United Nations AT/DEC/1318

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1318

Case No. 1303

Against: The Secretary-General of the International Seabed Authority

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, President; Ms. Brigitte Stern; Mr. Goh Joon Seng ;

Whereas, on 30 May 2005, a former staff member of the International Seabed Authority, filed an Application in which he requested, in accordance with article 12 of the Statute of the Tribunal, revision of Judgement No. 1214, rendered by the Tribunal on 24 November 2004;

Whereas in his Application, the Applicant requests the Tribunal, inter alia:

"…

- to put on stay and cancel … Judgement No. 1214 …
- to order a hearing in person of the Parties;
- to order for the provision … of [a number of] documents;
- to find … the Respondent's decision … to terminate [the Applicant's appointment] null and void …

…

The Applicant maintains in their entirety the terms and conclusions and recommendation in his Application.

…"

Whereas, on 4 October 2005, the Respondent submitted an Answer that did not meet the requirements of article 8 of the Rules of the Tribunal;

Whereas the Respondent filed his corrected Answer on 10 October 2005;

Whereas the Applicant filed Written Observations on 31 January 2006;

Whereas the facts in the case were set forth in Judgement No. 1214.

Whereas the Applicant's principal contentions are:

1. Having found many lapses in the procedures, in particular the lack of proper fact-finding, the Tribunal should have ordered an oral hearing of the parties.

2. The Tribunal did not take into consideration some facts of such a nature as to be a decisive factor.

3. The Tribunal should have dismissed the case or requested that a joint body be established to examine the facts of the case.

Whereas the Respondent's principal contention is:

The Applicant has failed to show any factual or legal basis for the exercise by the Tribunal of its jurisdiction under article 12 of the Statute.

The Tribunal, having deliberated from 26 June to 27 July 2007, now pronounces the following Judgement:

I. The Applicant initially brought his case to the Tribunal on 4 July 2003. The Tribunal examined it and rendered its decision in Judgement No. 1214. The Applicant is now filing a request for a revision of Judgement No. 1214 under article 12 of the Statute of the Tribunal.

II. 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), para. I, it held that "[a]pplications 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), para. V, the Tribunal stated:

> "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."

Even more recently, the Tribunal added, in its Judgement No. 1164, *Al-Ansari et al.* (2004), para. III "[t]he 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".

III. The substantive condition for the revision of a judgement is therefore the emergence of a new fact capable of modifying the judgement rendered. The Tribunal must therefore consider the new fact(s) adduced by the Applicant to support his Application for a revision, in accordance with the criteria established by the Tribunal in its previous jurisprudence. The Applicant points, for example, at what it considers the Tribunal's oversights and omissions of facts of decisive importance to the case in question. In support of his Application, the Applicant invokes errors of interpretation attributable to the Conciliation Committee; moreover, he maintains that the Conciliation Committee was not constituted in accordance with established procedure. The Applicant further contests the Tribunal's interpretation of elements of facts relating to the problem of his overpayment, to the letter of termination of appointment addressed to him by the Secretary-General and, in particular, the explanations concerning what the Administration considered to be the unsatisfactory performance by the Applicant of his professional duties.

IV. In light of the Applicant's arguments, it appears that no new fact that was not known at the time of the previous decision has been adduced. Rather, it seems that the Applicant limits himself to criticizing the interpretation of the facts by the Conciliation Committee meeting specifically to consider non-disciplinary cases, and the interpretation of the facts by the Tribunal based on the documents submitted in the dispute. The Applicant therefore does not base his arguments on the existence of a new fact that would justify a revision, but rather on what he considers to be a misinterpretation of old facts in respect of which the Tribunal has already rendered judgement. Such an application is not within the scope of article 12 of the Tribunal's Statute. The Tribunal has ruled many times on this type of application: in its Judgement No. 894, *Mansour* (1998), para. II, the Tribunal held 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".

Consequently, the Tribunal reiterates the conclusions that it reached in *Al-Ansari et al.* (*ibid.*), para. IV:

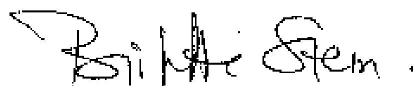
> "No one should believe that a mere restatement of claims, even though made in new language and with changed emphasis, can be a basis for the revision of a judgement made by the Tribunal. As stated in

Judgement No. 556, *Coulibaly* (1992), a revision is not a means of reopening issues that have been settled definitively and which are thus res judicata."

V. For the above reasons, the Tribunal rejects the Application in its entirety.

(*Signatures*)

Spyridon **Flogaitis**
President



Brigitte **Stern**
Member

Goh Joon Seng
Member

Geneva, 27 July 2007

Maritza **Struyvenberg**
Executive Secretary