United Nations AT/DEC/1376

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1376

Case No. 1332 Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, President; Ms. Jacqueline R. Scott, Vice-President; Ms. Brigitte Stern;

Whereas, on 10 July 2006, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 12 October 2006, the Applicant, after making the necessary corrections, filed an Application in which he requested, in accordance with article 12 of the Statute of the Tribunal, revision of Judgement No. 1259, rendered by the Tribunal on 23 November 2005;

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

> "[To find] that there were factual errors … in … Judgement [No. 1259]; … [to review] the Applicant's original application … on the merits, [to grant] the relief sought in [the] Judgement …; and, [to reinstate] the Applicant … in his former job …"

Whereas the Respondent filed his Answer on 19 February 2007;

Whereas the facts in the case were set forth in Judgement No. 1259.

Whereas the Applicant's principal contentions are:

1. Judgement No. 1259 contained factual errors.

2. The dates used to measure the period of preparing the filing were not the dates that should have been used.

3. An extension had been given by the secretariat.

4. The delays in filing his Application were due to factors beyond his control.

Whereas the Respondent's principal contention is:

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. 1259 was rendered and, accordingly, his request for revision of judgement is without merit.

The Tribunal, having deliberated from 21 April to 2 May 2008, now pronounces the following Judgement:

I. The Applicant initially filed his case with the Tribunal on 29 January 2004. The Tribunal considered that case and ruled on it in Judgement No. 1259.

II. Before considering the Applicant's current application, the Tribunal will, at the outset, briefly review the proceedings prior to its submission. On 11 December 1994, an Israeli court in Ramallah found the Applicant not guilty of murdering a man on 1 January 1989. On 11 February 1999, a Palestinian criminal court in Ramallah found the Applicant guilty of attempted murder for the same incident and sentenced him to ten years' imprisonment, commuted to five years. The Applicant appealed against the ruling and was released on bail on 17 February. Following these events, the Applicant was suspended from UNRWA effective 1 June. On 7 September, the Applicant requested a review of that administrative decision, stressing that, since the President of the Palestinian Authority, Mr. Arafat, had ordered the closure of all cases relating to incidents that occurred during the intifada, the charges against him (attempted murder) should therefore be dropped and the case closed. On 9 September, the Director of UNRWA Operations, West Bank, responded that the Applicant's request for reinstatement had been seriously considered but that the Agency's policy on staff convicted of criminal offences had been properly observed and the decision would therefore stand. On 12 October, the Applicant lodged an appeal with the Area staff Joint Appeals Board (JAB) in Amman.

Subsequently, on 18 December 1999, the Palestinian Court of Appeal granted a motion submitted by the Assistant Attorney-General of the Palestinian Authority on 23 September, pursuant to the order issued by Mr. Arafat, and issued a ruling terminating all proceedings against the Applicant and closing the case, on the grounds that the

court of first instance, the Palestinian Criminal Court, had exceeded its jurisdiction because the acts of which the Applicant had been accused had taken place prior to the establishment of the Palestinian courts, which, therefore, had no jurisdiction over the matter. Subsequently, the Attorney-General of the Palestinian Authority confirmed to UNRWA that the case was closed and that there would be no further proceedings.

III. The JAB adopted its report on 20 July 2000 and concluded that the Applicant should be re-employed. It also recommended that the contested administrative decision should be reviewed. However, on 6 August, the Commissioner-General refused to rescind the decision to terminate the Applicant's employment, explaining in a letter of the same date addressed to the Applicant that he rejected the Board's conclusions and dismissed the Applicant's appeal for the following reasons:

> "As you were found to be at fault by a competent judicial authority and detained on that basis, your conviction and the imposition of a prison sentence for more than three months was a proper basis for your termination as set out in the Agency's policy on detained staff. The fact that your earlier conviction was not confirmed by the Court of Appeal and that there was a chance that you could have been found innocent if the appeal process continued might be relevant for a re-employment decision but does not affect the validity of the Agency's decision to terminate you. The Court of Appeal's decision of 18 December 1999 to administratively suspend the case did not have the effect of cancelling or invalidating your conviction in the Court of First Instance."

