



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

TAVORA-JAINCHILL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Stephen Margetts, ALS/OHRM, UN Secretariat

Notice: This Judgment has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal

Introduction

1. By application filed with the Registry of the United Nations Dispute Tribunal in New York on 22 July 2013, the Applicant requested a suspension of action, pending completion of management evaluation, of the implementation of the Secretary-General's Bulletin ST/SGB/2011/6/Rev.1 on Staff-Management Committee, including the issuance of any further policy changes under the revised procedures.
2. On 25 July 2013, the Respondent filed his reply and submitted that, since the management evaluation has been completed, the Tribunal could not suspend the contested decision and the application should therefore be rejected.

Background

3. On 8 September 2011, the Secretary-General issued bulletin ST/SGB/2011/6 (Staff-Management Committee). The objective of this bulletin was to establish the Staff-Management Committee ("SMC") which, per sec. 1.1 of the bulletin would serve the purpose of having "an equitable and effective principal mechanism for staff-management negotiation".
4. On 12 April 2013, the General Assembly, in its resolution 67/255, requested that the Secretary-General "revise the Secretary-General's bulletin on the Staff-Management Committee in line with the existing regulations".
5. Prior to the SMC scheduled to commence at the beginning of June 2013, a draft amended ST/SGB/2011/6 was circulated between the parties. The formal session of SMC II was opened on 12 June 2013 in Mexico and it was closed prematurely on 14 June 2013.
6. On 20 June 2013, the Vice-President of the SMC wrote a letter to the Secretary-General in which he stated, *inter alia*:

A key agenda item at the SMC were proposed changes to the Secretary-General's Bulletin (SGB) on SMC (ST/SGB/2011/6), stripping staff of basic negotiating rights.

...

Management informed Staff that should no agreement be found on their proposed changes to remove staff negotiating rights, they would still go ahead and promulgate them. This is in violation of the SGB on SMC and casts doubt on whether Management ever intended to undertake meaningful consultations.

7. On 21 June 2013, the Assistant Secretary-General for Human Resources Management ("ASG/OHRM") sent an email whereby she requested that the parties provide her with "any comments and suggestions on the attached revision to ST/SGB/2011/6 no later than 4 July 2013 [close of business]".

8. On 24 June 2013, the Secretary-General responded to the Vice-President of the SMC's 20 June 2013 letter stating, *inter alia*, that:

While I am committed to engaging with staff, consultations must be done within the legislative framework established by the General Assembly. In this regard, I am duty-bound to implement the decision of the General Assembly in resolution 67/255 that ST/SGB/2011/6 on the Staff-Management Committee be revised in line with the staff regulations. To this end, the draft revision, which had been circulated before the Staff-Management Committee meeting, has been recirculated to staff representatives in order to seek your comments and suggestions.

9. On 3 July 2013, the Vice-President of the SMC sent an email to the ASG/OHRM in which he stated that, seeing that an agreement had not been reached regarding the revised ST/SGB/2011/6 during the June meetings in Mexico, further discussion "should only go forward within the framework established by ST/SGB/2011/6 (either be discussed further at SMC or be referred for mediation)". The Vice-President of the SMC also requested that the ASG/OHRM clarify "whether Management has the same understanding or whether it intends to promulgate without using the SMC processes". The following day the ASG/OHRM acknowledged the email from the Vice-President of the SMC and said that she would be grateful for

any comments on the draft that was circulated on 21 June 2013 by the previously referred deadline of 4 July 2013.

10. On 11 July 2013, ST/SGB/2011/6/Rev.1 was issued.

11. The following day, on 12 July 2013, the revised bulletin was distributed to staff members through the United Nations internal website iSeek.

12. The same day, on 12 July 2013, the Applicant filed a request for management evaluation with the Management Evaluation Unit (“MEU”).

13. On 22 July 2013, the Applicant filed the present application for a suspension of action, which was transmitted to the Respondent the following day. The Respondent was instructed to submit his reply by 12 p.m. on 25 July 2013.

14. On 24 July the MEU rejected the request for management evaluation on the grounds that it was not receivable.

15. On 25 July 2013, the Respondent filed his reply as instructed by the Tribunal, submitting that

[s]ince the management evaluation has been completed, there is no longer any basis for the Applicant’s request for suspension of action. There is no scope for any order suspending the alleged decision pursuant to Article 2(2) of the Statute of the Dispute Tribunal. Accordingly, the Application should be rejected.

