



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

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON INTERIM MEASURES

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Clementine Foizel, ALD/OHR, UN Secretariat

Introduction

1. On 15 December 2021, the Applicant filed an application to contest the decision not to grant his request to extend the period to submit his claim for repatriation grant by one additional year on an exceptional basis (“contested decision”).
2. On 16 December 2021, the Applicant filed a motion seeking the suspension of the contested decision.
3. On 21 December 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. As a preliminary matter, the Tribunal notes that the Applicant labeled his submission “an application for suspension of action”. However, since he already filed the application on the merits and there is no pending management evaluation, the Tribunal understands that the Applicant seeks a suspension of the contested decision during the current judicial proceedings and therefore will treat his submission as a motion for interim measures under art. 10.2 of the Dispute Tribunal’s Statute.

5. 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.

6. 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 as follows:

... 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.

7. 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 a suspension of the deadline, 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 on the merits.

8. In this case, the Applicant's case on the merits challenges the decision not to exceptionally extend the period to submit a claim for repatriation grant, arguing that this decision is unlawful. In his motion for interim measures, the Applicant seeks the temporary suspension of the contested administrative decision that he is contesting on the merits. This, in effect, would amount to granting the relief that he is seeking in his application on the merits, namely an extension of the deadline for him to submit his repatriation grant claim.

9. Therefore, if the requested interim measure were to be granted, the Tribunal would not be providing temporary relief maintaining *status quo* pending the Tribunal's consideration of the case, but the Tribunal would be adjudicating the merits of the matter, effectively disposing of the substantive case.

10. Accordingly, the Tribunal cannot grant the Applicant's motion for interim measures and therefore rejects his motion.

IT IS ORDERED THAT:

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

(Signed)

Judge Joelle Adda

Dated this 22nd day of December 2021