



**UNITED NATIONS**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an application for revision of judgment filed by Mr. Hans Obdeijn in respect of Judgment No. 2012-UNAT-201, *Obdeijn v. Secretary-General of the United Nations*, rendered by this Tribunal on 16 March 2012. Mr. Obdeijn submitted his application on 15 November 2012, and the Secretary-General answered on 13 December 2012.

### **Facts and Procedure**

2. Mr. Obdeijn served as Representative of the United Nations Population Fund (UNFPA) in Sana'a, Yemen on a two-year fixed term appointment (FTA), which commenced 3 October 2005 and was subsequently extended. On 13 February 2009, Mr. Obdeijn was notified that his FTA would expire on 2 April 2009, and that he would be contacted regarding separation formalities. When he requested the reasons for this decision, UNFPA informed him that an FTA carried no expectancy of renewal, and a decision not to renew could be made "without having to justify [it]". Mr. Obdeijn appealed this decision.

3. In its judgment No. UNDT/2011/032, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) found that the Administration had breached its obligation to disclose the reasons for the decision not to extend Mr. Obdeijn's appointment, in violation of the requirements of good faith and fair dealing. Therefore, the Dispute Tribunal ordered Mr. Obdeijn be paid six months' net base salary for actual economic loss and awarded him USD 8,000 for emotional distress suffered.

4. The Secretary-General appealed this judgment to the Appeals Tribunal. In its Judgment No. 2012-UNAT-201, the Appeals Tribunal concluded that because the Administration had refused to disclose the reasons for the contested decision, the Administration bore the burden of proof to show that the decision was neither arbitrary nor tainted by improper motives. The Appeals Tribunal also concluded, however, that Mr. Obdeijn had not established any economic loss and set aside the award under that heading. It affirmed the USD 8,000 award for moral damages.

## **Submissions**

### **Mr. Obdeijn's Application**

5. Mr. Obdeijn submits that the Appeals Tribunal did not have before it, at the time it rendered its Judgment, a detailed procedural history explaining that the Dispute Tribunal did not give him the opportunity to submit proof of economic loss to support the economic award.
6. Mr. Obdeijn further submits that the Secretary-General made a conscious decision not to challenge the quantum of the economic compensation. The Administration did challenge, however, the quantum of moral damages.
7. In the alternative, Mr. Obdeijn submits that should the Appeals Tribunal find that he is not able to avail himself of Article 11 of the Statute of the Appeals Tribunal, this Tribunal has the jurisdiction to "make Orders to prevent injustice".

### **The Secretary-General's Answer**

8. The Secretary-General argues that Mr. Obdeijn has had the opportunity to submit proof of his economic loss. The Secretary-General notes that Mr. Obdeijn requested two years' net base salary in compensation, which shows that he had the opportunity to present evidence of the alleged economic harm.
9. Thus, the Secretary-General argues that Mr. Obdeijn has not provided any decisive facts warranting revision.
10. The Secretary-General requests the Appeals Tribunal to dismiss Mr. Obdeijn's application in its entirety.

## **Considerations**

11. An application for review 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.

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

13. Mr. Obdeijn submits that the UNDT judgment was rendered without his having an opportunity to put forward evidence supporting an award of compensation, because the UNDT did not expressly request submission on the matter of compensation. He further submits that he was unaware that the UNDT required proof of economic loss because economic loss was not raised by the Administration in its su.727 -1.g0.0165 r4aU1

