



**Before:** Judge Agnieszka Klonowiecka-Milart  
**Registry:** Nairobi  
**Registrar:** Abena Kwakye-Berko

BELSITO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**ORDER ON AN APPLICATION FOR  
SUSPENSION OF ACTION PURSUANT  
TO ARTICLE 13 OF THE RULES OF  
PROCEDURE**

---

**Counsel for the Applicant:**

George Irving

**Counsel for the Respondent:**

Melissa Bullen, UN Women  
Mylène Spence, UN Women

## **Introduction**

1. The Applicant is a Senior Advisor to the Director of Programme at the headquarters of United Nations Women (UN Women) in New York. He previously served as country Representative for United Nations Women (UN Women) in Jordan. He is on a fixed -term appointment at the P-5 level.

2. On 14 July 2017 he filed an application for suspension of action (SOA), pending management evaluation, challenging the Respondent's decision to cancel the selection process for UN Women Regional Director, Europe and Central Asia and to initiate a new selection process. He filed an amended version of the application later the same day.

3. As part of his application, the Applicant has filed a Motion requesting the Tribunal to order the Respondent to produce the following documents:

- a. All relevant documents in the possession of the Respondent which are directly concerned with his candidacy for the post.
- b. Any reports of the interview panels and the signed recommendation of the Appointment and Promotion Committee (APC) to the Executive Director.
- c. Any correspondence from the Executive Director to the APC regarding the rejection of their recommendation.

He submits that this information is needed to demonstrate that the selection process was fully concluded in a correct and confidential manner but for the approval of the Executive Director and would establish a time frame for any reasons allegedly put forward by the Respondent for cancelling the process.

4. The Respondent filed a reply on 17 July 2017.

## **Facts**

5. On 6 October 2016, the post of UN Women Regional Director for Europe and Central Asia, D-1, was advertised. The Applicant applied for the post on 22 October 2016. He sat a written test for the post on 6 February 2017 and undertook a competency-based interview on 24 March 2017.

6. During May and June 2017, the Applicant was informed by his Hiring Manager and the selection panel member at the same time, that, notwithstanding that he had been the only candidate found qualified and thus recommended for the post, the Executive Director decided not to accept his candidature because she did not want a man in this position.

7. On 14 June 2017, the Applicant requested the UN Women Office of Human Resources to provide information on the status of his candidature. On 15 June 2017, he was informed by Human Resources that they were not aware of any formal decision about the recruitment process for the Regional Director post.

8. On 19 June 2017, the Applicant addressed a letter to the Executive Director of UN Women requesting management evaluation of the implied decision rejecting his candidacy for the Regional Director post.

9. On 6 July 2017, he was informed by the Human Resources Regional Business Advisor that the selection process had been cancelled and that the post would be re-advertised.

10. On 10 July 2017, the Applicant filed an SOA application challenging the 6 July 2017 decision. The Tribunal rejected the application, *vide* Order No. 121 (NBI/2017).

11. On 12 July 2017, the Permanent Mission of the Republic of Albania informed UN Women that the designation of the Applicant as the Representative of UN Women in the Republic of Albania met the approval of the Ministry of Foreign Affairs of the Republic of Albania.

12. On 13 July 2017, the Applicant submitted a management evaluation request of the decision to cancel the original selection process and to undertake a new selection exercise.

## **Submissions**

### ***Applicant***

#### *Prima facie* unlawfulness

13. The UN Women administration has violated staff regulations 4.3 and 4.4 and art. 101.3 of the United Nations Charter which prohibit discrimination on the basis of sex in the selection process whilst mandating carrying out competitive recruitment processes with fullest regard to requisite qualifications and experience of persons already in service of the United Nations. The UN Women administration likewise violated the UNIFEM Selection Guidelines, which mandate that, should the Executive Director not endorse the ranking of the candidates for the position, specific reasons should be recorded and shared with the interview panel. The guidelines also provide that the selection process must be consistent with the United Nations Staff Rules.

14. The decision not to carry out a selection process involving a potential promotion for a staff member to its conclusion is an administrative decision as was held in *Jannoun* Order No. 029 (NBI/2013).

15. By prevaricating over the status of the Applicant's candidacy, then failing to provide a rationale for rejecting the entire process and launching a new selection

procedure, the Applicant's belief that the decision is improperly motivated is confirmed.

*Urgency*

16. Given the UN Women administration's stated intention of advertising the position imminently, the Tribunal is requested to suspend all action on filling the post pending management evaluation.

*Irreparable harm*

17. If the new selection process is allowed to proceed, the Applicant will be presented with a *fait accompli* and be precluded from assuming the post which is at a higher level.

18. He will suffer irreparable harm in that his career prospects will be affected. The SOA is the only remedy available to him which can prevent the UN Women administration from unlawfully cancelling the vacancy announcement with the sole purpose of not appointing him to the post.

19. Additionally, as per the Tribunal's holding in *Tadonki* UNDT/2009/016, implementation of the decision will render his management evaluation request moot.

***Respondent***

*Prima facie unlawfulness*

20. The Applicant asserts that but for the improper interference by the Executive Director, his candidacy would have been successful but does not provide any grounds or evidence to support his allegations of improper motivation.

21. The Executive Director's decision to cancel the selection process is lawful. The Respondent does not contest the fact that the Applicant was one of the recommended candidates, however, in accordance with the UNIFEM Selection

Guidelines, the final selection decision rested with the Executive Director who was obliged to cancel the selection process due to concerns about the integrity of the selection process.

