

Marrett, who is said to have had a case pending before the Board. The Tribunal's view is that it is entitled and indeed required to consider these allegations and whether, if substantiated, they vitiate the Board's report.

V. In the Tribunal's opinion, the allegation concerning a confidential staff report is not material to the conclusions reached by the Board and cannot invalidate those conclusions, including the decision that the appeals are frivolous. Such conclusions of the Board do not rest upon anything in the confidential staff report but upon the finding that, in full cognizance of the facts and consequences and without duress or compulsion, the Applicant entered into an agreement with the Secretary-General by which he waived any entitlement or claim other than those specifically mentioned in the letter of agreement.

VI. The Tribunal has also considered the two additional allegations made in the Applicant's written statement of 21 April 1981 and does not think that they invalidate the conclusions of the board. The allegedly libellous and untrue statements by the representative of the Respondent were ruled out of order by the Chairman and were not taken into consideration by the Board. The Tribunal finds no evidence that these statements tainted or biased further proceedings. The fact that Mr. Marrett may have had a case pending before the Board would not disqualify him from sitting as a member of the Board to hear the Applicant's appeals.

VII. Accordingly, the application is not receivable by the Tribunal.

(Signatures)

Francisco A. FORTEZA
Vice-President, presiding

Arnold KEAN
Member

Samar SEN
Member

Jean HARDY
Executive Secretary

Geneva, 8 May 1981

Judgement No. 270

(Original: French)

Case No. 238:
Sforza-Chrzanowski

**Against: The Secretary-General
of the United Nations**

Request for revision of Judgement No. 250.

Request for oral proceedings.—Rejected.—Request for revision.—Article 12 of the Statute of the Tribunal.—Letter from the Vice Minister of the Ministry of Foreign Affairs of the Republic of Korea.—Question whether that letter constitutes a newly discovered fact within the meaning of article 12 of the Statute.—Conclusion of the Tribunal that the letter does not constitute a newly discovered fact within the meaning of that article.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS.

Composed of Madame Paul Bastid, President; Mr. Endre Ustor, Vice-President; Mr. Francisco A. Forteza, Vice-President; Mr. Samar Sen, alternate member;

Whereas, by letters dated 16 and 26 September 1980, the Applicant filed an application in which he requested under article 12 of the Statute of the Tribunal a revision of Judgement No. 250 rendered in his case on 9 October 1979;

Whereas the application contained a request for oral proceedings;

Whereas, on 28 November 1980, the Applicant submitted the following document in support of his application:

“MINISTRY OF FOREIGN AFFAIRS
“REPUBLIC OF KOREA

“Count Dr. S. SFORZA
18, Rue Félicien David
78100 Saint-Germain-en-Laye
FRANCE

“September 14th 1980

“Dear Count Sforza,

“I wish to inform you that neither myself nor anybody else at the Ministry has ever objected to the personal letter you have sent me on April 14th 1975, asking to help a colleague of yours.

“As you know, I have suggested myself that you inform me of such cases.

“As to your premature departure from Korea in 1975, I do gladly confirm that neither myself nor any qualified person at the Ministry has ever suggested the premature end of your mission in this country.

“On the contrary, as already mentioned in my letter to you of July 10th 1975, we fully appreciated the invaluable services provided by you to the small and medium industries of this country, and we would have certainly welcomed an extension of your mission here.

“With my best regards,

“Sincerely yours,
“KIM DONG-Whie
“Vice Minister”

Whereas the Applicant filed an additional written statement on 1 December 1980:

Whereas, on 19 December 1980, the Respondent filed his answer, which read in part:

“ . . .

“3. The Respondent submits that the applicant fails to meet the requirements of article 12 in so far as the newly discovered facts relied upon are those set forth in Mr. Kim Dong-Whie’s letter of 14 September 1980.

“4. Firstly, the essence of the views of Mr. Kim Dong-Whie on the Applicant’s conduct were already before the Tribunal (see Annex 5 and page 3 of Annex 13) and were also considered by the JAB [Joint Appeals Board] (see Annex 2, paras. 16 and 31).

“5. Secondly, Mr. Kim Dong-Whie’s statement that ‘neither myself nor anybody else at the Ministry has ever objected to the personal letter you have sent me on April 14th 1975’ overlooks the established and undisputed fact that a complaint was made by the Chief of the Korean Protocol and Immunities Office on 16 April 1975 (see para. 4 of Annex 2 and Annex 9).

“6. Thirdly, the facts in this letter are not decisive since re-assignment of staff members is solely within the discretion of the Secretary-General: Staff Regulation 1.2 (see also UNAT Judgement No. 250, *Sforza-Chrzanowski*, para. II). Furthermore, the decision to classify the Applicant as being rejected permanently for future employment with the Organization (category RP) was based on Mr. Sforza’s total record of service and not merely on his performance in Korea (see the Annex submitted in my memorandum of 14 September 1979).”

Whereas the presiding member ruled on 18 March 1981 that no oral proceedings would be held in the case;

Whereas the Applicant submitted an additional written statement and an additional document on 20 March 1981;

Whereas the Applicant submitted additional written statements on 23 and 25 April 1981;

Whereas the Respondent submitted an additional written statement on 30 April 1981;

Whereas the Applicant submitted on 4 May 1981 an additional statement reiterating his request for oral proceedings;

Whereas the facts in the case were set out in Judgement No. 250;

The Tribunal, having deliberated from 30 April to 13 May 1981, now pronounces the following judgement:

I. The Applicant has reiterated his request for oral proceedings. Since the file which the Tribunal has before it contains all the documents it needs in order to consider the application for a revision of Judgement No. 250, the Tribunal decides not to entertain the request.

