



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2014/020

Order No.: 67 (GVA/2014)

Date: 14 May 2014

Original: English

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**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** René M. Vargas M.

DE AGUIRRE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON AN APPLICATION FOR  
SUSPENSION OF ACTION**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Karen M. Farkas, UNHCR

## **Introduction**

1. By application filed on 7 May 2014, the Applicant, an Associate Legal Officer (National Officer B level) in the Regional Representation for Western Europe of the Office of the United Nations High Commissioner for Refugees (“UNHCR”), based in Brussels, seeks suspension of action of the decision to discontinue the position she is encumbering (post No. 10011149), and the consecutive termination of her indefinite appointment, effective 31 May 2014.

## **Facts**

2. By letter dated 18 November 2013, which she received on 20 November 2013, the Applicant was informed that the post she was encumbering would be discontinued effective 31 May 2014, “in line with a regional review of existing capacities” and “in accordance with relevant stipulations of IOM/051/2007-FOM/054/2007”.

3. By email and memorandum of 14 January 2014, the Applicant requested management evaluation of the decision communicated to her by letter of 18 November 2013.

4. By email of 28 February 2014, she was informed by the Office of the Deputy High Commissioner, UNHCR, that her request was under consideration.

5. By letter dated 14 April 2014 from the Director of the Division of Human Resources Management (“DHRM”), UNHCR, she was informed that her indefinite appointment would be terminated effective 31 May 2014, as it had been determined by the Regional Assignments Committee that there were “no suitable positions against which a comparative review could take place”.

6. By email of 30 April 2014 sent to the Deputy High Commissioner, UNHCR, the Applicant referred to her request for management evaluation of 14 January 2014 and attached a “follow-up Memorandum”, entitled “Request for Management Evaluation of the Regional Representation for Western Europe – continued”, in which she asked that the letter dated 14 April 2014 be withdrawn

“in the absence of a (satisfactory) response to [her] request for management evaluation”.

7. On 7 May 2014, the Applicant filed before the Tribunal the present application for suspension of action, which was served on the Respondent on 9 May 2014, who was granted until 12 May 2014 to submit a reply.

8. On 12 May 2014, the Respondent filed his reply, as well as “additional observations”, stating that action had been taken—based on the instruction of the Deputy High Commissioner—to suspend the decision to terminate the Applicant’s contract as well as “the underlying decision to discontinue her position (...) pending the Deputy High Commissioner’s response to [her] related request for management evaluation”. The Applicant was informed of the Deputy High Commissioner’s decision by email of the same day.

### **Parties’ contentions**

9. The Applicant makes substantive contentions regarding the three criteria for suspension of action as follows:

- a. With respect to *prima facie* illegality, the classification of posts and staff within the Regional Representation for Western Europe based in Brussels has not been conducted according to the nature of the duties and responsibilities required for the tasks performed; that the highest standards of ethical and professional conduct were not upheld; that the determination by the Regional Assignments Committee (“RAC”) that there were no suitable positions against which a comparative review could take place in accordance with para. 5 of IOM/066/2012-FOM/067/2012 (Comparative Review Policy for Locally Recruited Staff Members) did not take into account the fact that another staff member of the Legal Unit of the Regional Representation for Western Europe, who was hired on a temporary assignment at the G-6 level as of November 2013, has been taking over her duties since then; and that the composition of the RAC is also questionable;

- b. With respect to urgency, she emphasizes that her indefinite appointment would be terminated on 31 May 2014;
  - c. As regards irreparable damage, she argues that the contested decision to discontinue the position she is encumbering and the consecutive termination of her indefinite appointment would “negatively influence her career and employment conditions”;
  - d. She further requests that “her name be not made public in case of publication of a decision made by the Tribunal”, in order to “mitigate the impact of having taken the risk to speak up”, a concern which has been shown by the *2011 Global Staff Survey* and “reiterated during the Meeting of the Staff Management Consultative Committee in Budapest this year”.
10. The Respondent’s primary contentions may be summarized as follows:
- a. The Deputy High Commissioner has instructed the Director, DHRM, to suspend the implementation of the decision to terminate the Applicant’s appointment, pending his review of the issues raised in the Applicant’s memorandum of 30 April 2014 and her request for management evaluation;
  - b. Based on the instruction of the Deputy High Commissioner, action has been taken to suspend “both the decision to terminate Applicant’s contract as well as the underlying decision to discontinue her position”, pending “the Deputy High Commissioner’s response to the Applicant’s related request for management evaluation”;
  - c. In light of the above, the application for a suspension of action before the Tribunal has become moot.

## **Consideration**

### *Request for suspension of action*

11. Article 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure provide that it may order the suspension, during the pendency of

management evaluation, of the implementation of a contested administrative decision that is the subject of an on-going management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

12. It follows from these provisions that an application for suspension of action may only be granted if the contested decision has not yet been implemented and is the subject of an on-going management evaluation. In addition, suspension of action can only be granted until the end of the management evaluation process. Otherwise, the Tribunal would exceed its jurisdiction (see *Igbinedion* 2011-UNAT-159).

13. In the present case, the Applicant is challenging two decisions, namely the discontinuation of the post she is encumbering and the termination of her indefinite appointment. She wrote to the Deputy High Commissioner regarding both decisions on 14 January 2014 and 30 April 2014, respectively. As confirmed by the Respondent, none of the decisions has yet been implemented, and the management evaluation of both decisions has not yet been completed.

14. The Tribunal notes that on 12 May 2014, the Deputy High Commissioner has agreed, in an email to the Applicant, to suspend the implementation of the decision to terminate her contract “pending [his] review” of the issues she had raised in her memorandum of 30 April 2014 and “[his] response to [her] request for management evaluation”. Counsel for the Respondent further confirmed that “based on the instruction by the Deputy High Commissioner”, action had been taken to “suspend both the decision to terminate Applicant’s contract as well as the underlying decision to discontinue her position (...) pending the Deputy High Commissioner’s response to the Applicant’s related request for management evaluation”. The Tribunal considers that this is tantamount to a formal suspension of the implementation of the contested decisions pending management evaluation, and there is no reason to consider that such a commitment emanating from the Deputy High Commissioner will not be respected.

15. Therefore, since the contested decisions have already been suspended by UNHCR pending the Applicant’s request for management evaluation, and taking

into account that any judicial suspension of action would also necessarily be restricted to the end of the management evaluation process, the Tribunal can only conclude that the Applicant's request for suspension of action has become moot (see also *Gaitan* Order No. 156 (GVA/2013)).

16. It follows that it is not necessary for the Tribunal to examine if the three statutory requirements specified in art. 2.2 of its Statute and art. 13.1 of its Rules of Procedure, namely *prima facie* unlawfulness, urgency and irreparable damage, are met in the case at hand.

*Request for confidentiality*

17. As regards the Applicant's request that "her name be not made public in case of publication of a decision", the Tribunal is not convinced that the Applicant "displays a greater need than any litigant for confidentiality" (*Servas* Order No. 127 (UNAT/2013) and *Servas* 2013-UNAT-349, para. 25). The Applicant does not demonstrate that her case is of such a nature as to overcome the guiding principle of transparency in judicial proceedings and public rulings before this Tribunal.

**Conclusion**

18. In view of the foregoing, the Tribunal DECIDES:

- a. The application for suspension of action is moot and there is no need to further decide on the Applicant's request;
- b. The Applicant's request for confidentiality is rejected.

(Signed)

Judge Thomas Laker

Dated this 14<sup>th</sup> day of May 2014

Entered in the Register on this 14<sup>th</sup> day of May 2014

*(Signed)*

René M. Vargas M., Registrar, Geneva