



Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

CALVANI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON SUSPENSION OF ACTION

Counsel for Applicant:
François Lorient

Counsel for Respondent:
Susan Maddox, ALU, UN Secretariat

receivable". By email dated 6 March 2010 to the Chief, MEU, the Applicant questioned the conclusions contained in the latter's letter of 5 March 2010.

11. On 8 March 2010, the Respondent submitted a motion to dismiss proceedings and to vacate order No. 21 (GVA/2010), arguing that since the letter of 5 March 2010 from the Chief, MEU completed the management evaluation, the Tribunal has no competence to hear and pass judgment on the application.

12. The Tribunal issued another order on disclosure of information on 9 March 2010 to OIOS, requesting OIOS the Under-Secretary-General for

“The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage...”

17. Article 13, paragraph 1, of the UNDT RoP stipulates that:

“The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation ...”

18. It results from the foregoing that an order under article 2, paragraph 2, of the Tribunal’s statute and article 13, paragraph 1, of the UNDT RoP can only be released during the pendency of the management evaluation. The pendency of management evaluation comes to an end once the Secretary-General’s response, reflecting the outcome of the management evaluation, is communicated in writing to the staff member (see provisional staff rule 11.2 (d)). In the present case, the Chief, MEU, informed the Applicant by letter dated 5 March 2010 that the MEU considers that his request for management evaluation of 3 March 2010 was not receivable. Even if the irreceivability issue raised by the Respondent, according to which the decision to extend the administrative leave of the Applicant does not constitute a new decision, is completely unfounded, the letter of 5 March 2010 can only be understood as a rejection of

information for the resolution of the dispute, an assessment which is within the exclusive competence of this Tribunal.

20. At the same time, according to article 10, paragraph 2, of the Tribunal's statute and article 14, paragraph 1, of the UNDT RoP, the Tribunal may, under the circumstances specified therein, at any time during the proceedings order an interim measure, including an order to suspend the implementation of the contested administrative decision. It is an indispensable prerequisite of an interim measure under article 10, paragraph 2, of the UNDT statute and article 14, paragraph 1, of the UNDT RoP that judicial proceedings have already been started, in other words that the case be already pending before this Tribunal. In the present case, the Applicant did not yet submit an application against the decision of 1 March 2010 under article 8 of the UNDT RoP. Therefore, the request for suspension of action is not receivable under article 10, paragraph 2, of the UNDT statute and article 14, paragraph 1, of the UNDT RoP either.

21. The Applicant is of course free to resubmit a request for suspension of action under article 10, paragraph 2, of the UNDT statute and article 14, paragraph 1, of the UNDT RoP, once he submitted an application against the decision of 1 March 2010 under article 8 of the UNDT RoP, if he considers this to be useful to safeguard his rights.

22. Finally, even though the Applicant, quite rightly, is entitled to express his astonishment as to the bad faith shown by the administration with respect to the execution of the Tribunal's orders, it falls exclusively on the Tribunal to assess the conclusions to be drawn from such behaviour. In this respect, it seems useful to remind the administration of paragraph 1 of article 9 of the UNDT statutes, which provides "The Dispute Tribunal may order production of documents or such other evidence it deems necessary" and of article 18, paragraph 2, of the UNDT RoP which states "The Dispute Tribunal may order the production of evidence for either party at any time and may require any person to disclose any document or provide any information that appears to the Dispute Tribunal to be necessary for a fair and expeditious disposal of the proceedings".

