

7. By email of 12 October 2012, the Deputy High Commissioner notified the Applicant in writing of the decision to rescind her appointment.

8. On 17 October 2012, the Applicant submitted a request for management evaluation of the decision to rescind her appointment and on the same day she filed the application which forms the subject of th

d. The direct involvement of the Inspector General in the selection and management evaluation processes puts into question his neutrality as well as the confidentiality of the management evaluation process. Further, the Applicant was not given an opportunity to be heard in the context of the management evaluation which led to the contested decision. Lastly, it is doubtful that decisions of the Deputy High Commissioner taken in the context of the management evaluation can annul the High Commissioner's selection decisions;

e. According to paragraph 1.4 of inter-office memorandum IOM/FOM No. 034/2009 (The new Administration of Justice System) and staff rule 11.3(a), requests for management evaluation do not have the effect of suspending the implementation of the contested administrative decision. However, in this case, the request for management evaluation submitted by another staff member did have the effect of suspending the decision to select the Applicant for the post of Senior Inspection Officer;

f. The justification for the contested decision is weak at best and, in any event, it is for the Joint Review Board to review the selection process and determine whether or not it is tainted by irregularities;

g. The Tribunal has set a deadline of 90 days from the date the decision is communicated to the staff member for the Administration to revoke an unlawful decision conferring rights on another staff member. In this case, more than 90 days have elapsed between the selection and the rescission decisions;

Urgency

h. The decision to rescind the Applicant's appointment has not yet been implemented as no formal document has been signed off by the High Commissioner and DHRM. However, its implementation is believed to be imminent;

i. She is not challenging the decision to conduct the selection process anew but the decision to rescind her appointment;

Irreparable damage

j. The implementation of the contested decision would cause irreparable harm to her career prospects, professional and personal reputation, as well as mental anguish;

k. The implementation of the contested decision would also set a dangerous precedent whereby managers could reverse appointments even after they have been announced. Requests for management evaluation would thus unfairly put on hold another staff member's rightful appointment;

l. The delay in assigning her to the post of Senior Inspection Officer prevented her from being considered for other advertised posts, including one for which she had been recommended;

m. According to the rotation policy, the post of Senior Inspection Officer was her last chance to be reassigned to another position in the UNHCR headquarters;

n. As the UNHCR promotion framework is on a yearly basis, the implementation of the contested decision would harm her chances to be promoted;

o. Since her post within DHRM has already been filled, she has no position to return to;

p. Her supervisor within DHRM is required to attend all meetings conducted in relation to the selection of candidates and she cannot therefore be assured that she will be fairly considered for any posts;

q. The implementation of the contested decision would cause irreparable harm to DHRM and the credibility of the selection process.

11. The Respondent's contentions are:

Admissibility

a. The Deputy High Commissioner ordered that the selection process be conducted anew. In the context of this new selection process, the Applicant will receive full and fair consideration as a suitable candidate. Her application is therefore premature;

Prima facie unlawfulness

b. In basing his decision to conduct the selection process anew on the determination that the unsuccessful candidate had not received full and fair consideration, the Deputy High Commissioner did not exceed his authority. On the contrary, he indicated in his memorandum of 11 October 2012 that he expressed no view as to the merits of the relevant candidates;

c. The purpose of management evaluation is to give management a chance to correct itself in cases where there has been flawed decision-making. Thus, in order for a management evaluation to be meaningful, the Administration must have the opportunity to take appropriate interim measures that prevent a situation where a flawed decision could no longer be corrected;

Urgency

d. In the context of the new selection process, the Applicant will receive full and fair consideration as a suitable candidate;

e. Further, the Applicant's current post has not been filled and will not be re-advertised pending the outcome of the new selection process. The Applicant may thus remain on her current post;

Irreparable damage

f. No final decision on the selection for the post is made;

g. The Applicant may exceptionally submit late applications for vacancies advertised in September 2012;

h. The Applicant may remain on her current post without any negative impact on her salary, status or rights pending the new selection process as well as the outcome of any other applications she may submit.

Consideration

12. Article 2.2 of the Tribunal's Statute provides that the Tribunal may suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie*

16. Inter-office memorandum IOM/FOM No. 034/2009 (The new Administration of Justice System) which, inter alia, establishes the procedure for requesting management evaluation within UNHCR, further states:

The system of management evaluation ... provides the administration with the opportunity to correct itself and, where possible, to hold decision makers accountable for their actions.

The decision of the Deputy High Commissioner will constitute the management evaluation and will be communicated to a staff

Irreparable damage

22. The Tribunal must now examine whether the requirement of irreparable damage is met in this case.

23. The Respondent stresses that the Applicant has remained on her P-4 post, and that the post for which she had applied was not filled and will not be pending completion of the new selection process to which the Applicant can take part.

24. In view of this, The Tribunal considers that the Applicant's alleged injury is only hypothetical and that, therefore, the application does not meet the