



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

TAVORA-JAINCHILL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON MOTION FOR INTERIM
MEASURES UNDER ART. 10.2
OF THE STATUTE**

Counsel for Applicant:
George Irving

Counsel for Respondent:
Stephen Margetts, ALS/OHRM, UN Secretariat
Sarahi Lim Baró, ALS/OHRM, UN Secretariat

Introduction

1. On 14 March 2014, the Applicant, a Forest Affairs Officer in the Secretariat of the United Nations Forum on Forests in the Department of Economic and Social Affairs, United Nations Secretariat, file

UNSU officials. The application was registered under case number UNDT/NY/2014/007. The Respondent submitted his reply on 18 February 2014, arguing that the request for management evaluation having been completed on 17 February 2014 and thus no longer being pending, the application for suspension of action was not receivable.

5. The Tribunal dismissed the request for suspension of action in Order No. 36 (NY/2014) of 21 February 2014, finding that:

18. It is clear to the Tribunal that the Applicant's requests to the iSeek team to publish UNSU related announcements are directly related to the December 2013 UNSU elections. In the present case, the Applicant is seeking a judicial decision to confirm her personal views on matters which can only be decided by the Arbitration Committee. Seeing that the Tribunal has no jurisdiction on such matters, the application is not receivable.

Pending management evaluation

19. The request for management evaluation having been completed on 17 February 2014, it is no longer pending. It follows from art. 2.2 of the Statute of Tribunal and art. 13 of its Rules of Procedure that the suspension of a challenged decision may only be ordered when the management evaluation of that decision is ongoing (*Igbinedion* 2011-UNAT-159 and *Benchebbak* 2012-UNAT-256).

20. The Tribunal therefore considers that two of the cumulative conditions required for the purpose of suspending an administrative decision pending management evaluation, namely that the application (1) concerns an administrative decision and (2) that management evaluation be pending, are not fulfilled. It is therefore not necessary for the Tribunal to further examine the remaining requirements, namely the *prima facie* unlawfulness, urgency and the irreparable damage caused by the decision.

6. On 24 February 2014, the Applicant filed an application on the merits, registered under case numO10. The Res9,an iui UNSrov tw/TT25 0 TD-.2001 Tc.1001 Tw(ndi5d an a

communicated via email on 6 February 2014. The Tribunal directed the Respondent to file its reply by 27 March 2014. The matter is currently pending before the Tribunal.

7. In her motion for interim measures, the Applicant identified the contested decision as “the refusal of the Respondent to provide facilities including intranet access to all staff via iSeek” and stated that “the decision is in the nature of a refusal to respond to a communication of the President of the Staff Union requesting access to iSeek conveyed by email of [iSeek Team leader]”.

8. The facts presented by the

10. With regard to the requirement of particular urgency of the matter, the Applicant states that:

1. The work of the Staff Union has not ceased. There are many issues that require ongoing communication with staff apart from the issue of the elections. The contested decision does not differentiate between communications related to the electoral process and other necessary communications with staff. Significantly it impedes the process of finding an ultimate solution in accordance with the Statute of the Union by denying all access to communication facilities.

2. At the same time in order to resolve the present impasse, it is critical that the Polling Officers be allowed to exercise their mandate to conduct a proper election of an Arbitration Committee without interference in order to resolve any outstanding matters. The actions of the Respondent threaten to impede that critical process and to create further confusion among staff that will further compromise the attempt to reach a solution to outstanding claims consistent with the UNSU Statute and Regulations

3. The longer this situation remains unresolved, the longer the Staff Council and its Leadership will be prohibited from effectively representing the staff as required by the Staff Regulations. The consequence is that the properly constituted Polling Officers, who have now been designated, will be unable to carry out their functions, creating a deadlock. There is currently no way to resolve outstanding grievances internally until a properly constituted Arbitration Committee is established. This is the first order of business of the newly appointed Polling Officers. That process is being interfered with.

11. With respect to the requirement of irreparable harm, the Applicant submits that:

1. The Applicant's personal right to freedom of association, as well as the ability to carry out her official functions have been compromised. This is not a lost right that may easily be remedied at a later time through compensation.

