



**Before:** Judge Marilyn J. Kaman

**Registry:** New York

**Registrar:** Santiago Villalpando

HASSANIN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON APPLICATION FOR  
SUSPENSION OF ACTION**

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**Counsel for Applicant:**

Eman Hassanin, Self-represented

**Counsel for Respondent:**

Christine Graham, ALS/OHRM, UN Secretariat

Notice: The format of this judgment has been modified for publication purposes in accordance with Article 26 of the Rules of Procedure of the United Nations Dispute Tribunal.

## **Introduction**

1. By way of application filed on 13 May 2011, the Applicant seeks a suspension of action of the Secretary-General's decision not to intervene in proposed electronic, rather than manual, voting during upcoming United Nations Staff Union ("UNSU") elections to be held on 7-9 June 2011 (Application, para. III(1)).

2. On 11 May 2011, the Applicant requested management evaluation of the "[d]ecision of the Secretary-General not to act upon [the Applicant's] request to take the necessary corrective measures on the proposed use of electronic voting in conducting the elections of the Staff Union". The application indicates that the Applicant has not received a response to this request for management evaluation.

3. As directed by the Tribunal, the Respondent filed his response on 18 May 2011, and a substantive hearing on the application for a suspension of action was held on 19 May 2011.

## **Facts**

4.

The matters you have raised in your letter, however, focus on issues relating to the internal workings of the Staff Union, including its internal electoral processes, which are not subject to the administrative authority of the Secretary-General as the Chief Administrative Officer. It would not be appropriate for the Secretary-General to intervene in matters of such a nature.

Furthermore, please note that contrary to what you have indicated in your letter, the Office of Human Resources Management has not supplied any external vendor with the index numbers and personal information of staff members.

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Dear Colleagues,

It has been brought to our attention that there is a certain degree of confusion on a couple of issues

mentioned in paragraph 8 above, and (b) attending a private meeting with the Chairperson, Polling Officers, UNSU, during which the Applicant and two Information Technology Services Division officers “explained the risk” that electronic voting presents.

13. At the hearing, the Applicant also acknowledged that electronic voting is used by the United Nations within the mission context and further stated that he does not “question” the external vendor who would be conducting the electronic voting.

### **Relevant legal authority**

14. In making his arguments, the Applicant relies on ST/SGB/2011/1, Reg. 8.1 and Rule 8.1 (Staff representative bodies and staff representatives).

15. The UNSU Statute and Regulations were adopted as subsidiary to ST/SGB/2011/1, Reg. 8.1(b), which states that staff representative bodies “shall be entitled to initiate proposals to the Secretary-General” *inter alia* for issues relating to staff welfare, and provides that they “shall be organized in such a way as to afford equitable representation to all staff members ... under electoral regulations drawn up by the respective staff representative body and agreed to by the Secretary-General”.

16. The UNSU Statute and Regulations are staff-initiated proposals developed under ST/SGB/2011/1, Reg. 8.1(b). The Applicant himself has been a member of the working group which developed the UNSU Statute and Regulations, which were adopted by referendum of UNSU members on 14 December 2007. The Secretary-General’s only participation in the promulgation of the UNSU Statute and Regulations was to give his “agreement” to them.

17. At the substantive hearing, the Applicant emphasised that the Secretary-General’s mere “agreement”, rather than “approval”, was required. This mirrors again the concluding statement in the Applicant’s 28 April 2011 letter to the Secretary-General that UNSU holds a measure of autonomy from the United Nations Secretariat (“the Staff Union is quasi-independent and without prejudice to the non-

interference in its internal matters”). The Applicant’s insistence that UNSU possesses independence within the United Nations will be discussed elsewhere in this Order.

18.

mutual good faith and fair dealing should have in contractual disputes in the United Nations context”.

23. The obligation of good faith and fair dealing is most commonly discussed as being an obligation of the Respondent, and the corresponding obligation on the staff member is little discussed. The obligation of good faith and fair dealing typically is raised by a staff member as a means of questioning the actions of the Respondent (non-renewal, non-selection, summary dismissal, etc).

