

UNITED NATIONS DISPUTE TRIBUNAL

Introduction

1. The Applicant, a former staff member of the United Nations Development Programme (“UNDP”) appealed the “resignation from [the Applicant’s national Government] as condition for extension of Fixed Term Appointment beyond 6 August 2021”.

2. The Respondent replied that the application is not receivable *ratione materiae* and, in any event, without merit.

13. On 16 July 2021, the Applicant received a notice of separation.

Consideration

14. Given the Respondent's challenge to the receivability of the application, the Tribunal deems it appropriate to determine this question as a preliminary matter.

15. The Respondent submits that the Applicant did not contest the decision not to renew his fixed-term appointment in his requests for management evaluation and that the determination regarding his continued employment by his national government is not a contestable administrative decision.

16. In light of the Respondent's objections, the Tribunal will first determine what is the contested administrative decision to then examine whether the appeal against it is receivable.

What is the contested administrative decision?

17. The Respondent notes that the Applicant could not have contested the non-extension of his fixed-term appointment in his requests for management evaluation because he was only notified of the decision not to renew his fixed-term appointment on 13 July 2021, after he had submitted them, and provided with the separation letter on 16 July 2021.

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18. The Respondent further avers that respondent' (

appointment beyond 6 August 2021 should he fail to tender his resignation from Ministry of Foreign Affairs of [national government]”.

20. He further recalls that in his response to the management evaluation request, the Respondent upheld the “decision to impose the condition of resignation for the Applicant’s extension of appointment” while not addressing the Applicant’s request for the renewal of his appointment as remedy.

21. The Applicant finally states that the decision not to renew his appointment was taken on 27 April 2021 by means of an email by the Director/HR.

22. In this respect, the Tribunal notes that in the application, the Applicant, who as the Respondent rightfully states, is represented by legal counsel, identifies the contested administrative decision to impose on the Applicant, as the condition for the extension of his fixed-term appointment, to resign from his national government.

23. Moreover, the Applicant clearly identifies the 27 April 2021 email from the Director/HR as the contested administrative decision both in his application and in his requests for management evaluations.

24. The 27 April 2021 email informs the Applicant that following consultations with UNDP’s Ethics Office, it was not considered advisable to consider any further contract extensions before he tendered his resignation from his national government. Moreover, the email further notes that a fixed-term appointment carries no expectation of renewal and therefore, even if he were to fulfill the condition, there was no guarantee that the appointment would be extended.

25. Thereafter, on 16 July 2021, the Applicant received his separation letter informing him of the non-extension of his fixed-term appointment beyond 6 August 2021.

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39. This does not mean that the imposition of the condition of the Applicant's resignation was not capable of judicial review. The Applicant would have been able to request the Tribunal's review of its legality in the context of an appeal against the non-renewal decision.

40. However, in the current application, the Applicant failed to challenge the final decision not to extend his appointment. Therefore, he failed to challenge an administrative decision in the sense of art. 2.1(a) of the Tribunal's Statute and therefore, the application falls outside the competence of the Tribunal.

Conclusion

41. The application is dismissed.

(Signed)

Judge Joelle Adda

Dated this 11th day of February 2022

Entered in the Register on this 11th day of February 2022

(Signed)

Nerea Suero Fontecha, Registrar, New York