16. On 25 July 2013, the Applicant filed a motion for a determination of standing and receivability in which she requested that the Tribunal address the issue of her own standing for the purpose of these proceedings as well as the implication that results from the Chef de Cabinet signing off on the MEU response on behalf of the Secretary-General.

17. On 26 July 2013, the Tribunal requested that the Respondent address by 10:00 a.m. Monday, 29 July 2013, whether the Chef de Cabinet has been provided with, and if so under which measure, the authority to sign off on the MEU response

on behalf of the Secretary-General and/or the Under-Secretary-General for Management.

18. On 29 July 2013, the Respondent provided the Tribunal with an 11 September 2012 Note indicating that “effective 2 July 2012, the Executive Office of the Secretary-General (EOSG) comprising the Offices of the Deputy Secretary-General (ODSG) and the Chef de Cabinet (OCdC) were restructured”. The Note included a revised organigramme which identified that the Chef de Cabinet’s areas of responsibilities now included, *inter alia*, “Management Issues” and “Legal Issues”. The Respondent submits that, as a result of this Note, the Chef de Cabinet now has the authority, as part of her responsibilities to “support the Secretary-General in carrying his responsibilities” to “review and take action on various issues, including management issues”.

Consideration

19. Pursuant to art. 2.2 of the Statute of the Dispute Tribunal, the Tribunal is

competent to hear and pass judgement 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. The decision of the Dispute Tribunal on such an application shall not be subject to appeal. [emphasis added]

20. Therefore, for an application for suspension of action to be successful it must satisfy the following cumulative conditions:

a. The application is receivable because it concerns an administrative decision that may properly be suspended by the Tribunal;

b. The contested decision has not yet been implemented;

- c. The Applicant has submitted a request for management evaluation of the contested decision, which evaluation is currently pending;
- d. The impugned administrative decision appears *prima facie* to be unlawful;
- e. The case is of particular urgency; and
- f. Its implementation would cause irreparable damage.

21. The Tribunal notes that the 12 July 2013 request for management evaluation describes the administrative decision to be evaluated as

the refusal of management to comply with the request of staff representatives to refer Management's proposed amendment of ST/SGB/2006/1 to full discussion at SMC or mediation, in accordance with existing procedures prescribed in the ST/SGB/2006/11, prior to implementation (promulgation of the amendment).

22. Furthermore, as part of her request for management evaluation, the Applicant sought the following remedy:

Immediate suspension of the issuance of any amendments to ST/SGB/2011/6 and confirmation from Management that it would submit the proposed changes for discussion at the next [SMC] or for mediation.

23. With regard to the decision put in front of the MEU, the request for management evaluation was completed on 24 July 2013. As part of her response to the Applicant's MEU request, the Chef de Cabinet, on behalf of the Secretary-General, responded that the

requests for management evaluation of the decisions: (a) to conclude consultations and negotiations and close the meeting of the [SMC]; and (b) not to refer the proposed amendments of ST/SGB/2011/6, *Staff Management Committee*, to "full discussion at the SMC or mediation in accordance with existing procedures prescribed in the ST/SGB/2011/6, prior to implementation ..." are not receivable.

24. In the 22 July 2013 application for suspension of action, the contested decision for which the Applicant is seeking suspension of action is described as:

[T]he implementation of ST/SGB/2011/6/Rev.1, including the issuance of any further policy changes under the revised procedures, on the grounds that the revised SGB was issued in violation of the existing procedures (ST/SGB/2011/6) and despite repeated requests from staff representatives for further discussions or a third-party mediation (art. 1.3, ST/SGB/2011/6). It is therefore illegal. Having been published, unlawfully revised SGB's implementation is imminent, and its imminent use by Management to make far-reaching policy changes, including on staff welfare and conditions of service, would cause irreparable harm to staff-management relations and to the established rights of the Applicant.

25. Article 13 of the Tribunal's Rules of Procedures states:

Suspension of action during a management evaluation

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.

26. The Tribunal also notes that according to the Applicant, the date of the decision or the date on which she first came to know about the decision that is the subject to the application for suspension of action is 3 July 2013.

27. The Tribunal further notes that the Applicant specifically includes in the fact section of the application that "on 12 July 2013, the issuance of ST/SGB/2011/6/Rev.1 was broadcast to staff through iSeek. (Annex 13)".

