



UNITED NATIONS DISPUTE TRIBUNAL

---

Case No.: UNDT/GVA/2013/019

Judgment No.: UNDT/2013/107

Date: 23 August 2013

English

Original: French

---

**Before:** Judge Jean-François Cousin

**Registry:** Geneva

**Registrar:** René M. Vargas M.

AL-MULLA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**JUDGMENT**

**ON APPLICATION FOR REVISION**

---

**Counsel for Applicant:**  
Winston Sims

**Counsel for Respondent:**  
Jérôme Blanchard, UNOG

## **Introduction**

1. On 17 April 2013, the Applicant submitted an application with the Registry of the United Nations Dispute Tribunal in Geneva for revision of judgment UNDT/2012/045 *Al-Mulla*, which was rendered on 5 April 2012, and in which this Tribunal declared that his application contesting the decision notified on 12 March 2010 to reassign him to a post at the P-3 level was not receivable.

2. He claims that on the date the Tribunal rendered its judgment, he and the Tribunal did not know that “the ENTIRE memo of December 4 2009 would NOT be factually cited and accepted as the Applicant’s statement of the request to the [Management Evaluation Unit]”.

## **Facts**

3. The applicant joined the United Nations in Vienna in 1985. He was promoted to the P-3 level in 1992, and in 2006 his fixed-term appointment was converted into a permanent appointment.

4. On 1 July 2007, the Applicant was appointed to an L-4 post (under the 200 series of the former Staff Rules applicable to technical assistance project personnel) as Regional Programme Coordinator for the Gulf Cooperation Council Countries, Division for Operations, UNODC, Vienna.

5. On 9 April 2009, the Applicant was informed of the decision of the Executive Director of UNODC to laterally reassign him to the UNODC Subregional Office in Abu Dhabi.

6. Subsequently, the Applicant was informed during a meeting on 1 December 2009 of the decision taken by the Executive Director to no longer laterally reassign him to the UNODC Subregional Office in Abu Dhabi as Special Representative to the Gulf Countries at the P-4 level. He was also advised that he would continue to perform his functions of Regional Programme Coordinator for the Gulf Cooperation Council Countries in Vienna until such time as the new

Head of the UNODC Subregional Office in Abu Dhabi was appointed, and that thereafter he would be transferred to a P-3 post in Vienna.

7. By email dated 4 December 2009, the Chief of the Human Resources Management Service confirmed to the Applicant the decisions that had been communicated to him during the meeting on 1 December. On 21 December 2009, the Applicant requested a management evaluation of the decision to no longer laterally reassign him to Abu Dhabi, and on 23 December, he filed an Application requesting this Tribunal to suspend implementation of that decision. The application was registered under the number UNDT/GVA/2009/109 and was followed on 4 May 2010 by an application on the merits. The request for suspension of action was rejected by Order No. 1 (GVA/2010) of 6 January 2010.

8. By inter-office memorandum dated 1 March 2010 addressed to the Executive Director of UNODC and titled “Recommendation for redeployment of posts and reassignment of staff within the Division for Operations and the Division for Treaty Affairs”, the directors of the two divisions recommended the redeployment of posts and the reassignment of staff within the two divisions, as of 1 April 2010. With regard to the Applicant, the memorandum made the following recommendation:

To assign [the Applicant] PSC post 202565, P-3) to the Quality Control and Oversight Unit within IPB and change the post title to Programme Officer (Quality Control). For this post, [the Generic Job Profile] of a Senior Programme Officer applies but it is to be complemented with ... short [Terms of Reference] ... This lateral reassignment will constitute a substantive change in functions to be performed by the staff member.

9. On 2 March 2010, the Applicant received the terms of reference for the aforementioned P-3 post, and on 9 March 2010, the Executive Director approved the recommendations contained in the inter-office memorandum of 1 March 2010.

10. By email dated 12 March 2010, the Applicant was advised of his reassignment to the aforementioned P-3 post. He took up his new functions on 15 March 2010.

11. In *Al-Mulla* UNDT/2011/105 of 22 June 2011, the Tribunal dismissed the application on the merits submitted by the Applicant on 4 May 2010 appealing the decision of 4 December 2009 to no longer reassign him laterally to Abu Dhabi (cf. paragraph 7 above).

12. By letter dated 29 July 2011, the Applicant submitted to the Secretary-General a request for management evaluation of the decisions contained in (i) the inter-office memorandum of 1 March 2010 approved by the Executive Director on 9 March 2010, including the decision to “demote” him from P-4 to P-3; and (ii) Human Resources Action Request No. 2011/02-9271, dated 29 June 2011, concerning his March 2010 reassignment in accordance with the inter-office memorandum of 1 March 2010.

13. The Applicant filed an incomplete application with the Tribunal on 19 December 2011 and completed it on 17 January 2012. That application was registered as UNDT/GVA/2011/092. In Judgment No. UNDT/2012/045, rendered on 5 April 2012, this Tribunal declared that the application contesting the decision notified on 12 March 2010 to reassign him to a post at the P-3 level was not receivable, in the absence of a management evaluation request submitted in a timely fashion.

14. On 17 April 2013, the Applicant filed this application for revision. The Respondent submitted his observations on 12 June 2013.

15. On 14 June 2013, the Applicant submitted observations on the Respondent’s reply.

16. By Order No. 110 (GVA/2013) of 29 July 2013, the Tribunal decided that the application would be judged without a hearing and that the exchange of written submissions had concluded.

