Judgement No. 357

(Original: French)

Case No. 238:
Sforza-Chrzanowski

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

Request for the revision of Judgement No. 270.

Respondent's contention that the application was not filed within the time-limits set by article 12 of the Tribunal's statute.—Contention accepted.—The Tribunal nevertheless examines whether a new fact had been established.—Finding that the facts submitted by the Applicant contain no new elements and do not constitute newly discovered facts.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. T. Mutuale, President; Mr. Samar Sen, Vice-President; Mr. Endre Ustor;

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

Whereas, on 13 May 1981, the Tribunal rejected the application in its Judgement No. 270, in which it stated that the document dated 14 September 1980 submitted by the Applicant in support of his application did not constitute a newly discovered fact of such a nature as to call in question the legal basis of Judgement No. 250;

Whereas, on 19 December 1984, the Applicant filed with the Tribunal an application which did not comply with the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 29 April 1985, the Applicant filed a corrected application in which, under article 12 of the Statute of the Tribunal, he requested revision of Judgement No. 270 for the following reasons:

> "The new element submitted in the current request for revision is a letter from the Vice-Minister for Foreign Affairs of the Republic of Korea [Mr. Kim Dong-whie, addressed to the Applicant], dated 5 January 1982 . . . This letter, which was unknown to the Tribunal and the Applicant before Judgement No. 270 was rendered, is of such a nature as to be a decisive factor with regard to the substance of the case . . .
>
> "Furthermore, the current request for revision is formulated within an acceptable time-limit for the following reasons:
>
> "(*a*) The letter from the Vice-Minister for Foreign Affairs of Korea dated 5 January 1982 was not properly addressed and therefore the Applicant did not receive it until 4 September 1982.
>
> "(*b*) . . . On 8 September 1982, . . . the Applicant addressed a letter to the United Nations Department of Personnel . . . transmitting the

aforementioned letter from the Vice-Minister . . . . The Department of Personnel did not reply to this letter from the Applicant.

"(*c*) Having received no reply from the Department of Personnel, the Applicant contacted . . . the head of TARS [Technical Assistance Recruitment Service], by a letter dated 7 March 1983. . . . [the head of TARS] replied by a letter dated 28 March 1983 . . . .

"(*d*) The Applicant then contacted the Joint Appeals Board by letters dated 19 May 1983, 31 July 1983, 8 August 1983, 26 November 1983, 24 February 1984, 29 March 1984, 24 April 1984 and 8 May 1984. The Alternate Secretary of the Joint Appeals Board replied by a letter dated 25 May 1984 . . . .

"(*e*) On 28 February 1984, the Applicant addressed a letter to the Secretary-General of the United Nations. . . .

"(*f*) Following the reply of the Alternate Secretary of the Joint Appeals Board mentioned in paragraph (*d*) above, the Applicant contacted the Executive Secretary of the Tribunal by a letter dated 19 December 1984.

". . .";

Whereas the Applicant's pleas are the following:

"II. *PLEAS*

"The Applicant respectfully requests the Tribunal to consider the revision of its Judgement No. 270 and:

"(*a*) To rule that the letter of 5 January 1982 from Mr. Kim Dong-whie, Vice-Minister for Foreign Affairs of Korea, constitutes a new element of such a nature as to be a decisive factor and put the problem in a new setting . . . .

"(*b*) To order the rescission of the UNIDO decision prompted by the letter dated 26 May 1975 from the Resident Representative in Seoul which had the *de facto* effect of removing the Applicant from his duty station before the end of his contract. This decision by UNIDO in fact displeased the Korean Government . . . .

"(*c*) To rule that the classification of the Applicant in the 'RP' category, indicating that he had been permanently rejected for future employment with the Organization, was an unjust or at least excessive decision in view of the favourable evaluation of the Applicant's performance by the Korean Government . . . , by the Manager of the Medium Industry Bank of Seoul . . . , and by other authorities familiar with the expert services of the Applicant . . . . The decision to place a United Nations employee in the 'RP' category is certainly likely to have the most serious consequences for that person's career. In the case of the Applicant, that step was taken in an excessive, if not unjust, manner, without any regard for the general principle of proportionality.

