



**Before:** Judge Alessandra Greceanu

**Registry:** New York

**Registrar:** Hafida Lahiouel

SAKHARDANDE

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:**  
Self-represented

**Counsel for Respondent:**  
Alan Gutman, ALS/OHRM, UN Secretariat  
Alister Cumming, ALS/OHRM, UN Secretariat

## **Introduction**

1. On 12 January 2017, the Applicant, an Information Systems Assistance at the GS-6, step 10 level, filed an application for suspension of action pending management evaluation of the following decisions:

a. “The decision of the Department of Management to provide the names of eligible voters to an unqualified and unlawfully convened college of Polling Officers, pursuant to what the Arbitration Committee has deemed an illegal, null and void decision by a non-dues-paying, non-member of the Staff Union (Union) at the Headquarters in New York (UNHQ)”;

b. “The decision of the Office of the Legal Counsel to clear the so-called “transitional measures” amending the Statute and Regulations of the Union, which the Arbitration Committee has deemed to be illegal, and hence null and void, as they were introduced in violation of the Statute and Regulations of the Union”; and

c. “The decision of the Administration to interfere in Union affairs”.

2. On 12 January 2017 the case was assigned to the undersigned judge.

3. On 12 January 2017, the Registry transmitted the application to the Respondent directing him, upon the instructions of the Tribunal, to file a response by 16 January 2017, at 1:00 p.m.

4. On 16 January 2017, the Respondent filed his response together with a copy of a letter dated 13 January 2017 from the Management Evaluation Unit to the Applicant.

## Background

5. In his application, the Applicant sets out the following chronology of facts (emphasis omitted):

... As a result of the general election held on 10 and 11 December 2013, the Leadership and the 45<sup>th</sup> Staff Council of the Union at the Headquarters in New York (UNHQ) were elected to a two-year term starting 1 January 2014 [reference to annex omitted], pursuant to Article VIII, Regulation 8.1 (b) of the Staff Rules and Staff Regulations of the United Nations, published in the Secretary-General's Bulletin ST/SGB/2016/1, and Regulations 4.4 and 4.5 of the Union:

### Staff Regulation 8.1

(b) Staff representative bodies shall be established and shall be entitled to initiate proposals to the Secretary-General for the purpose set forth in paragraph (a) above. They shall be organized in such a way as to afford equitable representation to all staff members, by means of elections that shall take place at least biennially under electoral regulations drawn up by the respective staff representative body and agreed to by the Secretary-General.

### Union Regulations:

4.4 The Council shall take full office from the first day of the month immediately following the declared result of elections.

4.5 The term of office of the Council shall not expire earlier than a new Council assumes office.

... The Arbitration Committee has confirmed that the general election held on 10 and 11 December 2013 was conducted via a valid process, and hence upheld the outcome of the election in numerous decisions and communications, including its correspondence to [the Under-Secretary-General of Management, name redacted] of 24 January 2014, joint communication dated 22 October 2014, and decisions dated 6 December 2013, 18 March 2014, and 14 May 2015 [reference to annex omitted]. The outcome of the election was subsequently recognized by the Dispute Tribunal in *Hassanin* UNDT/NY/2016/181. Whereas the judgment UNDT/NY/2016/181 has been appealed, the Administration

has not contested that Mr. Hassanin was duly elected as a First Vice-President of the Union in the December 2013 election.

... Further, in its decision dated 14 May 2014, the Arbitration Committee, in response to a complaint submitted by members of the Executive Board of the 45<sup>th</sup> Staff Council, considered the matter of the term of office of the elected Leadership and 45th Staff Council, concluding:

“Taking full office is not self-executing; but is effected by the Secretariat, specifically the Office of Human Resources Management, Department of Safety and Security, and the Departments and Offices of the elected staff representatives. Having been denied the time release mandated by the General Assembly and physically occupying the Union premises designated by the Secretariat for the staff representatives, it is the Committee’s conclusion that the Leadership and 45th Staff Council have not taken full office following the general staff election held on 10 and 11 December 2013.”

Hence, the Arbitration Committee decided to defer consideration of the matter of the term of office to such time as to when the elected Leadership and 45th Staff Council actually have taken full office. Thus, the matter of the term of office of the Leadership and 45<sup>th</sup> Staff Council remains pending with the Arbitration Committee.

... On 8 December 2017, a staff meeting was held following an announcement in iSeek for the convening of a “General Staff Meeting to enact change to ensure that your needs and concerns are addressed” (<https://iseek-newyork.un.org/content/general-staff-meeting-all-staff-members-invited-8-dec>). In addition, the Department of Management provided access to the Lotus Notes addresses of various staff members to circulate the announcement of that meeting. The President and Secretary of the Union immediately brought to the attention of the Secretary-General and conveners of that meeting the fact that the announced meeting was illegal. There was no response and, indeed the illegal meeting was convened and chaired by two staff members, [Ms. EB and Mr. RC, names redacted]. [Ms. EB] was elected to the 45<sup>th</sup> Staff Council. [Mr. RC] is not a staff representative.

... In its response dated 27 December 2016 to the petition submitted by [Mr. EDS, name redacted] Chairperson of the 45<sup>th</sup> Staff Council, and [Mr. AM, name redacted], Secretary of

the Union, concerning the convening of the unauthorized meeting on 8 December 2016, the Arbitration Committee decided [reference to annex omitted]:

“...the 8 December 2016 meeting is an emergency general meeting in the meaning of the Statute, which was properly called as per Statute 9.7 (c), but was convened in violation of Regulations 5.2, 5.4, 5.7, 5.9, 5.11, 5.13, 5.17, 10.5 (b), and 10.5 (c). Further, taken in the best light, the outcome of the meeting represents a valid motion by the staff for the convening of an emergency general meeting in the context of Regulations 5.11 and 5.13, which is incumbent upon the Staff Council to consider.”

.. Subsequently, [Ms. KK, name redacted], who was at the time Chief, Transition Team of the Secretary-General-designate, responded to a correspondence from [Mr. AM] an email dated 29 December 2016, stating (emphasis added):

“...I also note in the letter of 14 December 2016 to the SG, entitled "UNHQ staff voted for new Staff Union Elections to be conducted by a 3<sup>rd</sup> party (CCISUA)", which indicates in point 2, “The President of CCISUA, [Mr. IR, name redacted], will act as interim leadership for UNHQ Staff Union, effective the date of this letter and until new leadership is elected.”

... In its response dated 3 January to the request from [Mr. AM] to rule on the proposed designation of [Mr. IR] as the leadership for the Staff Union, as revealed in the correspondence of [Ms. KK], the Arbitration Committee provided (Annex 5) (emphasis added):

“It is well known that [Mr. IR] is not only the President of CCISUA, but also the Executive Secretary of the Staff Coordination Council at the United Nations Office in Geneva (UNOG). [Mr. IR] is not a dues paying member of the UNHQ Staff Union, and is therefore statutorily prohibited from voting in any Union election or holding any Union office, ad interim or otherwise, at UNHQ. Any decision by [Mr. IR] concerning any Union election will be deemed illegal, and hence null and void.”

... On 4 January 2017, the Department of Management broadcast to the staff an email jointly signed by [Mr. IR], President of CCISUA, and [Mr. DS, name redacted], President of UNISERV [reference to annex omitted]. The email included, among other things (emphasis added):

“CISUA and UNISERV will elect a college of polling officers and arbitration committee members from among their global union membership, and contract a recognized firm to carry out electronic voting.

The polling officers will receive the names of eligible voters from the Department of Management, carry out the apportionments, call for candidates and carry out elections for unit representatives, unit chairs and the leadership.

The elections will be carried out in line with UNSU’s statutes and regulations, adapted during a transitional period to integrate the above arrangements. The transitional statutes, cleared by the Office of the Legal Adviser as being compliant with the Staff Rules can be found here: <http://www.ccisua.org/wp-content/uploads/2017/01/UNSUtransitional-statutes-marked.docx>. It should be noted that the sole purpose of these transitional statutes is to enable the organization and completion of the 2017 first quarter elections. They will not confer on CCISUA nor UNISERV a mandate to speak directly for UNSU nor to directly represent staff in New York in dealings with management or other parties.”

... In its response dated 5 January to the request from [Mr. AM] to rule on the broadcast in view of its ruling dated 3 January 2017, the Arbitration Committee reaffirmed its decision that any decision by [Mr. IR] concerning any Union election will be deemed illegal, and hence null and void, and stated that the same applies to [Mr. DS]. The Arbitration Committee further stated [reference to annex and emphasis omitted]:

“...the Statute provides but one and only one way to amend its articles – through referendum. Amendments introduced through any other means are therefore illegal, and hence null and void”.

