



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

Judgment No. 2013-UNAT-356

**Massah
(Applicant)**

v.

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

JUDGMENT ON APPLICATION FOR REVISION

Before:	Judge Sophia Adinyira, Presiding Judge Mary Faherty Judge Rosalyn Chapman
Case No.:	2013-450
Date:	21 June 2013
Registrar:	Weicheng Lin

Counsel for Applicant:	Clarence E. Clarke
Counsel for Respondent:	Stéphanie Cartier

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an application for revision of judgment filed by counsel for the late Mr. Mohamadou Abdoulaye Massah in respect of Judgment No. 2012-UNAT-274, rendered by this Tribunal on 1 November 2012 in the case of *Massah v. Secretary-General of the United Nations*. The application for revision was submitted on 7 March 2013, and the Secretary-General answered on 17 April 2013.

Facts and Procedure

2. Mr. Massah was Officer-in-Charge (OiC) of Security with the United Nations Mission for the Referendum in Western Sahara (MINURSO). He was initially suspended and later separated from service effective 14 March 2007 on the grounds of serious misconduct, specifically sexual exploitation and abuse. The Joint Disciplinary Committee (JDC) found that Mr. Massah paid women for sexual services, took pictures of a pornographic nature of local women, and used his assigned desktop computer to store the pictures and allow others to see them; it concluded that his conduct constituted “sexual abuse” and recommended his separation.

3. Mr. Massah, who had first resigned and then attempted to withdraw his resignation in 2005, appealed the decision to separate him from service before the United Nations Dispute Tribunal (Dispute Tribunal or UNDT). In its Judgment No. UNDT/2011/218 of 29 December 2011, the UNDT found no evidence to establish any act of sexual exploitation on the part of Mr. Massah, who had died in the interim. It did find, however, that he was guilty of misuse of the Organization’s information technology resources by using his office computer to store the pictures. The Dispute Tribunal awarded compensation fixed at four months’ net base salary. The Secretary-General appealed this Judgment.

4. In Judgment No. 2012-UNAT-274, the Appeals Tribunal reversed the UNDT’s findings, noting that Mr. Massah’s position as OiC of Security at MINURSO required a particular duty of care towards women and children. The Appeals Tribunal also concluded that the reports issued by the JDC and the Office of Internal Oversight Services (OIOS) provided sufficient evidence to establish that Mr. Massah’s conduct legally amounted to sexual exploitation.

5. The Appeals Tribunal further concluded that Mr. Massah's dismissal from the Organization was proportionate with the nature of the misconduct, given the responsibilities with which he was entrusted.

Submissions

Mr. Massah's Application

6. Counsel for Mr. Massah submits that it is not clear whether the Appeals Tribunal reviewed all the documentary evidence, and whether the Judges understood how computers work in respect of the transfer of digital photographs. He, therefore, concludes that the facts "set out in the Appeals Tribunal's Judgment are in conflict with those offered by the Secretary-General and those admitted into evidence".

7. Counsel for Mr. Massah also submits that although Mr. Massah took digital photographs of four local women, no one ever alleged that he cajoled, coerced or paid the women to pose for the photographs. Counsel submits that Mr. Massah was a heart patient and was "incapable of engaging in the sexual activity associated with the charge".

8. Counsel for Mr. Massah further submits that the OIOS investigators engaged in investigative activities that created serious doubts about their integrity and professionalism, and which affected the evidence presented against his client.

9. Counsel for Mr. Massah requests the Appeals Tribunal to vacate its Judgment No. 2012-UNAT-274 and affirm the Dispute Tribunal's Judgment No. UNDT/2011/218.

The Secretary-General's Answer

10. The Secretary-General submits that Mr. Massah's counsel has provided no new decisive facts: all facts allegedly supporting his application are taken from integral parts of the record and were available to the Appeals Tribunal at the time of the Judgment.

11. The Secretary-General further submits that Mr. Massah's counsel merely disagrees with the Appeals Tribunal's assessment of the facts, which does not meet the statutory threshold of newly discovered and decisive facts warranting revision.

Considerations

12. An application for revision of a final judgment can only succeed if it fulfils the strict and exceptional criteria established by Article 11(1) of the Statute of the Appeals Tribunal. Article 11(1) provides:

Subject to article 2 of the present statute, either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals 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.

13. It is recalled that the authority of a final judgment - *res judicata* - cannot be easily set aside.¹ There are only limited grounds for revision of a final judgment as set out in Article 11(1) of the Statute and Article 24 of the Rules of Procedure of the Appeals Tribunal.

14. The alleged errors on the factual findings do not constitute circumstances that warrant a revision, because none of them would result in the exclusion of the main reasons stated by the Appeals Tribunal in vacating the UNDT's Judgment and affirming Mr. Massah's separation from service for serious misconduct.

15. The application under examination is inadmissible since its actual goal is to litigate the case *de novo* as a result of counsel not agreeing with the final Judgment, an option which is not provided to the parties by the applicable law.

16. Consequently, the application filed for revision does not fulfil the requirements of Article 11(1) of our Statute, and is not receivable.

Judgment

17. The application is rejected.

¹ *Shanks v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-026bis; *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-063.

Original and Authoritative Version: English

Done in New York, United States.

(Signed)

Judge Adinyira, Presiding

21 June 2013

(Signed)

Judge Faherty

28 June 2013

(Signed)

Judge Chapman

28 June 2013

Entered in the Register on this 26th day of August 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar