Introduction

1. The Applicant, a staff member of the United Nations Office on Drugs and Crime (UNODC), based in Bamako, Mali, is applying for a suspension of the decision to separate him from service on the expiry of his fixed-term contract on 29 February 2012.

2. The Applicant requested a management evaluation of this decision on 9 February 2012 and is awaiting the outcome. On 17 February 2012, pending management evaluation, the Applicant filed the present request for suspension of action pursuant to article 13 of the Rules of Procedure of the United Nations Dispute Tribunal (UNDT).

3. On 22 February 2012 the Respondent filed a Reply.

Facts

4. The Applicant joined UNODC on 12 January 2011 as Project Coordinator at the P4 level. The specific project he was to work on ZDV ³$VVLVWDQFH IRU WKH LPS of the National Integrated Programme for the control of illicit trafficking and organized FULPH LQ0DOL´ ³3

5. The Applicant asserts that he has performed satisfactorily, and has received no indication that there were any performance-related concerns. The Tribunal has seen no evidence to the contrary.

6. 7KH $SSOLFDQW¶V SRVLWLRQ ZKHQ DGYHUWLVHG Z and initial appointment will be for one year. Any extension is subject to availability of IXQGLQJ ´

7. 7KH EXGJHW IRU ZKLFK post costs was approved on 9 January 2012. The PNI is due to continue until 30 November 2012. Thus there is no indication that budgetary constraints or the discontinuance of the project prevent the UHQHZDO RI WKH $SSOLFDQW¶V FRQWUDFW

17. Finally, the Applicant argues that reliance on the supposed email from the Malian authorities as a basis for the non-renewal of the Applicant's contract is an irrelevant circumstance which should not form part of the decision-making process. The staff of the United Nations enjoys independence in the exercise of their duties and this would be seriously compromised if the views of a Member State were taken into account when

7KH 5HVSRQGHQW¶V 6XEPLVVLRQV

20. The Respondent opposes the Application. The Respondent relies on the wording of the letter of appointment which clearly stipulates that the appointment was for a fixed-term; that the appointment would expire on the date stipulated therein; and that a fixed-term appointment does not carry any expectancy of renewal. Thus the Respondent asserts that the reason for the non-renewal is simply the expiry of the fixed-term contract, and nothing more.

21. The Respondent argues that since Obdeijn is under appeal before the United Nations Appeals Tribunal (UNAT), it has no force and should not be relied upon.

> the decision appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

Prima facie unlawfulness

26. The first question for the Tribunal is whether or not the Applicant has made out a prima facie case of unlawfulness in the decision not to renew his contract. The Respondent is correct that fixed-term appointments within the United Nations stipulate that they carry no expectancy of renewal and clearly state that they will expire on the date stated in the letter of appointment. However, the jurisprudence of this Tribunal and the former United Nations Administrative Tribunal is clear that, notwithstanding these provisions in the contract, a decision not to renew a fixed-term appointment may be unlawful where countervailing circumstances render it so. It is assumed that the Respondent acts in good faith when taking the decision not to renew a contract, and any indication that he has not, or that prejudice, bias, or other improper motives are at play will taint the whole decision making process and render it unlawful.[2]

27. In Pirnea UNDT/2011/059, the Tribunal stated:

> The general rule is that a fixed-term contract has an expiry date and such contract does not carry any expectancy of renewal. From the case law of the former United Nations Administrative Tribunal and the United Nations Dispute Tribunal, two schools of thought have emerged. Firstly, there is no duty to give reasons for the non-renewal of a fixed-term appointment but if the Organization decides to give reasons these reasons must be supported by evidence or by facts. Secondly, there is an emerging jurisprudential thinking that when a contract is not renewed or terminated reasons must be given to the concerned staff member so that he or she is in a position to take any action as he or she deems fit.
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> Whether reasons should be given or not, when a contract is not being renewed The

33. It seems to the Tribunal that everything points to a suspect reason for the non-renewal, and the fact that no clear reason was given, even after the Applicant specifically requested it, makes this an easy inference to draw.

34. As to the supposed email from the Minister of Justice ² if indeed Mr. Schmidt was suggesting that this was the reason behind the non-renewal decision ² there can be no doubt that taking a decision based on -

employment for no apparent reason constitutes irreparable moral harm, that cannot simply be compensated by an award of damages.

Conclusion

41. The Application is granted. The Respon(2)6(9)] TJETQq426.67 720.96 151/T1 0204 T9Tim[(T9T7T