



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Nerea Suero Fontecha

A ALI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION

Counsel for Applicant:
Aleksandra Jurkiewicz, OSLA

Counsel for Respondent:
Elizabeth Gall, ALS/OHRM

Introduction

1. On 26 October 2018, at 5:27 p.m., the Applicant, a Publishing Assistant at the G-4 level on a fixed-term appointment with the Department for General Assembly and Conference Management (“DGACM”) in New York, filed an application for suspension of action during management evaluation pursuant to art. 13 of the Dispute Tribunal’s Rules of Procedure, requesting that the decision not to renew his fixed-term appointment beyond 31 October 2018, which was notified to him on 8 October 2018 and scheduled to be implemented on 31 October 2018, be suspended pending management evaluation.

2. On 26 October 2018, the case was assigned to the undersigned Judge.

3. On 26 October 2017, at 6.33 p.m., the Registry acknowledged receipt of the application and transmitted it to the Respondent. The Tribunal instructed the Respondent to submit his reply by 4:00 p.m. on Tuesday, 30 October 2018.

4. The Tribunal further informed the parties that, due to the urgency of the matter (the deadline for the implementation of the contested decision being 31 October 2018) and pursuant to arts. 19 and 36 of the Dispute Tribunal’s Rules of Procedure, the suspension of the implementation of the contested decision pending the consideration of the application for suspension of action under art. 2.2 of the Dispute Tribunal’s Statute was granted and that a reasoned written order was to follow, which is the present Order.

5. By Order No. 213 (NY/2018) dated 29 October 2018, the Tribunal granted, without prejudice to the Tribunal’s determination of the application for suspension of action under art. 2.2 of the Dispute Tribunal’s Statute, the suspension of the implementation of the decision not to renew the Applicant’s fixed-term appointment beyond 31 October 2018 until the Tribunal rendered its decision on the application for suspension of action, or until further order.

6. On 30 October 2018, the Respondent filed his reply contending *inter alia* that the Application.

Background

7. In the application for suspension of action, the Applicant submitted as follows regarding the facts to be relied on (references to annexes omitted):

... In the application for suspension of action, the Applicant submitted as follows regarding the facts to be relied on (references to annexes omitted):

... The Applicant joined the DGACM Publishing team in May 2013, when the 1st Phase of “Project for digitalisation with DGACM” was launched with the funding provided by the State of Qatar.

The digitalisation programme was conceived in order to preserve important older United Nations documents, facilitate future availability and usability of valued documents, reduce the carbon print, and contribute to environmental improvement.

On 26 September 2018, the Applicant received a notification that his contract was not to be extended beyond its expiry date, effective 31 October 2018.

The reasons given in the e-mail were that “the digitalization project will come to closure on 31 October 2018”.

The Applicant immediately contacted staff representatives in order to assess his rights.

On 4 October 2018, the Applicant filed a Management Evaluation Request seeking rescission of the decision of non-renewal or placement on an alternative suitable post outside of the competitive recruitment process ...

However, on 23 October 2018, during a meeting held with [...], the Under-Secretary-General for General Assembly and Conference Management, the Applicant understood the following:

- First, that there is still remaining funding from the 1st phase of the digitalisation project;
- Second, that DGACM has obtained further funding from the State of Qatar for the 2nd phase of the digitalisation project; and
- Third, that DGACM intends to hire independent contractors for the 2nd phase of the project.

On or about the same day, Mr. A Ali discovered two documents pertaining to the 2nd phase of the project for digitalisation with DGACM ...

In particular, the “Project Initiation Document” specified as follows:

... As with the 1st phase, DGACM once again have obtained the funding from Qatar to digitize United Nations documents in pursuit of the objective set by the General Assembly. For 2nd phase, DCAGM will utilize five general service staff members and five general service WAE (when as employed) staff members with language and technical skills. The project is a cooperative one between DGACM and DPI. The remaining staff will be provided with a contract for one-year from July 2018 which would mark the beginning of the 2nd phase of the project” ...

In light of the above, the Applicant amended his Management Evaluation Request specifying that the non-renewal of his contract was not based on a genuine reason but rather a strategy designed to remove him from post, prohibited by ST/AI/2013/4.

The Applicant also reiterates his request for Suspension of Action pending management evaluation. ...

Parties’ submissions

8. The Applicant’s principal contentions are as follows:

Urgency

a. The matter is urgent as the decision on non-renewal could be implemented by the time the management evaluation is issued (3 November 2018). This is not a case of self-created urgency since he only learnt about the strategy and underlying facts on 23 October 2018.

Irreparable harm

b. If the impugned decision is implemented, the Applicant will suffer harm due to the loss of employment with the Organisation and in relation to his career prospects. Specifically, the Applicant will lose his best chance to continue to be employed by DGACM and to advance his career within the Organisation. Such harm cannot be compensated for by a monetary award.

Prima facie unlawfulness

c. Administration failed to act fairly, justly and transparently by providing inaccurate reasons to Applicant's non-renewal. The Administration failed to act fairly, justly and transparently when, on 26 September 2018, it provided inaccurate reasons for his non-renewal. The notification that the Applicant received referred to the closure of the digitalisation project. However, on 23 October 2018, the Applicant discovered that: (i) there is remaining funding from the 1st phase of the digitalisation project; that (ii) DGACM has obtained further funding from the State of Qatar for the 2nd phase of the digitalisation project; and that (iii) DGACM intended to hire independent contractors for the 2nd phase of the project.

d. This information not only directly contradicted the notification the Applicant received on 26 September 2018 that the digitalisation project was closing but it also contradicted the "Project Initiation Document" that specified that DGACM would "utilize five general service staff members" for the 2nd phase of the digitalisation project.

e. The Administration's reliance on project closing was intentionally misleading and was aimed to deprive him of an opportunity to challenge the Administration[']s failure to comply with its obligations Section 3.3(b) of ST/AI/2013/4.

f. There appears to be no lawful explanation for removing the Applicant while there was still funding from the 1st phase of the project and there was still need for his services in order to complete the task of uploading all important UN documents according to A/RES/67/237.

g. The Applicant's performance was consistently rated as "successfully meets performance expectations" or "exceeds performance expectations" for the last 12 years.

h. As no issues were raised with the Applicant's performance, it would seem suspect at best to withdraw the services of a staff member with five years of experience on the post before launching the 2nd phase of the digitalisation project. Any reasonable managerial approach would find such a resource invaluable and would, under normal legitimate circumstances, take all and any necessary steps to maintain it.

i. Alternatively, the Administration should place the Applicant on any available vacant post without proceeding through a competitive selection process.

j. Even if the Administration were to establish that his G-4 post was lawfully being abolished then, pursuant to Staff Rules 9.6(e) and 9.6(f), if the necessities of service require that appointments of staff members be terminated as a result of the abolition of a post, staff members holding fixed-term appointments shall be retained by preference to staff members with a lower level of protection (such as temporary appointments).

k. The Applicant applied to a number of vacancies within the UN Secretariat. Nine of these applications are still pending, four with the DGACM. It cannot therefore be said that there is no

suitable alternative position onto which he could be placed pursuant to Staff Rule 9.6.

1. In light of the above, the Administration is requested to comply with its obligations and place the Applicant on any available post with similar functions without requiring him to participate in a competitive selection process.

Urgency and irreparable harm

m. The Applicant indicated that his contract expires on 9 October 2018 and therefore he will separate from the Organization on 9 October 2018, the date of filing of the application for suspension of action.

9. The Respondent's principal contentions in his reply are as follows:

Urgency

a. The Applicant admits that he became aware of the decisions not to renew his appointments on 26 September 2018. He was in a position to request suspension of action from the Dispute Tribunal on 4 October 2018, when he requested management evaluation of the decision not to extend his fixed-term appointment. That he discovered supplemental material on 26 October is irrelevant. The draft working documents relating to a new proposed project corroborate the reason given for the contested decisions, that is, that funding for the existing project was exhausted.

b. Had the Applicant acted with the appropriate urgency and exercised his right to seek management evaluation and suspension of action promptly, the management evaluation processes may well have been completed before the expiry of his appointments. The Applicant does not meet the burden of demonstrating urgency.

Prima facie unlawfulness

c. The Applicant has been working as Publishing Assistants as part of a project established in 2014 entitled “Digitization: Turning Seven Decades of United Nations Work into Open Knowledge” (the “Project”). The Project was funded by voluntary contributions from the Governments of Qatar and China and an insurance indemnity received by the Organization in connection with storm Sandy in 2011. The Government of Qatar provided the bulk of the funding through a voluntary contribution of USD 5 million. The purpose of the Project was the digitization and preservation of historic and older United Nations documents.

d. The 11 staff members who worked on the Project were selected for the project positions, which were advertised through temporary job openings. The staff members included seven permanent appointees and four staff members, including the Applicant, who hold fixed-term appointments. From the outset, all staff working on the Project were aware of its temporary nature, limited by available funding. DGACM management encouraged the staff members to apply for other positions in view of the temporary nature of the Project. DGACM management also met with staff representatives.

e. In view of the anticipated exhaustion of funding at the end of October 2018, the Applicant’s fixed-term appointment was no longer renewed on a one-year basis. From 1 April 2018, the Applicant’s appointments were renewed for three months (to 30 June) and then four months (to 31 October).

f. During 2018, the Executive Office and DGACM encouraged the Applicant to apply for job openings and offered assistance in preparing his applications.

g. In June 2018, DGACM requested additional funding from Government of Qatar for a new proposed project “Digitization and enhanced accessibility of Official Documents of the United Nations”. Negotiations with

the Government are ongoing. The Government has not provided funding to the Organization for the proposed project.

h. The financing for the Project will be exhausted by 31 October 2018. The funds that have paid for the Applicant's position are no longer available. In fact, since June 2018, the savings from agreed termination packages for a number of the permanent appointees who worked on the Project have been deployed to fund the posts of those staff members on fixed-term appointments, including the Applicant, to the expiry of their contracts on 31 October 2018. Accordingly, on 26 September 2018, the Executive Officer, DGACM wrote to the Applicant to confirm the decision not to renew his appointment beyond 31 October 2018. As the Applicant was informed previously, the Executive Officer stated that the Project would "come to closure" on that date. On 23 October 2018, the USG/DGACM held a meeting with the Applicant and staff representatives. At the meeting, the Under-Secretary-General for DGACM ("USG/DGACM") explained that DGACM had approached the Government of Qatar with a proposal for a new project and that dialogue with the Government was ongoing. If the new project was to materialize, there was no guarantee that the modalities would be the same as for the digitization Project. The USG/DGACM explained that no funding for the proposed project had been received.

i. The contested decision is lawful, and the reason given is supported by the evidence. The funding for the Project has been exhausted and, consequently, the funds that have paid for the position held by the Applicant are no longer available.

j. Contrary to the Applicant's allegations, the reason given to the Applicant for the contested decisions is true. The assertions regarding the statements made by the USG/DGACM at the meeting on 23 October 2018 are incorrect. At the meeting, the USG/DGACM explained that the Government of Qatar had not provided the Organization with funding for the proposed project. The documents relied upon the Applicant in support of his allegations

are internal working documents only, and do not represent the final version of the proposed project submitted by DGACM to the Government of Qatar in June 2018.