“...the Staff Rules and Staff Regulations clearly establish the imperative of the approval of Secretary-General to any amendments made to the Statute and Regulations of staff representative bodies. It is not clear what the Office of Legal Adviser is or what authority it has to approve amendments to the Statute and Regulations of the Union made illegally.”

“In view of the above considerations, the Committee has decided that all the actions concerning the new election stipulated in the broadcast are in violation of the Statute and Regulations of the Union.”

... On 5 January 2017, [Mr. AM] transmitted a letter to the Secretary-General on behalf of the President of the Union, which stated [reference to annex and emphasis omitted]:

“Allow me also to state that the announcement posted on iSeek on 4 January 2017 (‘Arrangements for new staff union election in New York’), runs counter to the relevant provisions concerning the organization and holding of Staff Union elections. Also, the so-called “transitional measures” referred to in the announcement violate the relevant provisions of the Statute of the Staff Union with regard to making amendments thereto. I would therefore respectfully request, Sir, that you express your disapproval of both the posted announcement and the “transitional statutes”.

I should also like to object to the iSeek announcement this morning (“Congratulations UNHQ Staff!”), which, similarly, is in contravention of the decisions handed down by the Arbitration Committee and the Statute and Regulations of the Staff Union and amount to propaganda instigated by the very officials in the Department of Management who disallowed the 45<sup>th</sup> Staff Council representatives from assuming office. I would therefore likewise request that you take action accordingly and engage us directly.”

... No response has been received from the Secretary-General to the request.

### **The submissions of the parties**

6. The Applicant’s principal contentions may be summarized as follows:

#### *Prima facie unlawfulness*

a. The Applicant is a staff member and a polling officer of the 45<sup>th</sup> Staff Council, and hence is not a staff representative as per staff regulation 6.6;

b. The Applicant does not seek a ruling concerning an internal affair of the Union or on behalf of other staff members, but only in relation to his own legal rights. The Application is therefore receivable pursuant to the Dispute Tribunal’s finding in *Carlton* UNDT/NY/2014/055, para. 18;

c. The Appeals Tribunal defined in *Wasserstrom* 2014-UNAT-457, para. 35, the nature of an administrative decision. The decision of the Department of Management to provide the names of eligible voters to unqualified and unlawfully convened college of Polling Officers, pursuant to what the Arbitration Committee has deemed an illegal, null, and void decision by a non-Union member, is unlawful. The decision of the Office of Legal Counsel to agree to the so-called “transitional statutes” is plainly unlawful as it contravenes explicit Staff Regulations and Staff Rules and the Secretary-General’s instructions. The decisions contravene the Administration’s position of non-interference in the Staff Union affairs and breach its obligations of good faith and fair dealings;

d. The Arbitration Committee is the sole authority to regulate and adjudicate all matters related to the Union elections. From *Lane* Order No. 18 (NY/2014), para. 25-27, *Tavora-Jainchill* Order No. 36 (NY/2014), para. 24, and *Tavora-Jaichill* UNDT/2015/082, para. 25, follows that the Administration has no authority to regulate or adjudicate any Union matters, in particular those related to Union elections elected bodies;

e. The decision of the Department of Management to provide the names of eligible voters to unqualified and illegally convened polling officers pursuant to what the Arbitration Committee deemed an illegal, null, and void decision by a non-Union member is unlawful. The Arbitration Committee’s decision dated 4 January 2017 provides that the new group of polling officers referred to in the 4 January 2017 broadcast is unlawfully constituted as it is formed pursuant to a decision by a non-dues paying non-member of the Union and as it will include non-dues paying non-members of the Union;

f. In its response dated 18 March 2014, the Arbitration Committee has rescinded the decision of the Group of Unit Chairpersons to recall the polling officers of the 45<sup>th</sup> Staff Council, and deemed all subsequent actions taken by



the Group based on the rescinded decision, including the call for, and election of new Polling Officers, null and void;

g. In its decision dated 21 October 2015, in response to a petition by the Applicant, the Arbitration Committee decided that,

