



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2024/023
Order No.: 066 (NY/2024)
Date: 11 June 2024
Original: English

Before: Duty Judge

Registry: New York

Registrar: Isaac Endeley

SCEPANOVIC

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON INTERIM MEASURES DURING
THE PROCEEDINGS**

Counsel for Applicant:

Manuel Calzada

Counsel for Respondent:

Nisha Patel, AAS/ALD/OHR, UN Secretariat

Kathleen Welshman, AAS/ALD/OHR, UN Secretariat

Introduction

1. On 6 June 2024, the Applicant, a former staff member with the United Nations Multidimensional Integrated Stabilization Mission in Mali (“MINUSMA”), filed an application with the Tribunal contesting the decisions to: (a) terminate his fixed-term appointment effective 31 May 2024, and (b) not to place him on special leave with half pay, following the exhaustion of his entitlements to annual leave and certified sick leave. In his application dated 6 June 2024, the Applicant requested an order for interim measures during the proceedings.

2. On 10 June 2024, the Respondent filed a reply to the Applicant’s motion for interim measures submitting that the motion is not receivable *ratione materiae*. The Respondent further requests that the Applicant’s application on the merits be summarily dismissed pursuant to art. 9 of the Dispute Tribunal’s Rules of Procedure.

Consideration

3. Interim measures during the proceedings are governed by art. 10.2 of the Dispute Tribunal’s Statute and art. 14.1 of its Rules of Procedure. The former, which contains almost the same text as the latter, provides in relevant part that (*emphasis in italics*):

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. For the Tribunal to consider interim measures, several cumulative conditions set forth in the above-mentioned provisions must be met (see *Nadeau* Order No. 116 (NY/2015), *Auda* Order No. 156 (GVA/2016), *Harvey* Order No. 010 (GVA/2020), and *Adelegan* Order No. 112 (GVA/2020)):

- a. The motion for interim measures must have been filed in connection with a pending application on the merits before the Tribunal and at any time during the proceedings;
- b. The interim measure(s) ordered by the Tribunal must provide solely a temporary relief to either party, such relief being neither definite by nature nor having the effect of disposing of the substantive case in relation to which the application for interim measures is filed;
- c. The required temporary relief must not concern appointment, promotion or termination;
- d. The contested decision appears *prima facie* to be unlawful;
- e. There is a particular urgency in requesting the interim measure; and
- f. The implementation of the contested decision would cause irreparable damage.

2. In the present case, the Tribunal notes that the Applicant requests the interim measure of “[s]uspension of [a]ction of the proposed separation of the Applicant” under art. 14 of the Rules of Procedure. The condition indicated in para. 5.c above stipulates that an application for interim measures during the proceedings must not concern appointment, promotion or termination. As this is clearly a case where the application concerns termination, the temporary relief set out in art.14 is unavailable to the Applicant.

3. In any case, the Tribunal notes that the contested decision has already been implemented. The record shows that following the Respondent’s notification that the Applicant’s separation from service was effective as of 31 May 2024, on 5 June 2024 the Respondent emailed the Applicant a check-out memorandum regarding his separation from the MINUSMA.

4. In light of the above,

IT IS ORDERED THAT:

5. The motion for interim measures during the proceedings is rejected.
6. The Respondent is to file his reply on the merits of the Applicant's application dated 6 June 2024 by **4:00 p.m., Thursday, 11 July 2024**.
7. Further case management directions, including relating to the Respondent's request for a summary judgment, will be given once the case is assigned to a Judge.

Signed

Judge Joelle Adda

Dated this 11th day of June 2024

Entered in the Register on this 11th day of June 2024

Signed

Isaac Endeley, Registrar, New York