



**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Morten Albert Michelsen, Officer-in-Charge

CARMIGNANI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON SUSPENSION OF ACTION**

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**Counsel for Applicant:**

Daniel Trup, OSLA

**Counsel for Respondent:**

Elizabeth Gall, ALS/OHRM

## **Introduction**

1. On Friday, 1 June 2017, at 3:37 p.m., the Applicant, a staff member at the D-2 level with a permanent appointment working with the United Nations Integrated Peacebuilding Office in Guinea-Bissau, but currently temporarily assigned to United Nations Headquarters, filed an application under art. 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure seeking to suspend the decision, pending management evaluation, to "separate him from service with less than three days' notice".

2. Together with his application, referring to arts. 19 and 36.1 of the Dispute Tribunal's Rules of Procedure and the Appeals Tribunal's judgment in *Villamorán* UNAT/2011/160, the Applicant also filed a motion requesting that the contested decision be suspended pending the Tribunal's consideration of the suspension of action proceedings, submitting that he will otherwise be separated on Monday, 4 June 2018.

3. By Order No. 116 (NY/2018) dated 1 June 2018, the Tribunal granted, without prejudice to its determination of the application for suspension of action under art. 2.2 of the Tribunal's Statute, the interim suspension order requested by the Applicant.

4. On 4 June 2018, the Respondent filed his reply, submitting that the application was moot because the Administration had granted the Applicant the requested suspension of action.

## **Consideration**

5. Applications for suspension of action pending management evaluation are governed by art. 2.2 of the Dispute Tribunal's Statute and art. 13 of the Rules of

Procedure. The three statutory requisites of *prima facie* unlawfulness, urgency and irreparable harm must be satisfied for an application for suspension of action to be granted. Where an administrative decision has been implemented, a suspension of action may not be granted (*Gandolfo* Order No. 101 (NY/2013)), save where the implementation of the decision is of an ongoing nature (see, for example, *Calvani* UNDT/2009/092; *Hassanin* Order No. 83 (NY/2011); *Adundo et al* Order No. 8 (NY/2013); *Gallieny* Order No. 60 (NY/2014)).

6. Pursuant to art. 19 of the Rules of Procedure of the Dispute Tribunal,

The Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

7. Article 36.1 of the Rules of Procedure provides that:

All matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Dispute Tribunal on the particular case, by virtue of the powers conferred on it by article 7 of its statute.

8. Pursuant to art. 13.3 of the Rules of Procedure,

The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

9. In *Villamorán* 2011-UNAT-160, the Appeals Tribunal upheld this Tribunal's *Villamorán* Order No. 171 (NY/2011) finding that the Dispute Tribunal was within its competence to order a suspension of the contested decision pending a determination of the application for suspension of action on the basis of the aforesaid Rules of Procedure and without having to make a finding as to whether the requirements of a suspension of action under art 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure had been met. The Appeals Tribunal, *inter alia*, found that:

43. Where the implementation of an administrative decision is imminent, through no fault or delay on the part of the staff member, and takes place before the five days provided for under Article 13 of [the Dispute Tribunal's, "UNDT"] Rules have elapsed, and where the UNDT is not in a position to take a decision under Article 2(2) of the UNDT Statute, i.e. because it requires further information or time to reflect on the matter, it must have the discretion to grant a suspension of action for these five days. To find otherwise would render Article 2(2) of the UNDT Statute and Article 13 of the UNDT Rules meaningless in cases where the implementation of the contested administrative decision is imminent.

10. Upon perusing the application, noting that the urgency, was not self-created, and the fact that once the decision is implemented on Monday, 4 June 2018 the Applicant would have no recourse, the Tribunal was satisfied that the requirements for an interim order pending the Tribunal's determination of a suspension of action as set out in *Villamorán* by the Appeals Tribunal had been satisfied in this case. The Tribunal therefore granted the interim order on urgency basis in the late afternoon of Friday, 1 June 2018, pending the Tribunal's determination of the suspension of action application under art. 2.2 of the Statute.

11. However, on 4 June 2018, the Respondent in his reply submitted that the matter is moot as (references to annexes omitted),

... On 1 June 2018, upon the Applicant's request, the Secretary-General suspended the implementation of the contested decision until the management evaluation process is completed. The Applicant, through counsel, was informed accordingly.

... The Application for suspension of action is moot. The *status quo* will be maintained between the parties pending the outcome of the management evaluation process. The Applicant has already been granted the relief requested in his Application.

12. The Tribunal understands the Respondent's concession to mean that the Administration has suspended the contested decision pending management evaluation, thus the relief requested by the Applicant has already been granted. Respondent Counsel's undertaking on behalf of the Secretary-General is a

confirmation that the *status quo* will be preserved pending the management evaluation. Accordingly, there is no need for the Tribunal to issue an order suspending implementation of the contested decision pending management as this suspension has already been granted by the Administration.

IT IS ORDERED THAT:

13. The contested decision having been suspended, there is no further determination to be made by the Tribunal, the application having been rendered moot.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 5<sup>th</sup> day of June 2018