22. The Applicant indicated in the communication of 18 May 2017 and in greater detail in his first and second management evaluation requests that confidential information pertaining to the selection process for the post in question was shared with him in breach of the UNIFEM Selection Guidelines which provide that the deliberations and assessment of the panel members are strictly confidential.

23. On 12 June 2017, the Executive Director was informed that the strict confidentiality of the selection process had been violated. Specifically, the hiring manager had been sharing strictly confidential information about the selection process with the Applicant. Therefore, the Executive Director decided, on 19 June 2017, that this breach of confidentiality could have compromised the selection process and that it was in the best interests of the Organization for the process to be cancelled, the post re-advertised and the process redone *de novo* with a freshly appointed panel.

24. The Applicant has been invited to reapply to the re-advertised post and if he chooses to do so, his application will be given full and fair consideration.

25. The Applicant states that the Executive Director's actions came only after the selection process and the evaluation of his candidacy was concluded but his allegations are unfounded. In support of his allegations, the Applicant refers to communications between himself and the hiring manager but these communications occurred on 3 May 2017 before the panel had recommended candidates to the SRG on 12 May 2017 and certainly before the Executive Director had even received the SRG recommendation on 22 May 2017.

26. These communications do however indicate that the Applicant and the hiring manager were in close discussions on the subject of the selection process throughout

the ongoing recruitment. The communications support the Executive Director's concerns regarding the integrity of the selection process.

27. The assignment of the Applicant as the Representative of UN Women in Albania is within the authority of the Executive Director on the basis of the best interests of the Organization and this has no bearing whatsoever on his application for the post in question.

*Urgency*

28. There is no urgency since all the candidates, including the Applicant in this case, have also been informed of the cancellation of the selection process, that the post will be re-advertised and have all been encouraged to re-apply.

*Irreparable harm*

29. There is no risk of irreparable harm as there are no damages resulting from the decision to cancel the selection process. There is no suggestion that the Applicant's reputation or that of any of the other candidates was harmed by the cancellation decision.

30. The decision to re-advertise the post is not prejudicial to the Applicant since he has been invited to resubmit his application for the post. The Applicant was not the only candidate recommended for the post and it cannot be concluded that he would have been selected.

31. The Applicant has failed to specify how his career prospects will be affected by the contested decision.

**Considerations**

32. Applications for suspension of action are governed by art. 2 of the Statute and art. 13 of the Rules of Procedure of the Tribunal. Article 13 provides, in the relevant part:

1. The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to 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.

33. All three elements of the test must be satisfied before the impugned decision can be stayed. Accordingly, an application for the suspension of action must be adjudicated against the stipulated cumulative test, in that an applicant must establish that the impugned decision is *prima facie* unlawful, calls for urgent adjudication and that implementation of the impugned decision would cause him/her irreparable harm.

34. The Tribunal is not required at this stage to resolve any complex issues of disputed fact or law. All that is required is for a *prima facie* case to be made out by an applicant to show that there is a judiciable issue before the court.<sup>1</sup>

35. In the present case, the Applicant indicates that the implementation of the impugned decision would consist in carrying out a new selection process and thus he requests suspension of all actions of filling the post pending management evaluation. In this respect, the Tribunal recalls that “implementation” under art. 2 of the UNDT Statute in the United Nations Appeals Tribunal (UNAT) jurisprudence has indeed been interpreted to mean not just the execution of the dispositive part of the impugned decision, but also imminence of decisions and actions which are legally enabled by the impugned decision and which would have the effect of irreversibly frustrating the Applicant’s claim. This way, the suspension of action request serves the more general purpose of securing the claim. Regarding selection processes in

---

<sup>1</sup> See *Hepworth* UNDT/2009/003 at para. 10, *Corcoran* UNDT/2009/071 at para. 45, *Berger* UNDT/2011/134 at para. 10, *Chattopadhyay* UNDT/2011/198 at para. 31; *Wang* UNDT/2012/080 at para. 18.



particular, UNAT established that the decision of non-selection is “implemented” where an offer of appointment is accepted unconditionally by another candidate.<sup>2</sup>

36. Accepting that launching of a new selection process could be regarded as implementation, in the sense described above, of the impugned decision, the Tribunal is, nevertheless, not persuaded regarding the element of urgency and irreparable damage posed by the implementation of the contested decision. On the facts of the present case, it is obvious to the Tribunal that it is legally and practically impossible for the administration to advance a new selection process during the 30-day pendency of management evaluation to the extent of creating irreversible consequences. The only action directed at filling the post that could be undertaken during this period is re-advertising the vacancy. Should the Applicant succeed in management evaluation, this would constitute a legitimate basis to cancel such a new vacancy announcement without incurring legal obligations toward third parties. This is not to say that re-advertising the vacancy during the pendency of management evaluation at the risk of having to cancel it soon thereafter would be reasonable and cost effective from the managerial point of view; however, relevant for the case at hand is that such action alone is reversible and thus incapable of causing the Applicant an irreparable damage. Other actions related to the renewed selection process could only be undertaken until after the application period, as such are not imminent and do not pose urgency.

37. Having found that the Applicant’s case fails on these prongs of the tripartite test, the Tribunal does not find it necessary to consider the *prima facie* unlawfulness. Disclosure of the documents related to the selection process is therefore irrelevant at this stage.

## **Conclusion**

38. The application for suspension of action is accordingly **REFUSED**.

---

<sup>2</sup> See for example *Sprauten* 2011-UNAT-111, *Gabalton* 2011-UNAT-120 and *Cranfield* 2013-UNAT-367.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 20<sup>th</sup> day of July2017

Entered in the Register on this 20<sup>th</sup> day of July2017

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi