



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: Liliana López Bello

MRAZ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for Applicant:

Kalaycia Clarke, OSLA

Counsel for Respondent:

Federica Midiri, UNDP

Introduction

1. By application filed on 31 March 2025, the Applicant, a staff member of the United Nations Development Programme (“UNDP”), requests suspension of action, pending management evaluation, of the decision not to renew his fixed-term appointment (“FTA”) due to unsatisfactory performance, and to separate him from service upon its expiry on 31 March 2025.

2. The application for suspension of action was served on the Respondent, who filed his reply on 3 April 2025.

Facts

3. On Friday, 28 March 2025, the Applicant was informed that due to unsatisfactory performance, his contract would not be renewed, and he would be separated from service upon its expiry on Monday, 31 March 2025.

4. On Sunday, 30 March 2025, the Applicant requested management evaluation of the decision not to renew his FTA effective 31 March 2025.

5. On Monday, 31 March 2025, the Applicant filed the present application seeking to suspend the non-renewal decision.

6. The Registry only processed the application on the following day, 1 April 2025, because the day of filing was a United Nations holiday. On the same day, the application was served to the Respondent.

7. On 2 April 2025, the Respondent filed his reply indicating that the application for suspension of action was not receivable because the contested decision had already been implemented on 31 March 2025.

8. On 3 April 2025, the Applicant retained the assistance of Counsel, who subsequently filed two motions in support of the application for suspension of action. In these submissions, Counsel provided further arguments addressing the receivability of the application and the merits of the case.

9. On the same day, the Respondent submitted a reply in response to the Applicant's motions. In it, he reiterated the non-receivability of the application and requested leave from the Tribunal to file further submissions on the merits if the Tribunal were to find the application receivable.

Consideration

The Applicant's motions and the Respondent's reply

10. The Tribunal grants leave for the Applicant to file the new submissions dated 3 April 2025, due to the urgency of the situation and the limited time available for Counsel to assist the Applicant from the outset. Therefore, the motions with submissions on receivability and the merits are accepted into the case record.

11. In the spirit of the principle of equality of arms, the Respondent's response to the Applicant's new submissions is equally accepted.

12. However, the Tribunal draws the Respondent's attention to his request to file further submissions on the merits should the Tribunal consider receivable the application for suspension of action.

13. The Tribunal recalls that an application for suspension of action is a summary proceeding, which allows the Tribunal only five days to issue a ruling from the moment it serves the application on the Respondent. This means that no further submission can be granted once an Order ruling on the matter is issued, even in cases that require a receivability analysis.

14. Therefore, the Respondent is strongly encouraged to, in the future, produce submissions on receivability and the merits. Otherwise, should the Tribunal decide that the application for suspension of action is receivable, the Respondent would renounce his right to be heard in the dispute over the merits of the application.

Villamoran clause

15. In her submission of 3 April 2025, Counsel for the Applicant requested the Tribunal to issue a *Villamoran* Order suspending the implementation of the contested decision pending management evaluation.

16. The Tribunal recalls that it has the power to suspend the implementation of a contested decision only if said decision has not yet been implemented.

17. However, since the application was processed on 1 April 2025, the day after the Applicant's appointment expired, the *Villamorán* clause was no longer a possibility.

Receivability

18. Art. 2.2 of the Tribunal's Statute provides that the Tribunal shall be competent to suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. These three requirements are cumulative. In other words, they must all be met in order for a suspension of action to be granted. Furthermore, the burden of proof rests on the Applicant.

19. The Respondent submits that the decision not to renew the Applicant's FTA was implemented effective immediately on 31 March 2025, the day upon which it expired. He asks the Tribunal to determine the non-receivability of the application as a result.

20. The Applicant argues, however, that because he was informed of the non-renewal decision on Friday, 28 March 2025, and filed the application on Monday, 31 March 2025, before the FTA expired, the application for suspension of action is receivable.

21. On the merits, the Applicant argues that the non-renewal decision for unsatisfactory performance is unlawful, *ultra vires*, arbitrary, procedurally flawed, violates UNDP's Policy on Performance Management and Development, and is contrary to the jurisprudence of the United Nations Tribunals and the Organization's obligation to treat staff fairly, justly, and transparently.

22. The Tribunal recalls that art. 2.2 of its Statute prevents it from passing judgment on an application seeking suspension of a decision that has already been implemented. An application for suspension of action serves only to preserve the *status quo*, not reverse it.

23. The Tribunal's jurisdiction in an application for suspension of action is, therefore, limited.

24. Such limitation does not refer to the date and time when a staff member files an application for suspension of action; instead, it refers to the date on which the contested decision is to be implemented. If the Tribunal receives and processes an application for suspension of action before the implementation of the contested decision, assuming that the other criteria of art. 2.2 are met, then the Tribunal can suspend said implementation. However, if the contested decision has already been implemented, there is nothing to suspend.

25. In this case, although the Applicant acted promptly by filing the application for suspension of action on Monday, 31 March 2025, the Registry could not process it until the following day because the filing date fell on a United Nations official holiday. This means that it was not a working day for the Tribunal, and by the time the application was processed, that is, on 1 April 2025, the contested decision had already been implemented, and the Applicant was no longer a staff member.

26. As it follows, the application for suspension of action is not receivable.

27. Nevertheless, the Tribunal notes that the Organization's actions vis-à-vis the timing of the non-renewal decision prevented the Applicant from pursuing its suspension before the Tribunal. The evidence on record further shows that the performance evaluation process for the 2024-2025 performance cycle appears to not have been completed before the contested decision was made and that options available to the Applicant under the UNDP's Policy on Performance Management and Development appears to have been circumvented.

28. Since a suspension of action is only an interim measure and not the final decision on a case, a finding of *prima facie* unlawfulness does not require more than

serious and reasonable doubts about the lawfulness of the contested decision (*Hepworth* UNDT/2009/003, para. 10; *Corcoran* UNDT/2009/071, para. 45; *Corna* Order No. 90 (GVA/2010); *Loose* Order No. 259 (GVA/2017)).

29. Under the circumstances above, if the application were found receivable, the Tribunal would determine the contested decision's *prima facie* unlawfulness.

30. However, the foregoing does not alter the effective implementation date of the contested decision.

31. As the Tribunal is bound by its Statute, it cannot, in an application for suspension of action, suspend a decision with retroactive effect.

Conclusion

32. In view of the foregoing, the application for suspension of action pending management evaluation is dismissed.

(Signed)

Judge Sun Xiangzhuang

Dated this 8th day of April 2025

Entered in the Register on this 8th day of April 2025

(Signed)

Liliana López Bello, Registrar, Geneva