



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

MINAEVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for Applicant:

George Irving

Counsel for Respondent:

Jérôme Blanchard, LPAS, UNOG

Introduction

1. By application filed on 27 April 2020, the Applicant, a staff member of the United Nations Office on Drugs and Crime (“UNODC”) requests suspension of action pending management evaluation of the decision to place her on administrative leave with full pay (“ALWFP”).

Facts

2. On 15 August 2017, the Applicant joined the service of UNODC as an Adviser (Anti-Money Laundering and Counter-Financing of Terrorism) on a fixed-term appointment, based in Sarajevo, Bosnia and Herzegovina. On 25 February 2020, the Applicant’s appointment was extended until 30 June 2020.

3. At the time of the contested decision, the Applicant was the project Manager of a UNODC Regional Action project funded by the European Commission (“EC”).

4. On 29 January 2020, the Applicant contacted the EC Directorate General (“DG NEAR”) in an attempt to secure additional funds for her project, which would entail a continuation of funding for her contract. Noting in her email that the EC Finance and Contracts Unit (“FCU”) had decided to cover only one month out of the six eligible months of the project staff costs, she explained that it was not possible for her to complete the project report in one month. She thus requested the DG NEAR “to discuss this matter again with [the FCU] and authorize the utilization of the project savings towards covering all six months of the project reporting costs”.

5. On 30 January 2020, the Applicant contacted the UNODC Brussels Liaison Office (“BRULO”), which is the UNODC Office mandated to lead and coordinate all liaison with the EC, to share that it had been brought to her attention that BRULO continued to contact the donor to ask it not to fund her salary for five months. The Applicant requested BRULO to “refrain from any further contacts with the donor regarding [her] salary”.

6. By email dated 31 January 2020, the Chief, Human Resources Management Service (“HRMS”), United Nations Office at Vienna (“UNOV”)/UNODC, directed the Applicant not to make any further contact with any representatives of the European Union (“EU”) related to the work of UNODC without prior written clearance from her supervisors. She was expressly asked to “refrain from any lobbying with the EU for funding that [she] would intent to be used for [her] personal contract extension”. She was also informed that non-compliance with these directions would constitute unsatisfactory conduct that may amount to misconduct, which would be addressed through the framework of administrative instruction ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process).

7. The Applicant further contacted EU representatives on 30 March, 1 April and 3 April 2020, in an attempt to secure additional funds for the reporting phase of the project.

8. On 1 April 2020, considering that the Applicant’s behaviour may constitute unsatisfactory conduct, the Director, Division for Management (“DM”), UNOV/UNODC, referred the matter to the Office of Internal Oversight Services (“OIOS”). On 3 April 2020, the Director, DM, UNOV/UNODC, supplemented the referral with additional documents.

9. By letter dated 7 April 2020, which was notified to the Applicant on 17 April 2010, she was informed of the decision to place her on ALWFP. She was also informed that her placement on ALWFP was effective immediately and that it would remain in place pending consideration of the matter by OIOS and any ensuing investigative or administrative steps, as may be applicable. She was further notified that her placement on ALWFP would last until the expiration date of her fixed-term appointment on 30 June 2020.

10. The Applicant was on sick leave from 21 to 27 April 2020 and resumed her ALWFP on 28 April 2020.

11. On 25 April 2020, the Applicant requested management evaluation of the decision to place her on ALWFP.

12. On 27 April 2020, the Applicant filed the present application for suspension of action.

13. The same day, OIOS referred the matter to UNODC for “appropriate action in accordance with ST/AI/2017/1”. OIOS considered that “the matter would best be addressed by a fact-finding panel”.

14. On 28 April 2020, the application was transmitted to the Respondent who filed his reply on 30 April 2020.

Consideration

15. Applications for suspension of action are governed by art. 2.2 of the Tribunal’s Statute and art. 13 of its Rules of Procedure, which provide that the Tribunal may suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

16. For an application for suspension of action to be successful, it must satisfy the following mandatory and cumulative conditions:

- a. The Applicant requested management evaluation of the contested decision, which evaluation is ongoing;
- b. The contested decision has not yet been implemented;
- c. The application concerns an administrative decision that may be properly suspended by the Tribunal;
- d. The impugned administrative decision appears *prima facie* to be unlawful;
- e. Its implementation would cause irreparable damage; and
- f. The case is of particular urgency.

