



Before: Duty Judge

Registry: Nairobi

Registrar: René M. Vargas M., Officer-in-Charge

NK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON MOTION
FOR INTERIM MEASURES
PENDING PROCEEDINGS**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Jan Schrankel, UNHCR

Anna Mildemberger, UNHCR

Introduction

1. On 21 March 2024, the Tribunal received a motion for an extension of time to file an application from the Applicant, a staff member of the Office of the United Nations High Commissioner for Refugees (“UNHCR”).

2. On 22 March 2024, the Tribunal granted the motion and set the deadline for the filing of the application on the merits to 15 April 2024.

3. On 15 April 2024, the Applicant filed an incomplete application and has since then been engaged in email exchanges with the Registry to ensure that all the documents referenced in the application are correctly labelled and uploaded into the e-filing portal.

4. Included in the Applicant’s filings is a motion for interim measures pending proceedings. In said motion, the Applicant requests the suspension of the implementation of the decision to discontinue his position pending the finalization of a protection against retaliation process and discrimination case that he has filed pending the legal proceedings of his case before the UNDT.

5. The Applicant submits that interim measures were recommended by the Ethics Office of UNHCR in the form of “administrative renewal (nonaccrual) until the end of April 2024” and that these measures will expire on 30 April 2024, given the determination by the Ethics Office on 5 April 2024 of “No *prima facie* case of retaliation”. The Applicant further submits that the contested decision will be enforced on 30 April 2024 but that he has requested the renewal of the interim measures from the Ethics Office of UNHCR pending the outcome of the review by the “[C]hairperson of the United Nations”, which he initiated on 11 April 2023.

6. The Respondent filed a response to the motion on 26 April 2024 stating that:

a. To the extent that the motion is directed at the discontinuation of the Applicant’s position, the Respondent submits that the discontinuation of a position is not a reviewable administrative decision as it does not have a direct impact on a staff member’s conditions of appointment or contract of

employment, but rather constitutes an act that may result in a contestable decision, such as a separation;

b. In any event, the discontinuation was already implemented effective 1 January 2024 and can therefore no longer be suspended;

c. To the extent that the motion is directed at the decision not to renew the Applicant's fixed-term appointment ("FTA"), the Tribunal has no jurisdiction to order the suspension of an administrative decision pending the proceedings; and

d. To the extent that the Applicant's motion for interim measures pursuant to art. 10.2 of the UNDT Statute was to be interpreted as encompassing a motion for suspension of action pending management evaluation pursuant to art. 2.2 of the UNDT Statute, it would be moot because the management evaluation process was completed on 25 April 2024 and the response was transmitted to the Applicant by email before the motion was served on the Respondent.

Consideration

7. Requests for interim measures during the proceedings are governed by art. 10.2 of the Statute of the Dispute Tribunal, as also reflected in art. 14 of the Tribunal's Rules of Procedure.

8. Article 10.2 of the Statute stipulates:

At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, 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.

9. Article 14.1 of the Rules of Procedure is similarly worded (emphasis added):

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.**

10. To the extent that the motion is directed at the decision not to renew the Applicant's FTA, the Tribunal has no jurisdiction to order the suspension of an administrative decision pending the proceedings in cases of non-renewal of fixed-term appointments beyond the management evaluation deadline, as held by the United Nations Appeals Tribunal in *Tadonki* 2010-UNAT-005 (para. 10):

UNDT has no authority under Article 2(2) to order a suspension of the contested decision beyond the deadline for management evaluation. UNDT exceeded its jurisdiction in ordering suspension of the decision not to renew Tadonki's employment "pending the final determination of the substantive appeal". Article 2(2) authorizes the UNDT to order a suspension of a contested decision only "during the pendency of the management evaluation".

11. Furthermore, a plain reading of the above provisions makes it clear that a request for interim measures can be granted only if the following three conditions are met: (a) the contested decision appears *prima facie* to be unlawful; (b) it is a case of particular urgency; and (c) implementation of the contested decision would cause irreparable damage to the Applicant. These three conditions are cumulative and must all be satisfied. If one of them fails, the request for interim measures cannot be granted.

12. As correctly argued by the Respondent, to the extent that the motion is directed at the discontinuation of the Applicant's position, the discontinuation was already implemented effective 1 January 2024 and can no longer be suspended.

13. Having determined that the Applicant has failed to satisfy one of the three cumulative requirements for the grant of interim measures, the Tribunal sees no need to examine whether the two other requirements are met. Accordingly, the Tribunal will reject the motion.

Conclusion

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

(Signed)

Judge Sean Wallace, Duty Judge

Dated this 30th day of April 2024

Entered in the Register on this 30th day of April 2024

(Signed)

René M. Vargas M., Officer-in-Charge, Nairobi