The Applicant contested the Respondent's decision not to re-employ him after the Court of Appeal suspended his sentence and filed an Application with the Tribunal on 29 January 2004. In its Judgement No. 1259, the Tribunal declared that it was "sympathetic to the Applicant's situation" but rejected the Application in its entirety because:

> "Unfortunately … the Application to this Tribunal [was] well and truly time-barred. In accordance with the provisions of article 7, paragraphs 2 and 4, of the Statute of the Tribunal, the Applicant had 90 days from 6 August 2000 to file his Application with the Tribunal, as time commenced to run when the Respondent rejected the recommendation of the [JAB] and dismissed the Applicant's appeal. These proceedings were not received by the Tribunal until 29 January 2004 and no reasonable explanation has been offered for this long delay."

IV. The Applicant is now submitting an Application for revision of Judgement No. 1259, pursuant to article 12 of the Statute of the Tribunal.

V. The competence of the Tribunal to revisit cases in which judgements have already been pronounced is, for the main part, described in article 12 of its 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 strictly applies article 12: in paragraph I of its Judgement No. 303, *Panis* (1983), it ruled 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 the party who requests revision.".

Recently, in paragraph V of its 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."

Even more recently, in paragraph III of its Judgement No. 1164, *Al-Ansari et al*. (2004), the Tribunal added that "the Tribunal has no jurisdiction to reopen 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" and that 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".

Lastly, in paragraph II of its Judgement No. 894, *Mansour* (1998), the Tribunal stated 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".

VI. In his Application for revision, however, the Applicant does not mention any new facts. As the Applicant himself pointed out, the current request for revision of Judgement No. 1259 "centers solely on the ruling that the Appeal was time-barred". Indeed, given that the Application is entitled "Applicant's STATEMENT OF REQUEST FOR *RECONSIDERATION*" (emphasis added), the Applicant himself admits, perhaps involuntarily, that he is not requesting the revision of Judgement No. 1259 but, rather, the reopening of the debate on the merits.

VII. In support of his Application, the Applicant refers to three alleged errors in the Tribunal's initial Judgement, which, in his view, warrant its revision. First, he states that the Tribunal chose the wrong date from which to calculate the 90-day time limit for the filing of his Application. Secondly, he takes the view that the Tribunal was mistaken in its assertion that there was no reasonable explanation for the delayed filing of his Application. Thirdly, he advances a procedural plea to the effect that, once the secretariat had granted him an extension of the time limits

for filing, the Tribunal was estopped from ruling that his Application was time-barred. The Tribunal will now consider these arguments individually.

VIII. The Tribunal will, thus, first consider the plea that the dates used in its Judgement No. 1259 were incorrect. At the outset, the Tribunal wishes to recall that, pursuant to article 7, paragraph 4, of its Statute, "[a]n application shall not be receivable unless it is filed within ninety days reckoned from the respective dates and periods referred to in paragraph 2 above, or within ninety days reckoned from the date of the communication of the joint body's opinion containing recommendations unfavourable to the applicant".

The Tribunal ruled that the 90-day time limit for the filing of the Applicant's Application began on 6 August 2000, the date on which the Respondent rejected the recommendation of the JAB and the Applicant's appeal.

The Applicant is contesting the date chosen by the Tribunal. In support of his plea, the Applicant offers a number of rather confusing explanations, stating that he did not receive the letter dated 6 August 2000 from the Commissioner-General until 1 November; that he had informed the UNRWA Legal Adviser of his wish to appeal by means of a letter dated 10 November; and, that he had not received his personal file, which he had requested in order to prepare his appeal, until 10 May 2001. However, these explanations do not contain any new facts warranting a revision of the Judgement.

Even if all these new explanations are taken into consideration, the fact remains that two years transpired - between the date on which the Applicant states that he received his personal file, 10 May 2001, and the date on which he first attempted to file an application with the Tribunal, 10 May 2003 - before the Tribunal granted him an extension so that, in accordance with article 7, paragraph 10, of the Tribunal's Rules, he could make the necessary corrections to its form.

Accordingly, the Tribunal takes the view that there are no grounds for revision of the decision that the Application was time-barred.

IX. Secondly, the Tribunal will consider the plea that the Tribunal, in order to justify its decision that the Application was time-barred, wrongly maintained that no reasonable explanation had been offered for the delay. The Tribunal first wishes to recall that, pursuant to article 7, paragraph 5, of its Statute, "[i]n any particular case, the Tribunal may decide to suspend the provisions regarding time limits".

Recently, however, in paragraph IV of its Judgement No. 1335, (2007), the Tribunal pointed out that it

> "recognize[d] the importance of complying with procedural rules, finding them to be 'of the utmost importance for the well functioning of the Organization' (see Judgement No. 1106, *Iqbal* (2003)), [and would] not waive or suspend such time limits unless there [were] extraordinary circumstances, including 'serious reasons which prevented the Applicant from acting' (see Judgement No. 359, *Gbikpi* (1985))."

