



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/027

Order No.: 68 (NY/2021)

Date: 23 July 2021

Original: English

Before: Duty Judge

Registry: New York

Registrar: Nerea Suero Fontecha

IZIRAREN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON MOTION FOR INTERIM
MEASURES**

Counsel for Applicant:

Endah Ayuningsih Indini, OSLA

Counsel for Respondent:

Angela Arroyo, UNDP

Introduction

1. By motion dated 16 July 2021, the Applicant, a Deputy Director for Policy and Strategic Partnership with the United Nations Development Programme (“UNDP”), seeks the “suspension of the decision to add Applicant’s resignation from Moroccan Government as condition to extend his fixed term appointment beyond 6 August 2021”.

2. The motion was first filed via regular email at 4:02 p.m. on 16 July 2021. Upon the instructions of the Registry, the Applicant refiled the motion through the Dispute Tribunals eFiling portal on 19 July 2021.

3. As instructed by the Tribunal, on 23 July 2021, the Respondent filed his response to the motion in which he requests the Tribunal to reject it.

Consideration

Definition of the contested administrative decision

4. The Tribunal notes that in the Applicant’s application on the merits, the contested decision is defined as the decision to demand the Applicant to resign from the government of a United Nations member state “as condition for extension of Fixed Term Appointment beyond 6 August 2021”. In contrast, in the Respondent’s 23 July 2021 response to the motion for interim measures, the decision is instead identified as “the suspension of the implementation of the decision not to renew his Fixed-Term Appointment, which is due to expire on 6 August 2021”.

5. The parties therefore disagree on the definition of the administrative decision under judicial review. The Tribunal, however, sees no reason to make a final determination on this question at the present moment, which should rightly be done by the Dispute Tribunal Judge, who is eventually assigned to the case. In this regard, the Tribunal notes that attached to the application, the Applicant appends a

“Separation Letter” dated 16 July 2021 in which he is informed of his separation from “UNDP service upon Expiry of Appointment, effective close of business (COB) on 06 August 2021”.

Does the motion for interim measures concern an appointment case?

6. Article 10.2 of the Dispute Tribunal Statute (as also reflected in its Rules of Procedure, art. 14) provides that the Tribunal may order “temporary relief”, which “may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment ...”. This means that if a case concerns appointment, the Tribunal therefore cannot suspend the implementation of the relevant administrative decision under judicial review.

7. The Tribunal notes that no matter which of the parties’ definition of the contested administrative decision is applied in the present case, the question at stake is an appointment issue. A case regarding an appointment extension evidently also concerns an appointment question, and the present case either concerns the lawfulness of a prerequisite for such an appointment extension or the rejection of a request for such extension.

8. Accordingly, the motion for interim measures concerns a case of appointment in accordance with art. 10.2 of the Dispute Tribunal, and consequently, the Tribunal is not authorized to suspend the contested administrative decision.

IT IS ORDERED THAT:

9. The motion for interim measures is rejected.

(Signed)

Judge Joelle Adda (Duty Judge)

Dated this 23rd day of July 2021