As results from the above considerations, the Polling Officers shall continue to hold office and serve until new Polling Officers have been elected by the 45<sup>th</sup> Staff Council once it has taken full office in accordance with Regulation 6.3. This conclusion entails that the Polling Officers shall have the authority to organize and conduct elections, and publish its results, as required by the Statute, Regulations and rules of procedure in accordance with Statute 13.1. While confirming the authority of the Polling Officers to call, organize and conduct a general election, and publish its results, the Committee is cognizant of the prevailing situation, and expects the Polling Officers to consult with the 45<sup>th</sup> Staff Council on the appropriate time and course of action to hold the general election

h. As determined by the Arbitration Committee, the polling officers of the 45<sup>th</sup> Staff Council continue to hold office and have the authority to organize and conduct elections, and publish its results. It then follows that the Department of Management may only provide the names of eligible voters to the polling officers of the 45<sup>th</sup> Staff Council. Any other course of action pursuant to what the Arbitration Committee has deemed illegal, null, and void decision by a non-dues paying, non-member of the Union, is therefore unlawful;

i. The decision of the Office of the Legal Counsel to agree to the so-called “transitional-measures” contravenes explicit United Nations Staff Regulations and Staff Rules and the Secretary-General’s instructions;

j. As pointed previously in the Arbitration Committee’s decision dated 5 January 2017, the Staff Rules and Staff Regulations have established the imperative of the approval of Secretary-General to any amendments made to

electoral regulations drawn up by the staff representative bodies. The provision is contingent on the premise that such regulations have been drawn up as provided in the Statute and Regulation of the Union and does not extend to amendments made illegally;

k. Not only the Office of the Legal Counsel lacks the authority to approve illegally constituted electoral regulations, it also does not have any authority in this regard, as the authority to agree to the electoral regulations drawn up by the staff representative bodies has been retained by the Secretary-General (see ST/SGB/2015/1 (Delegation of authority in the administration of the Staff Regulations and Staff Rules));

l. The decision of the Office of the Legal Counsel is doubly unlawful, given that amendment to the election regulations were illegally made, and that the Office of the Legal Advisor lacks the appropriate delegation of authority to agree to such amendments even if they were properly constituted;

m. The decisions contravene the Administration's position of non-interference in the Union affairs and breach its obligations of good faith and fair dealings. The Administration's position of non-interference in the Staff Union's Affairs, generally, and in particular as it relates to the 45<sup>th</sup> Staff Council, was summarized in the Respondent's submission to the Dispute Tribunal in *Tavora-Jaichill* UNDT/2015/082, notably that:

- i. The internal dispute relating to the outcome of the UNSU elections is ongoing, and it extends to the Applicant's claim that she is entitled to act as President of the 44<sup>th</sup> Staff Council until her successor takes office. Contrary to the Applicant's claims, the Respondent has not recognized her authority to act as President;
- ii. The Administration is required to refrain from interfering with the affairs of the UNSU. Accordingly, the Administration has

no authority to recognize her as the current President of the UNSU;

n. This position has been stated earlier in *Lane* Order No. 341 (NY/2013) in which the Applicant quoted the then Assistant Secretary-General for Human Resources Management's response to an email from the Chairperson of the Unit Chairpersons, stating that "it was a longstanding policy and practice that it would be inappropriate for management to become involved in internal administration of the Staff Unions. Such involvement would not be conducive to the proper conduct of staff management relations";

o. The Under-Secretary-General for Management similarly stated in a memorandum dated 24 December 2013 that, "The Administration will refrain from taking any action that may prejudice the outcome of the efforts by the Arbitration Committee to resolve these disputes";

p. In *James* UNDT/NY/2009/025, para. 28, the Dispute Tribunal found that "it is a universal obligation of both employee and employer to act in good faith towards each other. Good faith includes acting rationally, fairly, honestly, and in accordance with the obligation of due process". Likewise, the Dispute Tribunal found in *Alauddin* UNDT/NY/2010/11 that "[i]t is important to observe that it is implicit in the Rules and Regulations and administrative issuances that the Organization, and, for that matter, the staff members are bound to act in good faith and to make decisions in the course of fair dealing and that this obligation is not satisfied by what is called facial compliance with the text of the relevant instrument".

q. The actions of the Administration, including its direct involvement in the mass broadcast of the email by Mr. IR and Mr. DS to all the staff in the Secretariat and approval of posting the announcements about the new elections on iSeek, make mockery of its position of non-interference in the

Union affairs when it was convenient to deny the duly elected Leadership and 45<sup>th</sup> Staff Council time release and physical accommodation for three years;

r. In view of the above, the decision of the Department of Management to provide the names of eligible voters to unqualified and unlawfully convened college of Polling Officers, pursuant to what the Arbitration Committee has deemed an illegal, null, and void decision by a non-Union member, is unlawful. The decision of the Office of Legal Counsel to agree to the so-called “transitional measures” is plainly unlawful as it contravenes explicit United Nations Staff Regulations and Staff Rules and Secretary-General’s instructions. The decisions contravene the Administration’s position of non-interference in the Staff Union affairs and breach its obligations of good faith and fair dealings.

