



**Before:** Judge Teresa Bravo

**Registry:** Geneva

**Registrar:** René M. Vargas M.

POSKAKUKHIN

v.

REGISTRAR  
OF THE INTERNATIONAL COURT OF JUSTICE

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

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Philippe Gautier, Registrar

## **Introduction**

1. By application filed on 4 December 2022, the Applicant, Head of the Information Department, International Court of Justice (“ICJ”), requests suspension of action, pending management evaluation, of the decision not to extend his contract until 31 January 2023, date on which he will reach the mandatory age of retirement at 65 years old.

2. The application for suspension of action was served on the Respondent, who filed his reply on 8 December 2022.

## **Facts**

3. In 2018, as his contract was due to expire on 31 December 2018, the Applicant expressed to the Registrar, ICJ, his wish to continue working until reaching the age of 65, on 31 January 2023.

4. On 19 July 2018, the Applicant’s contract was extended until 31 December 2020.

5. On 16 July 2020, the Applicant’s contract was further extended until 31 December 2021.

6. By letter of 6 June 2021 to the Registrar, ICJ, the Applicant reiterated his request to work until 31 January 2023.

7. On 8 June 2021, the Applicant had a meeting with the Registrar, ICJ, during which he was informed that his contract would receive a further and final renewal until 30 June 2022, and that he would be exceptionally granted an in-grade step increment despite of his latest performance records.

8. By letter dated 21 January 2022, following another contract extension request from the Applicant, the Registrar reiterated the position adopted by the Administration and relayed to him in the meeting of 8 June 2021, further confirming that the Applicant’s contract would not be renewed beyond 30 June 2022.

9. Due to delays in the selection process of the new Head of the Information Department, ICJ, the Applicant's contract was extended until 30 September 2022 and then again until 31 December 2022.

10. By letter dated 18 November 2022, the ICJ Registrar informed the Applicant that the new Head of the Information Department would join the Registry on 1 January 2023. Accordingly, the Applicant was expected to prepare detailed handover notes and separate from service upon expiry of his contract on 31 December 2022.

11. On 29 November 2022, the Applicant requested management evaluation of the decision dated 18 November 2022.

12. On 4 December 2022, the Applicant filed the instant application for suspension of action pending management evaluation.

### **Consideration**

13. Art. 2.2 of the Tribunal's Statute provides that the Tribunal shall be competent to suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears to be *prima facie* unlawful, in case 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. Furthermore, the burden of proof rests on the Applicant.

14. In the case at hand, the Respondent objects, *inter alia*, to the receivability of the application on two grounds. He claims that the 18 November 2022 letter received by the Applicant from the ICJ Registrar only reiterated a decision that had already been taken since 8 June 2021, rendering this application not receivable *ratione temporis*, and that the contested decision has already been fully implemented because the new Head of Information Department, ICJ, has already been appointed to take duty on 1 January 2023. Furthermore, the Respondent contends that the decision is lawful, any urgency was self-created and its implementation would not cause irreparable damage.

15. Having examined the evidence on record, for the reasons set forth below the Tribunal identifies the letter dated 18 November 2022 as the contested decision, thus rendering this application receivable *ratione temporis*.

16. The Respondent argues that the decision not to extend the Applicant's appointment until 31 January 2022 was taken on 8 June 2021 during a meeting where the Registrar informed the Applicant that the Registry decided to renew his contract for a "further a final period of six months, i.e., until 30 June 2022". On 21 January 2022, upon receiving another request for extension from the Applicant, the Registrar reminded the Applicant of this decision, and confirmed that no renewal or extension could be granted again.

17. However, after the alleged "original decision" dated 8 June 2021, the Applicant's contract was renewed two more times, i.e., until 30 September 2022 and until 31 December 2022, due to delays in the selection process for the new Head of Information Department.

18. On 18 November 2022, the Registrar informed the Applicant of the following (emphasis added):

I refer [to] my letter dated 1 January 2022, by which I informed you that, in accordance with Article 25, paragraph 1, of the Rules of Court and Article 5, paragraph 1, of the Staff Regulations for the Registry, **the Court had decided to renew your contract for a final period of six months, until 30 June 2022.**

Due to the delay in concluding the selection process for the position of Head of Information Department, First Secretary of the Court (P5), your contract was further extended, first to 30 September 2022 and then to 31 December 2022.

By this letter, **I wish to confirm to you that there will be no further extensions beyond 31 December 2022.**

The new Head of Information Department will join the Registry on 1 January 2023. In order to facilitate business continuity, may I kindly request you to prepare detailed handover notes, including the status of ongoing projects and any procedures that have been guiding the department's work.

The Administrative and Personnel Division will be in contact with you soon regarding administrative procedures related to your checkout.

I seize this opportunity to thank you for your dedication and loyalty to the Court and wish you well in your future endeavors.

19. The Tribunal is mindful of the fact that “the reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to statutory timelines; rather time starts to run from the date on which the original decision was made” (*Staedtler* 2015-UNAT-546, para. 46, *Cooke* 2012-UNAT-275, para. 38, *Kazazi* 2015-UNAT-557, para. 31, *Weslund* 2019-UNAT-959, para. 27-32).

20. The above notwithstanding, since the Registrar revisited the 8 June 2021 decision by granting to the Applicant two more short extensions, said “original” decision effectively changed.

