



UNITED



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

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.

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