



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

MASOOMI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Angela Arroyo, UNDP

Introduction

1. The Applicant, a staff member of the United Nations Development Programme (UNDP), requests suspension of action, pending management evaluation, of the decision not to renew his fixed-term appointment beyond 30 October 2022 (“the contested decision”).

Facts

2. On 3 November 2021, the Applicant joined UNDP as Programme Analyst at the National Officer, B level (“NOB”), in Tehran, under a one-year fixed-term appointment.

3. During a meeting held on 15 September 2022, the Resident Representative of UNDP Iran verbally informed the Applicant of the decision not to renew his contract, expiring on 30 October 2022, due to funding issues.

4. By letter dated 18 September 2022, the Applicant received written notice of the decision not to renew his fixed-term appointment beyond 30 October 2022. No reason was given for the non-renewal therein.

5. By email dated 19 October 2022, the Applicant contacted the Resident Representative of UNDP Iran asking him for the reasons for the non-renewal decision. On the same day, the Resident Representative replied indicating that the 18 September 2022 letter contained all the information needed.

6. On 21 October 2022, the Applicant requested management evaluation of the contested decision.

7. On 26 October 2022, the Applicant filed the present application for suspension of action.

8. On the same day, the Tribunal served the application for suspension of action on the Respondent instructing him to suspend the implementation of the contested decision until this Tribunal’s adjudication of the present application for suspension of action.

9. On 28 October 2022, the Respondent filed his reply.

Consideration

10. 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 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. These three requirements are cumulative; in other words, they must all be met for a suspension of action to be granted.

11. Furthermore, the Applicant bears the burden of proof to show that a decision was arbitrary or tainted by improper motives.

Prima facie unlawfulness

12. 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)).

13. In his application, the Applicant attempts to establish doubt over the lawfulness of the contested decision claiming that it was based on "improper motives, personal animosity, resentment of [his] communication style, and offence caused by [his] suggestions for organizational improvement following poor GSS Pulse Survey Results".

14. The Respondent alleges that the basis for the non-renewal decision was a lack of funding in the office. He asserts, *inter alia*, that due to serious and substantial funding constraints in the UNDP Iran Office, a decision was made not to extend the Applicant's fixed-term appointment and to freeze the position.

15. The Respondent further indicates that since the Joint Comprehensive Plan of Action has not been signed, the additional funds anticipated by the UNDP Iran Office when hiring the Applicant for a one-year fixed-term appointment have not been secured.

16. The Tribunal nevertheless regrets the lack of documentary evidence on the funding issues/status in the Respondent's reply. In this connection, the Tribunal draws the Respondent's attention to the fact that he is not only expected to argue his case but, also, to support his claims with documentary evidence despite the expedited nature of the suspension of action proceedings.

17. According to staff rule 4.13(c), a fixed-term appointment "does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service, except as provided under staff rule 4.14(b)".

18. However, as noted by the Appeals Tribunal in *Obdeijn* 2012-UNAT-201, para. 31, "where the applicable Staff Regulations and Rules provide that [a fixed-term appointment] does not carry an expectancy of renewal and is *ipso facto* extinguished on expiry, a non-renewal is a distinct administrative decision that is subject to review and appeal". Likewise, the "Administration cannot legally refuse to state the reasons for a decision that creates adverse effects on the staff member, such as a decision not to renew [a fixed-term appointment], where the staff member requests it or, a fortiori, the Tribunal orders it" (see *Obdeijn*, para. 37).

19. In the case at hand, the Tribunal notes that although the Respondent did not provide the reasons for the non-renewal in writing prior to the present application, the Applicant admits that during a meeting on 15 September 2022, he was informed that the basis for the non-renewal were "funding issues", which is the reason put forward by the Respondent in the present proceedings.

20. Furthermore, while documentary evidence submitted by the Applicant shows that there were some work-related disagreements between him and the Resident Representative of UNDP Iran, it is not enough to establish “serious and reasonable doubts” about the lawfulness of the impugned decision. Indeed, it does not prove, at least *prima facie*, that the non-renewal decision was arbitrary or tainted by improper motives.

21. Therefore, the Tribunal finds that the Respondent has, albeit minimally, provided credible reasons for the non-renewal decision and that the Applicant has failed to demonstrate that the said decision was *prima facie* unlawful.

22. As the Applicant failed to satisfy the requirement of *prima facie* unlawfulness and given the cumulative nature of the conditions to be met for the granting of a suspension of action, the Tribunal does not find it necessary to consider whether the contested decision is urgent or whether it would cause irreparable damage (*Evangelista* UNDT/2011/212, *Dougherty* UNDT/2011/113).

Conclusion

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

(Signed)

Judge Teresa Bravo

Dated this 1st day of November 2022

Entered in the Register on this 1st day of November 2022

(Signed)

René M. Vargas M., Registrar, Geneva