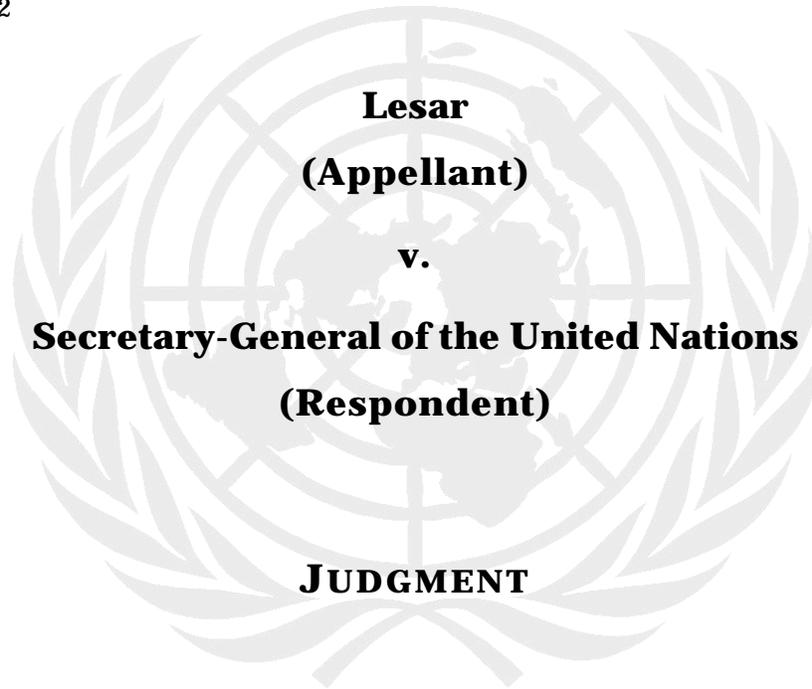




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2011-192



**Lesar
(Appellant)**

v.

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

JUDGMENT

Before: Judge Jean Courtial, Presiding
Judge Sophia Adinyira
Judge Kamaljit Singh Garewal

Judgment No.: 2011-UNAT-126

Date: 11 March 2011

Registrar: Weicheng Lin

Counsel for Appellant: Christopher Ronald

Counsel for Respondent: Phyllis Hwang

JUDGE JEAN COURTIAL, Presiding.

Synopsis

1. Mr. Rainer Lesar's appeal for the revision of a judgment handed down by the former United Nations Administrative Tribunal shortly before its abolishment is dismissed by the Appeals Tribunal on the grounds that it is being brought before a judicial body that does not have the authority to hear it. The Appeals Tribunal recalls that only the court that handed down a contested decision has the power to revise it, unless a rule of law determines to transfer it to another court. United Nations General Assembly resolution 63/253 provides for certain measures to facilitate the transition from the old to the new system of administration of justice, but it does not give the Appeals Tribunal the authority to revise judgments handed down by the former Administrative Tribunal during the period prior to its abolishment.

Facts and procedure

2. Mr. Lesar, an Austrian national, served as a D-1 official in the United Nations Interim Administration Mission in Kosovo (UNMIK) in Pristina from August 2000 to September 2002. After leaving the Organization, Mr. Lesar brought an appeal, within the system of internal justice then in force, against the decision of the Administration to inform the Austrian authorities that he was the subject of an investigation into the awarding of consulting contracts to two Austrian companies.

3. In a judgment dated 31 July 2009 the former United Nations Administrative Tribunal rejected Mr. Lesar's appeal in its entirety (Judgment No. 1465).

4. On 30 November 2009, Mr. Lesar filed an appeal against that judgment before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal). In a judgment handed down on 5 February 2010 (No. UNDT/2010/023), the Dispute Tribunal rejected that appeal on the grounds that it had been brought before a body that did not have the authority to hear it.

5. Also on 30 November 2009, Mr. Lesar filed an appeal with the Appeals Tribunal for the revision of the judgment of the former United Nations Administrative Tribunal.

On 13 January 2011, that appeal for revision was transmitted to the Secretary-General, who submitted an answer on 1 February 2011.

Submissions

Lesar's Appeal

6. Mr. Lesar maintains that he was unaware that a note dated 8 June 2006 and signed by a former Assistant-Secretary-General had been placed in his official status file. The writer of that note expressed his concern over the decision of the Austrian prosecutor not to investigate accusations of breach of trust and corruption brought against Mr. Lesar. The latter claims that that document prejudiced the review of his case by the former Administrative Tribunal. He adds that the note in question was placed in his official status file in violation of administrative instruction ST/AI/292 of 15 July 1982.

7. The Appellant adds that upon examining Judgment No. 1465, he discovered that one of the judges had been empanelled despite a conflict of interest arising from having served as UNMIK legal counsel from October 1999 to April 2000.

The Secretary-General's Answer

8. The Secretary-General notes that there is no provision in the Statute of the Appeals Tribunal empowering it to revise judgments handed down by the former Administrative Tribunal. However, the Appeals Tribunal must give full force to the principle, affirmed in General Assembly resolution 63/253, paragraph 28, that the Tribunal shall not have any powers beyond those conferred to it under its statute. He further argues that judicial precedent from the Appeals Tribunal (No. 2010-UNAT-057 (Fagundes)) opposes that it undertake the revision of judgments from the former Administrative Tribunal.

9. The Respondent adds that if the Appeals Tribunal had the authority to revise judgments of the former Administrative Tribunal, the Appellant has not, in any case, demonstrated the discovery of new decisive facts that would warrant a revision of the contested judgment. Neither the placement in 2006 of a note in Mr. Lesar's official status file nor the fact that a judge on the former Tribunal had served in UNMIK more than two years after the disputed decision was handed down — which in no way entails a conflict of interest — constitutes a decisive fact of that kind.

Considerations

10. The authority to revise its own decisions, which is expressly conferred on the Appeals Tribunal by article 11 of its Statute, is a power generally recognized as inherent to, and reserved for, courts of final instance. While it is important to proper administration of justice that there be an endpoint to a trial, it is equally important that supreme courts not be irrevocably bound by *per incuriam* rulings.

11. However, only the court that handed down the decision has the power to revise it, unless a rule of law determines to transfer it to another court.

12. General Assembly resolution 63/253 provides for certain measures to facilitate the transition from the old to the new system of administration of justice, but it is completely silent on the question of revision of judgments handed down by the former Administrative Tribunal during the period prior to its abolishment. That omission, regrettable as it may be, does not constitute a denial of the right to an effective remedy as provided for in article 8 of the Universal Declaration of Human Rights, since a tribunal has already dispensed justice.

13. It follows from these considerations that this Court is not competent to revise the judgment of the former Administrative Tribunal, and that, consequently, Mr. Lesar's appeal is not receivable.

Judgment

14. Mr. Lesar's appeal is dismissed.

Original and Authoritative Version: French

Dated this 11th day of March 2011 in New York, United States.

(Signed)

Judge Courtial, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Garewal

Entered in the Register on this 19th day of April 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar