

Translated from French

ADMINISTRATIVE TRIBUNAL

Judgement No. 837

Case No. 932: SAKBANI

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Hubert Thierry, President; Mr. Mikuin Leliel Balanda,
Vice-President; Mr. Julio Barboza;

Whereas, on 28 September 1995, Michael Sakbani, a staff member of the United Nations Conference on Trade and Development, filed an application which did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 17 July 1996, the Applicant, after making the necessary corrections, again filed an application, the pleas of which read as follows:

- "1. That my petition dated 18 December 1991 for a change in the date of birth on the United Nations official records from 23 November 1938 to my actual birth date of 25 February 1942 be accepted.
- "2. That the decision of the Office of Human Resources Management contained in their memorandum to me of 15 January 1992 be rescinded."

Whereas the Respondent filed his answer on 18 September 1996;

Whereas the Applicant filed written observations on 24 June 1997;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 14 July 1977 after filling out a personal history form in which he gave his date of birth as 23 November 1938. In the personnel action form drawn up on 21 July 1977, at the time of his initial appointment, his date of birth was recorded as 23 November 1938. It is this date which appears in all of the personnel action forms that were drawn up during his subsequent career with the United Nations.

On 17 February 1989 the Applicant wrote to the Office of Human Resources

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Management at United Nations Headquarters concerning administrative instruction 88/47 on requests for rectification of date of birth. He stated that he had, prior to the issuance of the instruction in question, "initiated, in good faith, a legal action" in Syria to correct his date of birth, which entailed "a material error of little over three years". As several months might elapse before the court rendered its decision, the Applicant wished to preserve his rights under subparagraph (a) of the administrative instruction until such time as he was notified of the court's decision.

On 18 December 1991 the Applicant wrote to the Under-Secretary-General for Human Resources to request that his date of birth be changed, the correct date being 25 February 1942. In support of his request, he adduced a certified copy of a judgement rendered on 30 July 1991 by a Syrian court, which had ruled that his real date of birth was 25 February 1942 and that the date appearing in the Syrian civil register was erroneous, owing to confusion with the date of birth of an older brother of the same name whose death had not been properly recorded.

The Applicant explained further that he had not been able to return sooner to Syria to initiate a legal action "because of the uncertainty and legal instability and the punitive regulations in force".

On 15 January 1992, the Administration refused to make the correction, on the ground that administrative instruction ST/AI/354 of 27 July 1988 provided that certain procedures must be followed and certain criteria must be met in order for a staff member's date of birth to be changed. The Applicant, however, did not meet these criteria; he had, in particular, waited 11 years after joining the Organization before raising the matter. Moreover, the Applicant's school records did not support his claim, in that he appeared to have completed his schooling at the normal age. Lastly, the Organization was not required to recognize a decision taken by a foreign court.

On 2 September 1992 the Applicant lodged an appeal with the Joint Appeals

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Board. The Board adopted its report on 22 May 1995. Its conclusion and recommendation read as follows:

"32. The Panel concluded that the Appellant had not met the criteria required by the relevant staff rules and administrative instruction ST/AI/354 of 27 July 1988 with respect to the rectification of date of birth.

"33. The Panel also concluded that, in view of the extremely long period of time elapsed, none of the circumstances invoked by the Appellant could relieve him from his obligation to provide the Organization with accurate facts to the best of his knowledge and belief.

"34. In the light of the above, the Panel makes no recommendation in support of the appeal."

On 22 June 1995 the Under-Secretary-General for Administration and Management transmitted a copy of the Board's report to the Applicant, informing him as follows:

"The Secretary-General has examined your case in the light of the Board's report. He has taken note of the Board's conclusions that you did not meet the criteria required by the relevant staff rules and administrative instruction ST/AI/354 of 27 July 1988 with respect to rectification of date of birth and that in view of the extremely long period of time elapsed, none of the circumstances invoked by you could relieve you from your obligation to provide the Organization with accurate facts to the best of your knowledge and belief. The Board made no recommendation in support of your appeal. The Secretary-General has decided, accordingly, to take no further action on your case."

On 17 July 1996 the Applicant filed the application referred to above.

Whereas the Applicant's principal contentions are:

1. The Applicant informed the Respondent that he had initiated an action before a Syrian court to preserve his right to correct his date of birth,

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concerning which a material error had been committed in the civil register.

2. He had not been in a position to initiate a legal action in Syria until the end of the 1980s, after the country had undergone sweeping legal and political changes.

3. The decision rendered by the Syrian court was in his favour, since the court had ruled that his real date of birth was 25 February 1942 and not 23 November 1938, the second date being the date of birth of a brother of the same name who had died.

Whereas the Respondent's principal contention is:

Correction of date of birth is regulated by an administrative instruction, and the Applicant's request to change his date of birth was rejected in accordance with the terms of that instruction. The decision to reject the Applicant's request was a valid exercise of administrative discretion.

The Tribunal, having deliberated from 8 July to 1 August 1997, now pronounces the following judgement:

I. The application challenges the decision of the Secretary-General to accept the recommendation of the Joint Appeals Board that the Applicant had not "met the criteria required by the relevant staff rules and administrative instruction ST/AI/354 of 27 July 1988 with respect to the rectification of date of birth."

II. In his application, the Applicant asserts that he raised the question of the rectification of his date of birth in 1989, when he informed the Administration of the action which he had initiated before the courts of Syria, his country of origin, for the purpose of making such a change. He had not raised this question previously because he had not been in a position to furnish

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sufficient proof and had not wished to complicate his situation. The Applicant invokes the circumstances resulting from the proceeding that was then pending against him in his country and the threat of arrest to which he was subject. He was consequently unable to return to Syria to correct his date of birth. It was only on 30 July 1991 that he was able to make this correction in a Syrian court.

III. The Respondent requests that the application be dismissed on the ground that it was not filed in time under the terms of administrative instruction ST/AI/354 of 27 July 1988.

IV. The Tribunal notes that on the form which he filled out at the time of his appointment in 1977, the Applicant stated without reservation that he had been born on 23 November 1938. It was not until 18 December 1991, nearly 14 years later, that he requested the rectification of his date of birth, whereas in accordance with administrative instruction ST/AI/354 concerning the procedures and criteria for the rectification of a staff member's date of birth, such a request must be submitted within two years from the staff member's initial appointment and within six months from the discovery of the error.

V. The Tribunal approves of the concern for legal certainty underlying the terms of administrative instruction ST/AI/354; without such certainty, no sound administration would be possible. The Tribunal considers that in this case, the Applicant, who had made no reservation concerning his date of birth at the time of his appointment in 1977, waited until 1991 to do so (cf. Judgement No. 321, Cunio (1984); Judgement No. 348, Lugman (1985); International Labour Organization Administrative Tribunal Judgement No. 459, Zreikat (1981)). He was negligent and failed to adhere to the time limits stipulated in the above-mentioned circular. It follows that the Administration acted properly in

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declaring his appeal inadmissible.

VI. Accordingly, the Tribunal rejects the application.

(Signatures)

Hubert THIERRY
President

Mikuin Leliel BALANDA
Vice-President

Julio BARBOZA
Member

Geneva, 1 August 1997

R. Maria VICIEN-MILBURN

Secretary
