

Introduction and Procedural History

1. The Applicant is a Resident Auditor, with the Office of Internal Oversight Services (OIOS) at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo

period of three months pending completion of the investigation and any disciplinary process against the Applicant.

7. The Applicant sought management evaluation of the decision on 5 March 2020. MEU upheld the decision on 23 April 2020.

8. On 13 May 2020, the Applicant was notified that the USG-MSPC had decided to extend his ALWOP for an additional period of three months from 13 April

Considerations

14. Applications for suspension of action are governed by art. 2 of the UNDT Statute and art. 13 of the Rules of Procedure of the Tribunal. Article 13 provides as follows:

1. 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 [emphasis added]**.

2.

3. The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

4. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

15. Article 2.2 of the Statute is intended to provide an uncomplicated and cost-effective procedure for suspending, in appropriate cases, an administrative action or decision.

that *prima facie*, the case he/she has made out is one which the opposing party would be called upon to answer and that it is just, convenient and urgent for the Tribunal to irreparably alter the *status quo*.¹

18. At this stage, the Applicant need only show *prima facie* unlawfulness. The presumption of regularity may be rebutted by evidence of failure to follow applicable procedures, the presence of bias in the decision-making process and consideration of irrelevant material or extraneous factors.²

19. Put another way, does it appear to the Tribunal that, unless it is satisfactorily rebutted by evidence, the claim of unlawfulness will succeed?³

20. On the facts before it, the Tribunal finds that the Applicant has not made out a case of *prima facie* unlawfulness.

21. The Applicant contends that the impugned decision is unlawful because it is based on evidence which has been improperly obtained. He does not dispute that a claim of unsatisfactory conduct has been made and is the subject of an ongoing investigation. The Applicant is instead challenging the sanctity of the evidence, and contends that the Investigation Report is the product of a flawed investigative process and illegally obtained evidence.

22. For present purposes, the Tribunal is persuaded that the impugned decision is not *prima facie* unlawful. There is nothing on the record to suggest that the USG/OIOS abused her discretion in arriving at the decision that the Applicant seeks to have suspended.

23. As the Applicant has not satisfied the limb of *prima facie* unlawfulness, there is no need for the Tribunal to further inquire into whether the impugned decision would

¹ See for example *Newland* Order No. 494 (NBI/2016).

² *Rolland* 2011-UNAT-122. See also-*Simmons* 2014-UNAT-425; *Zhuang Zhao and Xie* 2015-UNAT-536; *Tintukasiri* 96 Tf1 0 0 13BT/F1 9.96 Tf1 0 u

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