2. The decision of the Respondent is on-going and renders the Applicant unable to carry out her functions effectively thereby denying staff the right to proper representation through their staff association. The possibility of resolving outstanding claims through arbitration as envisaged in the Statute will be thwarted unless the Statute and Regulations are fully respected and

creates further divisions and confusion and represents a direct and unwarranted interference by the Respondent in Staff Union affairs. The refusal to properly allocate faculties for communication with staff violates the provisions of ST/AI/293. The irreparable harm caused in the immediate future will not be amenable to remedy later even if the contested actions of the Respondent are found to be unwarranted.

12. The Respondent submits that there was no final consideration concerning posting on iSeek. Further, the application is based on ST/AI/293 (Facilities to be provided to staff representatives). The Respondent also referred to Order No. 36

Consideration

Applicable law

14. Art. 10.2 of the Tribunal's Statute states:

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.

15. The Tribunal considers that an order on interim measures may be granted at the request of the parties when the following cumulative conditions are met:

- a. The motion for interim measures is filed in connection with a pending application on the merits before the Tribunal, anytime during the proceedings;
- b. The application does not concern issues of appointment, promotion or termination;
- c. The interim measure(s) ordered by the Tribunal must provide solely a temporary relief to either party, such relief being neither definitive by nature nor having the effect of disposing of the substantive case in relation to which the application for interim measures is filed;
- d. The contested administrative decision appears *prima facie* to be unlawful;
- e. There is a particular urgency in requesting the interim measures;

- f. The implementation of the contested administrative decision would cause irreparable damage.

Discussion

16. The Tribunal observes that the Applicant's motion for interim measures is filed in connection with a currently pending application on the merits before the Tribunal filed on 24 February 2014 and does not pertain to issues relating to appointment, promotion or termination. The first and second conditions mentioned above are accordingly fulfilled.

17. With respect to the third condition, the Tribunal observes that the application on the merits refers to the "refusal of the Respondent to provide facilities including intranet access via iSeek to the Applicant to carry out her official functions while according such facilities to persons who are not properly designated UNSU officials"

whilst the motion for interim measures refers to the "refusal of the Respondent to provide facilities including intranet access via iSeek to the Applicant to carry out her official functions while according such facilities to persons who are not properly designated UNSU officials"

also to the right of the newly appointed Polling Officers to have access to iSeek in order to conduct the election of an Arbitration Committee.

20. Regarding the Applicant's right to have access to iSeek as the alleged President of UNSU, the Tribunal observed in Order No. 36 (2014/NY), in relation to the Applicant's previous request for suspension of action, that:

24. ... the Applicant is raising issues directly related to the UNSU elections, and her claims are in direct contradiction with those of the applicant in Case No. UNDT/NY/2014/006. It appears that two persons currently claim to be President of UNSU. Such matters and disputes fall under the jurisdiction of the Arbitration Committee and not of this Tribunal. Further, any decision regarding the facilities to be afforded to UNSU staff representatives, even in the form of temporary relief such as a suspension of action, would result in the Tribunal adjudicating on a contested electoral issue over which it does not have jurisdiction.

21. Accordingly, the issue raised in the motion for interim measures appears to be still in contention and currently unresolved by the Arbitration Committee which, as stated above, is the only body having the competence to decide over an unresolved dispute arising over the interpretation of UNSU Statute and its Regulations (art. 17.2 and 8.3 of the UNSU Statute).

22. Furthermore, the right of the new Polling officers to have access to iSeek is related to a pending case (UNDT/NY/2014/004) where another applicant is contesting the "decision rejecting the request to suspend the provision of official facilities to the polling officers who had been recalled by the Unit Chairpersons of the 44th Staff Council [of United Nations Staff Union ("UNSU")], thereby consenting to [the] improper electoral process" held in December 2013. In this case the Tribunal rejected two motions for interim measures filed on 16 January 2014 and 24 January 2014 (in, respectively, Order No. 18 (NY/2014) and Order No. 31 (NY/2014)). The Tribunal held that the recall of the Polling officers by the Union Chairpersons, whether lawfully or unlawfully, is in dispute and the request for the withdrawal of official facilities to prevent the recalled Polling Officers from

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30. The present application for interim measures is rejected

(Signed)

Judge Alessandra Greceanu

Dated this 21st day of March 2014