UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NY/2021/057
Order No.:	111 (NY/2021)
Date:	22 November 2021
Original:	English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

INNISS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON APPLICATION FOR SUSPENSION OF ACTION

Counsel for Applicant:
Endah Indini, OSLA

Counsel for Respondent:
Camila Nkwenti, UNEP
Thomas Deleuil, UNEP
Isabel Martinez, UNEP

Introduction

1. On 16 November 2021, the Applicant, the Coordinator for the Cartagena Convention/Caribbean Environment Programme in the United Nations Environmental Programme ("UNEP") at the D-1 level, filed an application requesting, under art. 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure, the suspension pending management evaluation of the decision not to renew her fixed-term appointment beyond its expiration on 30 November 2021.

Factual background

2. On 16 November 2015, the Applicant joined the Cartagena Convention Secretariat.

3. The Cartagena Convention Secretariat is administered by UNEP and was established to serve as the Secretariat of the Cartagena Convention and its Protocols.

4. The Cartagena Convention forms part of the UNEP Regional Seas Programme consisting of 18 regional seas conventions and action plans. The regional seas conventions are multilateral and legally binding environmental agreements that each have their own governing bodies and exercise their decision-making power at annual or biannual meetings of the Conferences of the Parties ("COP"). The COP adopts decisions on the programme of work and budget of each of the regional conventions, as established by the Convention and subsequent decisions of the COP. By deciding on the budget of the Convention, the COP of each regional convention decides on the budget of the Secretariat of the Convention and therefore on staff costs and staffing table.

5. On 28-30 July 2021, the Sixteenth Meeting of the Contracting Parties to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region ("the COP16 of the Cartagena Convention") was held. In this

meeting, it was decided, among other things, to reclassify the post the Applicant encumbered from D-1 to P-5 level.

6. On 24 August 2021, the Applicant was notified that her fixed-term appointment would not be renewed beyond 30 November 2021 according to the decision of the COP16 of the Cartagena Convention to reclassify the Coordinator post from D-1 to P-5 level.

7. Subsequently, the reclassification process for the Coordinator post got underway, and on 22 October 2021, the reclassification of the Coordinator post from D-1 to P-5 level was approved by the United Nations Office at Nairobi.

8. On 22 October 2021, the Applicant filed a request for management evaluation of the contested decision not to renew her fixed-term appointment beyond 30 November 2021.

9. On 16 November 2021, the Applicant filed the present application for suspension of action.

10. On 19 November 2021, the Respondent filed the reply.

Consideration

11. Under art. 2.2 of the Dispute Tribunal's Statute and art. 13.1 of the Rules of Procedure, 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 have been met.

Urgency

12. Urgency is relative and each case will turn on its own facts, given the exceptional and extraordinary nature of such relief. If an applicant seeks the Tribunal's

assistance on an urgent basis, she or he must come to the Tribunal at the first available opportunity, taking the particular circumstances of her or his case into account (*Evangelista* UNDT/2011/212). The onus is on the applicant to demonstrate the particular urgency of the case and the timeliness of her or his actions. The requirement of particular urgency will not be satisfied if the urgency was created or caused by the applicant (*Villamoran* UNDT/2011/126; *Dougherty* UNDT/2011/133; *Jitsamruay* UNDT/2011/206).

13. The Applicant submits that the case is particularly urgent since her contract will expire on 30 November 2021. She submits that since she was notified of the contested decision on 24 August 2021, she has repeatedly engaged with senior management of UNEP as well as the Ombudsman's Office to resolve her grievance by discussing possibilities for the extension of her appointment and reassignment to other posts. She claims that the last correspondence she received was on 22 October 2021, informing her that there was no possibility to extend her appointment and that she acted diligently by filing her request for management evaluation on the same day.

14. In response, the Respondent submits that the prerequisite of urgency is not met since the Applicant was notified of the contested decision on 24 August 2021, at least three months in advance of the expiry of her contract.

15. The Tribunal notes that the Applicant was indeed notified of the contested decision on 24 August 2021 and yet she only filed the present application on 16 November 2021, more than two months later. While the Applicant argues that she delayed the filing of the present application for suspension of action due to the ongoing discussions with senior management of UNEP and the Ombudsman's Office concerning possibilities for the extension of her appointment and reassignment to other posts, she failed to present any evidence that they engaged in such efforts regarding the non-extension decision. The available documents only show that there were follow-up discussions and meetings for the implementation of the the COP16 of the Cartagena Convention's decisions.

16. Furthermore, the Applicant does not provide any explanation as to why she filed the application for suspension of action more than three weeks after the filing of her request for management evaluation.

17. Therefore, in the particular circumstances of the case, the Tribunal finds that the Applicant failed to meet the requirement of urgency. Any urgency in this case was self-created.

18. Accordingly, the Tribunal finds that the requirement of particular urgency is not satisfied.

Prima facie *unlawfulness and irreparable harm*

19. As the Applicant has not satisfied the requirement of urgency, the application fails and there is no need to examine the conditions of *prima facie* unlawfulness and irreparable harm.

IT IS ORDERED THAT:

20. In light of the above, the application for suspension of action is rejected.

(Signed)

Judge Joelle Adda
Dated this 22nd day of November 2021