k. The Applicant's allegations that he is entitled to be accorded the rights set out in Staff Rule 9.6(c) and (e) upon termination of fixed-term appointment for abolition of post have no merit. Chapter IX of the Staff Rules (Separation from service) clearly distinguishes between separation of service due to expiration of appointment (non-renewal) and termination of appointment (Staff Rule 9.4 and 9.6). A staff member whose fixed-term appointment expires (that is, non-renewed) due to abolition of post or reduction in staff is not entitled to the rights set out in Staff Rule 9.6(e) upon termination of fixed-term appointment due to abolition of post or reduction in staff. Under Staff Rule 9.4, a fixed-term appointment expires automatically and without prior notice on the expiration date in the letter of appointment. Under Staff Rule 9.6(a), a termination of appointment is a separation from service initiated by the Secretary-General. Further, termination of appointment brings the appointment to an end, prior to the expiry date of the appointment. Staff Rule 9.6(b) expressly provides that separation as a result of expiration of appointment "shall not be regarded as a termination with the meaning of the Staff Rules".

l. Contrary to the Applicant's claims, the Dispute Tribunal's observations in Order No. 281 (NY/2018) do not stand for the proposition that the rights under Staff Rule 9.6(c) and (e) upon termination of appointment due to abolition of post apply to a non-renewal of appointment for abolition of post.

Consideration

The mandatory and cumulative conditions for suspending an administrative decision

10. 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.

11. 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".

12. 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.

13. 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 application concerns an administrative decision that may properly be suspended by the Tribunal;
- b. The Applicant requested management evaluation of the contested decision, which evaluation is ongoing;
- 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 application concerns an administrative decision that may properly be suspended by the Tribunal

14. It is undisputed that the contested decision in the present case, namely the decision not to renew the Applicant's fixed-term appointment beyond 31 October 2018, is an administrative decision subject to review by the Tribunal, including its implementation being suspended pending management evaluation. Consequently, the first cumulative and mandatory condition presented above is fulfilled.

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

15. An application under art.2.2 of the Dispute Tribunal's Statute is predicated upon an ongoing management evaluation of the contested decision. It is uncontested from the parties' submissions that the Applicant requested management evaluation of the contested decision on 5 October 2018, and that he filed an amendment to the management evaluation request on 26 October 2018. The management evaluation was initiated prior to the filing of the application for suspension of action. The Tribunal notes that there is no evidence on the record that MEU has completed its evaluation. The Tribunal therefore finds that the contested decision is the subject of an ongoing management evaluation and the second condition is fulfilled.

Whether the contested decision has not yet been implemented

16. By Order No. 221 (NY/2018) dated 26 October 2018, the Tribunal granted, without prejudice to the Tribunal's determination of the application for suspension of action under art. 2.2 of the Dispute Tribunal's Statute, the suspension of the implementation of the decision not to renew the Applicant's fixed-term appointment beyond 31 October 2018 until the Tribunal rendered its decision on the application for suspension of action, or until further order.

17. Therefore, the contested decision is not yet implemented. Consequently, the third cumulative and mandatory condition presented above is fulfilled.

Whether the impugned administrative decision appears prima facie unlawful

18. The Tribunal notes the contested decision consists of the non-extension/renewal of Applicant's fixed-term appointment beyond its expiration date 31 October 2018. As results from the notification received by the Applicant on 26 September 2018, the reason provided by the Administration for the non-renewal was the confirmation that "the digitalization project will come to closure on 31 October 2018".

19. Further the Tribunal notes that on 22 June 2018, DGACM submitted a detailed proposal for the implementation of the second phase of the digitalization project for the consideration of the Government and Permanent Mission of Qatar. The document titled "Project Proposal for the Digitization and Enhanced Accessibility of Official Documents of the United Nations" states in the relevant parts:

... This document presents a strategic plan for the United Nations Digitization Project to be funded by the voluntary contribution of \$5 million. The plan builds on the earlier Project, "Digitization: Turning Seven Decades of United Nations Work into Open Knowledge," which set forth the digitization and preservation of historic and older UN documents. That Project has also been generously supported by a voluntary contribution of \$5 million from Qatar and \$100,000 from China. When the Project concludes later this year over 1.25 million pages covering the most vulnerable, older, historic documents will have been preserved ...