21. In addition, by confirming that the Applicant would not receive another extension of contract beyond 31 December 2022, a new expiration date from the one contained in the “original decision” of 8 June 2021, was established.

22. Therefore, the Tribunal is of the view that, the 18 November 2022 letter did not merely reiterate an original administrative decision instead, it effectively created a new and final decision regarding the expiration of the Applicant’s appointment.

23. Accordingly, the Applicant is correct in identifying the 18 November 2022 as the contested decision.

24. Since the Applicant requested management evaluation of the contested decision on 29 November 2022, well within the 60 calendar days statutory deadline, the application is receivable *ratione temporis*.

25. In relation to the Respondent’s second irreceivability claim, the Tribunal finds that the Applicant seeks to suspend the decision not to extend his appointment for another month in order for him to reach the retirement age of 65. The fact that

another staff member will take the Applicant's position as of 1 January 2023 does not mean that the contested decision not to extend the Applicant's appointment beyond 31 December 2022 is already implemented, as one fact is not necessarily dependent upon the other.

26. Having established the receivability of the application of suspension of action, the Tribunal will determine its merits.

*Prima facie unlawfulness*

27. 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, para. 10, *Corcoran* UNDT/2009/071, para. 45, *Wang* UNDT/2012/080, para. 18, *Berger* UNDT/2011/134, para. 10).

28. In the instant case, the Applicant attempts to establish doubt over the lawfulness of the decision on two main arguments: (i)first, that according to article 6, paragraph 1, of the Staff Regulations for the Registry, he has a right to work at the Registry until the age of 65 years and, (ii)second, he had a legitimate expectation that his contract would be extended until he reached said retirement age on 31 January 2023.

Legal framework

29. Pursuant to staff regulation 4.5(c) and staff rules 4.13 and 9.4, a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal, and shall expire automatically and without prior notice on the expiration date specified in the letter of appointment. These provisions read as follows:

Staff regulation 4.5(c)

A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service.

Staff rule 4.13

Fixed-term appointment

...

(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).

Staff rule 9.4

Expiration of appointments

A temporary or fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment.

30. Nonetheless, non-renewals can be challenged on the grounds that the staff member had a legitimate expectation of renewal, of a procedural irregularity, or that the decision was arbitrary or motivated by bias, prejudice or improper motive (*Ahmed* 2011-UNAT-153, para. 46). The Applicant bears the burden of proving that the discretion not to renew his appointment was not validly exercised (*Hepworth* 2015-UNAT-503, para. 25, *Obdeijn* 2012-UNAT-201, para. 38).

31. Furthermore, article 6 of the Staff Regulations for the Registry of the International Court of Justice provides that:

Article 6

1. The age limit for Registry staff members shall be 65 years, taking into account the acquired rights of staff appointed before 1 January 2014.

2. Staff members who wish to exercise their acquired right as described in paragraph 1 of this Article and separate from service at their normal age of retirement or any time thereafter before the age of 65 shall give written notice of three months if holding a continuous appointment, or 30 calendar days if holding a fixed-term appointment. The Registrar may, however, accept shorter notice.

Right to work until 65 years

32. Having examined the evidence on record, the Tribunal notes that the Applicant mistakenly interprets the wording of article 6 above. As a staff member appointed before 1 January 2014, the Applicant has an acquired right to retire

before the mandatory retirement age of 65. It does not mean, however, that the Applicant has a right to work until 65 years.

33. In addition, decisions on appointment and renewal lie within the discretion of the Organization and, as stated above, the burden of proving that such a decision is tainted lies with the Applicant. The Applicant, however, did not provide any evidence to support that the contested decision was tainted by any reason.

#### Legitimate expectation of renewal

34. In relation to the claim of legitimate expectation, the Tribunal recalls that an expectancy of renewal may be created by countervailing circumstances, such as a violation of due process, arbitrariness or other extraneous motivation on the part of the Administration (*Sarwar* UNDT/2016/178, para. 48). However, for a staff member's claim of legitimate expectation of a renewal of appointment to be sustained, "it must not be based on mere verbal assertion, but on a firm commitment to renewal revealed by the circumstances of the case" (*Abdalla* 2011-UNAT-138, para. 24, *Munir* 2015-UNAT-522, para 24).

35. In the case at hand, though, the Applicant has not provided any evidence to support that a "firm commitment to renewal" was given to him. On the contrary, the evidence and the narrative provided by the Applicant himself show that the Registrar never informed the Applicant that his contract could or would be extended until 31 January 2023.

36. In contrast, the Tribunal finds that the Respondent has successfully demonstrated that the decision not to extend the Applicant's appointment beyond 31 December 2022 was based on a lawful and proper exercise of discretion by the Administration.

37. Accordingly, the Applicant has failed to demonstrate *prima facie* unlawfulness of the decision not to extend his contract beyond 31 December 2022.



38. As the Applicant failed to satisfy the requirement of *prima facie* unlawfulness and given the cumulative nature of the conditions to be met for granting an application for 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, para. 29, *Dougherty* UNDT/2011/133, para. 38).

### **Conclusion**

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

(Signed)

Judge Teresa Bravo

Dated this 13<sup>th</sup> day of December 2022

Entered in the Register on this 13<sup>th</sup> day of December 2022

(Signed)

René M. Vargas M., Registrar, Geneva