

**Judgement No. 303***Original: English***Case No. 285:  
Panis****Against: The Secretary-General  
of the United Nations**

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*Request for revision of Judgement No. 297 under article 12 of the statute of the Tribunal.*

*Applications for revision of a judgement must be considered in the light of the standards imposed by article 12 of the Tribunal's statute.—These standards are relatively strict and lay a substantial burden upon a party requesting revision.—The Tribunal acknowledges a new policy under ST/IC/82/77 which abolished confidential files and gave the Applicant access to certain documents not available to him before Judgement No. 297 was rendered.—The Tribunal notes, however, that the documents presented to the Tribunal were available and known to it when it rendered Judgement No. 297.—These documents do not therefore constitute previously unknown decisive factor under article 12 of the statute.*

*Application for revision rejected.*

*Application for intervention by another former staff member under article 19 of the Tribunal's rules.—The Tribunal finds that Judgement No. 297 has no effect on any rights of the Applicant.—Application for intervention rejected.*

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THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Arnold Kean, Vice-President, presiding; Mr. Herbert Reis; Mr. Luis M. de Posadas Montero;

Whereas, on 27 January 1983, the Applicant filed an application in which he requested under article 12 of the Statute of the Tribunal a revision of Judgement No. 297 rendered in his case on 6 October 1982 on the following grounds:

“On 30 December 1982 I had the opportunity to review the confidential file and found in it a number of documents which demonstrate facts of such a nature as to be decisive factors, which facts were, when the judgement was given, unknown to the Tribunal and also to the party claiming revision without that such ignorance was due to negligence.”

Whereas the pleas of the application read as follows:

“These are the same as in the first Application rejected by the Tribunal on 6 October 1982 . . . adapted to the facts now discovered:

“(a) The preliminary or provisional measures are:

—the production of the Applicant's confidential file and the hearing of witnesses from the Administration having dealt with the aborted new assignment in Addis Ababa, his successive extension and reduction of request for contracts, the main witnesses being Mr. Daniel Cure, past Chief of Personnel at ECLA [Economic Commission for Latin America], Santiago, now Personnel Officer at U.N. New York Headquarters . . . ;

—to find out how a collusion between the Director, his Deputy and the Administrative Assistant [of ECLA's Caribbean Office at Port-of-Spain, Trinidad] may have brought the Administration in Santiago and New York

to an erroneous wrong decision with reference to points (i), (ii), (iii), (iv) [of paragraph (a) of the original application];

“(b) and (c) The Applicant requests the same as [in the original application] (except the certification of service already provided);

“(d) The request for compensation should be fixed to a minimum of four years’ salary in case of his immediate re-employment and steps should be taken to have his reinstatement within the U.N.J.S.P.F. [United Nations Joint Staff Pension Fund] (or an indemnity in lieu of);

“(e) This is left to the Administration according to the new developments unknown to the Applicant though more staff, if still needed, should be permitted to intervene in this case if their rights should be affected by the judgement to be given. In the investigations into facts described, the Tribunal may deem appropriate to have the persons accused confronted with the Applicant who is willing and ready to come where and when the session will be held.”

Whereas, on 18 February 1983, the Respondent filed his answer, in which he requested the Tribunal to find that the Applicant had adduced no new facts of decisive importance which justified a revision of the Tribunal’s judgement under article 12 of its Statute and therefore to reject each and every of the Applicant’s pleas and dismiss the application in its entirety;

Whereas the President ruled on 12 April 1983 that no oral proceedings would be held in the case;

Whereas the Applicant filed written observations on 13 April 1983;

Whereas, on 21 April 1983, Hemraj Ramdath, a former staff member of the ECLA Office for the Caribbean, submitted an application for intervention in the case;

Whereas the Respondent opposed the application for intervention on 26 April 1983;

Whereas the Applicant submitted additional information on 3 and 5 May 1983;

Whereas the facts in the case were set out in Judgement No. 297.

The Tribunal, having deliberated from 20 May to 1 June 1983, now pronounces the following judgement:

I. 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. That article enables the Secretary-General or the Applicant to “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 Statute thus balances the need for finality of judgements with the requirement of fairness in a particular case where, without negligence, a “decisive factor” is discovered after the delivery of a judgement. The standards contained in article 12 are accordingly relatively strict and lay a substantial burden upon a party who requests revision.

II. It is apparent that the Applicant did not have access to certain documents in his confidential file when, on 6 October 1982, the Tribunal delivered Judgement No. 297 (*Panis*). Two months later, on 3 December 1982, the Secretary-General issued ST/IC/82/77, which adopts a new policy for personnel records by abolishing confidential files and guaranteeing that a staff

member is entitled to have access to the entirety of materials in his personnel records. The Applicant thereupon reviewed his personnel records and, in this application for revision of Judgement No. 297, brings to the Tribunal a number of documents, hitherto unavailable to him, which he asserts warrant different conclusions on the part of the Tribunal.

