

Case No.:

## **Introduction**

1. By application filed on 23 March 2018, the Respondent in Judgment *Munyan* UNDT/2018/028 (“the Respondent”), rendered on 26 February 2018 in Case No. UNDT/GVA/2017/004, requests revision of that judgment.

2. The Respondent requests the Tribunal to revise the amount of the compensation in lieu of rescission awarded to the Applicant in *Munyan* (“the Applicant”), alleging that the Respondent became aware of new facts that were not known to the Tribunal at the time the judgment was rendered.

3. The application was served on the Applicant on 28 March 2018. Pursuant to art. 29.3 of the Tribunal’s Rules of Procedure, he

at the P-3 level, which represented an important step forward for his career development”. This finding was based on the facts asserted by the Applicant in his application filed on 1 February 2017, which

## Consideration

11. The issue of the application's receivability is a matter of law which may be assessed even if not raised by the parties and without waiting for the opposing party to file a reply (see *Gehr* 2013-UNAT-313, *Christensen* 2013- UNAT-335). Bearing this in mind, and considering that in the circumstances of the case it is in the interest of all parties that the present matter be disposed of as soon as possible, the Tribunal deems appropriate to rule on the application for revision by summary judgment, in accordance with art. 9 of its Rules of Procedure, without waiting for the Applicant's reply.

12. Applications for revision are governed by art. 12.1 of the Dispute Tribunal's Statute, which provides that:

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. 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. Pursuant to art. 11.3 of the Tribunal's Statute, judgments are executable "following the expiry of the time provided for appeal in the statute of the Appeals Tribunal", that is "within 60 calendar days of the receipt of the judgment" (art. 7(1)(c) of the Appeals Tribunal's Statute).

14. Art. 29 of the Dispute Tribunal's Rules of Procedure contains a provision, similar to art. 12.1 of the Tribunal's Statute, stating that:

1. Either party may apply to the Dispute 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 Dispute Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence.

2. An 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. The Tribunal notes that contrary to art. 12.1 of the Dispute Tribunal's Statute, art. 29 of its Rules of Procedure does not contain the word "executable" before "judgment".

20. The Tribunal notes that art. 12.1 of its Statute may *a priori* appear to be internally inconsistent in circumstances where a party discovers a fact that could prompt a revision of a judgment shortly after its issuance, namely within 30 days. The same problem would arise if the judgment had been appealed, in which case it would not become executable 60 days after its issuance. However, this contradiction is only apparent and consideration of the full breath of the recourses available to the parties allows for a coherent interpretation of said provision.

21. The requirement set forth in art. 12.1 of the Dispute Tribunal's Statute is very clear and mandates that a judgment be executable, that is, final and binding upon the parties, for it to be subject to review by the Tribunal. The reason for this requirement is that judgments could otherwise be subject to appeal to the Appeals Tribunal and to revision by the Dispute Tribunal at the same time. This situation would obviously trigger legal complications and not be in the interest of judicial economy. Hence, an application for revision is not possible when the judgment in question is subject to appeal; the appropriate avenue for a party to adduce new facts during this period is through appellate proceedings.

22. Therefore, the Tribunal finds that since the judgment is not executable, it does not have jurisdiction to entertain the application at this stage.

*Whether the application was filed within 30 days of the discovery of the fact*

23. In any event, the Tribunal finds that the requirement that the application be filed within 30 days of the discovery of the fact by the filing party is also not met.

24. In the case at hand, Counsel for the Respondent became aware of the Applicant's promotion in the summer of 2017 through the Chief, Human Resources Management, UNCTAD. This must have certainly been regarded as a reliable source of information as the Applicant was promoted within that specific entity. Indeed, the formal confirmation of the Applicant's promotion later came from this very same person. Yet, the Respondent did not take any action to verify this information, if he deemed it at all necessary, or asked for documentary evidence until 26 February 2018 after the judgment was issued. The formal confirmation

obtained on 28 February 2018 can therefore not be seen as the discovery date of the fact.

25. The Tribunal notes that the Applicant was promoted after the Respondent had already filed his reply on 14 June 2017. The Respondent had ample opportunities to bring this new fact to the attention of the Tribunal before the judgment was issued, notably following the Tribunal's Order No. 29 (GVA/2018) of 1 February 2018, which required him to file additional documents and requested both parties to indicate whether they agreed that the case be decided on the papers. The Respondent took no action to bring this allegedly relevant fact to the attention of the Tribunal. Allowing him to reopen the case at this stage while he did not exercise the necessary diligence in due time would jeopardize the principles of legal certainty and judicial economy.

26. The Respondent claims that the duty to apprise the Tribunal of this new fact fell on the Applicant, notably in light of the arguments that he put forward in his reply to Order No. 29 (GVA/2018) dated 15 February 2018, and that he should consequently not be allowed to benefit from a remedy to which he was not entitled.

27. Firstly, the Tribunal recalls that it is for each party to adduce the facts that they deem relevant for the determination of the case. Secondly, the Tribunal notes that whilst it could have been expected that the Applicant apprise the Tribunal of his promotion once it happened, it cannot be concluded in

have documents happened allegedly

