



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

FETAHU *ET AL.*

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON APPLICATION FOR REVISION

Counsel for Applicant:

Albatros Rexhaj

Counsel for Respondent:

Stephen Margetts, ALS/OHRM, UN Secretariat

Introduction

1. By an application filed with the Tribunal on 8 July 2011, the Applicants request the revision of Judgment UNDT/2011/118, which rejected their applications for suspension of action on the decisions not to renew their fixed-term appointments.

Facts

2. On 27 June 2011, five Applicants submitted applications requesting the Tribunal to suspend, during the pendency of the management evaluation, the implementation of the decisions not to renew their fixed-term appointments with the United Nations Interim Mission in Kosovo (“UNMIK”) beyond 30 June 2011.

3. By Judgment UNDT/2011/118, dated 30 June 2011, the Tribunal rejected these applications as time-barred, since the Applicants had not complied with the applicable deadline for the submission of their requests for management evaluation. While the Applicants argued that the delay was due to their efforts to solve the matter informally with the assistance of the Regional Ombudsman in Vienna, the Tribunal found that such efforts could not be considered as “negotiations under the auspices of the Regional Ombudsman” and, therefore, they could not have the effect of extending the deadline for filing a request for management evaluation pursuant to staff rule 11.2.

4. The decisions for which suspension was sought were implemented on 30 June 2011.

5. On 8 July 2011, the Applicants applied for a revision of Judgment UNDT/2011/118. The Respondent filed his reply on 2 August 2011.

6. On 10 August 2011, the parties were informed that the Judge hearing the case did not consider that an oral hearing was necessary and were granted the opportunity to take position thereon. Neither party objected to the matter being decided on the papers.

Parties' submissions

7. The Applicant's principal contentions are:
 - a. The Applicants wrote to the Office of the Ombudsman as early as 11 March 2011 and established contact with the Regional Ombudsman in Vienna in early April. The latter visited UNMIK in early June 2011 to discuss, among other things, the situation of the Applicants;
 - b. They became aware of the above facts "after a careful review of ... [J]udgment UNDT/2011/118] and the logic supporting it";
 - c. These facts should be considered decisive since "they directly contradict the claim (made in the [J]udgment) that the [A]pplicants did not pursue a formal attempt for an informal resolution. Since there was a formal process for an informal resolution which was filed on 11 March 2011, only two days after the [A]pplicants received the contested administrative decision, and lasted until 10 June 2011, the request by the [A]pplicants for [a management evaluation] submitted on 23 June 2011 and the request for a [suspension of action] submitted on 27 June 2011, cannot be declared irreceivable as time-barred."

8. The Respondent's principal contentions are:
 - a. The application is not receivable *ratione materiae* on two grounds. First, in accordance with article 2.2 of the Tribunal's Statute, decisions on applications for suspension of action are not subject to appeal and they do not constitute executable judgments that may be appealed pursuant to article 11.3 of the Statute. Consequently, they are not subject to article 12.1 of the Statute and revision of such decisions is not possible. Second, a suspension of action is not possible in cases where the contested decision has already been implemented, as in the present case, therefore the revision of the decision rejecting the application for suspension of action is not possible;

b. The application for revision does not fulfill the requirements of article 12.1 of the Tribunal's Statute. The Applicants have not identified any decisive fact which was unknown to them or the Tribunal at the time Judgment UNDT/2011/118 was rendered.

Consideration

9. In *Woinowsky-Krieger* Order No. 67 (GVA/2010), the Tribunal ruled on a request for revision of a decision it had previously rendered on an application for suspension of action. It held that:

14. The relevant legal provisions in the instant case are contained in articles 2.2, 11.3 and 12.1 of the Tribunal's statute:

Article 2.2:

The Dispute Tribunal shall be competent to hear and pass judgement on an application ... to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision... The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

Article 11.3:

The judgements of the Dispute Tribunal ... are subject to appeal in accordance with the statute of the United Nations Appeals Tribunal. In the absence of such appeal, they shall be executable following the expiry of the time provided for appeal in the statute of the Appeals Tribunal.

Article 12.1:

Either party may apply to the Dispute Tribunal for a revision of an executable judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Dispute Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence...

15. The above-cited article 12.1 allows a party to apply for revision of only an "executable judgment", while article 11.3 stipulates that judgments are executable "following the expiry of the time provided for appeal in the statute of the Appeals Tribunal".

16. Since orders on suspension of action are not subject to appeal pursuant to the above-quoted article 2.2, it follows from the plain meaning of article 12.1, as well as from the combined

provisions of articles 2.2, 11.3 and 12.1, that such orders are not open to revision.

17. Accordingly, the instant application for revision of Order No. 59 (GVA/2010), whereby the Tribunal rejected the applicant's request for suspension of action on the decision not to renew his fixed-term appointment, is inadmissible and must be rejected.

18. Even assuming, for the sake of the argument, that the above-mentioned Order is open to revision, which it is not, it would not be possible for the Tribunal to revise it since the contested decision has been fully implemented since 1 June 2010.

10. The Tribunal sees no reason to depart from the above-quoted ruling. The present application for revision is not receivable.

11. Additionally, the Tribunal notes that the application does not comply with the requirements of article 12.1 of its Statute. In particular, the facts relied upon in the application are neither decisive, nor were they unknown to the Applicants at the time Judgment UNDT/2011/118 was rendered.

12. As regards the first requirement, the Tribunal recalls what it held in paragraph 27 of Judgment UNDT/2011/118:

Nothing indicates that the Organization and the staff members actually entered into negotiations under the auspices of the Regional Ombudsman. It cannot be inferred either that the Regional Ombudsman deployed any concrete action to bring the parties together into discussions or at the very least to contact the Administration to tackle the Applicants' problem. Against this background, it cannot be said that the parties were involved in efforts for informal resolution.

13. While the Applicants contend that "there is no provision which says that [they] should [have] explicitly informed the Secretary-General [of] their efforts for informal resolution", the Tribunal notes on the contrary that staff rule 11.2(c) specifically provides that only the Secretary-General has the authority to extend the deadline for the filing of a request for management evaluation pending efforts for informal resolution conducted by the Office of the Ombudsman. It is clear from this provision that in order to exercise such authority, the Secretary-General must be informed of the ongoing efforts for informal resolution.

14. In any event, concerning the second requirement, it is clear that the facts relied upon by the Applicants were known to them before Judgment UNDT/2011/118 was rendered, including well before they filed their applications for suspension of action.

Conclusion

15. In view of the foregoing, the Tribunal DECIDES:

The application for revision is rejected.

(Signed)

Judge Thomas Laker

Dated this 4th day of June 2012

Entered in the Register on this 4th day of June 2012

(Signed)

René M. Vargas M., Registrar, Geneva