24. Implicit within the Organization’s regulations, rules and administrative issuances is the understanding that both the Organization and staff members are bound to act in good faith and to make decisions in the course of fair dealing; such obligation is not satisfied by what might be called facial compliance with the text of the relevant instrument (*Alauddin* UNDT/2010/114, para. 8).

25. In this case before the Tribunal, not even facial compliance has been given by the Applicant, for he failed to reveal to the Tribunal that he is a current candidate for the UNSU presidency. That fact potentially carries legal significance, and is one that was purposely kept from the Tribunal.

26. The Tribunal considers the Applicant to have made an affirmative misrepresentation by omission to the Tribunal when he stated, in his application and in his oral comments to the Tribunal, that he carried the status of ith the text oc10.0655 1(andS.455 0 e

28. The Tribunal has considered applying this doctrine to the present case, but considers it sufficient at this point to remind all parties of their obligation of good faith and fair dealing. The duty falls upon the Respondent, but it also falls upon the Applicant as staff member and upon the Applicant in all matters pertaining to UNSU. The obligation becomes all the more imperative in a judicial context where the aim of the Tribunal is to seek the truth in matters presented to it.

### **Applicant's submissions**

29. The Applicant's principal contentions may be summarised as follows (the Tribunal notes that these written arguments do not touch upon the Applicant's candidacy to become UNSU president):

#### *Prima facie unlawfulness*

a. The Secretary-General's decision not to intervene in proposed electronic, rather than manual, voting during upcoming UNSU elections is unlawful because it allows the elections for the staff representative body to be conducted in such a way that does not ensure the complete secrecy and fairness of the vote;

b. The Secretary-General's decision will subject the election process to the possibility of fraudulent actions and compromise the fairness of the votes cast, because an external vendor of el



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### **Respondent's submissions**

30. The Respondent's principal contentions may be summarised as follows:

#### *Receivability*

a. The Secretary-General's finding that it would be inappropriate for him to intervene in the UNSU's electoral process as communicated in the USG/DM's letter dated 9 May 2011 is not an administrative decision within the meaning of Article 2.2 of the Statute and under *Larkin* UNDT/2011/028;

b. The Secretary-General's determination that the Applicant's request concerned the internal affairs of UNSU does not carry sufficient direct legal consequences in respect of the Applicant's rights under the terms of his appointment or his contract of employment;

#### *Prima facie unlawfulness*

c. No evidentiary basis exists upon which the Tribunal can reasonably conclude that there exists "serious and reasonable doubts about the lawfulness of the contested decision", citing *Corcoran* UNDT/2009/071, para. 45;

d. The Applicant has not shown how the Secretary-General's determination breaches his contract of employment or his terms of appointment, particularly how it contravenes Staff Regulation 8.1(b), Staff Rule 8.1(d), art. 13.4 of the UNSU Statute, and sec. 6.9 of the UNSU Regulations;

e. The UNSU Statute and Regulations, which have been agreed to by the Secretary-General, include electoral provi



1. The Applicant has failed to provide proof that the decision breaches the confidentiality of his personal data, creates potential risks of fraudulent election results and identity theft, and will cause irreparable harm to his rights as a staff member to participate in and be effectively represented by a staff representative body.

### **Consideration**

#### *Receivability: the Applicant as an active candidate for the UNSU presidency*

31. The fact that the Applicant carries the status as candidate for the presidency of UNSU could fundamentally affect the receivability of the application for suspension of action. It is established that this Tribunal has no jurisdiction over matters involving the internal affairs of a staff association (*Hassanin* Order No. 83 (NY/2011)). Stated otherwise, the Tribunal does not have jurisdiction *rationae personae* in relation to applications filed by or on behalf of UNSU (*Kisambira* Order No. 36 (NY/2011)).

32. It was perhaps for this jurisdictional reason that, when asked by the Tribunal in what capacity he was appearing, that the Applicant merely stated that he was appearing “as a staff member, as a member of the union, for his own benefit”. The Applicant understood that if he stated he was appearing as a candidate for election of UNSU, the Tribunal would have concluded that such capacity touched integrally on the internal affairs of UNSU and that the Tribunal therefore did not have jurisdiction to hear the Applicant’s claim, under *Kisambira* and *Hassanin*.

