



**Before:** Judge Sun Xiangzhuang

**Registry:** Geneva

**Registrar:** René M. Vargas M.

TORRES SIBILLE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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

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**Counsel for Applicant:**

Sètondji Roland Adjovi  
Anthony Kreil Wilson

**Counsel for Respondent:**

Tamal Mandal, AS/ALD/OHR, UN Secretariat

## **Introduction**

1. By application filed on 28 December 2023, the Applicant, a staff member of the United Nations Assistance Mission in Afghanistan (“UNAMA”), requests suspension of action, pending management evaluation, of the decision not to renew her appointment beyond 31 December 2023.
2. The application for suspension of action was served on the Respondent, who filed his reply on 3 January 2024.

## **Facts**

3. On 9 July 2023, during a meeting with the Head, Resident Coordinator Office, UNAMA, the Applicant came to know about the abolition of her post in the 2024 budget submission of UNAMA.
4. By email exchange of 10 July 2023 between the Applicant and her supervisor, the latter confirmed that he was not aware of the proposed abolition of the Applicant’s post.
5. By email of 14 July 2023, the Head, Resident Coordinator Office, UNAMA, responded to the staff member, *inter alia*, that “the [2024 UNAMA] budget has already been considered by the ACABQ and unfortunately, we are not able to prevent the cut”.
6. By email of 16 July 2023, the Head, Resident Coordinator Office, UNAMA, responded to the Applicant that she “was not in a position to share the budget justifications with [the Applicant]”.
7. By email of 5 August 2023, the Chief Human Resources Officer, UNAMA, responded, *inter alia*, to the Applicant that “the justification [for the abolition of] the position is a confidential document and not shared”.

8. By letter dated 31 October 2023, the Chief Mission Support, UNAMA, informed the Applicant, *inter alia*, that her fixed-term appointment, expiring on 31 December 2023, would not be renewed if the General Assembly endorsed the abolition of her post proposed in the 2024 UNAMA budget.

9. By email dated 9 November 2023, Human Resources, UNAMA, requested the Applicant's supervisor to complete a table "for contract extension recommendations of International and National staff members in the Aid Coordination Coherence Section". The Applicant's name was listed therein with "31 December 2024" written in a column titled "Contract Extension Until".

10. On 12 November 2023, the Applicant and her supervisor signed the above-mentioned table.

### **Consideration**

11. 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*

12. 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 (see *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)).

13. The Applicant claims that the decision not to renew her appointment is *prima facie* unlawful because, first, the justification to abolish her post is false and misleading and, second, UNAMA created a legal expectation of renewal.

14. With respect to the first argument, the Tribunal notes that the Applicant essentially attempts to substantiate it with two paragraphs in a management evaluation request dated 20 August 2023. Their content shows that the Applicant disagrees with the justification for the abolition of her post set forth in a public document, namely A/78/6 (Sect. 3)/Add.5 (Proposed programme budget for 2024, Part II, Political affairs, Section 3, Political affairs, Special political missions, United Nations Assistance Mission in Afghanistan).

15. For instance, the document outlining the 2024 UNAMA budget (A/78/6 (Sect. 3)/Add.5), provides the following justification for the abolition of the post at stake:

Owing to the lack of an internationally recognized government and constitutional and legal bodies, direct engagement with the de facto authorities around aid coordination has stopped, and a new aid architecture has been established. Under this new aid architecture, UNAMA has been assigned coordination and secretarial functions that require different expertise, including on coordinating donors and international financing platforms around thematic areas, as well as tracking incoming aid streams through data collection.

16. The Applicant claims that “the very statement of the [Deputy Special Representative of the Secretary-General] that ‘engagement with [de facto authorities] has stopped’ amounts to not following the mandate of UNAMA”. This, however, is a partial quote of the above cited justification for it omits to account for the establishment of a new aid architecture calling for “different expertise”.

17. The Tribunal finds that a staff member having a differing opinion in post abolition matters does not make unlawful the decision(s) arising from the abolition of posts.

18. The Applicant also seeks to support her challenge against the veracity of the justification to abolish her post by arguing that UNAMA officials “attempted to deceive [her]” about the confidentiality of the information concerning the abolition of her post. She adds that these officials attempted to “cover up” what she characterizes as “lies”.

19. The record shows that document A/78/6 (Sect. 3)/Add.5 is dated 19 May 2023. Exchanges between the Applicant and UNAMA officials about the reasons for the abolition of her post took place after that (see paras. 4 to 7 above). Bearing in mind this timeline and the public nature of document A/78/6 (Sect. 3)/Add.5, the Tribunal is puzzled about why UNAMA officials were not more forthcoming when the Applicant inquired about the situation. While regrettable, this, however, does not substantiate a claim of unlawfulness of the decision not to renew the Applicant's appointment.

20. Concerning her second argument, the Applicant states that she "was requested to confirm a contract extension in writing from 1 January 2024 to 31 December 2024" and that she "accepted the contract extension in writing on 12 November 2023".

21. The 9 November 2023 email from Human Resources, UNAMA, referred to in para. 9 above and a copy of which is annexed to the Applicant's application, clearly states that the communication concerns "contract extension **recommendations**" (emphasis added). What the Applicant signed does not amount to a contract extension, and the Applicant signed the document attached to said email at the request of her supervisor, who lacks the delegated authority to extend appointments.

22. The above is further confirmed in the reply to the application where the Respondent stated that

[t]he Applicant was not asked to sign a contract or a proposal for a contract. Instead, in line with UNAMA's existing practice, what the Applicant signed was a list in preparation for a recommendation by the Applicant's supervisor to propose contract extension to be ultimately considered and actioned by the Chief Human Resources Officer [who has the delegated authority to renew appointments].

23. Additionally, the Respondent produced an email exchange between the Chief, Management Evaluation Unit, and the Applicant's Counsel dated 29 December 2023, where the former confirmed to the latter that the Applicant's argument of expectancy of renewal was duly considered and rejected because the

Applicant's supervisor lacked delegated authority (see *Houenou* 2021-UNAT-1091, paras. 26-27.)

24. The Applicant knew and the record shows that the extension of her contract was conditional to the General Assembly rejecting the recommendation to abolish her post. The fact that the Organization took preparatory steps in case the renewal of the Applicant's appointment was needed is reasonable under the circumstances, and does not support the Applicant's claim of a legal expectancy of renewal.

25. In view of the foregoing, the Tribunal finds that the Applicant has failed to establish that the decision not to renew her appointment is *prima facie* unlawful. 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 (see *Evangelista* UNDT/2011/212, para. 35; *Dougherty* UNDT/2011/133, para. 38).

### **Conclusion**

26. In view of the foregoing, the Tribunal DECIDES to reject the application for suspension of action pending management evaluation.

(Signed)

Judge Sun Xiangzhuang

Dated this 5<sup>th</sup> day of January 2024

Entered in the Register on this 5<sup>th</sup> day of January 2024

(Signed)

René M. Vargas M., Registrar, Geneva