United Nations AT/DEC/1165

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1165

Case No. 1146: SHEHABI

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Kevin Haugh, Vice-President, presiding; Mr. Omer Yousif Bireedo; Ms. Jacqueline R. Scott;

Whereas, on 5 January 2003, Mohammed Kheir Jamal Shehabi, a former staff member 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 he requested, in accordance with article 12 of the Statute of the Tribunal, the revision of Judgement No. 1076 rendered by the Tribunal on 26 July 2002;

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

"PLEAS

Applicant prays [that] the Tribunal ... :

i. Abrogat[e] the foregoing Judgement … declaring it null and void,

ii. [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 until 30 June 2003 and periodically thereafter until 30 November 2003;

Whereas the Respondent filed his Answer on 10 November 2003;

Whereas the Applicant filed Written Observations on 22 March 2004;

Whereas the facts in the case were set forth in Judgement No. 1076.

Whereas the Applicant's principal contentions are:

1. Judgement 1076 violates basic principles of law and justice, and was premised upon gross professional error.

2. Judgement 1076 ought to be abrogated, and the original contested decision rescinded.

Whereas the Respondent's principal contention 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. The Applicant filed an Application for abrogation of Judgement No. 1076, declaring it null and void and ordering according to the merits of the case. Unfortunately for the Applicant, however, no such vehicle for abrogation of judgement exists, but the Tribunal will treat the Applicant's Application as one for a revision of judgment, which is the only option available.

II. Article 12 of the Statute of the Tribunal sets forth the circumstances under which a judgement may be revised. Generally, judgements may be revised in two circumstances: (1) upon "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"; and, (2) in the case of clerical/arithmetic mistakes or errors arising from any accidental slip or omission in a judgment. "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."

III. In the first case, the newly discovered fact must be one that is sufficiently important to have affected the Tribunal's decision and which was unknown either to the Applicant or to the Tribunal at the time of the original judgement. (See Judgement No. 556, *Coulibaly*, (1992), citing Judgement No. 303, *Panis* (1983).)

In the second case,

> "applications for correction of clerical mistakes have no purpose other 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." (Judgement No. 896, *Baccouche* (1998).)

IV. In addition, pursuant to an advisory opinion, dated 13 July 1954, of the International Court of Justice 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).)

V. The Tribunal has consistently held Applicants to these "rigorous conditions" which must be met in order to request a revision of judgement. (See *Coulibaly, ibid*.) Further,

> "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". (See *Baccouche, ibid*.)

Attempting to re-argue issues already decided by judgement, thus constituting *res judicata*, is improper and considered an abuse of the Tribunal's procedures. (See Judgement No. 497, *Silveira* (1990).)

VI. In his Application, the Applicant does not claim that any clerical mistakes were made in the Tribunal's original Judgement. Nor does he allege any newly discovered facts that might have affected the Tribunal's original Judgement. Finally, the Applicant does not request the Tribunal to interpret its original Judgement. Instead, the Applicant merely seeks to void the Tribunal's decision as being one with which he does not agree. In short, the Applicant seeks another bite at the proverbial apple, hoping that this time, he will get a decision more to his liking. This, of course, for the reasons set forth above, is not possible.

VII. In view of the foregoing, the Application is rejected.

(*Signatures*)

Kevin **Haugh**
Vice-President, presiding

Omer Yousif **Bireedo**
Member

Jacqueline R. **Scott**
Member

Geneva, 23 July 2004

Maritza **Struyvenberg**
Executive Secretary