... The main goal of this proposal is to create a technical and administrative framework for the digitization and migration of official documents, and to increase and enhance the access and usability of the content in the six official languages. The majority of the United Nations documents that have been digitized are stored in the Official Document System, with basic formats that can be preserved in their versatility, integrity, quality, and completeness well into the future ...

... A portion of the funds will be set aside to continue the digitization of documents that are in the collection of the Dag Hammarskjold Library and are not digitized (prior to 1993). The tasks to digitize these documents will be as follows:

- The Project Team will determine the priority for selective digitization of the remaining DHL collection based on a set of pre-defined criteria (year, subject, inter-governmental body).
- Digitization may be carried out by external specialized vendors selected by DGACM in accordance with UN Procurement rules and procedures;
- Digitization will be carried out under controlled conservation conditions and, for reasons of authenticity and accountability, appropriate audit trails will be created and event metadata (technical, administrative, and preservation metadata) will be captured during the process, and provided to the UN in frequent reports;
- At the end of the digitization process the United Nations will return the originals to the DHL ...

Project Management

The project is anticipated to begin in the 4th quarter of 2018 and will last an estimated five (5) years ending in the 3rd quarter of 2023. A Project Manager will be designated and she/he will review all deliverables developed from this proposal. Additionally, the Project Manager will outline specific deliverables tasked to external service providers and provide periodic reports on activities, and on major milestones.

20. The Applicant contends that the newly discovered DGACM project proposal which has been submitted to the Government of Qatar for funding, envisages a second phase of the digitization project. The Respondent replies that DGACM had already explained to the Applicant that the proposal for the second phase of the digitization project is still under discussion with the Government of Qatar and that the Government of Qatar has not yet approved the project nor provided any funding. The Tribunal notes that the first document invoked by the Applicant is

titled “Project Proposal 2ndPhase of Digitization: Turning Seven Decades of United Nations Work into Open Knowledge” states as follows:

... The General Assembly, since 1997, has repeatedly requested the digitization and uploading of important older United Nations documents in all official languages (General Assembly Resolution A/RES/51/211 of 18 December 1996). The latest resolution on this subject (A/RES/67/237 of 24 December 2012) requests the Secretary-General once again to complete this task.

... The digitization programme will continue to be important in promoting the paper smart programme in the United Nations that will reduce paper, and allow for more usage of modern electronic services via digitization and reducing the carbon print and contributing to environmental improvement. It will contribute to the UN green initiative by reducing consumption of paper and ink as well as shipping and storage ...

... The continuation of the digitization programme will also serve to facilitate future conversion readiness ensuring continued availability and usability of valued documents, particularly millions of older documents ...

Project Activities:

I. Designing of policy and operational framework as well as information architecture to implement standards-based, open and long-term access to UN information through digitization; II. Mass digitization and accumulation of digital information electronically; Continued scanning of some four to five million most important pages and documents and digitizing them (out of the 20 million), quality control of scanned outputs, conversion for optical character recognition, subject analysis, metadata creation and uploading to UN websites and repositories. IV. Securing adequate funding and once the fund is secured, taking the following set of actions by DGACM:

1. Get bound books and documents from the DHL every Monday at 100,000 pages / month.
2. Prep for scanning.
3. Ensures safe handling of original documents
4. Cut the spine if need be
5. Creation of electronic documents, through digitization of historical UN documents in paper format.

- a) Optimize image quality to ensure legibility of images
 - b) Perform OCR function in the language of the document scanned
 - c) Quality Control in All Languages by document symbol and language and store them in the appropriate folder and DHL's NAS drive
 - d) Finalization as per DTP standards PDF documents based on the IISO 14289-1 standard (known as PDF/UA) under Electronic document file format enhancement for accessibility.
- 6. Route to the Front Desk for upload to ODS and eLuna
 - 7. Place cut-spine documents in acid-free boxes bought by MPD
 - 8. Re-Bound the books cut using the Press Room's book-binder
 - 9. Return documents and books to the DHL ...