17. In the present case, no issue has been raised about conditions a), b) and c) mentioned above.

18. The Tribunal recalls its holding in *Calvani* UNDT/2009/092 and *Ba* UNDT/2012/025, namely that a decision to place a staff member on administrative leave, with or without pay, produces continuous legal effects during the whole period of administrative leave (cf. in that sense also *Moise* Order No. 208 (NY/2014)). As such, while administrative leave commences on a certain date—in the case at hand on 17 April 2020—and implementation has thus started, it is fully implemented only upon its completion, that is, at the end of the administrative leave period. Therefore, and since implementation is not completed before the actual period of administrative leave has expired, a decision to place a staff member on administrative leave can be suspended at any time before such expiry under art. 2.2 of the Tribunal’s Statute.

19. The Tribunal will therefore consider the remaining conditions for the granting of the present application starting on whether the contested decision is *prima facie* unlawful.

Prima facie unlawfulness

20. The Tribunal recalls that the threshold required in assessing this condition is that of “serious and reasonable doubts” about the lawfulness of the impugned decision (*Hepworth* UNDT/2009/003, *Corcoran* UNDT/2009/071, *Miyazaki* UNDT/2009/076, *Corna* Order No. 90 (GVA/2010), *Berger* UNDT/2011/134, *Chattopadhyay* UNDT/2011/198, *Wang* UNDT/2012/080, *Bchir* Order No. 77 (NBI/2013), *Kompass* Order No. 99 (GVA/2015)).

21. The Applicant alleges, *inter alia*, that the contested decision is *prima facie* unlawful and that it is part of “a continuing pattern of retaliation aimed at marching [her] to the door”. She claims that the decision was taken in retaliation after she filed complaints against several staff members of UNODC, including her former supervisor. She further alleges that her placement on ALWFP is a disproportionate response to the allegations against her and that this decision constitutes “gender-based discrimination”.

22. The Respondent submits that the decision is lawful and that the Applicant failed to demonstrate *prima facie* unlawfulness of the decision. He claims that the Applicant has not met her burden to show that the decision was influenced by improper considerations, or that it was otherwise procedurally or substantively defective.

23. Staff rule 10.4 on administrative leave pending investigation and the disciplinary process provides, in its relevant part, as follows:

(a) A staff member may be placed on administrative leave, subject to conditions specified by the Secretary-General, at any time after an allegation of misconduct and pending the completion of a disciplinary process. Administrative leave may continue until the completion of the disciplinary process.

(b) A staff member placed on administrative leave pursuant to paragraph (a) above shall be given a written statement of the reason(s) for such leave and its probable duration.

...

(d) Placement on administrative leave shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure.

24. Section 11 of ST/AI/2017/1 provides the conditions under which a staff member may be placed on administrative leave. It reads in its relevant part:

11.1 In accordance with staff rule 10.4, a staff member may be placed on administrative leave with or without pay at any time after an allegation of suspected unsatisfactory conduct and pending the completion of the disciplinary process. The period of administrative leave may continue until the completion of the disciplinary process. Such action is without prejudice to the rights of the staff member and does not constitute a disciplinary measure. A staff member placed on administrative leave shall be given a written statement of the reason(s) for such leave and shall be informed of its likely duration.

....

11.3 The decision to place a staff member on administrative leave with pay may be made by the authorized official at any time following a report of suspected unsatisfactory conduct and following the authorized official's determination that at least one of the following circumstances is met:

....

(c) The continued presence of the staff member on the Organization's premises or at the duty station could constitute a security or financial risk to the Organization and/or its personnel, or could otherwise prejudice the interests or reputation of the Organization;

(d) The staff member's continued presence at the office could have a negative impact on the preservation of a harmonious work environment;

(e) There is a risk of repetition or continuation of the unsatisfactory conduct.

