



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

ENAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Stephen Margetts, ALS/OHRM, UN Secretariat
Chenayi Mutuma, ALS/OHRM, UN Secretariat

Introduction

1. On 20 May 2013, the Applicant, a staff member of the Department of General Assembly and Conference Manage

respect to receivability, the Respondent states that the Applicant has been located in the Albano building since 2009 and is not scheduled to move. He does not have standing to bring claims on behalf of other staff members. With respect to the merits, the Respondent states that the Albano building complies with local laws and safety and security standards. The Respondent further submits that the Applicant does not have a right to return to the Secretariat and no promises were made at any point in time to him or other staff members in the Albano building that they would be moved to the Secretariat building. The Respondent further submits that the application is not urgent as the Applicant has been in the Albano building since 2009. He was made aware of the decisions he seeks to contest on 4 or 16 April 2013, but waited until 20 May 2013 to file his application, thus making any urgency in this case self-created. The Respondent further submits that the Applicant would not suffer irreparable harm. He has occupied the Albano building for approximately four years without incident and no evidence has been presented by him demonstrating any risk to health and safety for occupants of the Albano building.

4. The application was transmitted to the Respondent on Monday, 20 May 2013, the same day it was received by the Registry. The Respondent's reply was duly filed on 21 May 2013. The Tribunal has five working days from the service of the application on the Respondent—or until 5 p.m. on Tuesday, 28 May 2013 (given that Monday, 27 May 2013, is a holiday)—to complete its consideration of the present application.

Background

5. The factual background below is based on the parties' submissions and the record before the Tribunal. (See also *Gatti et al.* Order No. 126 (NY/2013), dated 7 May 2013.)

DGACM staff members to the Albano building; to relocate staff already in the Albano building elsewhere within the building; and to deny DGACM staff the right to return to the renovated Secretariat building).

12. In late April 2013, staff-management consultations broke down. Around that time, staff members working in the Albano building and staff members designated to move into it held a general meeting and adopted a resolution strongly objecting to the scheduled relocation to the Albano building.

13. Between 26 April and 2 May 2013, the Tri

pending management evaluation. It is not meant to make a final determination on the substantive claims. Applications for in

alleged to be in non-compliance with the terms of appointment or the contract of employment is an individual right and it is for each staff member to make.

19. It is a term of the Applicant's contract of employment that the Organization must exercise reasonable care to ensure the safety, health, and security of its staff members (*Gatti et al.*). The Applicant alleges that relocation of additional staff members to the Albano building would "exacerbate the existing problems in the Albano building", thus worsening his conditions of service and breaching his rights. He also submits that he was among the staff members promised to be moved back into the Secretariat building. He alleges, in effect, that this pr

Prima facie unlawfulness

23. For the *prima facie* unlawfulness test to be satisfied, the Applicant is required to show a fairly arguable case that the contested decisions are unlawful. For instance, it would be sufficient for him to present a fairly arguable case that the contested decisions were influenced by some improper considerations, were procedurally or substantively defective, or were contrary to the Administration's obligation to ensure that its decisions are proper and made in good faith (*Jaen* Order No. 29 (NY/2011); *Villamorán* UNDT/2011/126).

General Assembly resolutions

24. The Applicant submits that in a number of resolutions “the General Assembly has reiterated the nature of swing space as temporary office accommodation during the period of CMP, pending renovation of the Secretariat Building at which point the staff members temporarily displaced to swing space would return to the Secretariat Building”. The Applicant refers the Tribunal to resolutions 63/270 (adopted on 7 April 2009), 64/228 (adopted on 22 December 2009), 65/269 (adopted on 4 April 2011), 66/258 (adopted on 9 April 2012), and 67/246 (adopted on 24 December 2012). The Applicant submits that the General Assembly has reserved to itself the authority to make any changes to CMP. The Applicant submits that “[s]ince management has not procured express approval of the General Assembly before making the contested decisions, these decisions would therefore be *ultra vires*”.

25. The Respondent submits that the Administration has acted lawfully in managing the office space available to it. The Respondent submits that the Administration is obliged to accommodate its workforce taking into account a range of financial, logistical, and organizational issues. The decision to relocate the Applicants was made in furtherance of a mandate by the General Assembly, which requested the Secretary-General in para. 19 of sec. V of its resolution 67/246,

adopted on 24 December 2012, to “enhance efforts to manage the costs pertaining to swing spaces with a view to optimizing the rental contracts”. The Respondent submits that, in line with this resolution, a decision was taken in 2012 to retain the Albano building as part of the Organization’s portfolio of rental properties.

