



Before: Judge Margaret Tibulya

Registry: Geneva

Registrar: René M. Vargas M.

SAMANDAROV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Esther Saabel, UNOG

Introduction

1. By application filed on 14 April 2023, the Applicant, a staff member of the United Nations Office of the High Commissioner for Human Rights (“OHCHR”), requests suspension of action, pending management evaluation, of the decision not to extend his temporary assignment with the Independent International Commission of Inquiry on Ukraine (“IICOIU”) beyond 30 April 2023, which as a result requires him to return to his original post on 1 May 2023.

2. The application for suspension of action was served on the Respondent, who filed his reply on 20 April 2023.

Facts

3. On 4 January 2021, the Applicant joined OHCHR as an Associate Human Rights Officer at the P-2 level.

4. On 4 March 2022, the Human Rights Council (“HRC”) adopted Resolution 49/1 on the “Situation of human rights in Ukraine stemming from the Russian aggression” and established the IICOIU for an initial duration of one year. To implement this resolution, the Programme Budget Implication (“PBI”) approved, *inter alia*, four P-3 Human Rights Officers/Investigators for 10 months from 1 June 2022 to 31 March 2023.

5. From 21 March 2022 to 3 April 2022, Temporary Job Opening 177300 (“TJO 177300”) for four positions of P-3 Human Rights Officer/Investigator was advertised. The TJO indicates that the positions were based in Vienna and located within the IICOIU pursuant to HRC Resolution 49/1.

6. On 21 March 2022, the Applicant applied to TJO 177300.

7. On 12 May 2022, the HRC adopted Resolution S-34/1 and requested the IICOIU to address the events in the Kyiv, Chernihiv, Kharkiv, and Sumy regions in late February and in March 2022. To implement this resolution, PBI approved, *inter alia*, one P-3 Human Rights Officer/Investigator and one P-3 Human Rights

Officer/Investigator/Child Protection Specialist, both positions for 9 months from 1 July 2022 to 31 March 2023.

8. By memorandum dated 9 June 2022 to the High Commissioner for Human Rights, the Chief of the Investigations Support Unit, OHCHR, referred to the two temporary staff positions approved in relation to Resolution S-34/1 and proposed that “the existing memo for the selection of [TJO 177300] [be] used for the selection of [the] two posts”. He also recommended appointing the Applicant for one of these positions. On 23 and 27 June 2022, the Deputy High Commissioner and the High Commissioner for Human Rights, respectively, approved this recommendation.

9. On 28 June 2022, the Applicant was informed that he had been selected for the temporary position of Human Rights Officer/Investigator (TJO 177300). The Applicant started his temporary assignment on 20 August 2022.

10. On 12 December 2022, the IICOIU Coordinator sent an email to all IICOIU staff enquiring who would be willing to continue with the Commission “if given the opportunity” in the event of a renewal of the IICOIU’s mandate at the end of March 2023.

11. On 15 February 2023, the Applicant’s temporary assignment was extended until 30 April 2023.

12. On 29 March 2023, the HRC adopted Resolution 52/L.41 where it decided to extend the mandate of the IICOIU for a further period of one year. To implement this resolution, PBI approved the continuation of the Secretariat, including, *inter alia*, four P-3 Human Rights Officers/Investigators. It also approved two P-3 Human Rights Officers/Investigators in Vienna: the first position for 12 months (1 April 2023 to 31 March 2024), and the second position for 9 months (1 July 2023 to 31 March 2024).

13. By email of 12 April 2023, the Applicant was notified that he would need to return to his original post in Geneva on 1 May 2023.

14. In response to the Applicant's query concerning the reason for the requested return to his original post, the OHCHR Human Resources Management Section, Programme Support and Management Services ("PSMS"), noted that:

[The Applicant] was [temporarily] assigned to serve on the second PBI of the special session resolution that was adopted on 12.05.2022, [t]he resolution is not renewed because the [IICOIU] has fully implemented it.

The [Applicant] is returning to his parent position on 01.05.2023. There is no decision that will affect the contract status of the staff member, his temporary assignment is just ending with no consequences on his parent position or contract status.

15. On 13 April 2023, the Applicant requested management evaluation of the contested decision.

Consideration

16. 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.

Prima facie unlawfulness

17. The Tribunal recalls that the threshold required in assessing this condition is that of "serious and reasonable doubts" about the lawfulness of the impugned decision (*Hepworth* UNDT/2009/003, *Corcoran* UNDT/2009/071, *Miyazaki* UNDT/2009/076, *Corna* Order No. 90 (GVA/2010), *Berger* UNDT/2011/134, *Chattopadhyay* UNDT/2011/198, *Wang* UNDT/2012/080, *Bchir* Order No. 77 (NBI/2013), *Kompass* Order No. 99 (GVA/2015)).

18. The Applicant contests the decision not to extend his temporary assignment with the IICOIU beyond 30 April 2023, which results in his return to his original post on 1 May 2023.

19. The Tribunal recalls that the characteristic of a temporary assignment is its limited duration. Indeed, a temporary assignment has an expiration date and, unless renewed by a subsequent discretionary decision, it will come to an end naturally on the date specified for this purpose and the concerned staff member will be placed anew against his or her original functions. Therefore, returning to one's initial duties is the natural outcome after a temporary assignment (see *Awoyemi* UNDT/2017/008).

20. It thus follows that the renewal of a temporary assignment is a discretionary decision, and that the Applicant was not entitled to have his temporary assignment extended. The decision not to extend a temporary assignment is within the Administration's discretion and is therefore lawful unless it can be established that such a decision was abused (see *Awoyemi* UNDT/2017/008 referring to *Assad* 2010-UNAT-021; *Sanwidi* 2010-UNAT-084; *Abbasi* 2011-UNAT-110).

21. The Respondent argues that the decision not to renew the Applicant's appointment was based on valid and objective reasons, namely, the non-renewal of Resolution S-34/1 after having been fully implemented by the IICOIU.

22. The Applicant claims that he applied for TJO 177300 created under Resolution 49/1 and was therefore not recruited under Resolution S-34/1.

23. In this respect, the Tribunal refers to the content of the 9 June 2022 memorandum which shows that TJO 177300 was also used for the selection of the two additional P-3 posts approved in relation to Resolution S-34/1. This is corroborated by the email of 28 June 2022 whereby the Applicant was informed of his selection for one of the six P-3 temporary positions covered by TJO 177300.

24. The 9 June 2022 memorandum also shows that the Applicant was selected for one of the two P-3 positions approved in relation to Resolution S-34/1. Although it is regrettable that the Applicant was not informed timely about the context of his selection, this mere fact does not render the contested decision *prima facie* unlawful as he applied for and accepted a temporary appointment available until 31 March 2023.

25. Furthermore, even if the Applicant was interviewed on 28 April 2022, that is prior to the adoption of Resolution S-34/1 on 12 May 2022, the Tribunal notes that he was only selected for one of the P-3 positions of Human Rights Officer/Investigator by the end of June 2022.

26. With respect to the Applicant's assertion that IICOIU did not assign any activities mandated by S-34/1 to him as they were implemented by other Investigators, the Tribunal will not examine this argument as no further evidence has been submitted by the parties in this respect.

27. The Applicant also claims that Resolution 52/L.41 clearly states that existing investigative capacity, which includes staff recruited under S-34/1 should be retained. However, the Tribunal notes that said Resolution only provides for the extension of the mandate of the IICOIU as per Resolution 49/1, that is the staff of the Secretariat, but does not refer to the positions related to the mandate of Resolution S-34/1, which had already been implemented.

28. Moreover, while two P-3 Human Rights Officers/Investigators positions were approved in relation to Resolution 52/L.41, these positions are subject to a new job opening and cannot be used as a basis to extend positions linked to a mandate that has already been implemented, as rightly pointed out by the Respondent.

29. The Applicant further argues that the non-extension of his temporary assignment was related to his allegations of prohibited conduct by his supervisors. However, apart from his own assertion, the Applicant has not provided any evidence in support of his claim.

30. Furthermore, the Applicant's argument in relation to his priority right as a staff member with a continuing appointment is inappropriate as the contested decision is not termination following a "reduction exercise", but rather the non-extension of his temporary assignment with the IICOIU. The Tribunal notes that the Applicant retains the right to return to his original post.

31. Therefore, the Tribunal finds that the Respondent has provided proper reasons for the non-extension of the Applicant's temporary assignment, and that the Applicant has failed to demonstrate that said decision was *prima facie* unlawful.

32. As the Applicant failed to satisfy the requirement of *prima facie* unlawfulness and given the cumulative nature of the conditions to be met for the granting of a suspension of action, the Tribunal does not find it necessary to consider whether the contested decision is urgent or whether it would cause irreparable damage (*Evangelista* UNDT/2011/212, *Dougherty* UNDT/2011/133).

Conclusion

33. In view of the foregoing, the application for suspension of action pending management evaluation is rejected.

(Signed)

Judge Margaret Tibulya

Dated this 25th day of April 2023

Entered in the Register on this 25th day of April 2023

(Signed)

René M. Vargas M., Registrar, Geneva