

6. On 30 October 2018, the Respondent filed his reply contending *inter alia* that the Application.

Background

7. In the application for suspension of action, the Applicant submitted as follows regarding the facts to be relied on (references to annexes omitted):

... The Applicant joined the DGACM Publishing team in March 2013, when the 1st Phase of “Project for digitalisation with DGACM” was launched with the funding provided by the State of Qatar.

The digitalisation programme was conceived in order to preserve important older United Nations documents, facilitate future availability and usability of valued documents, reduce the carbon print, and contribute to environmental improvement.

On 26 September 2018, the Applicant

for the 2nd phase of the digitalization project; and that (iii) DGACM intended to hire independent contractors for the 2nd phase of the project.

i. This information not only directly contradicted the notification the Applicant received on 26 September 2018 that the digitalization project was closing but it also contradicted the “Project Initiation Document” that specified that DGACM would “utilize five general service staff members” for the 2nd phase of the digitalization project.

j. The Administration’s reliance on project closing was intentionally misleading and was aimed to deprive him of an opportunity to challenge the Administration[’s] failure to comply with its obligations sec. 3.3(b) of ST/AI/2013/4.

k. There appears to be no lawful explanation for removing the Applicant while there was still funding from the 1st phase of the project and there was

j. Contrary to the Applicant's allegations, the reason given to the Applicant for the contested decisions is true. The assertions regarding the statements made by the USG/DGACM at the meeting on 23 October 2018 are incorrect. At the meeting, the USG/DGACM explained that the Government of Qatar had not provided the Organization with funding for the proposed project. The documents relied upon the Applicant in support of her allegations are internal working documents only, and do not represent the final version of the proposed project submitted by DGACM to the Government of Qatar in June 2018.

k. The Applicant's allegations that she is entitled to be accorded the rights set out in staff rule 9.6(c) and (e) upon termination of fixed-term appointment for abolition of post have no merit. Chapter IX of the Staff Rules (Separation from service) clearly distinguishes between separation of service due to expiration of appointment (non-renewal) and termination of appointment (staff rule 9.4 and 9.6). A staff member whose fixed-term appointment expires (that is, non-renewed) due to abolition of post or reduction in staff is not entitled to the rights set out in staff rule 9.6(e) upon termination of fixed-term appointment

to abolition of post apply to a non-renewal of appointment for abolition of post.

Consideration

The mandatory and cumulative conditions for suspending an administrative decision

10. Article 2.2 of the Dispute Tribunal's Statute states:

... The Dispute Tribunal shall be competent to hear and pass judgement 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. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

11. Article 8.1(c) of the Tribunal's Statute states that an application shall be receivable if: "... [a]n applicant has previously submitted the contested administrative decision for management evaluation, where required".

12. Article 13.1 of the Tribunal's Rules of Procedure states:

... 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.

13. The Tribunal considers that, for an application for suspension of action to be successful, it must satisfy the following mandatory and cumulative conditions:

a. The application concerns an administrative decision that may properly be suspended by the Tribunal;

- b. The Applicant requested management evaluation of the contested decision, which evaluation is ongoing;
- c. The contested decision has not yet been implemented;
- d. The impugned administrative decision appears *prima facie* to be unlawful;
- e. Its implementation would cause irreparable damage; and
- f. The case is of particular urgency.

Whether the application concerns an administrative decision that may properly be suspended by the Tribunal

14. It is undisputed that the contested decision in the present case, namely the decision not to renew the Applicant's fixed-term appointment beyond 31 October 2018, is an administrative decision subject to review by the Tribunal, including its implementation being suspended pending management evaluation. Consequently, the first cumulative and mandatory condition presented above is fulfilled.

Whether the Applicant requested management evaluation of the contested decision and whether the evaluation is ongoing

15. An application under art. 2.2 of the Dispute Tribunal's Statute is predicated upon an ongoing management evaluation of the contested decision. It is uncontested from the parties' submissions that the Applicant requested management evaluation of the contested decision on 5 October 2018, and that she filed an amendment to the management evaluation request on 26 October 2018. The management evaluation was initiated prior to the filing of the application for suspension of action. The Tribunal notes that there is no evidence on the record that MEU has completed its

evaluation. The Tribunal therefore finds that the contested decision is the subject of an ongoing management evaluation and the second condition is fulfilled.

