



**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Hafida Lahiouel

KINGLOW

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON AN APPLICATION FOR  
SUSPENSION OF ACTION**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Steven Dietrich, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant, a staff member of the Economic Commission for Latin America and the Caribbean (“ECLAC”), seeks suspension, pending completion of management evaluation, of the non-renewal of her fixed-term appointment beyond 30 June 2016.

2. The Applicant initially filed her request by email on 27 June 2016. She re-submitted it via the eFiling portal on 28 June 2016, on instructions of the New York Registry. The Registry transmitted the application to the Respondent on 28 June 2016. The Respondent was instructed to file his reply to the application by 2 p.m. on Wednesday, 29 June 2016. The Respondent’s reply to the application was duly filed on 29 June 2016.

3. The Applicant submits, with regard to the requirement of *prima facie unlawfulness*, that, although she was told that the non-renewal of her contract was due to reclassification and restructuring, no such process was afoot. There have been no changes in the organization charts and no official announcements regarding reclassification or restructuring, and no other posts appear to be affected by this alleged process. No other usual reasons for non-renewal (performance, lack of funds, redundancy, etc.) could apply in her case. For these reasons, the contested decision was arbitrary and unlawful. The Applicant alleges that the contested decision may have been made to punish her for exercising “a universal right: being a mother of [her] first son, and being absent from November [2016]” on maternity leave and post-maternity annual leave. With regard to the requirement of *particular urgency*, the Applicant submits that she was informed of the non-renewal of her contract by letter of 13 June 2016 and timeously sought management evaluation and filed an application with the Tribunal. With regard to the requirement of

*irreparable damage*, the Applicant submits in effect, that if the contested decision is not suspended, she will lose her employment on 1 July 2016.

4. In his reply duly filed on 29 June 2016, the Respondent submits that the ECLAC informed the Applicant via email dated 29 June 2016 that it would not implement the contested decision pending the completion of management evaluation. The Respondent attached to the reply a copy of the email. The Respondent requests the Tribunal to dismiss the application since the Applicant has been provided with the relief she sought and there is no matter before the Dispute Tribunal for adjudication.

### **Relevant background**

5. The following outline of the relevant background is based on the parties' submissions as well as the documentation on file.

6. The Applicant is a G-6 level Project Assistant with the Project Management Unit, Programme Planning and Operations Division, ECLAC. She joined ECLAC in April 2013 on a fixed-term contract.

7. The Applicant was on maternity leave from 8 January 2016 to 29 April 2016, and then was on post-maternity annual leave from 30 April to 13 June 2016.

8. The Applicant submits that, on 15 March 2016, while she was on leave, she exchanged emails with her supervisor regarding the extension of her contract. She submits that was surprised to learn that her contract was extended only to 30 June 2016. The Applicant submits that, by email of 15 March 2016, she asked about the extension of her contract beyond 1 July 2016, and regarding her work plan for 2016–2017. However, despite sending two

reminders on 23 March and 3 June 2016, the Applicant received no response to her queries.

9. On 13 June 2016, the Applicant returned to the office from her maternity leave and post-maternity annual leave. On the same day, she was provided with a letter signed by her supervisor, informing her that her contract would not be extended beyond its expiration date of 30 June 2016. No reasons for the non-renewal were included in this letter.

10. On 29 June 2016, following the Applicant's request for management evaluation and application with the Tribunal, the Chief of the Human Resources Section, ECLAC, sent an email to the Applicant, copying the Applicant's first and second reporting officers. The email notified the Applicant of ECLAC's decision to suspend the implementation of the contested decision pending completion of management evaluation, in the following terms (emphasis in original):

Dear [Applicant],

In connection with your application for suspension of action filed with the United Nations Dispute Tribunal dated 28 June 2016, please be advised that the United Nations Economic Commission for Latin America and the Caribbean agrees not to implement the decision of non-renewal of your appointment pending completion of management evaluation, which you had filed the same day, 28 June 2016.

