United Nations AT/DEC/1139

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1139

Case No. 1070: COURY ET AL. Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, Vice-President, presiding; Mr. Omer Yousif Bireedo; Ms. Brigitte Stern;

Whereas, on 17 December 2001, Jacqueline Coury, Adel El-Daly, Peter Neyner, Ferdinand Nostitz-Rieneck, Christa Poiger, Gerhard Roessner, Gerda Schauer and Elfriede Schwang, former staff members of the United Nations, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 29 May 2002, the Applicants, after making the necessary corrections, again filed an Application in which they requested, in accordance with article 12 of the Statute of the Tribunal, the revision of Judgement No. 999, rendered by the Tribunal on 23 July 2001;

Whereas the pleas contained in the Application read, in part, as follows:

"*II. Pleas*

…

3. … the Applicants request the Tribunal to address the original questions and pleas placed before it or review its original decision to enable it to reach a decision on the issue of exceptional circumstances.

4. … this Application is also being made in the context of article [12] which states that: 'Clerical or arithmetic mistakes in judgements or error arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal …'"

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 March 2003;

Whereas the Respondent filed his Answer on 26 February 2003;

Whereas the Applicants filed Written Observations on 2 April 2003;

Whereas the facts in the case were set forth in Judgement No. 999;

Whereas the Applicants' principal contentions are:

1. The Tribunal reached a decision that did not address the Applicants' primary plea. The issue of exceptional circumstances was the principle issue before the Tribunal, not that of time-bar. The Tribunal ignored numerous exceptional circumstances brought by the Applicants.

2. The Applicants are not requesting to re-open issues since the issues subject of this Application have not yet been examined and decided.

3. There is no indication that the Tribunal addressed the Applicants' other pleas.

4. The Tribunal deviated from its prior jurisprudence.

Whereas the Respondent's principal contention is:

The Applicants failed to introduce any fact of a decisive nature, which was unknown to the Tribunal and to the Applicants at the time Judgement No. 999 was rendered, and, accordingly, their request for a revision of that Judgement is without merit

The Tribunal, having deliberated from 23 October to 17 November 2003, now pronounces the following Judgement:

I. The Applicants seek the revision of Judgment No. 999, which was rendered by the Tribunal on 23 July 2001. They maintain that the Tribunal, through a possible mistake or oversight, did not address their primary plea, that the decision reached is essentially tangential and unrelated to the principle issue before the Tribunal, which is that exceptional circumstances existed warranting the waiver of the time limits. Therefore, since the Tribunal in its Judgement addressed only the time-bar issue and

not that of "exceptional circumstances", the Applicants now request the Tribunal to deal with the original pleas placed before it and particularly to address the issue of "exceptional circumstances". The Applicants further claim that the Tribunal did not examine the limitations and constraints of the memorandum of understanding (MOU) which they had signed, nor the broader issues of their contracts and in particular whether these were the result of misrepresentation, fraud or duress, rendering them invalid. The Applicants also claim that their agreed termination was unfair as they had not been fully informed that participation in the Early Separation Programme (ESP) would forfeit their end-of-service allowance and the MOU contained no statement to this effect.

II. Article 12 of the Tribunal's statute provides that:

> "The Secretary- General or the Applicant may apply to the Tribunal for a revision of a judgment on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment 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 judgment. Clerical or arithmetical mistakes in judgment, 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."

Furthermore, article 11, sub-paragraph 2 states that "[s]ubject to the provisions of article 12, the judgements of the Tribunal shall be final and without appeal".

III. The Tribunal notes that the Applicants failed to provide any new fact, let alone one of a decisive nature, which was unknown to the Tribunal when rendering its Judgement No. 999. The Tribunal further notes that, in fact, the Applicants do not purport to present any new fact.

The Applicants contend that, since their pleas were not examined in the original Judgement, their present Application cannot be considered a request for reopening of issues and consequently, there is no *res judicata*: the Tribunal would be addressing their pleas *de novo*.

The Tribunal rejects this claim, and reiterates what has been its consistent jurisprudence, as stated recently in Judgement No. 1055, *Al-Jassani* (2002):

"VI. The Applicant … claims that the Tribunal failed to consider certain evidence … the Tribunal notes that each Judgement refers to the pleas, facts and contentions of the parties, as well as the report and recommendations of the JAB, before beginning with the words "having deliberated". In addition, the Tribunal reviews the full pleadings in the matters before it. The Tribunal notes its comment in the *Khan* revision case that the text of the Judgement clearly showed that all the points raised by the Applicant were duly disposed of. The same situation exits here, even if each point raised by the Applicant is not specifically mentioned.

VII. 'No party may seek revision of the judgement merely because that party is dissatisfied with the pronouncement of the Tribunal and wants to have a second round of litigation.' (Judgement No. 894, *Mansour* (1998), para. II.) Yet the Applications in these cases are in reality a restatement of the claims asserted by the Applicant. No one should believe that a mere restatement of claims, even though made in new language and with changed emphasis, can be a basis for the revision of a Judgement made by the Tribunal. As stated in *Coulibaly*, a revision is not a means of reopening issues that have been settled definitively and which are thus *res judicata.* See also *Baccouche*, in which the Tribunal explained that an application for a revision must not be confused with an appeal, since the Tribunal's judgements are final and not subject to appeal."

IV. In view of the foregoing, the Tribunal rejects the Application in its entirety.

(Signatures)

Mayer **Gabay**
Vice-President, presiding

Omer Yousif **Bireedo**
Member

Brigitte **Stern**
Member

New York, 17 November 2003

Maritza **Struyvenberg**
Executive Secretary