



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2014-UNAT-456

**Pirnea
(Applicant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT ON APPLICATION FOR REVISION

Before: Judge Rosalyn Chapman, Presiding
Judge Inés Weinberg de Roca
Judge Luis María Simón

Case No.: 2013-507

Date: 27 June 2014

Registrar: Weicheng Lin

Counsel for Applicant: Self-represented

Counsel for Respondent: Wambui Mwangi

JUDGE ROSALYN CHAPMAN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an application for revision of Judgment No. 2013-UNAT-311, *Pirnea v. Secretary-General of the United Nations*, which was rendered on 28 March 2013. Mr. Vasile Pirnea filed his application for revision on 20 July 2013, and the Secretary-General of the United Nations filed his comments on 26 August 2013.

2. On 1 February 2014, Mr. Pirnea also filed a motion for confidentiality, requesting that he be referred to in the Judgment as “the Applicant” rather than by name. On 24 February 2014, the Secretary-General filed comments on the motion for confidentiality.

Facts and Procedure

3. In 2010, Mr. Pirnea was employed as a Field Security Coordination Officer (FSCO) under a fixed-term appointment issued by the United Nations Development Programme (UNDP) with the United Nations Department of Safety and Security (DSS). He was residing in Hargeisa, Somalia, where an alleged incident took place that jeopardized his personal safety and led DSS to relocate him to Nairobi. He was not paid the Daily Subsistence Allowance (DSA) in Nairobi. Moreover, the alleged incident in Hargeisa, Somalia, could not be investigated because of the cultural environment in Somalia. Due to concerns about his safety, Mr. Pirnea could not return to work in Somalia, and his absence from Somalia meant DSS was short one FSCO there, which adversely affected DSS’ mandate to protect the United Nations personnel in Somalia.

4. DSS determined not to renew Mr. Pirnea’s fixed-term appointment upon its expiration, and on 10 May 2011, Mr. Pirnea filed an application before the United Nations Dispute Tribunal (UNDT) challenging the decision not to renew his fixed-term appointment on the grounds the Administration had improperly exercised its discretion and violated his due process rights. In addition, Mr. Pirnea claimed that he was due DSA while in Nairobi.

5. In Judgment No. UNDT/2012/068, the UNDT determined, *inter alia*, that there was no valid reason for not renewing Mr. Pirnea’s contract and there was bias within DSS against Mr. Pirnea that contributed to the non-renewal decision. The UNDT also determined that Mr. Pirnea’s claim for DSA was receivable. Among other things, the UNDT awarded

Mr. Pirnea “two years’ net base salary for the non-renewal of his contract and for the treatment meted out to him”.

6. On 28 March 2013, the Appeals Tribunal issued Judgment No. 2013-UNAT-311, in which it determined that the UNDT erred: (1) in determining that there was no valid reason for not renewing Mr. Pirnea’s contract and in finding bias against Mr. Pirnea; and (2) in receiving the claim regarding DSA because Mr. Pirnea had not timely sought management review of that claim. The Judgment granted the appeal and vacated the UNDT judgment.

Submissions

Application for Revision of Judgment

Mr. Pirnea’s Application

7. Mr. Pirnea argues that the Administration did not renew his contract based on unproven allegations. The Administration attempted to hide the fact that the decision was motivated by the investigation into the claims of racist and improper behavior made against him

8. Evidence presented shows Mr. Pirnea is entitled to the DSA following his relocation to Nairobi.

The Secretary-General’s Comments

9. Mr. Pirnea has failed to comply with Article 11(1) of the Appeals Tribunal Statute (Statute) in that he has not cited any new facts that were unknown to him and the Appeals Tribunal. He merely disagrees with the Appeals Tribunal’s Judgment, which is insufficient. The Appeals Tribunal’s Judgment is final and without appeal under Article 10(6) of the Statute.

10. It is not necessary for the Appeals Tribunal to have addressed all of the myriad claims raised by Mr. Pirnea, and reasserting claims that were not addressed does not come within the statutory requirements for revision under Article 11(1) of the Statute. The Judgment shows that the Appeals Tribunal thoroughly considered all relevant factors.