26. Although the Applicant referred the Tribunal to a number of General Assembly resolutions, the Tribunal has not been alerted to any provisions that clearly state that it is impermissible for the Respondent to continue to utilize the Albano building. In fact, para. 18 of sec. V of resolution 67/246 reflects the General Assembly’s awareness that the Secretariat “intends to keep two swing space leases [including the Albano building] after the completion of [CMP], which will result in an additional burden on the regular budget”. While the General Assembly noted budgetary implications of keeping two swing space leases, it was clearly made aware of such plans and did not say that they were not permitted. The Assembly’s resolution 67/246 specifically relied on the Report of the Advisory Committee on Administrative and Budgetary Questions of 25 October 2012 (A/67/548, “Capital master plan”), which states at para. 40(a) that “the Secretariat considers the building to be part of its midterm space planning and management strategy” and that the lease will continue until its expiration in July 2017. The Assembly’s resolution also referred to the Secretary-General’s Tenth annual progress report on the implementation of the capital master plan (A/67/350), dated 5 September 2012, which states at para. 18 that the lease on the Albano building would be retained until July 2017, “at which time it will either be extended or terminated as part of the medium-term office requirements strategy”.

Alleged promise of return to the Secretariat building

27.

management has failed to resolve. He states that “the conditions would become even worse as a result of the decisions” made on 4 and 16 April 2013 to bring additional staff into the building and to deny staff members of DGACM temporarily accommodated in the Albano building the right to return to the renovated Secretariat building. The Applicant further states that staff surveys conducted in April 2013 show that the Albano building does not meet the requirements stipulated in para. 34 of General Assembly resolution 62/87, adopted on 10 December 2007, which emphasized to the Secretary-General the importance of ensuring that “the swing space meets the highest standards for the safety, security, health and well-being of the staff of the United Nations”. The Applicant states that “with a high rate of staff members falling ill, [experiencing] breathing difficulties, developing allergies and water quality issues, the whole building’s environmental health should have been thoroughly assessed, however, [m]anagement has failed to properly investigate and resolve these issues”. The Applicant further submits that the Albano building lacks many amenities available in other buildings used by the United Nations, such as cafeteria and medical services.

31. The Respondent submits that the Albano building is compliant with the relevant local regulations and standards. The Respondent submits that the relocation to the Albano building was required by several considerations, including the need to: optimize space density; consolidate related units that are presently scattered across different locations under one roof; allow the relocation of other offices and avoid penalties for failure to vacate them; and minimize the use of rental space and related expenses. The Respondent submits that the Albano building was among two swing spaces that were always considered as “long-term opportunities”, which is why the Organization invested over USD24 million in the renovation of the Albano building. The Respondent acknowledges the ongoing issues concerning the Albano building but states that management has been

addressing them and will continue to address them as they arise in consultation with the staff.

32. With regard to the Applicant's claim that many of the work stations in the Albano building lack natural light, the Respondent states that the Applicant's work station has access to natural light. Furthermore, 88 per cent of incoming staff will have access to natural light, 11 per cent will have partial access to natural light, and only 1 per cent will have no access to natural light. The Respondent states that, in any event, there is no requirement that workspaces have access to natural light.

33. The Respondent further submits that, with respect to the Applicant's complaints that the Albano building has no cafeteria or medical service, there is no provision in his terms of appointment that provides for a cafeteria and medical services to be located in the premises in which he works. The Respondent submits that all staff, including the Applicant, may have their meals, if they wish, at the Secretariat building, which is located a short walk from the Albano building. The same applies to medical services.

34. It is apparent to the Tribunal that there are a number of issues with the working conditions in the Albano building, as is in fact acknowledged by management. There is also a sense of dissatisfaction of staff presently located there with the quality of their work conditions. However, the Tribunal is not persuaded on the papers filed that the Applicant has demonstrated that the implementation of the contested decisions—provided that they are not yet fully implemented—would have such effect on his working conditions as to render the decisions *prima facie* unlawful.

35. In particular, the Respondent's submission that the building complies with the relevant local codes and regulations—the same submission made by the Respondent in *Gatti et al.*—stands unrebutted. The Applicant has not proffered any evidence to contradict the Respondent's submission, which finds support in

Conclusion with respect to the prima facie unlawfulness

40. The Tribunal finds that the Applicant has not satisfied the requirement of *prima facie* unlawfulness of the contested decision.

Urgency

41. Although the findings above are sufficient to dismiss the present application, the Tribunal finds it appropriate to state the following regarding the requirement of particular urgency.

42. Urgency is relative and each case will turn on its own facts, given the exceptional and extraordinary nature of such relief. If an applicant seeks the Tribunal's assistance on an urgent basis, she or he must come9f37(rto she Tribunal ft)]TJ1-7.97 Otio

