

Judgement No. 284*(Original: English)***Case No. 251:
Kennedy****Against: The Secretary-General
of the United Nations**

Request for revision of Judgement No. 265.

Article 12 of the Statute of the Tribunal.—Binding nature of the established time-limits.—The time-limit of one year cannot be reckoned from the date of the judgement rejecting the first application for revision.—The application is not receivable inasmuch as it was submitted after the expiry of the two time-limits prescribed in article 12.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Samar Sen, Vice-President; 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, in Judgement No. 271 rendered on 13 May 1981, the Tribunal ruled that the application for revision could not be considered to have met the requirements of article 12 of the Statute and consequently rejected the application;

Whereas, on 19 November 1981, the Applicant filed a further application, dated 16 November 1981, in which she requested a revision of Judgement No. 265 under article 12 of the Statute on the basis of three documents, namely, a statement dated 18 March 1981 from Dr. T. A. Welborn, a statement dated 30 March 1981 from Dr. Alex Cohen and a statement dated 13 April 1981 from Dr. J. B. Mathieson;

Whereas in her application the Applicant requests the Tribunal:

“(i) to review and revise its Judgement in accordance with this additional material which was not available to the Appellant at the time of the presentation or hearing of the Appeal in Case No. 251 or at the time an application for revision was made or decided on thereafter; (ii) to hear Counsel at oral proceedings for the purpose of presentation of these facts and the arguments that would arise therefrom; and (iii) based on this information to grant relief in accordance with the original requests for relief in Case No. 251”;

Whereas the Respondent filed his answer on 3 February 1982;

Whereas the Applicant filed written observations on 19 March 1982;

Whereas the Applicant requested oral proceedings on 30 March 1982;

Whereas, on 16 and 26 April 1982, the Respondent submitted additional information and documents, including a letter dated 15 April 1982 from Dr. J. B. Mathieson to the Medical Director of the United Nations reading in part:

“ . . . I have no recollection of Miss Kennedy having contacted me since the initial approach of your office some nine years ago. She certainly did not communicate with me any time in 1981.

“As I mentioned during our conversation I have been retired from the position of Commonwealth Director of Health since 1976. It is possible that there could have been some contact between Miss Kennedy and the Commonwealth Department of Health but certainly no such action has been taken with me, personally, between 1973 to 1976 and since 1976”;

Whereas the facts in the case were set out in Judgement No. 265.

Whereas the Applicant's principal contentions are:

1. The delay in submitting to the Tribunal the documents supporting the application for revision was unavoidable. Furthermore, Dr. Mathieson's statement was in fact a document that should have been in the Respondent's possession. It was incumbent on him to make this information available to the Tribunal. His failure to do so occasioned a grave lacuna as to the true facts and it was precisely because of this lacuna that the Tribunal accepted that the Respondent was entitled to separate the Applicant from service for abandonment of post.

2. It is clear that as at 20 January 1973 there was a consensus of medical opinion that the Applicant was seriously ill and would not be fit to travel to New York for six months or more. As a consequence, it is established beyond all doubt that at the point in time when the final decision to separate her from service was taken, the Respondent, through his medical director and/or consultant was aware of her inability to travel or return to work. This vitiates any determination of abandonment of post at that point in time.

Whereas the Respondent's principal contentions are:

1. The statements in support of the application were available and known to the Applicant before the date of the last Judgement (13 May 1981) and could have been submitted to the Tribunal when it was considering her first request for revision. Their submission on 19 November 1981 was also not timely because it was not done within the time-limit of thirty days laid down in article 12 of the Statute.

2. Statements solicited many years after the events they purport to describe have no probative value.

3. To the extent the statements in support of the application differ from and contradict statements and opinions expressed by the same doctors in 1972-1973 on the same subject matters, as recorded in the documents that were before the Tribunal, the recent statements should be disregarded.

The Tribunal, having deliberated from 29 April to 6 May 1982, now pronounces the following judgement:

I. At the outset, the Tribunal denied oral proceedings in the case under consideration as all the relevant material for the disposal of the application was on record before the Tribunal.

II. Article 12 of the Statute of the Tribunal reads:

“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."

Judgement No. 265 was delivered on 19 November 1980 and any application for revision based on the discovery of a new fact, as defined in article 12, has to be submitted within one year of the judgement and 30 days of the discovery of such a fact. The present petition of the Applicant forwarding some material, the authenticity of much of which has been questioned by the Respondent, was not filed within the time-limits prescribed in article 12, and must therefore fail. The Tribunal has no power to relax this rule or to extend the time-limits even if it accepted the reasons given for the delay. Nor can it be reasonably argued that the limit of one year should be reckoned from the date of Judgement No. 271 of 13 May 1981 which rejected the first application for the revision of Judgement No. 265; such an interpretation would totally defeat the principle and purpose of article 12 of the Statute by making it possible for any applicant to continue a case indefinitely by a series of successive applications for revision. Even if the time-limits did not apply, the material presented by the Applicant after so many years and without any indication of how and from where it was obtained cannot bring into question the evidence on which the Tribunal based its Judgement No. 265.

III. The Tribunal holds that the application is not receivable inasmuch as it was made after the expiry of the two time-limits prescribed in article 12.

IV. The application is therefore rejected.

(Signatures)

Suzanne BASTID
Vice-President, presiding
 Samar SEN
Vice-President
 Geneva, 6 May 1982

Arnold KEAN
Member
 Jean HARDY
Executive Secretary

Judgement No. 285

(Original: English)

Case No. 272:
Perucho

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

Non-renewal of the fixed-term appointment of a staff member of the United Nations Children's Fund. Staff Rule 104.12 (b).—Judgement No. 142.—Assurance creating a reasonable expectancy of con-