



## **Introduction**

1. By a motion filed on 30 June 2020, the Applicant, a Mail Assistant at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), in Goma

credits for home leave, rest and recuperation

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17. The Respondent explains that, in his motion, the Applicant seeks final relief, that is, relief that may only be granted under art. 10.5 of the Tribunal's Statute, when the Tribunal ultimately finds on the merits that the contested decision was unlawful. By seeking an order that he be placed on ALWP from 13 January 2020, the Applicant requests the Tribunal to exceed its powers.

18. The Respondent maintains that interlocutory orders of the Tribunal, including orders for interim measures, do not have retroactive effect. Retroactivity of orders would violate the general principle against retroactivity recognized under international law. In accordance with paragraph 41 of Order No. 119, the Respondent is taking steps necessary to pay the Applicant his salaries while he is on administrative leave as from 25 June 2020, the date of the issuance of the Order.

19. In light of the above, the Respondent requests the Tribunal to dismiss the motion.

### **Considerations**

20. The motion is filed for the execution of the Order mentioned in para. 1, which is an order on interim measures pending proceedings.

21. The Respondent contends that the motion is not receivable, for lack of competence by the Tribunal to enforce the execution of an interim measure under art. 12.4 of the Tribunal's Statute and art. 32.2 of the Tribunal's Rules of Procedure, which limit the application for an order for execution to judgments only. The Respondent explains that the Tribunal only has competence to order execution of a judgment after it has found on the merits that a contested administrative decision is unlawful and an applicant has been awarded relief ~~wait~~ 11(t)-22(o)-3117ed

requests the Tribunal to exceed its powers to order final relief under art. 10.5 of the Tribunal's Statute.

23. The Respondent's submissions raise important issues, concerning the general power of the Tribunal to rule on the execution of orders on interim measures.

24. The Tribunal is fully aware of the principle consistently stated by the General Assembly that International Tribunals do not have powers beyond those conferred under their respective Statutes. The Tribunal finds, however, that the objection by the Respondent is without merit because it is the UNDT Statute itself that empowers the Tribunal to take interim measures with the exclusive aim to grant adequate protection of applicants' rights pending the proceedings on the merit.

25. Indeed, art. 10.2 of the Tribunal's Statute 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.

26. Art. 11.3 of the Statute provides that:

The judgments and orders of the Dispute Tribunal shall be binding upon the parties, but are subject to appeal in accordance with the statute of the United Nations Appeals Tribunal. In the absence of such appeal, they shall be executable following the expiry of the time provided for appeal in the statute of the Appeals Tribunal. Case management orders or directives shall be executable immediately.

27. Art. 12.4 of the Statute provides that:

Once a judgement is executable under article 11, paragraph 3, of the present statute, either party may apply to the Dispute Tribunal for an order for execution of the judgement if the judgement requires execution within a certain period of time and such execution has not been carried out.

28.

32. Considering the above cited rules, the Tribunal observes that the rules enabling the Tribunal to order interim measures would be ineffective and fictitious if that function would not be accompanied by the power to assess that the order has not been executed by the Administration; indeed, the mandate given to the Dispute Tribunal to conduct judicial review of the administrative decision would be void and ineffective if the Tribunal could not ensure the execution of orders that it has issued.

33. It follows that the rule contained in art. 10.4 of the Statute and art. 32.2 of the Rules of Procedures, although referring explicitly only to judgments, applies to any executable decision issued by the Tribunal, this interpretation being the only one in compliance with the effectiveness of justice rendered by the Tribunal and the concreteness of powers conferred by the Statute to the Tribunal.

34. In sum, the power to issue interim orders, recognized by the Statute, is intended to grant a



the suspension of action order has nature and scope only in maintaining the *status quo* and, thereby, in regulating the position between the parties pending final adjudication of the dispute on the merits. In that situation, given that an order for suspension of action “does not make an award that may be the subject of execution”, the Tribunal concluded that it could not order execution.

38. The *El-Awar* judgment didn’t consider, however, that interim measures can consist also of relief of an anticipatory nature, which, recalling the conditions set up in the rules about interim orders, temporarily provide an applicant with an award which is similar (or even the same) to the one the judgment on the merits will grant at

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actions taken by them (see art. 10.8 of the Dispute Tribunal's Statute and *Dalgamouni, supra*).

44. The principles above are undoubtedly applicable to the case at hand, which has many similarities with the previously mentioned.

45. With specific reference to the present case, Order No. 119 was immediately executable and, given its nature as an order for interim measure, it was without appeal.

46. Although the period within which Order No. 119 was to be executed was not specified, the urgency of its execution can be inferred from the fact that the Applicant needed his salary to meet the subsistence needs of his family. In finding that the application was urgent, the Tribunal recalled that the Applicant was "the sole provider for his wife, seven children and two elderly parents" and that "the deprivation of a family of eleven of a source of income {was} in the circumstances of this case very harsh, especially since the Applicant is in a foreign country and cannot seek alternative employment".

47. The Applicant submits that, in consideration of the content of the said Order, the Administration was bound to put him on ALWP from 13 January 2020 and, given that the Administration didn't comply with the said Order, he filed the motion for execution of the Order.

48. The Respondent objects that in any case interlocutory orders by the Tribunal, including orders for interim measures, do not have retroactive effect, as they produce effects only for the future.

49. The Tribunal finds that retroactive application of the Order is not an issue in this case given that the Applicant did not ask for a retrospective acknowledgement of his rights, but only for the full execution of the Order.

50. The Tribunal notes that in his motion of 17 June 2020, indeed, the Applicant primarily requested "interim measures pending proceedings seeking: (a) change of



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