

PROVISIONAL TRANSLATION

ADMINISTRATIVE TRIBUNAL

Judgement No. 827

Case No. 762: THIAM

Against: The Secretary-General of
the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Mikuin Leliel Balanda,
Vice-President; Mr. Mayer Gabay;

Whereas, by a letter dated 17 May 1996, Mr. Oumar Doudou Thiam, a former staff member of the Office of the United Nations High Commissioner for Refugees (hereinafter referred to as UNHCR), filed with the Tribunal an Application requesting, under former article 12 (now article 11) of the Statute of the Tribunal, revision of Judgement No. 715 rendered on 28 July 1995;

Whereas the conclusions formulated in the Application read in part as follows:

"The Applicant requests the Tribunal to:

(a) Consider favourably his request for immediate reinstatement in UNHCR [the Office of the United Nations High Commissioner for Refugees] ...

(b) To declare these singular methods and practices employed by the Administration of UNHCR in the management of* the Applicant's professional career ... contrary to the spirit and letter of the Charter of the United Nations ...

* Translator's note: Reference quotes the original inaccurately; I have corrected it on the French text sent for translation.

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(c) To declare the Applicant a victim of abuse of authority and unlawful practices which led to his dismissal from employment ..."

Whereas the Respondent filed his answer on 24 May 1996;

Whereas the Applicant filed written observations on 18 June 1996;

Whereas the Applicant filed an additional document on 21 March 1997;

Whereas the facts of the case were set forth in Judgement No. 715;

Whereas the Applicant's principal contention is:

The instruction by the Head, Personnel Services, contained in the document dated 1 February 1983, renders null and void the decision by the Appointment and Promotion Board to recommend non-renewal of the Applicant's appointment. This new document submitted to the Tribunal, which constitutes new elements revealed on the occasion of the June/July session of the Administrative Tribunal, constitutes completely new elements which are of such a nature "as to be a decisive factor" in the Tribunal's perception of this case.

Whereas the Respondent's principal contention is:

The Application does not meet the requirements of former article 12 (now article 11) of the Statute of the Tribunal; it does not reveal "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 party claiming revision".

The Tribunal, having deliberated from 8 July to 1 August 1997, now pronounces the following Judgement:

I. The Applicant, a former staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR), requests revision of Judgement No. 715 of 28 July 1995, whereby the Tribunal had inter alia granted him, as compensation, a sum equivalent to six months' net base salary as a consequence

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of the irregularities noted in the circumstances under which his separation from service took place in 1985.

II. In support of his request, containing also a request for his reinstatement, the Applicant invokes the discovery in his administrative file of a note from an administration official at the time indicating that a document should not be part of his file. The document in question was the one containing an unfavourable evaluation of the Applicant's services during his mission to Cameroon.

The Respondent requests rejection of this Application on the grounds that it does not meet the requirements of former article 12 (now article 11) of the Statute of the Tribunal.

III. Former article 12 (now article 11) of the Statute of the Tribunal provides that:

"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 notes that under the terms of these provisions, a number of requirements are made of the party seeking to file an Application for revision.

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He must inter alia prove that the fact cited was unknown to the party and also to the Tribunal at the time when the Tribunal pronounced judgement.

IV. In the case under consideration, the Applicant himself acknowledges having had access to his administrative file, which he was able to consult in May-June 1995. Given that the memorandum referred to was in that file, the Applicant should thus have had knowledge of it. The same applies to the Tribunal at the time of the proceedings which led to Judgement No. 715 of 28 July 1995.

V. It follows that the Applicant is wrong in claiming now that he did not have knowledge of this document. Accordingly, one of the requirements of former article 12 (now article 11) of the Statute not having been met in this case, the Application, which in fact aims at challenging the first judgement, should be rejected (cf. Judgements No. 742, Magari (1996); No. 751, Sa'adiyah (1996); No. 752, Bakr et. al. (1996)).

VI. For the foregoing reasons, the Tribunal rejects the Application.

(Signatures)

Hubert THIERRY
President

Mikuin Leliel BALANDA
Vice-President

Mayer GABAY
Member

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Geneva, 1 August 1997

R. Maria VICIEN-MILBURN
Secretary

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