United Nations AT/DEC/1379

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1379

Case No. 1351 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 28 August 2006, a former staff member of the United Nations, filed an Application in which he requested, in accordance with article 12 of the Statute of the Tribunal, revision of Judgement No. 1268, rendered by the Tribunal on 23 November 2005;

Whereas in his Application, the Applicant requests the Tribunal, inter alia, to find that "in addition to not accurately interpreting the Applicant's submission on damages to his professional reputation, [it] also made a clerical error in paying the Applicant US$ 7,000 instead of US$ 10,000 as awarded in Judgement No. 1268".

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 8 February 2006, and once thereafter until 8 March;

Whereas the Respondent filed his Answer on 20 February 2006;

Whereas the facts in the case were set forth in Judgement No. 1268.

Whereas the Applicant's principal contention is:

The previous compensation of US$ 3,000 awarded by the Secretary-General was for the delays in dealing with the case up to that point in time. The compensation was in fact separate and apart from any further awards.

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. 1268 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 first brought his case before the Tribunal on 28 April 2004. The Tribunal considered the case and delivered its Judgement No. 1268. In that Judgement, the Tribunal found that the Administration had violated the right to due process of the Applicant, an expert in forensic projects who was employed by the International Criminal Tribunal for the Former Yugoslavia and then prematurely dismissed. The Applicant received some compensation for that violation, which will be considered in this Judgement. The Applicant now submits an Application for revision of Judgement No. 1268, by virtue of article 12 of the Statute of the Tribunal.

II. The competence of the Tribunal to review cases in which a judgement has already been delivered is basically set out in article 12 of the Statute of the Tribunal, 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."

According to article 12 of the Statute, there are two types of circumstance in which a judgement may be revised:

> "(1) upon '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'; and
>
> (2) in the case of clerical/arithmetic mistakes or errors arising from any accidental slip or omission in a judgment. 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." (See Judgement No. 1166, *Wu* (2004), para. II.)

III. Before considering the request of the Applicant, the Tribunal will, in the first place, briefly summarize the prior proceedings. The Joint Appeals Board (JAB) had found that the Applicant was entitled to be given a Certificate of Service, compensation equivalent to three months' salary for denial of due process and compensation equivalent to three years' salary for moral damage and the delays in the appeal process. Indeed, it:

> "found that there was lack of due process in this case and that the Applicant was entitled to
>
> (i) be given a Certificate of Service, including specific information outlined in its report;

(ii) compensation equivalent to three months' net base salary as at the date of his separation from service for denial of due process; and,

(iii) compensation equivalent to three years' net base salary as at the date of his separation from service for the damage done to his professional reputation exacerbated by the delays in dealing with the case".

The Secretary-General accepted the first two elements of compensation recommended by the JAB and, therefore, decided that the Applicant should receive a Certificate of Service and also the compensation equivalent to three months' salary suggested by the JAB for denial of due process. However, he considered that three years' salary for moral damage and delays in the appeal procedures was excessive compensation and only agreed to an amount of US$ 3,000 for the delays in the consideration of the Applicant's case, thus explicitly excluding any compensation for moral damage:

"the issuance of a Certificate of Service was the Applicant's entitlement under staff rule 109.11, if he so requested. ... Furthermore, he decided to accept the JAB's conclusion that by providing *ex post facto* reasons for the Applicant's separation from service, the Administration violated his due process rights and, on that ground, agreed to pay him the compensation suggested by the Panel. Finally, the Secretary-General decided that, given the fact that he accepted to give the Certificate of Service as well as to pay the above-mentioned damages, no other compensation was due, especially because the Applicant was given interim relief and continued to serve up to the end of his contract. For the delays in dealing with the case, and only for them, the Secretary-General accepted to pay an additional sum of US$ 3,000."

As the Applicant considered that the compensation of $3,000 for delays was insufficient, he brought the case before the Tribunal, which in its Judgement No. 1268, ordered the Respondent:

"1. to provide the Applicant with a Certificate of Service to which he is entitled, under the terms proposed by the JAB;

2. to remove all adverse material inserted *ex post facto* from the Applicant's Official Status file;

3. *to pay the Applicant US$ 10,000 for the damage objectively caused to his scientific reputation by the undue delays of the Organization in dealing with his case*, with interest payable at eight per cent per annum as from 90 days from the date of distribution of this Judgement until payment is effected". (Emphasis added.)

