



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2025/011

Order No.: 25 (GVA/2025)

Date: 21 March 2025

Original: English

Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: Liliana López Bello

MESESAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON A MOTION
FOR INTERIM MEASURES**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Jérôme Blanchard, UNOG/HRLU

Introduction

1. The Applicant, a staff member of the United Nations Office at Vienna (“UNOV”), seeks suspension of the implementation of a Performance Improvement Plan (“PIP”) through a motion for interim measures, under art. 10.2 of the Tribunal’s Statute and art. 14 of its Rules of Procedure (“RoP”).

2. For the reasons set out below, the Applicant’s motion for interim measures is denied.

Facts

3. On 10 March 2025, the Applicant filed an application on the merits contesting the decision to place her on a PIP, registered under Case No. UNDT/GVA/2025/011. The application was served on the Respondent on 12 March 2025, with a deadline to file his reply by Friday, 11 April 2025.

4. On 14 March 2025, the Applicant file a motion for interim measures seeking suspension of the PIP implementation pending the outcome of the current proceedings.

5. The motion was served to the Respondent, who filed a reply on 18 March 2025. In his submission, the Respondent requests that the motion be rejected for failure to meet the cumulative requirements to grant interim measures.

Consideration

Suspension of action during proceedings - Interim measures

6. Interim measures during the proceedings are governed by art. 10.2 of the Tribunal’s Statute and art. 14.1 of its RoP. 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.

7. For the Tribunal to order 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), *Auda* Order No. 156 (GVA/2016) and *Harvey* Order No. 10 (GVA/2020):

- 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 administrative decision contested in the application on the merits appears *prima facie* to be unlawful, relates to a case of particular urgency, and its implementation would cause irreparable damage; and
- c. The requested temporary relief must not concern appointment, promotion or termination.

8. The Applicant filed her motion for interim measures into a pending application (Case No. UNDT/GVA/2025/011). The cumulative condition referred to in para. 7.a above is met.

9. The condition referred to in para. 7.b above, requires that the decision contested in the pending application on the merits meet three other cumulative conditions, namely *prima facie* unlawfulness, urgency, and causing irreparable damage.

10. Nevertheless, the initial premise for consideration is whether the placement of a staff member on a PIP is an appealable administrative decision pursuant to art. 2.1(a) of the Tribunal's Statute.

11. Art. 2.1(a) defines an appealable administrative decision as a decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment.

12. In *Gnassou* 2018-UNAT-865, para. 31, UNAT held that the decision to place a staff member on a "PIP is not an appealable final administrative decision".

Pursuant to ST/AI/2010/5 (Performance Management and Development System), the implementation of a PIP is merely a preliminary step instituted to address a staff member's shortcomings during a performance. UNAT also held that such preliminary steps or actions are not administrative decisions subject to appeal (see *Nguyen* 2015-UNAT-509, para. 33).

13. The Tribunal acknowledges that the Applicant was placed in a PIP under ST/AI/2021/4. However, as decided by UNAT in *Dragnea* UNDT/2022/088, para. 39, the PIP instituted under ST/AI/2010/5 is equally applicable *mutatis mutandis* to the PIP instituted in accordance with ST/AI/2021/4. Indeed, both ST/AI/2010/5 and ST/AI/2021/4 contain the same provisions in relation to the institution of a time-bound PIP.

14. While the Applicant is correct that contesting the placement on a PIP does not concern an issue of appointment, promotion or termination, the Tribunal finds that the decision to place the Applicant on a PIP is not an appealable administrative decision.

15. Therefore, the Tribunal does not consider it necessary to examine the cumulative conditions indicated in para. 7.b above.

Conclusion

16. In view of the foregoing, it is ORDERED THAT the Applicant's motion for interim measures is denied.

(Signed)

Judge Sun Xiangzhuang

Dated this 21st day of March 2025

Entered in the Register on this 21st day of March 2025

(Signed)

Liliana López Bello, Registrar, Geneva