Motion for Confidentiality

Mr. Pirnea's Motion

11. The posting of the Appeals Tribunal's Judgment on the Internet has severely affected and deteriorated Mr. Pirnea's image and standing in the community. Thus, the Judgment should be amended to refer to Mr. Pirnea as "the Applicant", rather than by name.

The Secretary-General's Comments

12. It is common practice to make public the identities of litigants absent compelling countervailing considerations, such as a staff member who has been charged with sexual misconduct. Moreover, when a staff member is named in the UNDT Judgment, it would be unusual to grant him anonymity on appeal.

Considerations

Application for Revision of Judgment

13. Article 11(1) of the Statute provides that:

[E]ither party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

Article 24 of the Rules of Procedure of the Appeals Tribunal (Rules) contains similar provisions.

14. The Statute and Rules set out the material elements which a moving party must show for revision to be granted: (1) a new fact which, at the time the judgment was rendered, was unknown to the Appeals Tribunal and the moving party; (2) such ignorance was not due to the negligence of the moving party; and (3) the new fact would have been decisive in reaching the original decision.

15. “No 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.”¹

16. Mr. Pirnea has not set forth a new fact that was unknown to him and the Appeals Tribunal at the time the Judgment was rendered. Thus, his application does not come within the grounds for revision set forth in Article 11(1) of the Statute and Article 24 of the Rules. Rather, the claims for revision listed by Mr. Pirnea are merely arguments previously made by him on appeal and an attempt by him to re-litigate his case. Thus, his application for revision of the judgment should be dismissed.

Motion for Confidentiality

17. Article 10(9) of the Statute provides that “[t]he judgements of the Appeals Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal”. Article 20(2) of the Rules provides that “[t]he published judgements will normally include the names of the parties”.

18. The foregoing provisions make clear that one of the purposes or goals of the new system for the administration of justice is to assure that the judgments of the Appeals Tribunal are published and made available to the Organization’s staff and the general public. Public dissemination of the appellate judgments helps to assure there is transparency in the operations of the Appeals Tribunal. It also means, sometimes fortunately and other times unfortunately, that the conduct of individuals who are identified in the published decisions, whether they are parties or not, becomes part of the public purview.

19. Initially, it must be noted that Mr. Pirnea’s motion for confidentiality is late. He did not seek confidentiality before the UNDT or at the time his case was on appeal. Now that the Appeals Tribunal’s Judgment has been published for more than a year, it is unlikely that confidentiality can be achieved or implemented.

20. Apart from the lateness of Mr. Pirnea’s motion, this Tribunal does not find that it has any merit. Rather, this Tribunal has determined that “[t]he names of litigants are routinely included in judgments of the internal justice system of the United Nations in the interests of

¹ *Muthuswami et al. v. United Nations Joint Staff Pension Board*, Judgment No. 2011-UNAT-102, para. 11 (citing former Administrative Tribunal Judgment No. 894, *Mansour* (1998)).

transparency and, indeed, accountability”.² And Mr. Pirnea has not shown any “greater need than any other litigant for confidentiality”.³ Staff members challenge many types of employment-related decisions before the internal justice system. Some of these decisions pertain to personal matters, such as disability or illness, and others pertain to the staff member’s performance - and even to claims of serious misconduct. If confidentiality attached to the staff member’s identity in each case, there would be no transparency regarding the operations of the Organization, which would be contrary to one of the General Assembly’s purposes and goals for the internal justice system.⁴ Mr. Pirnea was not charged with misconduct or any wrongdoing; his fixed-term appointment was not renewed. His discomfort with having his name attached to the Judgment is not grounds to grant his motion. Thus, Mr. Pirnea’s motion for confidentiality should be denied.

Judgment

21. The application for revision is dismissed. The motion for confidentiality is denied.

² *Servas v. Secretary-General of the United Nations*, Order No. 127 (2013).

³ *Ibid.*

⁴ See *Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-292.

Original and Authoritative Version: English

Dated this 27th day of June 2014 in Vienna, Austria.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Simón

Entered in the Register on 29th day of August 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar