
Judgement No. 216*(Original: English)***Case No. 205:
Ogley****Against: The Secretary-General
of the United Nations**

Request for revision of Judgement No. 215.

Request for oral proceedings.—Request rejected, since all the relevant material was on record.

Request for revision.—Alleged discovery by the Applicant that his counsel was on the verge of retirement.—Complaint of the Applicant that his counsel did not take any action after the judgement was rendered.—Powers of revision of the Tribunal under article 12 of its Statute.—The aforementioned alleged discovery is not a fact of such a nature as to be a decisive factor.—The aforementioned complaint has no relevance to the application before the Tribunal.—Request rejected.

The requests for reimbursement of expenses are irrelevant or rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Madame Paul Bastid, Vice-President; Sir Roger Stevens; Mr. Francisco A. Forteza, alternate member;

Whereas, by a letter dated 21 January 1977, the Applicant filed with the Tribunal an application requesting, under article 12 of the Statute, revision of Judgement No. 215 rendered in his case on 15 October 1976;

Whereas in his application the Applicant stated *inter alia*:

“I had not the slightest idea that [the Applicant’s counsel] was on the threshold of finishing his contract with the United Nations. If I had known this I would have asked to be represented by a new counsel, and I would have exercised even closer control over the handling of my case than I have done in the last three or four months. I would have acted quite differently if I had known of [the Applicant’s counsel’s] position for two reasons. (i): I would have assumed that there was at least a possibility that [the Applicant’s counsel], consciously or unconsciously, would handle my case with undue delicacy towards senior members of the United Nations/UNDP, on the grounds that if he were hoping that there might be an extension of his contract, or if he were to have another contract in the future, he must, at all costs, spare their feelings, otherwise his own position would be prejudiced. My position in this case would be expendable: (ii) apart from this aspect, I would consider it likely that if [the Applicant’s counsel] were about to leave his United Nations assignment he would be under pressure to ensure that it was fully completed and with no ‘loose ends’ left. He would also be pre-occupied with looking for a new job, or, even if he had one, generally preparing himself for it. In such circumstances the handling of my own difficult case would have become a burden and even an irritation to him, to be brushed aside and dropped as quickly as possible. It happens that since my case had reached the Tribunal I have, exceptionally, been entrusting the handling of my case more and more to [the

Applicant's counsel], as I felt that the stage had been reached when technical points would need special attention such as only a qualified lawyer could deal with. However, I have been far from satisfied with [the Applicant's counsel's] recent handling of my case . . .”;

Whereas, in a letter dated 5 February 1977, the Applicant clarified the grounds of his application as follows:

“My grounds for applying to the Administrative Tribunal for a revision of their Judgement are that it has now become evident to me that during the period when I had been looking to my counsel for his expert help and guidance he was, unknown to me, on the point of leaving the United Nations. He must himself have known that his contract was ending. Had he been expecting that it would be renewed or extended? . . . It is evident that when a counsel does have to leave an unfinished case, there should be an administrative arrangement that he makes a proper handover to some other counsel on the United Nations panel of counsel. My counsel has evidently done nothing about my case for months and now just dropped it. I find his conduct unacceptable to say the least. However, in the circumstances—and I have given much thought to recent developments—it is evident to me that what has happened makes it possible for me to seek a revision of the Judgement on the basis of Article 12 of the Statute of the Tribunal. I can state categorically that if I had known that my counsel was on the point of leaving the United Nations I would have taken the handling of my case out of his hands and, for better or for worse, I would have conducted my case alone. In fact, it is entirely because of my own efforts that my case has got as far as it has. It has required almost superhuman effort for me to take on single handed the top administration of the United Nations/UNDP, the Joint Appeals Board and finally, by my persistence, to obtain formal acknowledgement, *inter alia*, of ‘irregularities and improprieties’ when these had been vehemently and vigorously denied—for years—by the internal United Nations administration.

“I now formally apply to the Tribunal for a Revision Judgement for the reasons stated here. I want to close this case and I ask for reasonable costs, both (a) with respect to out of pocket expenses and (b) with respect to the time which I have had to spend on this case which I would not have had to spend on it if the United Nations administration had done their job as they ought to have done it, properly, in the first place . . .”;

Whereas the Respondent filed his answer on 16 February 1977;

Whereas, on 21 March 1977, the Applicant filed written observations in which he requested oral proceedings;

Whereas the facts in the case have been set forth in Judgement No. 215.

The Tribunal, having deliberated from 6 April 1977 to 14 April 1977, 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 for revision of Judgement No. 215 was on record before the Tribunal.

II. The Applicant seeks revision under article 12 of the Statute of Judgement No. 215 rendered in his case on 15 October 1976 on the plea that he did not know at the time of the consideration of the case that his counsel was “on the threshold of finishing his contract with the United Nations” and that, had he known it, he would have asked to be represented by a new counsel and would have “exercised even closer control over the handling” of his case. He gives as his reason that a staff member at the end of his contract might either be too soft to the Administration in expectation of further employment or too busy with his own affairs to give the case the attention it needed.

In his further letter dated 5 February 1977, the Applicant amplifies the grounds for revision and states that, after the judgement was rendered on 15 October 1976, his counsel had "evidently done nothing about [the Applicant's] case for months and now just dropped it".

III. The Tribunal observes that under article 12 of its Statute, the Tribunal may revise a judgement if

(a) some fact unknown to the Tribunal and to the party claiming revision at the time the judgement was given is subsequently discovered;

(b) such fact is of such a nature as to be a decisive factor; and

(c) the ignorance of such fact is not due to the negligence of the party claiming revision.

The Tribunal's powers of revision are strictly limited by its Statute and cannot be enlarged or abridged by the Tribunal in the exercise of its jurisdiction.

IV. The Tribunal observes that the alleged discovery by the Applicant that his counsel was on the verge of retirement is not "some fact of such a nature as to be a decisive factor" affecting the decision of the Tribunal in Judgement No. 215. The Applicant assumes without any foundation that, through some fault of his counsel, his case was not presented adequately to the Tribunal.

The Applicant's contention that a member of the panel of counsel of the United Nations would not take adequate interest in a case at the end of his contract is only an inference drawn by the Applicant, and on the basis of such an inference a judgement cannot be revised under article 12 of the Statute.

V. The Applicant's further complaint that his counsel did not take any action in his case *after* Judgement No. 215 was rendered has no relevance to the application before the Tribunal.

VI. The Tribunal therefore finds that there is no basis for the application for revision of Judgement No. 215 under article 12 of the Statute and accordingly rejects the application.

VII. The Applicant's request for reimbursement of expenses incurred during the proceedings culminating in Judgement No. 215 does not call for a decision by the Tribunal as his application for revision of the said judgement fails.

The Applicant's request for reimbursement of expenses related to the application for revision is rejected as the application fails.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

Roger STEVENS
Member

Geneva, 14 April 1977

Francisco A. FORTEZA
Alternate Member

Jean HARDY
Executive Secretary