25. The decision to place the Applicant on ALWFP was made following a report of suspected unsatisfactory conduct that was referred to OIOS. The Applicant's conduct was deemed to constitute a potential violation of staff regulations 1.2 (d) and 1.2 (m), as well as staff rules 1.2 (a) and (j).

26. According to the contested decision, the Applicant was placed on ALWFP for the following reasons:

a. There [was] a risk of repetition or continuation of the unsatisfactory conduct;

b. [Her] continued presence at the office could prejudice the interests or reputation of the Organization; and

c. [Her] continued presence at the office could have a negative impact on the preservation of a harmonious work environment.

27. The evidence shows that the Applicant contacted EU representatives on 29 January 2020 in an attempt to secure additional funds for the project in which she had been working, which would have entailed a continuation of funding for her contract. She did so without coordinating or clearing her messages through her supervisors and despite an initial decision by the EC FCU to cover only one month of the project staff costs.

28. The Tribunal further notes that notwithstanding clear directions from the Chief, HRMS, UNOV/UNODC, to the Applicant on 31 January 2020 not to contact EU representatives without clearance from her supervisors, she continued to contact them on 30 March 2020 and again on 1 and 3 April 2020. The Applicant also contacted BRULO, on 30 January 2020, requesting it to “refrain from any further contacts with the donor regarding [her] salary”.

29. While the allegations raised against the Applicant may require an investigation by a fact-finding panel as recently advised by OIOS, the Tribunal finds that the decision to place her on SLWFP is not *prima facie* unlawful.

30. The EU is a major donor of UNODC activities, and it is evident that the Applicant failed to adhere to clear instructions in relation to her contacts with EU representatives. Considering that there was a reasonable risk of repetition of the Applicant’s alleged unsatisfactory conduct, which may have prejudiced the interest or reputation of UNODC *vis-à-vis* the EU, the decision to place her on SLWFP was reasonable.

31. The Tribunal notes, in particular, that while the Applicant attempted to involve EU representatives in the management of her individual contractual situation, a EU representative respectfully requested the Applicant not to be involved in said discussions and expressly ask her to deal with this issue internally.

32. Under such circumstances, the Director, DM, UNOV/UNODC, properly pointed out in the contested decision that the Applicant’s behaviour posed a risk for future funding and operations, beyond the project that she was working in.

33. The Tribunal further notes that the Director, DM, UNOV/UNODC, indicated, in the contested decision that the continued presence of the Applicant at the office could have a negative impact on the preservation of a harmonious work environment. He noted that the Applicant had been “disrespectful and crossing dignity lines in [her] communications with colleagues in various offices across divisions of UNODC and at various levels”.

34. The Tribunal does not have enough evidence, at this stage, to review the alleged negative impact of the Applicant’s presence at the office. However, in accordance with para. 11.3 of ST/AI/2017, a staff member may be placed on ALWFP if at least one of the circumstances mentioned thereby is met. The Tribunal has already found that two out of the three reasons provided for the contested decision were justified.

35. Having said the above, the Tribunal finds that the Applicant has failed to provide any evidence to show *prima facie* that the contested decision was made in retaliation for having filed complaints under ST/SGB/2019/8 and ST/AI/2017/1. At this point, those complaints seem to be unrelated to the contested decision and the Applicant has also failed to *prima facie* demonstrate that she has been the victim of “gender-based discrimination”.

36. The Applicant has not even referred to the factual circumstances related to her alleged complaints nor to the facts related to the alleged gender-based discrimination. Consequently, the Tribunal cannot establish *prima facie* unlawfulness based on said allegations.

37. Consequently, the Tribunal finds that the contested decision is not *prima facie* unlawful. Having reached this finding, and given the cumulative nature of the legal test related to the consideration of applications for suspension of action, the Tribunal will not examine the remaining requirements of urgency and irreparable damage.

Case No. UNDT/GVA/2020/024

Order No. 56 (GVA/2020)

Conclusion

38. In view of the foregoing, the application for suspension of action pending management evaluation is rejected.

(Signed)

Judge Teresa Bravo

Dated this 5th day of May 2020

Entered in the Register on this 5th day of May 2020

(Signed)

René M. Vargas M., Registrar, Geneva