33. If the application for suspension of action is evaluated against the Applicant’s true capacity as a candidate for the presidency of UNSU, the Tribunal finds that the Applicant’s application for suspension of action fails for being an internal affair of the UNSU.

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*Receivability: the Applicant as a United*

38. The Secretary-General's decision not to intervene in the matter of electronic voting in UNSU elections differs from the majority of administrative decisions taken affecting staff members. In the context of contract non-renewal, for example, an affirmative decision is taken by the Respondent not to renew the staff member's contract, and the affected member may challenge the administrative decision on a number of grounds (see, e.g., *Syed* 2010-UNAT-061, *Abdallah* UNDT/2010/049, *Megerditchian* UNDT/2010/035). The administrative decision may be explicit or implicit, preparatory or final (*Larkin* UNDT/2010/108, *Elasoud* UNDT/2010/111). In all events, the action taken by the Respondent has been an affirmative decision affecting a staff member's rights.

39. The required analysis is under *Andati-Amwayi* 2010-UNAT-058, wherein the Appeals Tribunal held that apart from the "straightforward" determination of what constitutes a contestable administrative decision in terms of appointments, promotions and disciplinary measures, in o.00,ns and d. p5ec co(e 6dm)8(i)92(ni ltrative decision on 6d

41. In *Hassanin* Order No. 83 (NY/2011), the Tribunal referred to authority cited in the *Freedom of Association – Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO* (2006) (“Digest”). The Respondent notes, and the Digest of Decisions confirms, that the issue of staff union elections is one that must remain beyond an employer’s involvement.

42. In paragraph 429 of the Digest, it is stated that “any intervention by the public authorities in trade union elections runs the risk of appearing to be arbitrary and thus constituting interference in the functioning of workers’ organizations, which is incompatible with Convention No. 87, Article 3, which recognizes their right to elect their representatives in full freedom”. Further, “[a]ny interference by the authorities and the political party in power concerning the presidency of the central trade union

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specific case are of “general application” and do not constitute a unilateral decision taken by the administration in a precise individual case which produces direct legal consequences to the legal order.

50. For the above reasons, the present application is not receivable.

*Prima face unlawfulness*

51. In order to prevail on an application for a suspension of action, besides presenting a contestable administrative decision, the Applicant must also meet the elements of *prima facie* unlawfulness, urgency, and irreparable harm.

52. Having already found that the application is not receivable, a further discussion of the suspension of action is therefore not necessary. However, the Tribunal considers that a brief assessment may be useful for the parties in the instant case.

53. The Tribunal considers the Applicant not to have met any of the three criteria and will not discuss all three here. However, the Tribunal particularly notes that the administrative decision for which the suspension is sought is not *prima facie* unlawful. The Tribunal agrees with the Respondent that no evidentiary basis exists upon which the Tribunal can reasonably conclude that there exists “serious and reasonable doubts about the lawfulness of the contested decision”, citing *Corcoran* UNDT/2009/071, para. 45.

54. The Applicant has not shown how the Secretary-General’s determination breaches his contract of employment or his terms of appointment, particularly how it contravenes with Staff Regulation 8.1(b), Staff Rule 8.1(d), art. 13.4 of the UNSU Statute art. 13.4 and sec. 6.9 of the UNSU Regulations. Art. 13.4 specifically states that “[e]lections shall be by Secretariat-wide secret ballot and may be conducted electronically or manually as determined by the Council”. The Council, established under art. 7 of the UNSU Statute as the UNSU’s governing body, apparently took the

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60. This Tribunal notes the general comment and conclusion in *Hassanin* that this Tribunal “has no jurisdiction regarding staff associations or the internal disputes within a staff union, its members or its executive. The only available recourse in terms of the UNSU Statute would be to the Arbitration Committee. The Tribunal was advised that despite provision for an arbitration committee, UNSU has failed since the inception of its Statute and Regulations in 2007 to install such a committee” (*Hassanin*, para. 37).

61. If UNSU seeks to preserve its status as an independent body which is shielded