



**Before:** Duty Judge

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

MINZER

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON INTERIM MEASURES**

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**Counsel for Applicant:**

Cristian Gimenez Corte

**Counsel for Respondent:**

Alan Gutman, ALD/OHR, UN Secretariat

Clementine Foizel, ALD/OHR, UN Secretariat

## **Introduction**

1. On 1 April 2021, the Applicant filed an application to contest the decision not to transfer him to a different unit.
2. On 6 August 2021, the Applicant filed a motion requesting the Dispute Tribunal “to order the interim measure to transfer [the Applicant] to a different division and to stop the retaliatory measures taken against him, with a view to provide [the Applicant] temporary relief”.
3. On 10 August 2021, the Respondent filed a response to the Applicant’s motion for interim measures, submitting that the motion is not receivable and is without merit.

## **Consideration**

4. Article 10.2 of the Dispute Tribunal’s Statute, as also reflected in art. 14 of its Rules of Procedure, provides that:

... 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.

5. In *Russo-Got* Order No. 48 (NY/2019), paras. 12-13, the Tribunal explained under what circumstances a request for interim measures may be granted:

... An interim measures order 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 the Dispute Tribunal’s consideration of the contested decision (see *Gizaw* Order No. 151 (NY/2017), para. 31). Furthermore, as interim relief is intended to preserve the *status quo*, it is not meant to make a final determination on the merits or the substantive claims (see, for instance, *Nadeau* Order No. 145 (NY/2018), para. 19).

... It further follows from art. 10.2 of the Statute that if a contested decision has been fully implemented, the Tribunal generally will no longer have the authority to order the suspension of the contested decision pending the completion of the judicial proceedings. However, in cases where the implementation of the decision is of an ongoing nature (see, e.g., *Calvani* UNDT/2009/092; *Hassanin* Order No. 83 (NY/2011); *Adundo* et al. Order No. 8 (NY/2013)), the Tribunal may grant a request for a suspension of action or possibly another type of interim relief.

6. The Respondent argues that under art. 10.2 of the Dispute Tribunal's Statute, the Dispute Tribunal's jurisdiction is limited to preserving the *status quo*, and yet the Applicant, by seeking reassignment, is requesting the Dispute Tribunal to change the *status quo*. Further, the Respondent argues that granting the Applicant's request would result in the final disposition of the application.

7. In this case, the Applicant's case on the merits challenges the decision not to transfer him to a different unit, arguing that this decision is unlawful. In his motion for interim measure, the Applicant seeks the rescission of the very decision that he is contesting on the merits. Therefore, if the requested interim measure were to be granted, the Tribunal would be adjudicating the merits of the matter, effectively disposing of the substantive case.

8. The Tribunal further cannot grant an interim measure requesting that the retaliatory measures taken against the Applicant be stopped, since this would also entail a final determination on the merits of the Applicant's substantive claims.

9. Accordingly, the Tribunal is not competent to grant the Applicant's motion for interim measures and thereby rejects his motion.

IT IS ORDERED THAT:

10. The Applicant's motion for interim measures is rejected.

*(Signed)*

Judge Joelle Adda

Dated this 12<sup>th</sup> day of August 2021