II. The application seeks revision by the Tribunal of its Judgement No. 250 pursuant to article 12 of its Statute, the relevant part of 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 Tribunal recalls that, where revision of its judgements is concerned, it has recognized that its powers are strictly limited by its Statute and that it cannot enlarge or abridge them in the exercise of its jurisdiction (Judgements Nos. 73, *Bulsara*; 216, *Ogley*; 255, *Teixeira*).

III. In his application, the Applicant relies upon the letter of 14 September 1980, reproduced in full in the first part of the Judgement, addressed to him by the Vice Minister of the Ministry of Foreign Affairs of the Republic of Korea.

The Tribunal must therefore consider whether that letter constitutes a newly discovered fact of such a nature as to be a decisive factor within the meaning of article 12 of its Statute.

IV. The Tribunal recalls that in its Judgement No. 250 it noted, in its statement of the facts, that the same member of the Korean Government had addressed to the Applicant on 10 July 1975 a letter in which he "expressed regret that the Applicant was about to leave Korea and offered praise for his work". The same sentiments are repeated in the further letter of 14 September 1980; however, the Tribunal notes that in the first paragraph the writer adds: "neither myself nor anybody else at the Ministry has ever objected to the *personal* letter you have sent me on April 14th 1975". [Emphasis added]

In its Judgement No. 250, the Tribunal noted that the Assistant Resident Representative of UNDP in Korea had stated, in a confidential note for the file dated 8 May 1975, that the Chief of the Privileges and Immunities Office of the Ministry of Foreign Affairs had sent for him on 16 April 1975 and shown him the bottom part of the Applicant's letter of 14 April 1975, describing that letter as "completely unacceptable". The Assistant Resident Representative further stated in his note that, on 25 April 1975, the same official had given him a copy of the Applicant's letter and had "reiterated the displeasure of all concerned in the Ministry at the language used in the letter".

V. The Tribunal notes that the first letter from the Vice Minister, of 10 July 1975, does not mention the reaction aroused by the letter which the Applicant addressed to him on 14 April 1975. However, even if neither the Vice Minister nor anybody else at the Ministry ever objected to the "personal" letter from the Applicant, the fact remains that a copy of that letter was handed to the Assistant Resident Representative by an official of the Ministry of Foreign Affairs of the Republic of Korea.

The Tribunal finds it inconceivable that the Assistant Resident Representative should have been given a copy of a "personal" letter unless there had been some reaction to it on the part of the authority which had received it and which took the initiative of passing it on to the United Nations office in Seoul.

VI. While the Tribunal has no occasion to consider whether the comments made by the Assistant Resident Representative in his confidential note are consistent with the two letters from the Vice Minister, it finds that the Assistant Resident Representative acted correctly in informing his superiors of the facts. The Tribunal further finds, as stated in paragraph II of its Judgement No. 250, that, having regard to all the circumstances, the Administration could legitimately take the Applicant's letter of 14 April 1975 into consideration when it decided to terminate his assignment to Seoul.

Consequently, the Tribunal cannot consider that the further letter from the Vice Minister of 14 September 1980 constitutes a newly discovered fact of such a nature as to call in question the legal basis of Judgement No. 250.

VII. The additional document submitted by the Applicant on 20 March 1981 is a certificate from the former Head of the Economic Department of the Ministry of Foreign Affairs of Colombia concerning the duties performed by the Applicant in that country as an expert. The Applicant relies upon this document in contesting his classification in the "RP" category. The Tribunal has no occasion to rule on the decision on that subject taken by the Administration, and in its Judgement No. 250 it simply found that the prescribed procedure had eventually been applied.

VIII. For the foregoing reasons, the application for revision is rejected.

(Signatures)

Suzanne BASTID
President

Endre USTOR
Vice-President

Francisco A. FORTEZA
Vice-President

Geneva, 13 May 1981

Samar SEN
Alternate member

Jean HARDY
Executive Secretary

Judgement No. 271

(Original: English)

Case No. 251:
Kennedy

Against: **The Secretary-General
of the United Nations**

Request for revision of Judgement No. 265.

Conditions for admissibility of an application for revision.—Statement on which the request relies.—That statement does not bring out any new facts which might decisively affect the judgement of the Tribunal.—Request not receivable.

Comments by the Tribunal on some of the Applicant's contentions.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; Mr. Samar Sen; Mr. Arnold Kean;

Whereas, on 3 February 1981, the Applicant filed an application in which she requested under article 12 of the Statute of the Tribunal a revision of Judgement No. 265 rendered in her case on 19 November 1980;

Whereas the application was based on a "written deposition" by Dr. J. B. Mathieson dated 15 October 1980 which read:

"TO WHOM IT MAY CONCERN:

"As I have been informed that the question of Miss Iris Kennedy's termination has come before the Administrative Tribunal of the United Nations, I wish to make the following observations. With regard to the functions of Commonwealth Director of Health for Western Australia, the post is essentially an administrative one. The Department provides a service in connection with the Immigration Department for