### **Parties' submissions**

17. The Applicant's contentions are:

a. The UNDT and the Applicant himself did not know that the memo of 4 December 2009 would not be cited factually and accepted in its entirety in connection with his application for revision of 21 December 2009, to which he received a reply from the Management Evaluation Unit on 3 February 2010; in that reply, no mention is indeed made of the memo of 4 December 2009. It is the discovery of this fact that constitutes the basis for his request for revision;

b. He discovered this fact after a review of the documentation of his case in "March", when it struck him that the statements by the Respondent in his reply of 24 February 2012 contradicted the Respondent's previous statements;

c. Indeed, in case UNDT/2011/105, the Respondent declared under oath that the Applicant had never asked for management evaluation of the decision to "demote" him. Now, in his reply of 24 February 2012 in case UNDT/2012/045, the subject of this application for revision, the Respondent expressly mentioned the memo of 4 December 2009 reviewed in connection with another request by the Applicant for management evaluation, to which he had received a reply on 21 September 2011. Thus, the Respondent allegedly admitted that the memo of 4 December 2009 also addressed the Applicant's demotion. That amounted to the discovery of a new fact that the Tribunal had not known about when it rendered its judgment;

d. The UNDT-2012-045 *Al-Mulla* judgment should be revised, bearing in mind from now on that, when he submitted his request for management evaluation on 21 December 2009, the Applicant had asked for a review of the entire memo sent to him on 4 December 2009, including the decision to demote him from P-4 to P-3.

18. The Respondent's contentions are:
- a. On 3 February 2010, the Applicant received the reply of the Management Evaluation Unit to his request for management evaluation of 21 December 2009; the latter was therefore known to both the Applicant and the Tribunal when, on 5 April 2012, the Tribunal rendered its UNDT/2012/045 judgment, a revision of which is requested. The Applicant cannot therefore claim that he only ascertained the contents of the Management Evaluation Unit's reply more than three years after that reply;
  - b. If the Applicant was not satisfied with the Management Evaluation Unit's reply, he could have raised the subject with this Tribunal, claiming that the Management Evaluation Unit had not correctly reviewed all the points he had made, but he did not;
  - c. The Applicant was thus aware of the new fact he highlights; therefore the conditions required under Article 12 of the Statute of the United Nations Dispute Tribunal for an application for revision of judgment are not met;
  - d. Even supposing that it were a new fact, it did not affect the UNDT/2012/045 judgment;
  - e. In addition, the Respondent maintains that the last paragraph of the email-memo of 4 December 2009 is not an administrative decision against which an appeal may be lodged but solely a reminder of the terms of the Applicant's contract of 21 May 2007; in fact, the Applicant had been aware since 2007 that, at the end of his appointment at the P-4 level, he would return to the P-3 level, and he did not contest those terms;
  - f. The Applicant is acting in bad faith in this case and has manifestly abused the proceedings, since this is the fourth time he has raised the same issue before this Tribunal; he has also raised it with the Appeals Tribunal. The Tribunal should therefore award costs against him in accordance with Article 10 (6) of the UNDT Statute.

## Consideration

19. In his application registered with the Registry of the Tribunal in Geneva on 17 April 2013, the Applicant requests a revision of judgment No. UNDT/2012/045 of 5 April 2012. Said judgment rejected an application filed by the same applicant on 19 December 2011, in which he contested a decision of which he was notified on 12 March 2010 to reassign him to a P3-grade post after he had held a P-4 post.

20. Article 12 (1) of the Statute of the Tribunal provides that:

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. 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.

21. Likewise, Article 29 of the Rules of Procedure of the Tribunal provides that:

1. Either party may apply to the Dispute Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact that 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.

2. An application for revision must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

22. In order to maintain that a new fact unknown to him and the Tribunal warrants a revision of the aforementioned judgment under the above provisions, the Applicant claims that the Tribunal did not take account the fact that, through the email-memo of 4 December 2009 he had been demoted from the P-4 grade to P-3 and that he had requested a management evaluation of that decision on 21 December 2009, citing the memo in its entirety.

23. The Tribunal cannot fail to point out that the Applicant himself attached to his application of 19 December 2011, the subject of the judgment of 5 April 2012 that he asks to have revised, both the email memo of 4 December 2009 and the request for management evaluation of 21 December 2009. Consequently, he can under no circumstances claim that, on the one hand, he was unaware of the information contained therein and, on the other, the Tribunal did not know it, since those documents formed part of the file submitted to the judge.

24. The Tribunal therefore considers that the application for revision can only be rejected.

25. Furthermore, in the instant case the Tribunal considers that the provisions of Article 10 (6) of its Statute apply. They provide that: “Where the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party.”

26. Indeed, requesting the revision of a judgment is an act fraught with consequences since its purpose is to ask a tribunal to revise one of its decisions that has become enforceable. These proceedings should therefore only be undertaken under exceptional circumstances.

27. Now, in the instant case, in order to request revision of the contested judgment on the grounds that a new and decisive fact had been discovered, the Applicant has cited documents that he himself submitted with his request. That therefore amounts to abuse of proceedings and renders the Applicant liable to pay US\$800 in costs to the Secretary-General of the United Nations.

### **Conclusion**

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

- a. The application is rejected;



b. The Applicant is sentenced to pay US\$800 in costs to the Secretary-General of the United Nations.

*(Signed)*

Judge Jean-François Cousin

Dated this 23<sup>th</sup> day of August 2013

Entered in the Register on this 23<sup>th</sup> day of August 2013

*(Signed)*

René M. Vargas M., Registrar, Geneva