"(*d*) To rule that the reasons which led the Secretary-General to abolish in 1983 the procedure leading to classification in the 'RP' category were equally valid in 1975, when this measure was taken in the case of the Applicant—since the abolition merely rectified an abnormal situation through the application of principles of law consistently recognized by the Secretary-General.

"(*e*) To rule that as a result of the UNIDO decision to seek to relieve the Applicant of his functions before the expiration of his appointment and

to place him in the 'RP' category, the Applicant suffered psychological and physical harm and serious damage to his professional reputation and material situation . . . and consequently to order that he be paid appropriate compensation, namely a minimum of two years' gross salary corresponding to his grade in 1975.

"(*f*) To order the Secretary-General to address to the Applicant a written statement clearing up the misunderstanding.";

Whereas the letter dated 5 January 1982 reads as follows:

"Dear Count Sforza,

"I understand with great surprise that the difficulties caused by the letter you have sent me in April 1975 still exist.

"I have already expressed in two letters, and I want to confirm emphatically again that we were all fully and completely satisfied with your work and we were sorry and shocked that you had to leave our country prematurely—

"—That we have asked the U.N. to extend your mission and we were greatly disappointed that this was not accepted

"—That nobody at the Ministry with the exception of Mr. HUH has ever objected to the aforementioned letter

"—That the strictly individual action of Mr. HUH, who without any reason or authorization, criticized the strictly personal letter of yours, addressed to me—(when speaking to an Officer of the U.N.D.P.)—was totally irresponsible, decided by only himself—and was condemned by the Minister, myself and the Chief of Protocol.

"It is an absolute injustice that your invaluable services and remarkable contribution to the economic development of this country have been so badly rewarded.

". . .

"(*Signed*) Kim Dong-whie
"Vice Minister";

Whereas, on 3 June 1985, the Respondent filed his answer, in which he requested the Tribunal to find that the Applicant's request for revision was irreceivable under article 12 of the Tribunal's Statute, since it was not filed within 30 days of the discovery of new facts of decisive importance which would justify a revision of the Tribunal's judgement, and within one year of the date of the judgement whose revision the Applicant is requesting;

Whereas, on 4 July 1985, the Applicant submitted written observations on the Respondent's answer;

Whereas the facts in the case were set forth in Judgements Nos. 250 and 270.

The Tribunal, having deliberated from 14 October to 8 November 1985, now pronounces the following judgement:

I. The Applicant requests revision of Judgement No. 270, rendered by the Tribunal on 13 May 1981. In support of his application he contends that "the letter of 5 January 1982 from Mr. Kim Dong-whie, Vice-Minister for Foreign Affairs of Korea, constitutes a new element of such a nature as to be a decisive factor and puts the problem in a new setting".

II. The Respondent contends that the application was not filed within the time-limits set by article 12 of the Statute of the Tribunal. The Tribunal

recognizes the mandatory character of this provision of article 12. Nevertheless, the Tribunal has examined the question whether the Applicant had in fact established the existence of a new fact.

III. The Tribunal notes that in the letter in question, the Korean Vice-Minister recalls his two earlier letters and emphatically confirms again that the Ministry for Foreign Affairs was fully and completely satisfied with the Applicant's work; that it regretted his premature departure and that it condemned the strictly individual action of Mr. Huh.

IV. The Tribunal recalls that in support of his application for revision of Judgement No. 250 the Applicant had submitted the letter which the same Korean Vice-Minister had addressed to him on 14 September 1980; in that letter, the Vice-Minister stated:

> "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 . . . and we would have certainly welcomed an extension of your mission here."

V. It is clear that the letter dated 5 January 1982 contains no element concerning the problem which is new or different from those set forth in the letter of 14 September 1980. The Tribunal can therefore not consider the document dated 5 January 1982 as a newly discovered fact of such a nature as to call in question the legal basis of Judgement No. 270.

VI. With regard to the question of his classification in the "RP" category, the Applicant invokes considerations linked to the decision taken by the Secretary-General in 1983 to abolish that procedure, and produces letters testifying to the quality of his work.

VII. The Tribunal notes in that regard that these considerations and letters do not prove the existence of a newly discovered fact.

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

(Signatures)

T. MUTUALE
President

Endre USTOR
Member

Samar SEN
Vice-President

R. Maria VICIEN-MILBURN
Executive Secretary

New York, 6 November 1985