The Applicant asserts that "there were reasonable explanations for the delay which was due to factors beyond [his] control" and states that the invasion of Ramallah and the subsequent destruction of his lawyer's offices during the intifada, were directly responsible for the fact that his Application was time-barred:

> "Israeli military forces reoccupied Ramallah in the West Bank two separate times: Once in 5 February 2002, then again on 3 April 2002 ... The army imposed curfews, and remained for weeks terrorizing the population, and disrupting normal life functions. On the second invasion, a rocket (or some other explosive) was fired into the offices of [the] attorney for Applicant, and destroyed most of its contents, including the papers pertaining to the Appeal ... As the attorney attempted to reconstruct different files in his office, including that of the Applicant, he had to contend with the fact that most of the government offices had also been destroyed, or ransacked, and were not functioning at peak efficiency. Nonetheless, and with the help of the United Nations Legal office, he was able to reconstruct the papers pertaining to the file of the Applicant, and submit the Application to the Tribunal [on 10 May 2003].
>
> These delays caused by the invasion, and the destruction of the offices of the attorney fully explain the delay in filing the Appeal. They were not the fault of the Applicant, and were due to circumstances beyond his control. The circumstances of the situation in the West Bank are well known to the [United Nations] officials in the area, and have disrupted much of their own operations as well. For this reason, Applicant found no reason to give details of the disruptions causing the delays, and he considered the additional extension given him to file a corrected Application a clear indication that he was not required to justify or explain the delay, otherwise, he could have easily done so at the time."

These circumstances are certainly unusual. Unfortunately, however, the explanations given do not amount to a new 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 Applicant should have provided the Tribunal with these explanations when he filed his initial Application, particularly since the Respondent had maintained that the Application was not receivable *ratione temporis*.

Accordingly, the Tribunal takes the view that there are no grounds for revising its decision that, when filing his initial Application, the Applicant failed to mention any extraordinary circumstances with a view to requesting the Tribunal to suspend the provisions regarding time limits, pursuant to article 7, paragraph 5, of its Statute.

X. Lastly, with the assertion that "the extension granted by the secretariat acts as an estoppel", the Applicant submits an additional procedural plea designed to show that the Tribunal was mistaken.

The Tribunal wishes to point out that estoppel is a concept rooted in Anglo-Saxon law for which there is no official translation. A wide variety of definitions of the term can be found in doctrine and case law. In the interest of clarity, one of those definitions should be mentioned. Estoppel can thus be defined as "the impossibility for a person to contradict what he or she has previously said or indicated" (see Kohen, Marcelo G., Possession contestée et souveraineté territoriale, Paris, PUF, 1997, p. 356).

In the case at issue, the Applicant first filed his Application with the Tribunal on 10 May 2003. On 11 November 2003, the secretariat of the Tribunal granted him an extension until 31 January 2004 so that he could make the necessary corrections to his Application, in accordance with article 7, paragraph 10, of the Tribunal's

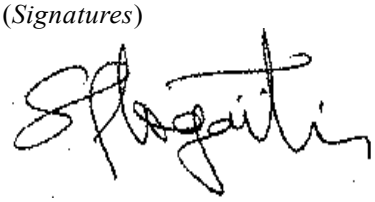
Rules. The Applicant finally filed his Application on 22 January 2004, and it was received by the Tribunal on 29 January 2004, i.e. within the time limit set by the secretariat for the correction of the Application. The Applicant now maintains that the Tribunal is thus estopped from establishing a set of circumstances, i.e. deciding that the Application is time-barred, that differ from those whose existence it had previously upheld.

The Tribunal wishes to point out, however, that the secretariat of the Tribunal is not empowered to issue judgements and that the simple registration of a case or, in the matter at issue, the granting of an extension of the time limit for the submission of a completed file are acts with no jurisdictional bearing. The Tribunal decides on its own competence and it alone is empowered to rule on the non-receivability of a request *ratione temporis*.

Accordingly, the Tribunal is of the view that there are no grounds for the revision of the decision that the Application to the Tribunal was time-barred, and rejects the plea that the time limit granted by the secretariat acted as estoppel.

XI. In view of the foregoing, the Tribunal rejects the Application in its entirety.

(*Signatures*)



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New York, 2 May 2008

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