Whether the contested decision has not yet been implemented

16. By Order No. 212 (NY/2018) dated 26 October 2018, the Tribunal granted, without prejudice to the Tribunal's determination of the application for suspension of action under art. 2.2 of the Dispute Tribunal's Statute, the suspension of the implementation of the decision not to renew the Applicant's fixed-term appointment beyond 31 October 2018 until the Tribunal rendered its decision on the application for suspension of action, or until further order.

17. Therefore, the contested decision is not yet implemented. Consequently, the third cumulative and mandatory condition presented above is fulfilled.

Whether the impugned administrative decision appears prima facie unlawful

18. The Tribunal notes the contested decision consists of the non-extension/renewal of Applicant's fixed-term appointment beyond its expiration date 31 October 2018. As results from the notification received by the Applicant on 26 September 2018, the reason provided by the Administration for the non-renewal was the confirmation that "the digitalization project will come to closure on 31 October 2018".

19. Further the Tribunal notes that on 22 June 2018, DGACM submitted a detailed proposal for the implementation of the second phase of the digitalization project for the consideration of the Government and Permanent Mission of Qatar. The document titled "Project Proposal for the Digitization and Enhanced Accessibility of Official Documents of the United Nations" states in relevant parts:

... This document presents a strategic plan for the United Nations Digitization Project to be funded by the voluntary contribution of \$5

which set forth the digitization and preservation of historic and older UN documents. That Project has also been generously supported by a voluntary contribution of \$5 million from Qatar and \$100,000 from China. When the Project concludes later this year over 1.25 million pages covering the most vulnerable, older, historic documents will have been preserved ...

... The main goal of this proposal is to create a technical and administrative framework for the digitization and migration of official documents, and to increase and enhance the access and usability of the content in the six official languages. The majority of the United Nations

fund is secured, taking the following set of actions by DGACM:

1. Get bound books and documents from the DHL every Monday at 100,000 pages / month.
2. Prep for scanning.
3. Ensures safe handling of original documents
4. Cut the spine if need be
5. Creation of electronic documents, through digitization of historical UN documents in paper format.

- a) Optimize image quality to ensure legibility of images
- b) Perform OCR function in the language of the document scanned

- c) Quality Control in All Languages by document symbol and language and store them in the appropriate folder and DHL's NAS drive

- d) Finalization as per DTP standards PDF documents based on the IISO 14289-1 standard (known as PDF/UA) under Electronic document file format enhancement for accessibility.

6. Route to the Front Desk for upload to ODS and eLuna
7. Place cut-spine documents in acid-free boxes bought by MPD
8. Re-Bound the books cut using the Press Room's book-binder
9. Return documents and books to the DHL ...

... These are the standard ways of achieving the retrospective digitization and access set-up of this magnitude and complexity. Because this process is very labour-intensive, it requires a variety of professional expertise and equipment. Current five general service staff members from MPD together with five general service WAE (when as employed) staff with technical and language skills, DGACM will provide additional necessary training for the staff to the level of complexities and sophistication required ...

... Impact and Expected Outcome:

a. Easy, efficient and effective access to United Nations documents

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Order No. 219 (NY/2018)

IT IS ORDERED THAT:

31. The application for suspension of action is granted in relation to the decision not to renew the Applicant's fixed-term appointment beyond 31 October 2018, and the implementation of this decision is suspended pending management evaluation.

Observation

32. While noting that the finalization of the documents presented by the Applicant in the present case is currently ongoing, the Tribunal is of the view that the Administration is in the best position to assess during the management evaluation the ongoing factual situation, together with the legal effects of the existing proposals on the contracts of the staff members employed for the first phase of the digitization project, including their due-process rights, taking also into account the distinction