11. As of the date of the Respondent's reply, the management evaluation of the Applicant's request is pending.

## Consideration

### *Legal framework*

12. Article 2.2 of the Statute of the Dispute Tribunal provides:

2. The Dispute Tribunal shall be 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.

13. Article 13.1 of the Tribunal's Rules of Procedure states:

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.

14. In accordance with art. 2.2 of the Dispute Tribunal's Statute, the Tribunal may suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. The Dispute Tribunal can suspend the contested decision only if all three requirements of art. 2.2 of its Statute have been met.

15. A suspension of action order is, in substance and effect, akin to an interim order of injunction in national jurisdictions. It is a temporary order

made with the purpose of providing an applicant temporary relief by maintaining the *status quo* between the parties to an application pending a management evaluation of its impugned decision or a full determination of the case on the merits.

16. Under arts. 13 and 14 of its Rules of Procedure, the Tribunal is required to conclude proceedings for suspension of action and interim measures within five working days due to their urgent nature. Accordingly, when dealing with interdict proceedings, often there is no time for the Tribunal or parties to entertain extensive production requests as it may delay the proceedings well beyond the statutory five-day period. Therefore, when appearing before the Tribunal, parties should bear in mind that an application or reply may well stand or fall on the initial papers filed. It is only in particular cases that the Tribunal will find it necessary to order the parties to make further submissions or document productions in the context of urgent proceedings. Therefore, the parties' submissions should be complete to the extent possible in all relevant respects, but also bearing in mind that the matter is not at the merits stage at this point of the proceedings.

*Suspension of the contested decision*

17. On 29 June 2016, the Applicant was notified in writing, by email copied to her first and second reporting officers, that ECLAC had agreed to suspend the contested decision not to renew her contract beyond 30 June 2016, pending completion of management evaluation.

18. Therefore, the Applicant has obtained, in full, the relief she sought in the context of the present proceedings. It is therefore not necessary for the Tribunal to consider the requirements for the granting of suspension of action under art. 2.2 of the Tribunal's Statute.

## Observations

19. The Tribunal notes that the circumstances of this case, as presented by the Applicant, appear unusual and require careful consideration by the Administration. The Applicant is a dedicated staff member with a good performance record, who has just returned from her maternity leave and subsequent post-maternity annual leave. A range of international human rights and labour standards protect female workers and promote gender related non-discrimination measures in relation to their reproductive functions, including the right to work. Everyone has the right to just and favourable conditions of work and to protection against unemployment (art. 23, Universal Declaration of Human Rights). Article 5 of International Labour Organisation (“ILO”) Convention No. 158 (on Termination of Employment) (1982) lists reasons that shall not constitute valid reasons for termination, including pregnancy and family responsibilities (art. 5(d)), and absence from work during maternity leave (art. 5(e)). The right to return to work is explicitly mentioned in art. 8 of ILO Convention No. 183 (on Maternity Protection) (2000). The ILO Recommendation No. 191 (on Maternity Protection) (2000) goes further by taking into account the inherent problems that can arise when returning from maternity leave in terms of determining rights, such as calculating seniority, promotions, pensions, and health or disability benefits.

20. In view of the Administration’s decision to suspend the implementation of the contested decision, the Tribunal need not make pronouncements on the allegations proffered by the Applicant. However, the Tribunal invites the parties to carefully consider the particular and exceptional circumstances of this case and to attempt resolving this situation amicably.

21. The Tribunal trusts that, in view of the seriousness of the Applicant’s allegations, the Management Evaluation Unit will examine her claims in full,

bearing in mind the relevant case law of the Dispute Tribunal and Appeals Tribunals (including *Obdeijn* UNDT/2011/032, *Obdeijn* 2012-UNAT-201 and other pronouncements).

IT IS ORDERED THAT:

22. The contested decision not to renew the Applicant's contract beyond 30 June 2016 having been suspended during the pendency of management evaluation, Case No. UNDT/NY/2016/030 is hereby closed.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 29<sup>th</sup> day of June 2016