Following the delivery of Judgement No. 1268, the Respondent paid US$ 7,000 to the Applicant, which is US$ 10,000 less the sum of US$ 3,000 that he had already paid as compensation for the delays in the consideration of the case, in accordance with the recommendations of the JAB.

IV. The request of the Applicant for revision of Judgement No. 1268 is based on his interpretation of the Judgement. The Applicant claims that the Respondent "made a mathematical error by only paying him US$ 7,000 instead of the US$ 10,000 as ordered in … Judgement No. 1268" and requests the Tribunal to order payment of a "further US$ 3,000 to meet [the] original award of US$ 10,000 as authorized in Judgement No. 1268".

V. Although the Application was filed as an application for revision, it is in fact, in the opinion of the Tribunal, an application for interpretation. It is within the power of a tribunal to determine what the true legal question is - be it a contentious or an advisory case - and to reformulate requests that do not express it adequately.

VI. The Tribunal confirms that there is no arithmetical error in its Judgement which could require correction and, in order to convince the Applicant of that fact, it will treat this case as an application for interpretation. It will, therefore, proceed to give the correct interpretation of its Judgement.

VII. The Tribunal recalls that pursuant to an advisory opinion of the International Court of Justice dated 13 July 1954 and its own jurisprudence, the Tribunal considers applications for interpretation of a judgement where there is dispute as to its meaning or scope. (See Judgement No. 61 *Crawford et al.* (1955).) This power to interpret its own judgements despite the fact that the Statute is silent on that point was recalled more recently in Judgement No. 972, *Abdulhadi* (2000), para. II:

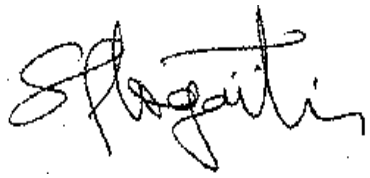
> "Regarding the receivability of the application, the Tribunal holds that it is competent to interpret its own judgements, even though no part of its Statute or rules of procedure so provides. In accordance with the general principles of law, it believes that such competence is encompassed in the jurisdictional function of a tribunal: Judgements *Crawford et al.* (*ibid*.), and No. 366, *Sabatier* (1986)."

VIII. If one reads the order of Judgement No. 1268 in light of the penultimate paragraph of the Judgement, it is clear that the Tribunal considered in its Judgement that the sum of US$10,000 was sufficient compensation for the damage caused by delays in the proceedings, including moral damage resulting from harm to the Applicant's scientific reputation. First, the Tribunal estimated that the delays in the consideration of the Applicant's case constituted the only harmful act which the Applicant might claim to have suffered. Second, it found that the sum of US$ 3,000 paid as compensation was not sufficient and, third, that a total sum of US$ 10,000 would be sufficient compensation. Indeed, the Tribunal first found that "the only truly harmful action taken by the Administration lies in the delays in dealing with this case, as for a period of more than four years the Applicant's scientific reputation was 'imprisoned' in the late proceedings". The Tribunal also found that "the sum accorded by the Administration for delays is not sufficient because of the linkage of those delays with the professional reputation of the Applicant" and then the following, which is the key point that gives a correct interpretation of the wording of the Judgement "that US$ 10,000 should be, under the circumstances, *a sufficient compensation* for damages caused *by delays*". (Emphasis added.) The Tribunal, therefore, ordered "the Respondent to pay the Applicant US$ 10,000 for the damage objectively caused to his scientific reputation by the undue delays of the Organization in dealing with his case".

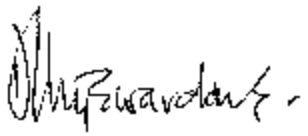
IX. It is, thus, clearly established that the Tribunal meant that the Respondent should pay the Applicant a total amount of US$ 10,000 as compensation for the damage caused by the delays in consideration of his case. As the Respondent had already agreed to pay US$ 3,000 to the Applicant before the delivery of Judgement No. 1268, the Respondent only needed to pay the Applicant the remaining US$ 7,000 to make a total sum of US$ 10,000.

X. For these reasons, the Tribunal declares that Judgement No. 1268 has been interpreted and executed correctly by the Respondent and rejects the Applicant's request in its entirety.

(*Signatures*)



Spyridon **Flogaitis**
President



Dayendra Sena **Wijewardane**
Vice-President

Brigitte **Stern**
Member

New York, 2 May 2008

Maritza **Struyvenberg**
Executive Secretary