United Nations AT/DEC/1164

# Administrative Tribunal

Distr.: Limited
30 September 2004

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1164

| | | | |
|---|---|---|---|
| Cases No. 1001: | AL-ANSARI | Against: | The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East |
| No. 1004: | ZARRA AND KHALIL | | |
| No. 1005: | ABDUL HALIM ET AL | | |
| No. 1015: | ABDULHADI ET AL | | |
| No. 1067: | ABU ALI | | |
| No. 1072: | IDRISS | | |

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, President; Mr. Kevin Haugh, First Vice-President; Ms. Brigitte Stern, Second Vice-President.

Whereas, on 16 July 2002, Husni Idriss and Ali Abu Ali, former staff members of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an Application in which they requested, in accordance with article 12 of the Statute of the Tribunal, the revision of Judgements No. 983 and 984 rendered by the Tribunal on 21 November 2000;

Whereas, on 10 September 2002, Nabil Ra'ouf Al-Ansari, a former staff member of UNRWA, filed an Application in which he requested, in accordance with article 12 of the Statute of the Tribunal, the revision of Judgements No. 926, rendered by the Tribunal on 30 July 1999, and No. 1014, rendered by the Tribunal on 20 November 2001, in which the Tribunal rejected a request for revision of Judgement No. 926;

Whereas, on 26 December 2002, Mohammed Zarra and Ali Saleh Khalil, former staff members of UNRWA, filed an Application in which they requested, in accordance with article 12 of the Statute of the Tribunal, the revision of Judgements No. 929, rendered by the Tribunal on 30 July 1999, and No. 1014, rendered by the Tribunal on 20 November 2001, in which the Tribunal rejected a request for revision of Judgement No. 929;

Whereas, on 26 February 2003, Suheil Ahmed Abdulhadi, Mohammed Deeb Salameh and Bassem Mahmoud Khader, former staff members of UNRWA, filed an Application in which they requested, in accordance with article 12 of the Statute of the Tribunal, the revision of Judgements No. 928, rendered by the Tribunal on 30 July 1999, and No. 1014, rendered by the Tribunal on 20 November 2001, in which the Tribunal rejected a request for revision of Judgement No. 928;

Whereas, on 23 April 2003, Ghassan Mahmoud Abdul Halim and Mahmoud Mohammed Najia, former staff members of UNRWA, filed an Application in which they requested, in accordance with article 12 of the Statute of the Tribunal, the revision of Judgement No. 927 rendered by the Tribunal on 30 July 1999;

Whereas the Applicants Abu-Ali and Idriss' Application contained pleas which read as follows:

"PLEAS

Applicants pray [that the] Tribunal …

a. [Abrogate] its foregoing judgements and [declare] them null and void.

b. [Order as per the] pleas … set out in the [original] Applications."

Whereas the Applicant Al-Ansari's Application contained pleas which read as follows:

"PLEAS

Applicant prays [that] the Tribunal …:

i. Abrogat[e] [the] foregoing [J]udgements … declaring them null and void,

ii. [Reconsider] the case and [order] according to pleas included in the original [A]pplication."

Whereas the Applicants Zarra and Khalil's Application contained pleas which read as follows:

"PLEAS

Applicants pray [that] the Tribunal …:

i. Abrogat[e] [the] foregoing [J]udgements … declaring them null and void,

ii. [Order] pleas as set out in the basic [A]pplications."

Whereas the Applicant Abdulhadi's Application contained pleas which read as follows:

"PLEAS

Applicants pray [that] the Tribunal …:

i. Abrogat[e] the foregoing [J]udgements, declaring them null and void,

ii. [Order] pleas as set out in the basic [A]pplications."

Whereas the Applicant Abdul Halim's Application contained pleas which read as follows:

"PLEAS

Applicants … pray [that the] Tribunal …:

a. Abrogat[e] the foregoing Judgement,

b. Declar[e] it null and void and,

c. [Order pleas] as set out in the basic Application."

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 in cases No. 1001, Al-Ansari, No. 1067, Abu Ali, and No. 1072, Idriss, until 31 March 2003 and periodically thereafter until 30 November 2003;

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 in cases No. 1004, Zarra and Khalil, and No. 1015, Abdulhadi et al, until 30 June 2003 and periodically thereafter until 30 November 2003;

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 in case No. 1005, Abdul Halim et al, until 31 August 2003 and thereafter until 30 November 2003;

Whereas the Respondent filed his Answer in Cases No. 1001, Al-Ansari, No. 1004, Zarra and Khalil, No. 1005, Abdul Halim et al, and No. 1015, Abdulhadi et al, on 29 October 2003;

Whereas the Respondent filed his Answer in cases No. 1067, Abu Ali, and No. 1072, Idriss on 17 November 2003;

Whereas the Applicant Al-Ansari filed Written Observations on 22 March 2004;

Whereas the facts in the cases were set forth in Judgements No. 926, 927, 928, 929, 983, 984 and 1014;

Whereas the Applicants' principal contentions are:

1. Judgements 926, 927, 928, 929, 983, 984 and 1014 violate basic principles of law and justice, and were premised upon gross professional error.

2. Judgements 926, 927, 928, 929, 983, 984 and 1014 ought to be abrogated, and the original contested decisions rescinded.

Whereas the Respondent's principal contention in all cases is that the Application does not comply with the requirements for revision of judgement, as set out in article 12 of the Statute of the Tribunal.

