

1. On 20 December 2019, the Applicant filed an application contesting the decision of the Deputy High Commissioner of the Office of the United Nations High Commissioner for Human Rights (“OHCHR”) to remove her from the role of Departmental focal point for women.
2. On 21 January 2020, the Applicant filed a motion for interim measures pending proceedings requesting the Tribunal to order the suspension of the implementation of the contested decision until a final determination on the merits is made.
3. On 23 January 2020, the above-mentioned motion was transmitted to the Respondent who filed his reply on 27 January 2020.

Facts

4. The Applicant currently serves as a Human Rights Officer at the P-3 level, on a continuing appointment, in the Human Rights Council and Treaty Mechanism Division (“CTMD”), Human Rights Treaty Branch (“HRTB”), OHCHR.
5. Following elections held in November 2018 at OHCHR, the Applicant was elected as Departmental focal point for women. She subsequently took up said functions for a two-year term.
6. According to the Applicant, during the course of her mandate, she undertook a number of cases providing advocacy and counselling pursuant to her functions as Departmental focal point for women.
7. By email dated 26 August 2019, the Deputy High Commissioner, OHCHR informed the Applicant that the role of the Departmental focal point for women would be assigned to the Chief, Women’s Rights and Gender Section, OHCHR.
8. According to the Applicant, on 3 September 2019, she was verbally informed by the Deputy High Commissioner that the decision had already been made and “was not up for discussion”.

9. By email dated 9 September 2019 to the Applicant, the Deputy High Commissioner reiterated the decision and explained the rationale behind it.

10. On 21 October 2019, the Applicant requested management evaluation of the contested decision.

11. On 5 December 2019, the Management Evaluation Unit replied to the Applicant's request upholding the contested decision.

12. On 17 December 2019, OHCHR staff was informed of the High Commissioner's decision to designate the Chief, Women's Rights and Gender Section as OHCHR Departmental focal point for women. They were also informed that the Applicant would continue in "her separate role as Gender Focal Point with the Staff Committee".

Consideration

13. 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".

14. 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.

15. In the case at hand, the Applicant contests the decision to remove the Applicant from the role of OHCHR Departmental focal point for women.

16. The Respondent challenges the receivability of the motion for interim measures on the grounds that the Applicant does not contest an administrative decision but rather a managerial decision.

17. Without entering in the determination of the nature of the contested decision at this stage, the Tribunal will consider whether the decision has not yet been implemented.

18. Indeed, an application for interim measures during the proceedings requires that the contested decision has not yet been implemented which can be reasonably understood from the condition indicated in para. 14.f above.

19. Relief under an application for interim measures during the proceedings is, in substance and effect, akin to an *interim* order of injunction in national jurisdictions. It is an order limited in scope and time to provide temporary relief by maintaining the *status quo* between the parties. It follows, therefore, that an order for interim measures during the proceedings cannot restore a situation or reverse an allegedly unlawful act that has already been implemented.

20. It is well established by the jurisprudence of this Tribunal that, where a contested decision has been implemented, suspension of action cannot be granted (see *De Luca* Order No. 79 (GVA/2019), *Dalgamouni* Order No. 137 (NBI/2014), *Tadonki* UNDT/2009/016, *Applicant* UNDT/2011/158, *Kweka* UNDT/2011/122, *Tiwathia* UNDT/2012/109, *Laurenti* Order No. 243 (NBI/2013)). The same reasoning applies to an order for interim measures.

21. In the present case, the Tribunal notes that by email dated 26 August 2019 from the Deputy High Commissioner, the Applicant was informed of the decision to assign the role of the Departmental focal point for women to the Chief, Women's Rights and Gender Section, OHCHR. The Tribunal also recalls that, on 3 September 2019, she was verbally informed by the Deputy High Commissioner that the decision was "already made" and was not up for discussion. The Deputy High Commissioner reiterated her decision on 9 September 2019.

22. Furthermore, it is evident from the message sent to all OHCHR staff on 17 December 2019 that the contested decision has been implemented and that the role of OHCHR Departmental Focal Point for Women is now under the responsibility of the Chief Women's Rights and Gender Section.

23. In this respect, the Applicant claims that "the action to be suspended arises from the on-going effect of the contested decision". However, the Tribunal is not convinced by this argument as it appears that the Applicant refers, in fact, to the consequences of the decision itself.

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

25. For the above-mentioned reason, the Tribunal finds that the requested interim measure cannot be granted.

Case No. UNDT/GVA/2019/074

Order No. 10 (GVA/2020)

IT IS ORDERED THAT:

26. The motion for interim measures pending proceedings is rejected.

(Signed)

Judge Teresa Bravo

Dated this 30th January 2020

Entered in the Register on this 30th January 2020.

(Signed)

René M. Vargas M., Registrar, Geneva