

Case No.: UNDT/GVA/2019/065  
Order No.: 91 (GVA/2019)  
Date: 8 November 2019

## **Introduction**

1. On 1 November 2019, the Applicant filed this application for suspension of action pursuant to article 2.2 of the Tribunal's Statute and article 13 of its Rules of Procedure, challenging the decision to remove her lien on the post she encumbered as a Human Rights Officer/Deputy Regional Representative in Bishkek, Kyrgyzstan, with the Office of the High Commissioner for Human Rights ("OHCHR"), and to advertise said post.

## **Facts**

2. The Applicant is an OHCHR staff member who served in Bishkek, Kyrgyzstan from September 2012 to September 2016. She served as a Human Rights Officer at the P-4 level and then, on a temporary assignment, as Regional Representative at the P-5 level from September 2014 to May 2016.

3. From September 2016 to July 2017, the Applicant took up a temporary assignment as Human Rights Officer at the P-4

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Tribunal may 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.

15. The Tribunal considers that, for an application for suspension of action to be successful, it must satisfy the following mandatory and cumulative conditions:

- a. The Applicant requested management evaluation of the contested decision, which evaluation is ongoing;
- b. The contested decision has not yet been implemented;
- c. The application concerns an administrative decision that may properly be suspended by the Tribunal;
- d. The impugned administrative decision appears *prima facie* to be unlawful;
- e. Its implementation would cause irreparable damage; and
- f. The case is of particular urgency.

16. In the present case, while no issue has been raised about conditions a) and b) mentioned above, the Respondent asserts that the application is not receivable because the Applicant has not identified a reviewable administrative decision.

17. According to the jurisprudence of the United Nations Appeals Tribunal (“UNAT”), administrative decisions are characterized by the fact that they are taken by the Administration, are unilateral and of individual application, and carry direct legal consequences for a staff member’s terms and conditions of appointment.

18. The Tribunal is aware that the mere expiration of a lien with a specific post

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the job position she formerly encumbered. These decisions directly impacted on the Applicant's terms of appointment and effectively extinguished any possibility of the Applicant's return to post in question. The Tribunal therefore finds the application receivable.

19. As to the merit, the Applicant's case is that the impugned decisions are *prima facie* unlawful because there was no agreement, written or otherwise, between her and the Administration indicating that specific return rights to her post would be lost after two years. She alleges she was not informed of OHCHR's 13 March 2019 new policy on liens on posts and that if she had been informed of the lien on her post being lost, she would not have extended her SLWOP beyond two years. Consequently, she argues that she had a legitimate expectation of a right to return to her post in Bishkek at the end of her SLWOP.

20. The Respondent's case is that the decisions were lawful and taken in accordance with all applicable rules, having considered the Applicant's absence from the post and her willingness to move elsewhere from Bishkek.

21. The Tribunal does not find the impugned decisions to be *prima facie* unlawful for the reasons outlined below.

22. The administrative decisions are in compliance with the OHCHR policy of 13 March 2019, which clearly defined the Organization's rule on liens on specific posts, providing that liens on specific posts are granted for a maximum period of two-years. Beyond this time limit, the Administration will grant a general return to a position in the Office for up to five years. In the present case, the Applicant's SLWOP lasted more than two years, without interruptions.

23. The policy is applicable to all OHCHR staff and they were informed of this by email sent on 13 March 2019.

24. Given that it is for staff members to know the rules governing their work relationship, there is no requirement in the policy for the administration to give staff in advance formal advice about the future possible loss of lien on a post subsequent to a SLWOP of more than two years that was motivated by personal reasons. In addition, the Applicant appears not to have specifically followed up at any time



30. Since the Tribunal does not find the impugned decisions to be *prima facie* unlawful, it will not address the issues of urgency and irreparable damage.

**Conclusion**

31. The application for suspension of action is rejected.

*(Signed)*

Judge Francesco Buffa

Dated this 8<sup>th</sup> day of November 2019

Entered in the Register on this 8<sup>th</sup> day of November 2019

*(Signed)*

René M. Vargas M., Registrar, Geneva