The Tribunal, having deliberated from 22 June to 23 July 2004, now pronounces the following Judgement:

I. In each of these cases, the Applicant seeks what he calls "Abrogation of Judgement" which is explained as meaning a request that the Tribunal should re-consider the Judgement rendered in his case and that on such re-consideration the Tribunal should render a new or modified Judgement which would exonerate him and grant him relief in accordance with his Application. Since each Applicant makes what

is effectively the same type of submission and since each of them are persons who were affected by the findings of the same Board of Inquiry, the Tribunal orders joinder of these cases so that they will be dealt with by this Judgement rather than as individual cases.

II. Certain of these Applicants had earlier sought revision of the Judgement which had been rendered in his case, and each of those Applications for revision had been rejected by the Tribunal, inter alia, on the ground that each of the Applications, which had been based on a common ground, had not disclosed a "new fact", let alone a new fact which might conceivably have been considered as potentially decisive. Each Applicant had been found by the Board of Inquiry to have engaged in some sort of misconduct or wrongdoing and each had been subjected to some form of sanction, ranging from termination for misconduct in the interest of the Agency through to summary dismissal.

In those cases in which revision has already been sought, the Applications presently before the Tribunal are phrased as if "abrogation" is being sought on the Judgements given on the Applications for revision. As no such concept exists in the Statute of the Tribunal, the Tribunal will interpret what the Applicants seek. The Applications are, in fact, requests to re-open the original cases and for alteration or modification of the Judgements initially given therein. It is clear that the submissions are not addressed to seeking "abrogation" of the Judgements given on the Applications for revision but are rather addressed to the matters which were dealt with in the original claims which resulted in the main in the dismissal of those Applications. No submissions are addressed as to why the Judgements rendered in the revision cases should be revisited or re-opened. The Tribunal will, therefore, address each of the joined Applications as one of revision of the original Judgement, and will not differentiate in this Judgement between the cases in which revision has already been sought and those in which it has not.

III. The jurisdiction of the Tribunal to revisit cases in which Judgement has been rendered is by and large to be found in article 12 of the Tribunal's Statute, which 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."

The Tribunal applies article 12 rigorously: in Judgement No. 303, *Panis* (1983), it held that

> "Applications for revision of a judgement delivered by the Tribunal must be considered in the light of the standards imposed by article 12 of the Tribunal's Statute. ... The standards contained in article 12 are … relatively strict and lay a substantial burden upon a party who requests revision."

Recently, in Judgement No. 1120, *Kamoun* (2003), the Tribunal stated:

> "In accordance with the Statute and case law, in order to be able to apply for revision of a judgement it is necessary to satisfy certain formal and substantive conditions. As regards formal conditions, article 12 sets a time limit for filing the application. As regards substantive conditions, in order for an application to be admissible the Applicant must on the one hand, plead discovery of a new fact, that is to say one that was not known at the time the judgement was given, and, on the other, the new fact must be of such a nature as to be able to influence the outcome of the dispute as reflected in the judgement."

Additionally, in accordance with both the advisory opinion of the International Court of Justice of 13 July 1954 and its own jurisprudence, the Tribunal will consider applications for interpretation of judgement, where there is dispute as to the meaning or scope of the judgement. See Judgement No. 61, *Crawford et al* (1955).

From what is stated above, it can be seen that the Tribunal has no jurisdiction to re-open cases in which judgement has been rendered based on mere bald assertions such as those made in these cases that the original Judgements were works of incompetence and were wrong. See Judgement No. 896, *Baccouche* (1998), in which the Tribunal explained that an application for revision must not be confused with an appeal, since the Tribunal's judgements are final and not subject to appeal. The instant submissions are made on the sole proposition that the Applicants' explanations or denials should have been preferred by the Board of Inquiry to the evidence which had been offered against them. The Tribunal might add in passing that the allegations that

the Judgements were incompetent and wrong are unsupported, unfounded and are rejected.

If these Applications are to be considered as Applications for revision of the original Judgements, the Tribunal must find that each of these Applications is time-barred. The Tribunal notes that the time difference between the date of the original Judgement in each case and the date of the instant Application is as follows:

- For the Applicants Idriss and Abu Ali, Judgements No. 983 and 984 were rendered by the Tribunal on 21 November 2000, and the instant Application was filed on 16 July 2002;
- For the Applicant Al Ansari, Judgement No. 926 was rendered by the Tribunal on 30 July 1999, and the instant Application was filed on 10 September 2002;
- For the Applicants Zarra and Khalil, Judgement No. 929 was rendered by the Tribunal on 30 July 1999, and the instant Application was filed on 26 December 2002;
- For the Applicant Abdulhadi, Judgement No. 928 was rendered by the Tribunal on 30 July 1999, and the instant Application was filed on 26 February 2003;
- For the Applicant Abdul Halim, Judgement No. 927 was rendered by the Tribunal on 30 July 1999 and the instant Application was filed on 23 April 2003.

Furthermore, once again, these Applications contain no new fact of the sort contemplated by article 12 of the Tribunal's Statute.

IV. In conclusion the Tribunal reiterates Judgement No. 894, *Mansour* (1998): "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". The Applications in these cases are, in reality, a restatement of the claims originally asserted by the Applicants. 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 Judgement No. 556, *Coulibaly* (1992), a revision is not a means of reopening issues that have been settled definitively and which are thus *res judicata.*

V. In view of the foregoing, the Applications are rejected in their entirety.

*(Signatures)*

Julio **Barboza**
President

Kevin **Haugh**
First Vice-President

Brigitte **Stern**
Second Vice-President

Geneva, 23 July 2004

Maritza **Struyvenberg**
Executive Secretary