United Nations AT/DEC/1200

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1200

Cases No.	1182: FAYACHE 1186: FAYACHE 1187: FAYACHE 1188: FAYACHE 1190: FAYACHE 1191: FAYACHE	Against:	The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Kevin Haugh, Vice-President, presiding; Mr. Omer Yousif Bireedo; Mr. Spyridon Flogaitis;

Whereas at the request of Mohamed Larbi Fayache, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 15 May 2003 the time limit for the filing of an application with the Tribunal;

Whereas, on 12 May 2003, the Applicant filed an Application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 23 June 2003, the Applicant, after making the necessary corrections, again filed an Application in which he requested, in accordance with article 12 of the Statute of the Tribunal, the revision of Judgement No. 1086 rendered by the Tribunal on 25 November 2002. The Application contained pleas which read, in part, as follows:

"PLEAS

The Tribunal is respectfully requested to find and rule that:

1. AT/DEC/1086 (which purports to be the Tribunal's [Judgement] on cases No. 1182, 1186, 1187, 1188, 1190 and 1191), and which disregarded *dozens* of [United Nations Administrative Tribunal (UNAT)] and [Administrative Tribunal of the International Labour Organization] precedents, rules and regulations, not to mention three [General Assembly] resolutions, was the exclusive work of [the Executive Secretary of UNAT] and was drafted in collusion with [the] Deputy Director[, General Legal Division], the [Office of Human Resources Management] Rules and Regulations Section and the *Acting* Secretary of the Geneva [Joint Appeals Board (JAB)].

2. Furthermore, [the Executive Secretary of UNAT's] AT/DEC/1086 constitutes a case of denial of justice …

…

4. The Tribunal's Executive Secretary … colluded with her colleagues the *Acting* Secretary of the Geneva JAB and [the Deputy Director, General Legal Division,] (who was involved in my cases since June1999) in order to have the *Acting* Secretary of the Geneva JAB issue all his reports the same day, which enabled the Respondent to issue a single answer, and the Executive Secretary to draft a single judgment which drowned out eighty out of my eighty-six pleas.

5. [The Executive Secretary of UNAT's] AT/DEC/1086 arbitrarily and illegally joined on as early as 4 April 2002 six different cases, filed in the course of two years (including three for which the documentation was not sufficiently complete since I had not sent my written observations), when she informed me that all my cases would be considered jointly in July 2002.

…

And consequently,

…

16. Alternatively, issue six new and different judgments on my cases which would consider all my pleas instead of only one for each case, by members of the Tribunal other than the three who signed AT/DEC/1086.

17. Hold a special plenary session in accordance with article 5.2 of the Rules of 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 30 November 2003;

Whereas the Respondent filed his Answer on 28 November 2003;

Whereas, on 26 February 2004, the Applicant filed Written Observations amending his pleas as follows:

"**Conclusion and pleas**:

The Tribunal is respectfully requested to:

1. Order the Respondent to submit a factually correct and honest Answer and reply to *all my pleas* without distorting any fact, as he is required by all legal deontological codes.

2. Find that the adoption of [General Assembly resolution 57/307, "Administration of Justice in the Secretariat", of 15 April 2003] (of which neither I nor the UNAT was aware at the time of the judgment) did introduce a fact of a decisive nature, which was unknown to the Tribunal and to me at the time [Judgement] No. 1086 was rendered.

…"

Whereas the Applicant submitted additional Observations on 6 July 2004;

Whereas the facts in the case were set forth in Judgement No. 1086.

Whereas the Applicant's principal contention is:

The Tribunal should consider the six original Applications individually and render six new and different judgements considering all the pleas. The Executive Secretary and the members of the Tribunal who signed AT/DEC/1086 should not be involved in the rendering of these new judgements.

Whereas the Respondent's principal contention is:

The Applicant failed to introduce any fact of a decisive nature, which was unknown to the Tribunal and to the Applicant at the time Judgement No. 1086 was rendered, and, accordingly, his request for a revision of that Judgement is without merit.

The Tribunal, having deliberated from 26 October to 24 November 2004, now pronounces the following Judgement:

I. In 2000 and 2001, the Applicant submitted six Applications to the Tribunal: Cases No. 1182; No. 1186; No. 1187; No. 1188; No. 1190; and, No. 1191. On 25 November 2002, the Tribunal rendered one Judgement (No. 1086, *Fayache* (2002)), for all six cases. In that Judgement, the Tribunal specifically addressed various claims of the Applicant and then rejected all other pleas.

In the present Application, the Applicant contends that the Tribunal did not understand his maltreatment by the Administration; engages in personal attacks against various officials of the Organization; and, substantially reiterates the pleas contained in his original Applications.

II. In its recent Judgement No. 1164, *Al-Ansari et al.* (2004), the Tribunal produced what may be considered a seminal Judgement on its powers of revision and interpretation. It considers it appropriate to quote a substantial part of that Judgement herewith:

> "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:
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> > '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."

III. In the instant case, the Tribunal finds that the Application for revision of Judgement contains no new fact of the sort contemplated by article 12. Indeed, as the Respondent correctly points out, the Application does not even purport to rely upon article 12. It is, in reality, a restatement of the claims originally asserted by the Applicant, embellished with unwarranted attacks and conspiracy theories. This simply cannot provide a basis for revision of Judgement, which is not a means of reopening issues that have been settled definitively and which are thus *res judicata*. (See Judgment No. 556, *Coulibaly* (1992).) In this regard, the Tribunal recalls Judgement No. 894, *Mansour* (1998), in which it stated that "[n]o 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".

IV. The Tribunal now turns its attention to the outrageous and improper allegations made against the Tribunal and its secretariat in the present Application. The Tribunal finds that the Applicant has demonstrably abused the process of administration of justice. As it has no power to fine the Applicant, or otherwise hold him in contempt, it wishes to state for the record that it can and will impose costs against the Applicant should further frivolous or abusive Applications be filed with the Tribunal. This does not contradict the position taken by the Tribunal in its Statement of Policy on costs, adopted on 18 December 1950 (A/CN.5/R.2), which makes no reference to awarding costs against an Applicant.

In this regard, the Tribunal wishes to take judicial notice of Judgement No. 1884, *In re Vollering* (No. 15) (1999), rendered by the Administrative Tribunal of the International Labor Organization (ILOAT):

> "The Tribunal has never heretofore imposed a costs penalty upon a complainant. However, it asserts unequivocally that it possesses the inherent power to do so as part of the necessary power to control its own process. Clearly, such power must be exercised with the greatest care and only in the most exceptional situations since it is essential that the Tribunal should be open and accessible to international civil servants without the dissuasive and chilling effect of possible adverse awards of costs. That said, however, there is another side to the coin: frivolous, vexatious and repeated complaints to the Tribunal absorb the latter's resources and impede its ability to deal expeditiously and fully with the many meritorious complaints which come before it. They are also, of course, costly and time-wasting for the defendant organisation."

The wisdom of the ILOAT in its cited Judgement is fully recognized by this Tribunal, which will have no hesitation in acting accordingly, should the occasion arise.

V. In view of the foregoing, the Application is rejected in its entirety.

(*Signatures*)

Kevin **Haugh**
Vice-President, presiding

Omer Yousif **Bireedo**
Member

Spyridon **Flogaitis**
Member

New York, 24 November 2004

Maritza **Struyvenberg**
Executive Secretary