



Before: Judge Alessandra Greceanu, Duty-Judge

Registry: New York

Registrar: Hafida Lahiouel

NADEAU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON MOTION FOR INTERIM
MEASURES**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat
Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. On 5 June 2015, the Applicant filed a motion for interim measures pending the substantive proceedings, pursuant to art. 10.2 of the Dispute Tribunal's Statute. The Applicant requests that the Under-Secretary-General for Internal Oversight Services ("USG/OIOS") "be ordered to appear to give testimony before her [upcoming] separation from the Organization [in September 2015]" and stating that "[t]his motion is a request for an order for a deposition/precognition *in facie curiae*".
2. The Registry transmitted the motion to the Respondent on the same day. The Respondent filed its response to the motion on 10 June 2015.

Applicant's submissions

Prima facie unlawfulness

3. The Applicant stated that (emphasis in the original):

[he] submitted a complaint of prohibited conduct to [Ms. L], in her capacity as the responsible official for OIOS ... [on 24 December 2013] pursuant to ST/SGB/2008/5 [Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority]. The complaint was made in good faith, containing information supporting a reasonable belief that misconduct had occurred. [USG/OIOS] summarily [dismissed] the complaint on 18 February 2015. In rejecting the complaint, [she] failed to comply with the requirements of section 5.12 of ST/SGB/2008/5, in that she did not take into consideration all the evidence submitted by the Applicant and the existing toxic and poisonous working environment at the material time in the New York office of the Investigation Division of OIOS, the existence of which she has, for other purposes, acknowledged to exist. In respect of the element of the complaint under ST/SGB/2008/5, para. 3.2, which relates to "*the failure to provide a harmonious work environment, free of intimidation,*

hostility, offence and any form of prohibited conduct”, a failure to fulfil this obligation – if proven – constitutes misconduct. In failing to recuse herself and summarily dismissing the complaint, [Ms. L] was in breach of the principle of “*nemo iudex in sua causa*”. In dismissing the Applicant’s complaint, [Ms. L] made a patently unreasonable decision based on self-interest and a capricious and pervasive assumption of facts not in evidence. Such a decision is in breach of the fundamental obligation contained in the Declaration under Staff Rule 1.1(b) Regulation 1.2(a) and 1.2(b).

Urgency

4. The Applicant argues that the matter is of particular urgency since the upcoming separation of the USG/OIOS from the Organization in September 2015 will deprive the Applicant of her testimony, which is essential to his case, given that she “will cease to be within the jurisdiction of the Tribunal”. The Applicant further submits that “it is reasonable to believe there is a high risk that [Ms. L] will be in *meditione fugae*” given the pressure currently exerted for her “mishandling of the ‘Kompass Affair’ ”.

Irreparable harm

5. The Applicant contends that the USG/OIOS’s separation from service prior to her testimony in his case will deprive him of his right to due process.

Respondent’s submissions

6. The Respondent submits that the motion should be rejected because the application is not receivable *rationae materiae*. The Respondent contends that:

The Applicant failed to request timely management evaluation of the contested decision. Should the Dispute Tribunal find the application receivable, the motion should be rejected. The order is not necessary for the fair and expeditious disposal of the case and to do justice

between the parties. The Applicant has not identified a factual dispute that would require the USG/OIOS to give oral evidence in order for the Dispute Tribunal to dispose of the proceedings. Also, there is no reasonable basis for inferring that the USG/OIOS would not give evidence before the Dispute Tribunal, if so requested after she separates from the Organization.

...

... [t]he Applicant has not adduced any credible or cogent evidence that she will not make herself available to appear as a witness. Counsel for the Respondent and applicants have called former staff members to give oral testimony in a number of hearings on the merits, including a former USG/OIOS Also the Dispute Tribunal has made appropriate arrangements to receive the testimony of former staff members located abroad, including appearing by telephone. ... The expected separation of a witness does not constitute exceptional circumstances for an expedited hearing.

Considerations

7. Article 10.2 of the Tribunal's Statute states (emphasis added):

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.

8. Article 14.1 (Suspension of action during the proceedings) of the Dispute Tribunal's Rules of Procedure states 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

9. The Tribunal considers that an order on interim measures may be granted at the request of any of the parties when the following cumulative conditions are met:

a. The motion for interim measures is filed in connection with a pending application on the merits before the Tribunal, anytime during the proceedings;

b. The application does not concern issues of appointment, promotion or termination;

c. The interim measure(s) ordered by the Tribunal must provide solely a temporary relief to either party, such relief being neither definitive by nature nor having the effect of disposing of the substantive case in relation to which the application for interim measures is filed;

d. The contested administrative decision appears *prima facie* to be unlawful;

e. There is a particular urgency in requesting the interim measures;

f. The implementation of the contested administrative decision would cause irreparable damage.

Findings

10. On 29 May 2015, the Applicant filed an application on the merits contesting the decision of the USG/OIOS not to establish a fact-finding panel to investigate the Applicant's complaint made under ST/SGB/2008/5.

11. The Tribunal notes that the Applicant's motion for interim measures is filed in connection with a currently pending application on the merits filed on 29 May 2015. The contested administrative decision does not pertain to issues relating to appointment, promotion or termination. The first and second conditions mentioned above are accordingly fulfilled.

12. As results from art. 10.2 of the Tribunal's Statute and art.14.1 of the Tribunal's Rules of Procedure, a temporary relief may be ordered in cases of particular urgency where the contested decision appears to be *prima facie* unlawful and its implementation would cause irreparable harm.

13. The scope of an order granting a motion for interim measures pending proceedings is to provide a temporary relief to prevent irreparable damage which would be caused by the implementation of the contested decision. The Tribunal finds that it results that the irreparable harm is always caused directly only by the implementation of the contested decision.

14. In the present case, the Applicant stated that the "separation of [the USG/OIOS] from the Organization prior to her testimony will deprive [his] rights to due process, because after her separation from the Organization, the USG/OIOS will cease to be within the jurisdiction of the Tribunal".

15. It results that the irreparable damage invoked by the Applicant would not be caused by the implementation of the contested administrative decision as required by the legal provision, but by the separation of the decision-maker. The condition that the implementation of the contested decision would cause irreparable harm is not fulfilled.

16. Since one of the cumulative conditions to grant a motion for interim relief is not fulfilled, the Tribunal need not consider whether the remaining requirements are met.

ORDERS

17. The application for interim measures is rejected.

(Signed)

Judge Alessandra Greceanu, Duty-Judge

Dated this 12th day of June 2015