



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

CHERNEVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION
FOR INTERIM MEASURES
AND ON A MOTION
TO DISCLOSE DOCUMENTS**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Bart Willemsen, UNICEF

Introduction

1. By application filed on 26 March 2018, the Applicant contests:
 - a. the recruitment and selection process for the post of Corporate Alliance Manager for Research (P-4), United Nations Children's Fund ("UNICEF"); and
 - b. the decision to place her under the direct supervision of a P-3 "who has no supervisory functions in her Terms of Reference".
2. The case was registered under Case No. UNDT/GVA/2018/027 and assigned to the undersigned Judge.
3. On the same day, the Applicant had requested management evaluation of the above two decisions.
4. On 16 April 2018, the Applicant filed a motion for interim measures pending proceedings and a motion to disclose documents in the present case. She requested suspension of the decisions:
 - a. to suspend her UNICEF account and email; and
 - b. to assign a P-3 officer without managerial functions as her direct supervisor.
5. She also requested disclosure of all documents and communications around the two administrative decisions that she contested for suspension.
6. The motion was served to the Respondent who filed his reply thereto on 20 April 2018.

Consideration

7. Pursuant to art. 10. 2 of its Statute,

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.

8. Unlike a request for suspension of action under art. 2.2 of the Tribunal's Statute, a request for interim measures pursuant to art. 10.2 thus requires that an application on the merits be pending with the Tribunal.

9. The Tribunal notes that it has jurisdiction to grant interim measures in pending proceedings only where the application on the merits is, in itself, receivable.

10. In the case at hand, the Applicant filed her application on the merits on 26 March 2018, namely the same day on which she filed her two requests for management evaluation of the decisions contested in Case No. UNDT/GVA/2018/027.

11. According to art.8.1(d)(i)(b) of its Statute, the Tribunal is competent to hear an application that is filed within 90 calendar days of the *expiry* of the relevant response period for management evaluation, which, in the case at hand, is 45 days.

12. Having filed the application on the merits on the same day as the two requests for management evaluation, the Tribunal is not competent to hear the application on the merits. It follows that the present request for interim measures is not receivable.

13. Furthermore, the Tribunal notes that the Applicant requests suspension of the decision to suspend her UNICEF email account. It observes that this decision is completely unrelated to the decisions contested in the application on the merits. Hence, this is yet another reason why the Tribunal cannot grant the requested interim relief in the framework of the proceedings in Case No. UNDT/GVA/2018/027.

Prima facie unlawfulness

14. Moreover, and notwithstanding the fact that the request is not receivable, with respect to the Applicant's request to suspend the decision to change her direct supervisor, the Tribunal notes that the Administration has broad discretion in organizing its services and that the decision does not appear *prima facie* unlawful.

Request for disclosure of documents

15. In light of the above conclusions, the Tribunal finds that the Applicant's request for disclosure of documents relating to the two decisions she wishes to be suspended has to be equally rejected.

Conclusion

16. In view of the foregoing, the request for interim measures and the motion for production of documents are rejected.

(Signed)

Judge Teresa Bravo

Dated this 24th day of April 2018

Entered in the Register on this 24th day of April 2018

(Signed)

René M. Vargas M., Registrar, Geneva