III. Chief among these documents is an internal memorandum of 17 May 1977 from the Administrative Officer to the Director of the ECLA Office for the Caribbean in Port-of-Spain, where the Applicant was posted when the events occurred that have been the subject of this litigation. The Applicant attributes "decisive importance" to this memorandum by asserting that its "unwarranted charges however were used to obtain from ECLA Headquarters a drastic reduction in my extension of contract from two years to three months and my separation from the UN Secretariat Staff". The memorandum in question, which appears to do little credit to its author, complains of asserted conduct of the Applicant with reference to the use of staff members for personal errands, reading the mail of other staff members, lack of "a team spirit" and failure to give "adequate supervision to research assistant assigned to him". However, this memorandum was available to the Tribunal, having been sought by the Applicant and produced by the Respondent in the course of the proceeding that led to Judgement No. 297. The Tribunal recorded in paragraph V of the judgement its conclusion that this document has no relevance to the issues raised in this case.

IV. Nor do the other documents now presented by the Applicant to the Tribunal constitute what article 12 of the Statute describes as "a decisive factor" in the case. These documents concern the deplorable interpersonal relations at the ECLA Caribbean Office. In the view of the Tribunal, however, they cannot affect its conclusion that, as his fixed-term appointment at Port-of-Spain was coming to an end in June 1978, "the Applicant made a conscious decision against accepting the offer of the UNIDO post at Addis Ababa, where he had served in 1975 and 1976" (Judgement No. 297, paragraph III). It was the failure of the Applicant to state to the Administration his willingness to serve at Addis Ababa, assuming some reasonable delay in his date of entry on duty were agreed, that made it impossible to find an entitlement to compensation for unsatisfied expectancy of renewal of his fixed-term contract. Consequently, the application for revision of Judgement No. 297 is denied.

V. The Tribunal has also considered an application, dated 21 April 1983, by Mr. Hemraj Ramdath for intervention in this case. Mr. Ramdath was a staff member at the ECLA Office for the Caribbean who, during a period in 1978, served as Research Assistant to the Applicant. Like the latter, Mr. Ramdath asserts wrongful denial of renewal of his fixed-term contract, attributing this denial to events and personalities at the Port-of-Spain office. However, the Tribunal is unable to find that "he has a right which may be affected by the judgement to be given by the Tribunal", which, under article 19 of the Rules, is the necessary basis for the granting of an application to intervene. Judgement No. 297 binds only the Secretary-General and the Applicant in that case, Mr. Panis; it has no effect whatever on any rights that the applicant for intervention, Mr. Ramdath, may have or have had. In these circumstances, the Tribunal can find no basis for granting the request to intervene in a case that was closed on 6 October 1982, the judgement in which contains nothing that affects any possible rights of Mr. Ramdath. The application for intervention is accordingly denied.

(Signatures)

Arnold KEAN  
Vice-President, presiding

Herbert REIS  
Member

Geneva, 1 June 1983

Luis de POSADAS MONTERO  
Member

Jean HARDY  
Executive Secretary

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## Judgement No. 304

(Original: English)

Case No. 273:  
Moser (classification of post)

Against: The Secretary-General  
of the United Nations

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*Request by a former staff member of UNIDO to rescind administrative decision refusing to reclassify the Applicant's post from the General Service to the Professional category.*

*Conclusion of the Joint Appeals Board that a memorandum from UNIDO Personnel Services to the Applicant conveying information concerning upgrading of posts in the UNIDO service to which he was assigned did not affect the Applicant's rights and could not be construed as an administrative decision and that, consequently, the Board had no competence to entertain the request.—Notwithstanding the JAB conclusion the Tribunal finds the application receivable under article 7.1 of its statute.*

*Question of the existence of an administrative decision against which an appeal can be filed.—The Tribunal finds that the memorandum of the UNIDO Personnel Services regarding the Applicant's request for reclassification of post constituted an administrative decision.*

*Case remanded to the Joint Appeals Board for consideration of its merits.*

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THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, President; Mr. Samar Sen, Vice-President; Mr. Arnold Kean, Vice-President; Mr. Luis M. de Posadas Montero, alternate member;

Whereas at the request of Hans Jürgen Moser, a former staff member of the United Nations Industrial Development Organization, hereinafter called UNIDO, the President of the Tribunal, with the agreement of the Respondent, successively extended to 25 May 1981, 12 August 1981, 1 November 1981 and 2 January 1982 the time-limit for the filing of an application to the Tribunal;

Whereas, on 23 December 1981, the Applicant filed an application in which he requested the Tribunal:

“(a) To declare his application receivable;

“(b) To rescind the decision of 21 December 1971 by which the Appellant's post was classified in the General Service Category, as a consequence of his Austrian nationality and the understanding between UNIDO and IAEA [International Atomic Energy Agency] with respect to