



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

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Judgment No. 2013-UNAT-392

**Maghari  
(Applicant)**  
**v.**  
**Commissioner-General  
of the United Nations Relief and Works Agency  
for Palestine Refugees in the Near East  
(Respondent)**

**JUDGMENT ON APPLICATION FOR REVISION**

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**Before:** Judge Sophia Adinyira, Presiding  
Judge Luis María Simón  
Judge Richard Lussick

**Case No.:** 2013-462

**Date:** 17 October 2013

**Registrar:** Weicheng Lin

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**Counsel for Applicant:** Self-represented

**Counsel for Respondent:** Lance Bartholomeusz

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an application for revision of Judgment No. 2010-UNAT-039, issued by the Appeals Tribunal on 16 August 2010, in the case of *Maghari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Abdel Rahman Sulieman Maghari filed his application on 21 July 2011 and the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (Commissioner-General and UNRWA, respectively) filed his comments on 24 May 2013.<sup>1</sup>

2. On 8 July 2013, Mr. Maghari filed a motion seeking to introduce additional evidence with respect to the timeliness of his application for revision as well as additional pleadings concerning the merits of his case. The Commissioner-General responded on 7 August 2013. By Order No. 157 (2013), the Appeals Tribunal granted Mr. Maghari's motion to the extent it concerned the admission of evidence in respect of the timeliness of his application.

### **Facts and Procedure**

3. By letter dated 19 April 2005, Mr. Maghari, a Teacher employed by UNRWA, requested under Area Staff Rule 109.2, "resignation according to the rules of early voluntary retirement, effective from 20/5/2005". By letter dated 26 April 2005, Mr. Maghari was informed that his request for early voluntary retirement had been accepted effective close of business on 19 May 2005.

4. By letter dated 9 May 2005, Mr. Maghari sought to withdraw his request for early voluntary retirement. His request was denied.

5. On 31 July 2005, Mr. Maghari filed an appeal before the former Area Joint Appeals Board (AJAB). In its report, the AJAB noted that early voluntary retirement is a unilateral decision and that Mr. Maghari did not contest an administrative decision alleging the non-observance of his terms of appointment or a disciplinary action. Accordingly, the AJAB concluded that the appeal was not admissible, *ratione materiae*, and recommended that the Commissioner-General dismiss the appeal. The decision of the Commissioner-General to that effect was communicated to Mr. Maghari by letter dated 18 May 2008.

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<sup>1</sup> NB: The lapse of time between application and comments is due to delays by the Applicant in completing his filings, and the translation of Arabic documents into English.

6. Mr. Maghari appealed the Commissioner-General's decision to the former United Nations Administrative Tribunal. His case was transferred to the Appeals Tribunal following the abolition of the former Administrative Tribunal at the end of 2009.

7. On 16 August 2010, the Appeals Tribunal issued Judgment No. 2010-UNAT-039, in which it affirmed the Commissioner-General's decision.

### **Submissions**

#### **Mr. Maghari's Application**

8. Mr. Maghari requests revision of judgment on the ground of the following "new facts":

- "Administrative decisions and circular J/17/1997".
- The Appeals Tribunal's finding that Mr. Maghari's performance was unsatisfactory.
- The Appeals Tribunal's finding that the evaluation procedures "were a normal performance management and not a reflection of any bias against [him]".
- The fact that the Appeals Tribunal was biased in its consideration of his case.
- The fact that the Appeals Tribunal violated its own rules of procedure.
- "Results of a study of the periodic evaluation report (PER)".

#### **Commissioner-General's Comments**

9. The Commissioner-General submits that Mr. Maghari's application is time-barred since he submitted his incomplete application on 21 July 2011, more than one year after the date of the Judgment, 1 July 2010.

10. The Commissioner-General submits that none of Mr. Maghari's grounds for revision constitute a "decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision".

11. The Commissioner-General contends that Mr. Maghari's grounds for revision consist of facts that were available to and considered by the Appeals Tribunal and which were known to Mr. Maghari at the time the judgment was rendered; findings of the Appeals Tribunal with

which Mr. Maghari disagrees; and allegations of procedural irregularities which are incorrect and unsupported by evidence.

### **Considerations**

12. The legal framework governing applications for revision are Article 11(1) of the Statute of the Appeals Tribunal (Statute) and Article 24 of its Rules of Procedure (Rules).

13. Article 11(1) of the Statute provides that:

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.

14. Article 24 of the Rules stipulates:

Either party may apply to the Appeals Tribunal, on a prescribed form, 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 Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application for revision will be sent to the other party, who has 30 days to submit comments to the Registrar on a prescribed form. The 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.

15. By these provisions, an applicant must show or identify the decisive facts that, at the time of the Appeals Tribunal Judgment, were unknown to both the Appeals Tribunal and the party applying for revision; that such ignorance was not due to the negligence of the applicant; and that the facts identified would have been decisive in reaching the decision.<sup>2</sup>

16. As a preliminary issue, the Commissioner-General submits that the application is time-barred. However, the applicant, upon receipt of the Commissioner-General's reply, sought and obtained the leave of the Appeals Tribunal to file a postal receipt as evidence that his application was filed in a timely fashion, i.e. on 23 June 2011, well within one year of the

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<sup>2</sup> *Macharia v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-128, para 7.

date that the Appeals Tribunal Judgment was delivered. The application for review is therefore receivable, *ratione temporis*.

17. We find that the grounds filed by the Applicant do not fall within Article 11(1) of the Statute. None of Mr. Maghari's grounds for revision constitute a "decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision".

18. Mr. Maghari merely disagrees with the decision of the Appeals Tribunal and seeks to reargue his appeal.

19. This Tribunal has often stated that an application for revision is not a substitute for appeal;<sup>3</sup> and no party may seek revision of a judgment merely because the party is dissatisfied with the pronouncement of the Tribunal and "wants to have a second round of litigation".<sup>4</sup> A revision of a final judgment is an exceptional procedure and not an additional opportunity for a party to re-litigate arguments that failed at trial or on appeal.<sup>5</sup>

### **Judgment**

20. The application for revision is dismissed.

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<sup>3</sup> *Eid v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-145, para. 2.

<sup>4</sup> See *Cohen v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-352, quoting *Muthuswami et al. v. United Nations Joint Staff Pension Board*, Judgment No. 2011-UNAT-102, para. 11.

<sup>5</sup> See *Massah v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-356, para. 15; *Muthuswami et al. v. United Nations Joint Staff Pension Board*, Judgment No. 2011-UNAT-102, para. 13.

Original and Authoritative Version: English

Dated this 17<sup>th</sup> day of October 2013 in New York, United States.

*(Signed)*

Judge Adinyira, Presiding

*(Signed)*

Judge Simón

*(Signed)*

Judge Lussick

Entered in the Register on this 19<sup>th</sup> day of December 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar