United Nations AT/DEC/1377

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1377

Case No. 1333 Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, President; Mr. Dayendra Sena Wijewardane, Vice-President; Ms. Brigitte Stern;

Whereas, on 7 July 2006, the Respondent in case No. 1333 filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 5 September 2006, the Respondent, after making the necessary corrections, filed an Application in which he requested the interpretation of Judgement No. 1260, rendered by the Tribunal on 23 November 2005;

Whereas in his Application, the Respondent "seeks the Tribunal's interpretation as to the meaning and scope of its Judgement No. 1260, and specifically paragraphs X to XII thereof"; "wishes to confirm that this Judgement does not affect the Organization's policy on the due process rights applicable to staff members during fact-finding investigations"; and, also "wishes to seek the Tribunal's clarification as to when such investigations become quasi-judicial enquiries giving rise to a right of cross-examination, as the Tribunal concluded had occurred in this case".

Whereas the facts in the case were set forth in Judgement No. 1260.

Whereas the Respondent's principal contention is:

The request for interpretation of Judgement No. 1260 is clearly within the jurisdiction of the Tribunal, fulfils all requirements as to receivability, and is thus receivable.

The Tribunal, having deliberated from 23 April to 2 May 2008, now pronounces the following Judgement:

I. On 23 November 2005, the Tribunal rendered Judgement No. 1260, holding, in relevant part, that the staff member's rights of due process had been violated during an investigation and subsequent disciplinary proceedings against him. The Tribunal focused upon the violation of his due process rights in the following passage:

> "Whilst it is correct that the panel of investigation is, in a sense, an inquiry into the facts preceding a disciplinary inquiry, it is also, in effect, the 'hearing' which was conducted on the spot where the action had taken place and where the actors were present. The [disciplinary] hearing took place a year later in New York. Although the investigation in this case was ostensibly conducted to establish facts, from the very outset the Applicant was identified and implicated. These proceedings were, in effect, a quasi-judicial inquiry, and one in which the Applicant was entitled, in the Tribunal's view, to have all his due process rights carefully preserved."

Furthermore, the Tribunal held:

> "A case like the present is demonstrably one in which the right of confrontation should have been permitted. This right is 'necessary' for due process protection and accordingly, in the Tribunal's view, the requirement is one which is provided for in the circular. The failure to accord the Applicant such an opportunity, even when he drew attention to it, is a denial of his due process rights."

The Tribunal awarded compensation in the amount of US$ 6,000 but found that there was sufficient evidence against the staff member to sustain the disciplinary sanction imposed.

On 5 September 2006, the Respondent filed a request for interpretation of judgement, seeking clarification as to "the meaning and the scope of … Judgement No. 1260". The Respondent wishes "confirm[ation] that this Judgement does not affect the Organization's policy on due process rights applicable to staff members during fact-finding investigations", as well as elucidation as to when such investigations become quasi-judicial enquiries giving rise to a right of cross-examination.

II. The power of the Tribunal to interpret its own judgements is well-established, having first been enunciated in 1955, in Judgement No. 61, *Crawford et al*. The Tribunal declared itself competent to consider a Motion requesting interpretation of judgement finding that, notwithstanding the silence of the Statute of the Tribunal on the matter, "the competence of national and international courts to interpret their own judgements is generally recognized". It noted that the parties to the case had agreed that the competence to interpret judgements was "inherent in the judicial function which the International Court of Justice (ICJ), in its advisory opinion of 13 July 1954, declared the Tribunal to possess" and that the Tribunal was competent to interpret the judgements in question. Recently, in Judgement No. 972, *Abdulhadi* (2000), the Tribunal found that the competence to interpret its own judgements is "encompassed in the jurisdictional function of a tribunal", "[i]n accordance with the general principles of law".

In *Crawford*, the Tribunal relied upon the jurisprudence of the ICJ, noting:

> "The [ICJ] (Asylum case [interpretation], ICJ Reports, 1950, p. 402) has laid down the conditions in which it can take action on a request for interpretation as follows :
>
> > '(1) The real purpose of the request must be to obtain an interpretation of the judgement. This signifies that its object must be solely to obtain clarification of the meaning and the scope of what the Court has decided with binding force, and not to obtain an answer to questions not so decided. Any other construction of Article 60 of the Statute would nullify the provision of the article that the judgement is final and without appeal.
> >
> > (2) In addition, it is necessary that there should exist a dispute as to the meaning or scope of the judgement. To decide whether the first requirement stated above is fulfilled, one must bear in mind the principle that it is the duty of the Court not only to reply to the questions as stated in the final submissions of the parties, but also to abstain from deciding points not included in those submissions.'
>
> The Court added (*loc. cit*., p. 403): 'Interpretation can in no way go beyond the limits of the judgement, fixed in advance by the Parties themselves in their submissions.'
>
> The Tribunal considers that it should be guided by these general principles regarding the interpretation of judgements."

The Tribunal has consistently held that the party requesting interpretation must demonstrate "legitimate interest" in so doing. (Judgement No. 330, *Klee* (1984).) However, legitimate interest alone is not the applicable threshold for the Tribunal to provide the requested interpretation. Rather, "a request for interpretation should refer to a particular point or passage in a decision whose meaning is obscure or ambiguous, thus requiring clarification from the Tribunal". (Judgement No. 998, *Baccouche* (2001).)

III. In the instant case, the Tribunal is not persuaded that there is a need for clarification of its original Judgement, which it considers to be clear and unambiguous, or, in the terms of the ICJ, that there exists "a dispute as to the meaning or scope of the judgement".

The Respondent's motivation is quite clear from the pleadings he submitted to the Tribunal:

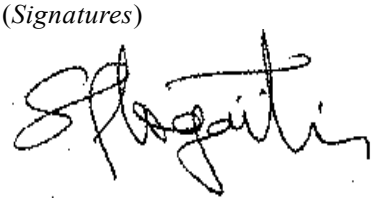
> "Specifically, the Representative of the Secretary-General wishes to confirm that the Administration's policy on due process rights applicable to staff members during fact-finding investigations is consistent with the Tribunal's jurisprudence. The Representative of the Secretary-General also requests an interpretation of the Judgement in order to clarify what requirements are necessary for its fact-finding investigations not to be classified as quasi-judicial inquiry by the Tribunal in future."

While he attempts to classify his request as a request for interpretation, the Tribunal finds that the Respondent has mischaracterized the request, which amounts to a request for guidance for future cases or policy decisions. It is clear to the Tribunal that the "real purpose" of the request is to explore the implication of the Tribunal's Judgement on issues that may well unravel in the future, and not a request for interpretation of what the Tribunal precisely decided as binding between the parties to the litigation in respect of which Judgement No. 1260 was delivered.

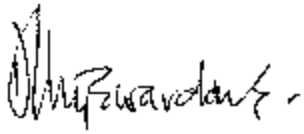
Such a request, regardless of how it is characterized, falls squarely under the heading of a request for an advisory opinion, which the Tribunal has no competence to render. (See Judgement No. 237, *Powell* (1979).) Just as the Tribunal has no competence to render advisory opinions, *in abstracto*, it has no competence to render advisory opinions brought in the guise of an application for revision, interpretation or otherwise. (See Judgement No. 1283 (2006).)

IV. In view of the foregoing, the Respondent's Application for interpretation of judgement is rejected in its entirety.

(*Signatures*)



Spyridon **Flogaitis**
President



Dayendra Sena **Wijewardane**
Vice-President

Brigitte **Stern**
Member

New York, 2 May 2008

Maritza **Struyvenberg**
Executive Secretary