



Before: Judge Thomas Laker
Registry: Geneva
Registrar: Víctor Rodríguez

WOINOWSKY-KRIEGER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON APPLICATION FOR
REVISION**

Counsel for applicant:
Miguel A. Longone

Counsel for respondent:
Steven Dietrich, ALS/OHRM, UN Secretariat

Introduction

1. By Order No. 59 (GVA/2010) dated 31 May 2010, the Tribunal rejected the applicant's request for suspension of action on the decision not to extend his fixed-term appointment, which was due to expire on the same day.
2. By application dated 29 June 2010, the applicant purported to seek revision of the above-mentioned order pursuant to article 12.1 of the Tribunal's statute and article 29 of its rules of procedure.

Facts

3. The applicant entered the service of ICTY in 1995 on a fixed-term appointment (100 series of the former Staff Rules), which was continuously renewed. At the time of his separation on 31 May 2010, he was serving as an intelligence analyst in the Office of the Prosecutor, at the P-3 level.
4. In mid-December 2009, the applicant was informed that his post would be abolished and that his contract would not be extended beyond its expiration date.
5. By memorandum dated 10 March 2010, the Human Resources Section, ICTY, informed the applicant that, among other things, his post would be abolished effective Monday, 31 May 2010.
6. On 13 May 2010, the applicant requested a management evaluation of the decision not to extend his fixed-term appointment beyond 31 May 2010, as well as the suspension of the implementation of the contested decision pending completion of the management evaluation pursuant to provisional staff rule 11.3 (b) (ii).
7. By letter dated 18 May 2010, received by the applicant on Thursday, 20 May 2010, the Under-Secretary-General for Management informed the applicant of the Secretary-General's decision to reject his request for a suspension of action, on the grounds that the contested decision was not *prima facie* unlawful.

8. On Friday, 28 May 2010, after close of business, the applicant filed before the Tribunal an application for suspension of action on the decision not to renew his fixed-term appointment beyond its expiration date on Monday, 31 May 2010.

9. On 31 May 2010, by its Order No. 59 (GVA/2010), the Tribunal rejected the application for suspension of action.

10. On 29 June 2010, the applicant filed the instant application seeking the revision of the above-mentioned Order and his reinstatement.

11. On 9 July 2010, the application for revision was transmitted to the respondent, who submitted his reply on 8 August 2010.

Parties' contentions

12. The applicant's principal contention is that decisive new facts have been discovered subsequent to the Tribunal's rejection of the applicant's request for suspension of action and that these facts justify the revision and reversal of the Tribunal's Order No. 59 (GVA/2010) and the applicant's reinstatement.

13. The respondent's contentions are:

- a. The application is not receivable as there is no legal basis either under the Tribunal's statute or rules of procedure upon which the Tribunal may revise its own orders. Article 12.1 of the statute and article 29 of the rules of procedure allow a party to apply for revision of only an "executable judgment" on the merits, and not interlocutory decisions and orders, such as Order No. 59 (GVA/2010);
- b. Even assuming *arguendo* that the instant application for revision is permissible under the Tribunal's statute and rules of procedure, the applicant can no longer establish his entitlement to a suspension of action pending management evaluation under article 2.2 of the Tribunal's statute, since the contested decision has been implemented and the management evaluation has been completed;

- c. Notwithstanding, should the Tribunal wish to consider the application for revision, the respondent submits, in the alternative, that the applicant failed to establish the existence of a decisive new fact regarding his failure to timely file his request for suspension of action.

Considerations

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.

19. In fact, what the applicant misguidedly seeks under an application for revision is a decision on the merits of the decision not to renew his fixed-term appointment. The Tribunal notes that, on 29 July 2010, the applicant filed, under article 2.1 of the Tribunal's statute, a substantive appeal against such decision. It is only under these new proceedings, and provided the application meets the receivability criteria set out in article 8 of the Tribunal's statute, that the Tribunal may address the merits of the contested decision.

20. For the reasons stated above, the application for revision of Order No. 59 (GVA/2010) is rejected.

(Signed)

Judge Thomas Laker

Dated this 12th day of August 2010

Entered in the Register on this 12th day of August 2010

(Signed)

Víctor Rodríguez, Registrar, UNDT, Geneva