... These are the standard ways of achieving the retrospective digitization and access set-up of this magnitude and complexity. Because this process is very labour-intensive, it requires a variety of professional expertise and equipment. Current five general service staff members from MPD together with five general service WAE (when as employed) staff with technical and language skills, DGACM will provide additional necessary training for the staff to the level of complexities and sophistication required ...

... Impact and Expected Outcome:

- a. Easy, efficient and effective access to United Nations documents for operational, policy, statutory, legislative and research purposes for all Member States, in all United Nations duty stations and peacekeeping operations, missions, governments and other users worldwide;
- b. Increased goodwill and support to the United Nations from the world, delegates and Member States;
- c. Assured business continuity in case of disaster affecting hard copy documents, and readiness for off-site storage of the greater part of Headquarters and other location documents;
- d. Achieving future conversion readiness and ensuring continued availability and usability of valued documents;
- Open access to the general public by improving United Nations outreach to a variety of groups and contribution to the achievement of the United Nations mandate;
- f. Saving on storage and shelf-kept and cost for UN offices

(including rent for those outside the UN compound) and entities worldwide which lead to efficiency gains;

g. Cost-savings through making indefinite hard copy storage of United Nations documents;

h. Contribution to the historic preservation of historically significant and monumental documents; modernizing documentation through digitization as part of the United Nations reform and contribution to the UN's green initiative, reducing carbon printing and consumption of paper;

i. Assured worldwide availability and access to additional four to five million UN documents in the short run and 12.5 million UN documents in the medium-term and approximately 20 million in the long run;

Enable the Secretary-General to respond robustly to repeated General Assembly resolutions to carry out the retrospective digitization of all important older official documents, including achieving aspects of equal treatment of the six official languages and multilingual presentation of UN websites.

...

Risks:

... If digitization and preservation of documents and maps are not continued with the needed urgency, these documents will degrade and eventually disintegrate leading to a loss of historically significant information and data. Documents may also get lost or destroyed as the result of any form of disaster – natural or unnatural- without the organization having any surrogate to fall back on. Owing to a lack of resources, the documents are not currently stored in sound preservation and secure formats and environments.

... We will be focusing on the remaining four million documents and pages which were identified to be the most critical ...

21. This document appears to be different from the initial proposal made on 22 June 2018.

22. The second document invoked by the Applicant “Joint project for digitization with DGCAM, Project Initiation Document (PID) 2nd Phase for Project for digitization with DGACM” (ANNEX4) states as follows:

1.1 The General Assembly has requested “the Secretary-General to complete the task of uploading all important older United Nations documents onto the United Nations website in all six official languages on a priority basis so that these archives will also be

available to Member States through that medium” (A/RES/67/237, IV, para 23)

1.2 As with the 1st phase, DGACM once again have obtained the funding from Qatar to digitize United Nations documents in pursuit of the objective set by the General Assembly. For 2nd phase, DCAGM will utilize five general service staff members and five general service WAE (when as employed) staff members with language and technical skills. The project is a cooperative one between DGACM and DPI. The remaining staff will be provided with a contract for one-year from July 2018 which would mark the beginning of the 2nd phase of the project.

1.3 The group of staff will operate under the operational direction of the DGACM. They will be managed by the assigned Project Manager (The Deputy Chief of the Meetings Support Section), who for this project alone, will directly report to the Director of the Meetings Publishing Division.

1.4 This new initiative will build on lessons learned from the first phase project agreement between DGACM and DPI and the work done subsequently in 2013/18. The project will use basic project.

...