*Urgency*

s. With reference to *Jitsamruay* UNDT/2011/206, *Villamoran* UNDT/2011/126, *Pius Onana* UNDT/2009/033 and *Saffir* Order No. 49 (NY/2013), it is particularly urgent to suspend the impugned decisions, in particular the decision of the Department of Management to provide the names of eligible voters to unqualified and unlawfully convened college of polling officers, pursuant to what the Arbitration Committee has deemed an illegal, null, and void decision by a non-Union member. If not suspended, an unlawfully convened college of polling officers would be provided the names of eligible staff to make the apportionment of units necessary to carry out the unlawful election, pursuant to unlawful administrative decisions;

*Irreparable damage*

t. With reference to *Tadonki* UNDT/2009/016, para. 13, *Adundo et al.* UNDT/2012/077, paras. 31 and 32, and *Jaen* Order No. 29 (NY/2011), paras. 31 and 32, as a Polling Officer, the Applicant is entitled to carry out the

functions for which he has been selected, affirmed and reaffirmed to hold office, and authorized to conduct the staff election by the body solely authorized to regulate and adjudicate all Union election matters—the Arbitration Committee. This entitlement is part of the legal rights of the Applicant under his contract of appointment and stems from staff rule 8.1(d). The unlawful decisions conveyed in the email broadcast of 4 January 2017 will therefore cause the Applicant irreparable harm to his professional reputation and breach some of his basic fundamental rights, including the right to equal protection under the law and unequivocal Staff Rules and Regulations as anyone else (art 7 of the Universal Declaration of Human Rights).

7. The Respondent submits that, on 13 January 2017, the MEU informed the Applicant that his request for management was not receivable and that, since the management evaluation has been completed, there is no longer any basis for the Applicant request for suspension of the implementation of the contested decisions. The Dispute Tribunal does therefore not have jurisdiction to hear the application under art. 2.2 of its Statute.

### **Consideration**

*The mandatory and cumulative conditions for suspending an administrative decision*

8. Article 2.2 of the Dispute Tribunal's Statute states:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to 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. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

9. Article 8.1(c) of the Tribunal's Statute states that an application shall be receivable if: "... [a]n applicant has previously submitted the contested administrative decision for management evaluation, where required;

10. Article 13.1 of the Tribunal's Rules of Procedure states:

The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to 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.

11. 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 application concerns an administrative decision that may properly be suspended by the Tribunal;
- c. The contested decision has not yet been implemented;
- 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.

*Whether the Applicant requested management evaluation of the contested decision and whether the evaluation is ongoing*

12. It follows from art. 2.2 of the Tribunal's Statute and art. 13.1 of its Rules of Procedure that the suspension of action of a challenged decision may only be ordered

when management evaluation for that decision has been duly requested and is still ongoing (*Igbinedion* 2011-UNAT-159, *Benchebbak* 2012-UNAT-256).

13. As results from the case record, the Applicant submitted his request for management evaluation on 11 January 2017, contesting:

a. “The decision of the Department of Management to provide the names of eligible voters to an unqualified and unlawfully convened college of Polling Officers, pursuant to what the Arbitration Committee has deemed an illegal, null and void decision by a non-dues-paying, non-member of the Staff Union (Union) at the Headquarters in New York (UNHQ)”;

b. “The decision of the Office of the Legal Counsel to clear the so-called “transitional measures” amending the Statute and Regulations of the Union, which the Arbitration Committee has deemed to be illegal, and hence null and void, as they were introduced in violation of the Statute and Regulations of the Union”; and

c. “The decision of the Administration to interfere in Union affairs”.

14. The MEU completed its review of the request for management evaluation on 13 January 2017 and concluded that it was not receivable. Since an application under art. 2.2 of the Statute is predicated upon an ongoing and pending management evaluation, and as the management evaluation in this case is no longer pending and has been completed, one of the cumulative and mandatory conditions presented above is not fulfilled.

15. Consequently, the Tribunal will not examine if the remaining statutory requirements specified in art. 2.2 of its Statute have been met in the case at hand.

**Conclusion**

16. In the light of the foregoing, the Tribunal ORDERS:

The application for suspension of action is dismissed.

*(Signed)*

Judge Alessandra Greceanu

Dated this 16<sup>th</sup> day of January 2017