



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

GRAY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Robbie Leighon, OSLA

Counsel for Respondent:

Alister Cumming, ALS/OHRM

Introduction

1. By application filed on 30 January 2018, the Applicant, a Judge's Assistant at the United Nations Mechanism for International Criminal Tribunals ("MICT"), requests suspension of action, pending management evaluation, of the decision to separate her from service by retirement on 31 January 2018.
2. On the same day, the application was served on the Respondent for reply by 1 February 2018.

Consideration

3. Pursuant to art. 2.2 of its Statute and art. 13 of its Rules of Procedure, the Tribunal has the power to suspend the implementation of an administrative decision while its management evaluation is underway, provided that a set of cumulative conditions be met. The Tribunal must decide on an application for suspension of action within five working days of the service of such application on the respondent (art. 13.2 of its Rules of Procedure).
4. Furthermore, the Appeals Tribunal ruled in *Villamorán* 2011-UNAT-160 that, based on arts. 19 and 36 its Rules of Procedure, the Dispute Tribunal may order the suspension of action regarding a decision while considering a suspension of action request under art. 13 of the Rules of Procedure. Specifically, the Appeals Tribunal found that:

Where the implementation of an administrative decision is imminent, through no fault or delay on the part of the staff member, and takes place before the five days provided under Article 13 of the UNDT Rules have elapsed, and where the UNDT is not in a position to take a decision under Article 2(2) of the UNDT Statute, i.e. because it requires further information or time to reflect on the matter, it must have the discretion to grant a suspension of action for these five days. To find otherwise would render Article 2(2) of the UNDT Statute and Article 13 of the UNDT Rules meaningless in cases where the implementation of the contested administrative decision is imminent.

5. According to an email of the Chief of Human Resources, MICT, dated 15 January 2018 the Applicant will be separated from service by retirement today.

6. Having reviewed the Applicant's submissions and in light of the legal question that they raise, the Tribunal finds it appropriate to give the Respondent the opportunity to reply before deciding on the application for suspension of action. Since this could not be reasonably done before the contested decision is implemented, the Tribunal will only be in a position to examine the Applicant's application for suspension of action if it suspends the implementation of the decision to separate the Applicant through an interim *Villamorán* Order.

7. The Tribunal notes that the Administration waited until 15 January 2018 to notify the Applicant of her imminent separation, taking effect two weeks later. This left the Applicant very limited time to challenge the decision and/or to reorganise herself, considering that the loss of status as staff member entails various practical consequences on a staff member's personal life, including medical insurance coverage and pension contributions and entitlements.

8. The Applicant in turn reached out to the Office of Staff Legal Assistance immediately upon receipt of the contested decision, therefore acting diligently. Her Counsel also promptly contacted the Chief of Human Resources, MICT, on 17 January 2018 to resolve the matter informally. That noted, Counsel for the Applicant received a response on 18 January 2018 indicating that the contested decision would not be reviewed but he filed the application only on 30 January 2018.

9. The Tribunal finds that whilst no explanation was provided for the filing of the application at the last minute, the same holds true for the contested decision itself. In the particular circumstances of the present case, the Tribunal is of the view that the substance of this matter should prevail over the form as it is in the interest of justice and of all the parties involved that the legal issue raised by the Applicant in her application be examined expeditiously, and that no harm would be caused if her appointment is extended for a few days pending examination of her application for suspension of action.

Conclusion

10. In view of the foregoing, it is ORDERED that the implementation of the contested decision be suspended until the Tribunal issues an order ruling on the application for suspension of action, pursuant to arts. 2.2 of its Statute and 13 of its Rules of Procedure, within the time limit set out in art. 13.2 of said Rules of Procedure.

(Signed)

Judge Teresa Bravo

Dated this 31st day of January 2018

Entered in the Register on this 31st day of January 2018

(Signed)

René M. Vargas M., Registrar, Geneva