United Nations AT/DEC/1224

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1224

Case No. 1141 Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Kevin Haugh, First Vice-President, presiding; Mr. Spyridon Flogaitis, Second Vice-President; Ms. Brigitte Stern;

Whereas, on 28 August 2003, a former staff member of the United Nations filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 10 December 2003, the Applicant, after making the necessary corrections, again filed an Application in which he requested, in accordance with article 12 of the Statute of the Tribunal, the revision of Judgement No. 1047 rendered by the Tribunal on 23 July 2002;

Whereas the Application contained pleas which read, in part, as follows:

"**II. Pleas**

1. The Applicant hereby submits four pleas, labelled A to D, based on material facts unknown to him at the time Judgement No. 1047 … was given. …

Plea A: The Administrative Tribunal *overlooked one of the most important rules and principles in the law - that he who prepares a contract is responsible for any and all ambiguities or misstatements contained in it and that the judge or trier of fact must hold such flaws against the preparer and in favour of the other party.* …

In the light of the above, the Applicant respectfully requests the Administrative Tribunal to reconsider plea No. 1 of his original Application … [and] *taking into account contra [preferentum]***,** to reverse its decision …

> *Plea B*: In rejecting plea No. 5 of the original Application …, which the Respondent ha[d] not contested, the *Administrative Tribunal has not applied its own jurisprudence* … Without stating its reason for this, it acted contrary to Article 10, paragraph 3 of its Statute.
>
> Accordingly, the Applicant respectfully requests the Administrative Tribunal to reconsider plea No. 5 ...
>
> *Plea C*: Judgement No. 1047 … *does not state why the Administrative Tribunal declined to award compensation in respect of pleas No. 2 and No. 4* of the original Application …, neither of which the Respondent had contested.
>
> Because this is contrary to Article 10, paragraph 3 of its Statute, the Applicant respectfully requests the Administrative Tribunal to reconsider these pleas and to reverse its decision ...
>
> *Plea D*: The Respondent filed his Answer *after the deadline to file had expired.* This is irregular and therefore it should not have been received. The Respondent's casual and dilatory handling of the Application before the Tribunal further delayed the course of justice. In view of this, the Applicant respectfully requests the Administrative Tribunal to order the Secretary-General to pay him additional compensation in the amount of six months net pay …
>
> [The Applicant requests that oral proceedings be held in this case.]"

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 30 April 2004;

Whereas the Respondent filed his Answer on 23 April 2004;

Whereas, on 25 May 2004 the Applicant filed Written Observations amending his pleas as follows;

> "… [T]he Applicant respectfully requests the President of the Administrative Tribunal to call upon the Executive Secretary to provide the parties with properly authenticated copies of [the case] file under the provisions of article 10.1 of the Rules of the Tribunal. …
>
> If [the case file] confirms the Applicant's contention that no extension beyond 31 July 2001 was authorised, then the Respondent's Answer [in Judgement No. 1047] is not receivable. … [T]he Applicant respectfully requests the Administrative Tribunal to reconsider the case, setting aside the Respondent's Answer because it was filed after the deadline to file had expired."

Whereas, on 28 June 2004, the Applicant submitted an additional communication;

Whereas, on 30 June 2005, the Tribunal decided not to hold oral proceedings in the case;

Whereas the facts in the case were set forth in Judgement No. 1047.

Whereas the Applicant's principal contentions are:

1. The Tribunal overlooked the principle of *contra preferentum* in rendering Judgement No. 1047.

2. The Tribunal failed to apply its jurisprudence.

3. The Tribunal failed to provide reasoning for its decisions.

4. The Tribunal ought not to have accepted the Respondent's Answer, which was filed late.

Whereas the Respondent's principal contention is that the Applicant failed to introduce any fact of a decisive nature which was unknown to the Tribunal and to the Applicant at the time Judgement No. 1047 was rendered, and, accordingly, his request for a revision of that Judgement is without merit.

The Tribunal, having deliberated from 30 June to 22 July 2005, now pronounces the following Judgement:

I. The Applicant entered the service of the Organization as an Associate Administrative Officer, Office of Personnel Services, at the P-2 level, on 1 April 1975, and at the time of the events which gave rise to his original Application, was serving as Chief, Information Management Unit, Department of Humanitarian Affairs, Geneva, at the P-5 level. In Judgement No. 1047, the Tribunal rejected the Applicant's request for education grant for the school year 1994-1995 in respect of his minor daughter, on the basis of her age. On 10 December 2003, the Applicant submitted an application to the Tribunal for revision of that Judgement, in which he requests the Tribunal "to reconsider" his pleas.

II. The Tribunal recalls its established jurisprudence in revision cases and notes, in particular, its Judgement 1164, *Al-Ansari et al.* (2004), in which it stated as follows:

> "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), it held that

> '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. ... 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), 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.'

Additionally, in accordance with both the advisory opinion of the International Court of Justice of 13 July 1954 and its own jurisprudence, the Tribunal will consider applications for interpretation of judgement, where there is dispute as to the meaning or scope of the judgement. See Judgement No. 61, *Crawford et al.* (1955).

From what is stated above, it can be seen that the 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. See Judgement No. 896, *Baccouche* (1998), in which the Tribunal explained that an application for revision must not be confused with an appeal, since the Tribunal's judgements are final and not subject to appeal." (Para. III.)

In the present case, the Tribunal finds no element which would allow the Applicant's case to be revisited. The Applicant contends that the Judgement itself provided a new fact in that it gave judicial notice of an extension of time granted to the Respondent of which the Applicant was unaware. This argument, independent of its validity on other grounds, holds no water: the Applicant was aware of the date of the Respondent's Answer when a copy was transmitted to him, and he had the opportunity to object to its timeliness in his Written Observations.

III. Finally, the Tribunal reiterates Judgement No. 894, *Mansour* (1998), "[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". The Application in this case is little more than a restatement of the original Application. As held in *Al-Ansari*, *ibid*., "[n]o 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". Moreover, a revision is not a means of reopening issues that have been settled definitively and which are thus *res judicata*. (See Judgement No. 556, *Coulibaly* (1992).)

IV. In view of the foregoing, the Application is rejected.

(*Signatures*)

Kevin **Haugh**
First Vice-President, presiding

Spyridon **Flogaitis**
Second Vice-President

Brigitte **Stern**
Member

Geneva, 22 July 2005

Maritza **Struyvenberg**
Executive Secretary