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ADMINISTRATIVE TRIBUNAL

Judgement No. 896

Case No. 896: BACCOUCHE

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed as follows: Mr. Hubert Thierry, President; Mr. Julio Barboza; Mr. Victor Yenyi Olungu;

Whereas on 7 August 1997 Habib Baccouche, a former staff member of the United Nations, filed an application which did not meet all the formal conditions established in rule 7 of the rules of procedure of the Tribunal;

Whereas on 8 October 1997 the Applicant, having made the necessary corrections, refiled an application in which he requested, in accordance with article 11 of the Statute of the Tribunal, a revision of Judgement No. 802 given by the Tribunal on 21 November 1996, relying on "new facts" discovered in mid-July 1997 (...), facts which were unknown to him or to the Tribunal before the Judgement of 21 November (...). [He] further invokes a

clerical mistake which vitiates that judgement (...), which was moreover delivered - in some respects - in violation of the right to a hearing (...)."

Whereas the application contained conclusions in which the Applicant requested the Tribunal:

- "1. [To] supplement Judgement No. 802 given on 21 November 1996 in case No. 896 by ordering the reinstatement of Mr. BACCOUCHE at the United Nations, Geneva;
2. [To] award to Mr. BACCOUCHE compensation corresponding to his base salary (Fr. 5,890 a month) for the period from 23 March 1995 - the date of his dismissal - to the date of the revised judgement;
3. [To] award to Mr. BACCOUCHE fair compensation for part of his costs of counsel."

Whereas the Respondent filed his answer on 20 November 1997;

Whereas on 18 December 1997 the Applicant filed an additional document;

Whereas the Applicant filed written comments on 20 January 1998;

Whereas on 5 March, 8 and 30 June, and 2 and 3 July 1998 the Applicant filed additional documents;

Whereas on 3 July 1998 the Tribunal decided that there would not be any oral proceedings in the case;

Whereas on 7 July 1998 the Applicant filed an additional document;

Whereas on 19 and 24 July 1998 the Applicant filed an additional document;

Whereas on 4 August 1998 the Tribunal informed the parties that it had decided to defer the case to its next session;

Whereas on 11 November 1998 the Applicant filed an additional document;

Whereas the facts of the case were set out in Judgement No. 802.

Whereas the Applicant's main argument is the following:

In mid-July 1997 the Applicant learned of three new facts which had not been brought before the Tribunal before its decision of 21 November 1996 and which justified a revision of its judgement in favour of the Applicant: (1) the Director of the Division of Administration of the United Nations Office at Geneva (UNOG) said, before the Tribunal's decision, that "nothing justified the dismissal of Mr. BACCOUCHE; the file contained nothing serious and he would probably win his case before UNAT (...)" ; (2) there was a cause-and-effect connection between the action taken by the Applicant in 1993 during the general meeting of the Credit Union of the international civil service and his dismissal; and (3) the Chief of the UNOG Security and Safety Section wrote a note dated 11 November 1992, in which he explained that the incident of 21 August 1992 - an altercation with a security guard - concerned another staff member and not the Applicant.

Whereas the Respondent's main arguments are the following:

1. The request for revision does not cite any fact which is a decisive factor or was unknown to the Tribunal or to the Applicant before the judgement was given,...

2. The request for revision does not cite any clerical mistake on the part of the Tribunal.

The Tribunal, having deliberated from 3 July to 4 August 1998 in Geneva and from 3 to 20 November 1998 in New York, pronounces the following judgement:

I. Article 11 of the Statute of the Tribunal, which addresses both applications for revision and applications for correction of clerical mistakes reads as follows:

"The Secretary-General or the applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement. Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties."

It is clear from this provision that applications for revision are admissible only if a new fact is discovered which is sufficiently important to have affected the Tribunal's decision and which was unknown either to the applicant or to the Tribunal.

Further, applications for correction of clerical mistakes have no other purpose than to amend such mistakes in the text of a judgement. In fact, such mistakes may be typographical or arithmetical (affecting, for example, the amount of compensation) or they may result from an accidental slip or omission. The point at issue always relates to a defect in the drafting of the judgement and never to its substance, i.e. to possible unawareness on the part of the Tribunal of facts or applicable rules.

II. Neither an application for revision nor an application for correction of a clerical mistake may be confused with a procedure for appeal against the Tribunal's judgements, which are final and not subject to appeal. The abrogation of the former article 11 of the Statute of the Tribunal, instituting a procedure under which advisory opinions could be requested from the International Court of Justice concerning the validity of the Tribunal's judgements, has never had the effect of opening the way for transforming applications for revision or for correction of clerical mistakes into a procedure for variance of the Tribunal's decisions.

III. The Applicant made two requests, one for revision, the other for correction of a clerical mistake in Judgement No.802 of 21 November 1996. By that judgement the tribunal awarded him compensation equal to six months net base salary at the date of his separation from service, but it did not order his reinstatement in the post which he had held before separation. In support of his application for revision the Applicant cites, firstly, the records of the proceedings of a general meeting of the Credit Union of the international civil service, held on 5 May 1994, during which he spoke on several occasions. His remarks apparently prompted an unfavourable reaction on the part of senior officials of the United Nations and were, according to the Applicant, the reason for his dismissal. The proceedings of this meeting, in which the Applicant himself took part, in no way constitute new facts which were unknown to the Applicant in accordance with the requirements of article 11 of the Statute of the Tribunal. The Applicant also

cites remarks, of which he learned only recently, made by the Director of the UNOG Division of Administration before the Tribunal delivered its Judgement No. 802. He also refers to a note of the Chief of the UNOG Security and Safety Section concerning the incidents on which the Tribunal gave its opinion in paragraph X of its Judgement No. 802. Far from impairing the grounds of Judgement No. 802, these facts of only very relative importance confirm them.

Accordingly, the conditions required by article 11 for a revision of the judgement have not been met.

IV. Furthermore, the Applicant does not cite a clerical or arithmetical mistake or a mistake resulting from an accidental slip or omission in Judgement No. 802. Therefore in this respect too his application is clearly inadmissible. The Applicant devotes most of his application to facts which were already considered by the Tribunal in connection with its Judgement No. 802 and which the Tribunal cannot revisit. The Applicant is wrong in relying on article 11 of the Statute to question Judgement No. 802, which has the force of res judicata and is not subject to appeal.

V. The application is therefore rejected.

(Signatures)

Hubert THIERRY  
President

Julio BARBOZA  
Member

Victor YENYI OLUNGU  
Member

New York, 20 November 1998

R. Maria VICIEN MILBURN  
Secretary