



Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

DASKALOVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Halil Göksan, AS/ALD/OHR/UN Secretariat

Tamal Mandal, AS/ALD/OHR/UN Secretariat

Introduction

1. On 3 October 2024, the Applicant, the Chief of Operations and Resource Management at the United Nations Mission for the Referendum in Western Sahara (“MINURSO”), filed an application under art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure for the Tribunal to suspend, pending management evaluation, the decisions to remove the Finance and Budget Section (“FBS”) and the Human Resources Section (“HRS”) from her portfolio and reflect the change in the 2025-26 budget proposal for MINURSO.
2. On 7 October 2024, the Applicant filed a motion to admit additional evidence.
3. On 8 October 2024, the Respondent filed his reply in which he contends that the application is not receivable because the contested decisions have already been implemented and that, in any event, the application is without merit.
4. On 8 October 2024, the Applicant filed a “request for subpoena of records”.

Consideration

Legal framework

5. 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.
6. The Dispute Tribunal can therefore only suspend the contested decision if it has not already been implemented. Otherwise, the Tribunal has no jurisdiction to do so, and the application is therefore not receivable.

Have the contested decisions already been implemented?

7. In the application, the Applicant submits that FBS and HRS were removed from her portfolio “with immediate effect” on 11 September 2024 and 1 October 2024, respectively. She further contends that the 2025-26 budget proposal for MINURSO is due on 15 October 2024.

8. As the decisions to remove FBS and HRS from the Applicant’s portfolio have already been implemented according to the information on record, the Tribunal therefore has no jurisdiction to suspend them, lawful or not.

9. Concerning MINURSO proposing the 2025-26 budget to reflect the change, this is not an appealable decision under art. 2.1(a) of the Statute of the Dispute Tribunal and the Appeals Tribunal’s relevant jurisprudence. Recently, the Appeals Tribunal, for instance, held that “an administrative decision is a unilateral decision of an administrative nature taken by the Administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of [a staff member] and produces direct legal consequences” (see *Hoxha* 2024-UNAT-1465, para. 42). This is not the case here—MINURSO is only making a budget proposal for 2025-26 and the actual budget is instead to be adopted by the General Assembly.

10. The Tribunal further notes that the Respondent in his reply confirms that, for the time being, the Applicant is not in risk of losing her employment with the United Nations (references to footnotes omitted):

... [...] The fact that the SRSG proposed to reflect the “DCMS designation ... in the Mission Support organizational structure through the 2025-26 budget submission” in no way supports the Applicant’s unfounded apprehension regarding the “[t]ermination of [her United Nations] employment through abolition of [her] post”. To the contrary, the Applicant admits that MINURSO assured her that the contested decisions “do not concern [her] post” and “did not change [her] position” and that she would continue to supervise the Field Technology Section, Mission Support Section and Archiving Unit.

... Moreover, the Application is not facing loss of employment or salary or status within MINURSO. The Applicant’s post is budgeted

until 30 June 2025 following the General Assembly's approval of MINURSO's budget until that date.

11. As the Tribunal has no jurisdiction in the present matter, there is no need for considering the Applicant 8 October 2024 request for having the Respondent provide certain written documentation.

Conclusion

12. The application for suspension of action is rejected as not receivable.

(Signed)

Judge Joelle Adda

Dated this 8th day of October 2024

Entered in the Register on this 8th day of October 2024

(Signed)

Isaac Endeley, Registrar, New York