



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

CHHIKARA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON REVISION

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Steven Dietrich, ALS/OHRM, UN Secretariat

Notice: This Judgment has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. On 8 March 2017, the Applicant, a Chief Aviation Safety Officer on a fixed term appointment at the P-5 step 9 level in the United Nations Organization for Stabilization in the Democratic Republic of the Congo (“MONUSCO”), filed an application for revision, pursuant to art.12 of UNDT Statute and art.29 of the Rules of Procedure, of the judgment *Chhikara* UNDT/2017/012 issued on 6 March 2017 in Case No. UNDT/NY/2016/045.

2. The application was transmitted to the Respondent on 15 March 2017 who was instructed to file a reply on 17 April 2017. On the same day, the case was assigned to the undersigned judge. The Respondent duly filed his reply on 13 April 2017.

Applicant’s submissions

3. The Applicant contends that, after reading the judgment, he realized that the arguments contained in his closing submissions had probably not been taken into consideration by the Tribunal since there is no reference to them in the judgment and this might be the result of an oversight due to a technical problem. The Applicant explained that he was directed to file his closing submissions by 21 November 2016 and he did so on that date by uploading them on the Tribunal’s eFiling system at 16.05 p.m. New York time. The parties both received an automatically generated notification from the eFiling system that the Applicant’s closing submissions had been properly filed before the Tribunal.

4. The Applicant states that the following day when he wished to verify whether his closing submissions were received in the eFiling system, he was not able to open the attachment and instead he got an error message. He thus contacted the Registry of the Tribunal, which confirmed on 23 November 2016 that the closing submissions had been received. The Applicant states that, nevertheless, it appears to him when

reading the judgment that his closing submissions were not reviewed by the Judge assigned to the present case. The Applicant requests the revision of the judgment in light of the gross irregularities which he alleged in his closing submissions.

Respondent's submissions

5. The Respondent submits that a party may apply to the Dispute Tribunal for a revision of an executable judgment, under art. 12.1 of the Dispute Tribunal's Statute and art. 29.1 of the Rules of procedure, following the discovery of a new decisive fact which in and of itself may affect the Dispute Tribunal's consideration in the case.

6. The Respondent argues, first, that the application for revision is premature and not admissible as the judgment is not yet executable. The Respondent explains that the judgment was rendered on 6 March 2017 and it will become executable only 60 days from the date of receipt of the judgment, namely on 6 May 2017.

7. Secondly, the Respondent submits that the Applicant has not identified any decisive fact, which at the time of rendering the judgment was unknown to him and the Dispute Tribunal and that this was not due to negligence on his part. In addition, according to the Respondent, contrary to the Applicant's contention, there is no evidence that the Dispute Tribunal did not consider his closing submissions. On the contrary, by email dated 23 November 2016, the Registry of the Dispute Tribunal notified the Applicant that his closing submissions had been well received on 21 November 2016. The Respondent states that he successfully downloaded the Applicant's closing submissions from the eFiling system on 21 November 2016. Accordingly, the Respondent requests that the application for revision be rejected.

Considerations

8. The legal provisions applicable in the present case are art. 12.1 of the Dispute

Tribunal's Statute and art. 29 of the Dispute Tribunal's Rules of Procedure.

9. Article 12 of the Dispute Tribunal's Statute states:

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. 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.

10. Article 29 of the Dispute Tribunal's Rules of Procedure states:

Article 29 Revision of Judgments

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.

3. The application for revision will be sent to the other party, who has 30 days after receipt to submit comments to the Registrar.

11. The Tribunal notes that the Applicant filed his closing submissions in case No. UNDT/NY/2017/019 on 21 November 2016, as instructed by the Tribunal's Order No. 259 (NY/2016) and as confirmed in the email correspondence issued in this case by the Registry on 23 November 2016 and copied to both parties to the case. It results that the closing submissions were part of the case file and were reviewed by the Judge assigned to the case. Paragraph 68 of the judgment *Chhikara* UNDT/2016/045 clearly makes a reference to the closing submissions as follows: "In his closing submissions, he [the Applicant] mentioned that he lost the chance to be appointed to a higher level post (D-1 level) with a more stable tenure than his current

position". The Tribunal further underlines that closing submissions are summaries which are to be prepared and filed by the parties based solely on the submissions and evidence already presented before the Tribunal.

12. The Tribunal concludes that there are no legal reasons for the Judgment to be revised. The Tribunal also notes that the reason invoked in the application for revision may be submitted as a ground of appeal, if any, before the United Nations Appeals Tribunal.

13. In light of the above considerations and observing that the judgment is not yet executable, the Tribunal rejects the application for revision.

Conclusion

14. In light of the foregoing, the Tribunal DECIDES:

The application for revision is rejected.

(Signed)

Judge Alessandra Greceanu

Dated this 28th day of April 2017

Entered in the Register on this 28th day of April 2017

(Signed)

Hafida Lahiouel, Registrar, New York