



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2020/038  
Order No.: 127 (NY/2020)  
Date: 24 August 2020  
Original: English

**Before:** Duty Judge  
**Registry:** New York  
**Registrar:** Nerea Suero Fontecha

MUC

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**  
**ON MOTION FOR INTERIM**  
**MEASURES**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
UNDP

## **Introduction**

1. On 18 August 2020, the Applicant filed an application on the merits contesting her exclusion from a selection process with the United Nations Development Programme (“UNDP”) and UNDP’s failure to inform her of her exclusion.
2. On the same day, the Applicant filed a request for interim measures seeking the suspension of the contested selection process.

## **Consideration**

3. Article 10(2) of the Tribunal’s Statute provides:

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.

4. Article 14(1) of the Tribunal’s Rules of Procedure states:

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.

5. In her motion for interim measures, the Applicant requests suspension of the contested selection process which is currently underway. She relies on Order No.93 (GVA/2015) to argue that the relief requested is not the suspension of the implementation of an appointment or promotion decision, which would fall outside the Tribunal's jurisdiction under art. 10(2) of its Statute and art. 14(1) of its Rules of Procedure.

6. The Tribunal notes that indeed, in Order No. 93 (GVA/2015), the Tribunal granted the relief sought by the applicant in that case, *i.e.*: the suspension of an ongoing selection process from which he had been excluded. On the one hand, the Tribunal found that the decision to exclude the applicant from further participation in the recruitment process was not an appointment or promotion type of decision but rather a decision "preventing the [a]pplicant to compete as a candidate for the post, which is different in nature and scope". In this regard, [...] the exclusion of these specific categories of cases constitutes an exception to the more general power conferred to the Tribunal to order interim measures and, as such, it must be interpreted restrictively [...]."

7. On the other hand, the Tribunal reasoned that it was permitted to suspend the selection process that was under way because this was a different measure than the suspension of the implementation of a promotion decision which is excluded by art. 14(1) of the Tribunal's Rules of Procedure.

8. The Tribunal is not persuaded by either of these findings.

9. The decision to exclude an applicant from a recruitment process constitutes a final administrative decision with direct legal consequences on the applicant (*Hejamadi* UNDT /2020/068, paras. 18-20). The Applicant's exclusion from further participation in the selection process therefore constitutes a decision not to appoint or promote her for the position.

10. Moreover, the suspension of an ongoing recruitment process pending the completion of judicial proceedings has the same impact as the suspension of the implementation of a selection decision at the end of said selection process. In the Tribunal's opinion, this is the type of disruption of the Organization's operations that the Statute and the Rules of Procedure seek to avoid.

11. Therefore, the Tribunal finds that it does not have jurisdiction to order the suspension of an ongoing selection process under art. 10(2) of its statute and art. 14(1) of its Rules of Procedure. The present request for interim measures is therefore not receivable.

12. In light of the above,

IT IS ORDERED THAT:

13. The motion for interim measures is rejected.

*(Signed)*

Judge Joelle Adda

Dated this 24<sup>th</sup> day of August 2020