



**Before:** Judge Joelle Adda  
**Registry:** New York  
**Registrar:** Nerea Suero Fontecha

APPLICANT

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON APPLICATION FOR SUSPENSION  
OF ACTION**

**AND**

**ON MOTION FOR  
CONFIDENTIALITY**

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**Counsel for Applicant:**  
Omar Yousef Shehabi, OSLA

**Counsel for Respondent:**  
UNOPS

## **Introduction**

1. On 26 November 2021, the Applicant, a staff member with the United Nations Office for Project Services (“UNOPS”) filed an application requesting, under art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure, a suspension of action pending management evaluation of the “decision to strip applicant of her leadership and supervisory responsibilities.”

2. Together with the application for suspension of action, the Applicant filed a motion for suspension of the contested decision during the pendency of the Tribunal’s consideration of this application, under *Villamorán* 2011-UNAT-160 and an *ex parte* motion for anonymity which she requested the Tribunal to consider as a preliminary matter.

## **Consideration**

3. 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.

4. Having reviewed the papers, the Tribunal finds that the Applicant has failed to establish a case of irreparable damage for the reasons below.

### *Irreparable harm*

5. The Applicant states that she was notified on 23 November 2021 of a proposed temporary restructuring within her unit that would reduce the Applicant’s supervisory functions which is to be implemented within a few days of the filing of the application.

6. The Applicant argues that that if the contested decision is implemented, she will suffer significant career harm “in the form of losing her leadership position [...] and virtually all of her supervisory responsibilities. In essence, the contested decision would dramatically reshape and reduce the Applicant’s role [...] and set back her career progression by many years.”

7. The Tribunal notes that the contested decision concerns the change in functions of a staff member, not a non-renewal of contract or a non-selection as is normally the case for applications for suspension of action submitted to the Tribunal (see e.g. *Chocobar*, UNDT/GVA/2015/128, *Torkonoo* Order No. 168 (NBI/2014), *Baldini* Order No. 103 (NY/2013), *Zhuang* Order No. 165 (GVA/2013)), and in which the damage caused to the staff member might indeed be considered as irreparable since he or she loses employment with the United Nations or a career opportunity.

8. The Tribunal recalls that irreparable harm is a loss that cannot be adequately compensated through a monetary award (*Khalouta* Order No. 138 (NY/2014)). Depending on the circumstances of the case, sudden loss of employment, harm to health, or harm to professional reputation and career prospects may constitute irreparable damage. The onus is, however, on the applicant to demonstrate, with specificity, that irreparable damage will occur and must not be speculative (*Nwuke*, UNDT/2011/107).

9. In the circumstances of the present case, the Tribunal considers that the Applicant did not establish such irreparable damage. First, the Tribunal notes that the Applicant does not submit that she faces loss of employment, but rather that her functions are subject to change under a temporary restructuring process. Second, if the proposed changes to the Applicant’s functions were indeed deemed unlawful following a review of the merits of her case, an order could be made to adequately redress the Applicant. Under these particular circumstances, any damage cannot be considered “irreparable”.

10. As the application fails on this ground, the Tribunal does not need to examine the application further.

*Request for confidentiality*

11. In a separate *ex parte* motion filed together with the present application, the Applicant claimed that she feared retaliation if the details of this litigation were publicized. She therefore requested that her name and personal information be kept confidential and that the order disposing of this case not be published.

12. The Tribunal informed the Applicant that, having reviewed her submissions, it would be amenable to granting the request for anonymity.

13. In this respect, the Tribunal notes that the Applicant is part of separate confidential process and, to avoid undermining such process, it grants the Applicant's motion to keep her personal information confidential.

14. However, as the Tribunal informed the Applicant, under art. 11.6 of the Tribunal's Statute, the Tribunal would have to publish the order disposing of this case which would have to be served, along with the application, to the Respondent.

15. In an email to the Tribunal's Registry dated 26 November 2021, Counsel for the Applicant confirmed that the Applicant wished to pursue her case under these conditions.

16. The Tribunal further notes that, given that the application is rejected on the grounds of irreparable harm alone, the *ex parte* annexes except the one identified by the Applicant as the contested decision (Annex 2 of the application) were not taken into consideration in the determination of this case.

17. Therefore, keeping all the annexes to the application *ex parte* except for Annex 2, will not impair the Respondent's right to be heard.

18. Accordingly, the Tribunal will disclose to the Respondent the application and its Annex 2 noting that these documents will be maintained *under seal* and recalling that all parties must keep their contents confidential. All other documents filed by the Applicant will remain *ex parte*.

IT IS ORDERED THAT:

19. In light of the above, the Tribunal orders that:

- a. The application for suspension of action is rejected;
- b. The Applicant's request for confidentiality is granted in part;
- c. The application and its Annex 2 will be filed under seal and served on the Respondent;
- d. All other documents filed by the Applicant will be kept *ex parte*.

(Signed)

Judge Joelle Adda

Dated this 26<sup>th</sup> day of November 2021