28. According to the Applicant, "[h]aving been published unlawfully, the implementation of the revised SGB is imminent".

29. The Tribunal notes that ST/SGB/2009/4 (Procedures for the promulgation of administrative issuances) states:

Section 1

Categories of administrative issuances

1.1 In accordance with the provisions of the present bulletin, the following administrative issuances may be promulgated:

- (a) Secretary-General's bulletins;
- (b) Administrative instructions.

...

Section 2

Entry into force and effect of administrative issuances

2.1 Administrative issuances shall enter into force upon the date specified therein and shall remain in force until superseded or amended by another administrative issuance of the same or higher level and promulgated in accordance with the provisions of the present bulletin.

30. The Tribunal considers that since sec. 10 of ST/SGB/2011/6/Rev.1 titled "Final provisions" states that "[t]he present bulletin shall enter into force on 11 July 2013", the Bulletin was in force when the application for suspension of action was filed.

31. While there have been cases in which the implementation of the contested decision was of an ongoing nature that was capable of suspension by the Tribunal, there is nothing before the Tribunal that would lead it to consider in the present case that sec. 2.1 of ST/SGB/2009/4 does not apply to ST/SGB/2011/6/Rev.1 and that the "entr[y] into force" date of 11 July 2013 "specified therein" by sec. 10 of ST/SGB/2011/6/Rev.1 results in anything other than the full promulgation and implementation of ST/SGB/2011/6/Rev.1 on that date. Thus, the decision that the Applicant seeks to suspend in her application has been fully implemented.

32. The Tribunal notes that the MEU issued its response to the request for management evaluation on 24 July 2013 and the requests for management evaluation of the decisions: (a) to conclude consultations and negotiations and close the meeting

of the [SMC]; and (b) not to refer the proposed amendments of ST/SGB/2011/6, *Staff Management Committee*, to “full discussion at the SMC or mediation in accordance with existing procedures prescribed in the ST/SGB/2011/6, prior to implementation ...” were considered not receivable.

33. The management evaluation request was made regarding “the refusal of management to comply with the request of staff representatives to refer Management’s proposed amendment of ST/SGB/2006/1 to full discussion at SMC or mediation, in accordance with existing procedures prescribed in the ST/SGB/2006/11, prior to implementation (promulgation of the amendment)”, whereas the contested decision in the application for suspension of action is “the implementation of ST/SGB/2011/6/Rev.1, including the issuance of any further policy changes under the revised procedure...”.

34. Article 13 of the Tribunal’s Rules of Procedures states that only a decision which is subject to an ongoing management evaluation can be suspended.

35. Based on a review of her applications, the Tribunal considers that the contested decision put forward before it by the Applicant is different from the one for which she sought management evaluation.

36. As for the contested decision which is the subject of the application for suspension of action before the Tribunal whereby the Applicant requests the suspension of the implementation of ST/SGB/2011/6/Rev.1, there is no evidence that the Applicant has submitted a request for management evaluation of this specific decision. The management evaluation request was made regarding “the refusal of management to comply with the request of staff representatives to refer Management’s proposed amendment of ST/SGB/2006/1 to full discussion at SMC or mediation, in accordance with existing procedures prescribed in the ST/SGB/2006/11, prior to implementation (promulgation of the amendment)”.

37. Seeing that in the present case the administrative decision is already implemented and there is no management evaluation request currently pending, there

is no need for the Tribunal to further analyze the other conditions for granting of a suspension of action, including the standing of the Applicant to challenge the implementation of ST/SGB/2011/6/Rev.1.

38. The Tribunal further notes that the Application's motion contesting the validity of the Secretary-General's response to the management evaluation due it having been signed by his Chef de Cabinet was clarified by the Respondent in his 29 July 2013 response. The signature by the Chef de Cabinet of the response to the management evaluation request is consistent with the functional organigramme of the Executive Office of the Secretary-General as approved by the Secretary-General in September 2012.

39. Finally, the Tribunal considers that the Applicant's request that the Tribunal suspend "the issuance of any further policy changes under the revised procedures" is not receivable. A future administrative decision that has yet to be taken cannot be subject of a suspension of action as there is no actual decision to suspend, so the Applicant does not have the standing to file such a request.

Conclusion

40. The Applicant's request for a suspension of action is dismissed.

(Signed)

Judge Alessandra Greceanu

Dated this 29th day of July 2013