



Case No.: UNDT/GVA/2009/89

Judgment No.: UNDT/2009/071

Date: 11 November 2009

The issues

1.

performance expectations”. This recommendation was accepted by the Special Representative of the Secretary-General (SRSG) and the Chief of Mission. The Rebuttal Panel further noted, *inter alia*, that “underlying many of the issues identified in the staff member’s PAS was a problem,







decision was tainted by bad faith, improper motivation, arbitrariness, discrimination or was in violation of her due process rights”.

28. The Respondent also believes that there is no urgency in this application, since the Applicant has been on notice since 1 June 2008 that due to her performance failings, UNFICYP had decided not to renew her contract. He argues that the Applicant had a long time to prepare for her separation from the Organization.
29. The Respondent further notes that the Applicant did not demonstrate that the implementation of the decision would cause her irreparable harm and that – should the Applicant win her case on the merits – she could be compensated by a monetary award.

#### Considerations

30. The application is receivable under art. 2.2 of the statute of the UNDT (UNDT Statute) and art. 13.1 of the Tribunal’s rules of procedure (UNDT RoP).
31. In the new system of Administration of Justice the Dispute Tribunal can release two different types of interim measures. These types are related to the stages of the application. One of them is connected to the administrative review, now called management evaluation. The other one has its place during the proceedings of judicial review.
32. According to art. 2.2 of UNDT Statute the Dispute Tribunal shall be competent to hear and pass judgment on an application 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. Art. 13.1 of UNDT RoP state, using the same words, that the Dispute Tribunal shall order a suspension of action in such a situation.







40. In the present case it is not easy to draw the line. Since the Applicant initially contested the administrative decision of 1 June 2008 not to renew her contract, which is already before the Dispute Tribunal, being case No. UNDT/GVA/2009/50, it might be arguable that her new application for



employment with the Organization ceases on the expiration date of fixed-term appointments and that a legal expectancy of re

with the Applicant on her contractual status is an email from the OIC,

Organisation. The logic for this is that while it i