3.1 Within two weeks of agreement on the PID, DPI will identify team structures and roles that fit the profiles and the needs of the project. DPI will also identify its staff to work on the project and roles will be allocated within two weeks. Launch of the project should be within one week of agreement on the PID.3.2 During the period of their work, the 10 DGACM staff members will directly report to the Deputy Chief of the Meetings Support Section, who in turn will report to the Director of the Meetings Publishing Division (for this project only).3.3 At the outset of the 2nd phase, the Deputy Chief will organise group and individual briefings for the DGACM staff and make any necessary adjustments to the roles and structure. He will develop and deliver induction training and training for particular roles as necessary. management methodology. 3.6 In summary the project will use the following resources:

(1) DGACM: a team of five staff members, with a provision to hire five WAEs with language and technical expertise ...

23. Having reviewed the documentation provided by the parties, the Tribunal notes that it appears that the initial proposal from 22 June 2018 - a distinct project to be implemented by independent contractors - was not agreed and that instead, subject

to approval, is the continuation of the initial project for digitization with a 2nd phase under the terms and conditions drafted as presented in para. 22 above. The second phase of the digitization project appears therefore to be a continuation/extension of the initial Project for which the Applicant was hired. The proposed implementation of this project would comprise ten DGACM staff members at the GS level, with five “on board” and five “when as employed (“WAE”)”.

24. In light of this evidence, it appears that the Project is expected to continue beyond 31 October 2018 for another five years and to require DGACM for its implementation, the utilization of five general service staff members and five general service WAE staff members with language and technical skills. According with the proposal, it appears that the contracts of any of the staff members currently employed for the first phase of the project which may continue to implement the second phase are expected to be renewed/extended for the duration of this second phase and the remaining staff is expected to be provided with a contract for one-year starting from 1 July 2018 the proposed date for the beginning of the 2nd phase of the project.

25. Therefore, it appears that the reason provided by DGACM not to extend the Applicant’s fixed-term, namely “the closure of the project by 31 October 2018” is no longer actual. Further, it appears from the Respondent’s response that the Applicant’s fixed-term contract is not to be renewed due to the lack of funds, a reason different from the one indicated in September 2018.

26. The Tribunal finds that the decision appears to be *prima facie* unlawful.

Is there an urgency?

27. The Tribunal considers that the condition of urgency is fulfilled, since the Applicant’s appointment was due to expire on 31 October 2018. The Tribunal notes that the Applicant filed a request for management evaluation on 5 March 2018. On 23 October 2018, the Applicant discovered documents detailing the proposal for the second phase of the digitization project. Soon thereafter, on 26 October 2018, the

Applicant filed an amendment to his request for management evaluation, together with his application for suspension of action.

28. The Tribunal is satisfied that given the proximity of the date of the implementation of the contested decision, the matter is urgent. The Tribunal notes further that the Applicant acted diligently in filing the amendment of his request for management evaluation soon after he became aware of the new information. Therefore, it does not appear that the urgency was self-created.

Is there an irreparable harm to be caused by the implementation of the contested decision?

29. The Tribunal considers that the contested decision, if implemented, has the potential to cause the Applicant irreparable harm since he would be separated from the Organization. In these circumstances, the Tribunal is satisfied that the condition of irreparable harm is fulfilled, which is not contested by the Respondent.

30. In light of the above,

IT IS ORDERED THAT:

31. The application for suspension of action is granted in relation to the decision not to renew the Applicant's fixed-term appointment beyond 31 October 2018, and the implementation of this decision is suspended pending management evaluation.

Observation

32. While noting that the finalization of the documents presented by the Applicant in the present case is currently ongoing, the Tribunal is of the view that the Administration is in the best position to assess during the management evaluation the ongoing factual situation, together with the legal effects of the existing proposals on the contracts of the staff members employed for the first phase of the digitization project, including their due-process rights, taking also into account the distinction between the separation from service due to the expiration of a temporary or fixed-

term contract (staff rule 9.4) and the termination of a contract due to abolition of posts or reduction of staff (staff rule 9.6(c)(i)), which may be determined, *inter alia*, by the discontinuation/finalization of a project and/or lack of funding.

(Signed)

Judge Alessandra Greceanu

Dated this 2nd day of November 2018