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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

Application 003/2011

In the matter of

URBAN MKANDAWIRE — **APPLICANT**

V.

THE REPUBLIC OF MALAWI — **RESPONDENT**

RULING

The Court composed of: Sophia A. B. AKUFFO, President; Bernard M. NGOEPE, Vice-President; Gérard NIYUNGEKO; Fatsah OUGUERGOUZ; Augustino S. L. RAMADHANI Elsie N. THOMPSON; Sylvain ORÉ; El Hadji GUISSE and Ben KIOKO, Judges: and Robert ENO, Registrar

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (the Protocol) and Rule 8(2) of the Rules of the Court (the Rules), Judge Duncan Tambala, Member of the Court and a National of Malawi did not hear the application.

In accordance with Rule 66(4) of the Rules Judge Kimelabalou Aba did not hear the application.

In chambers, after deliberation, delivered the following ruling;

I. THE NATURE OF THE MATTER

1. The Court handed down its judgment on 21 June 2013 in an Application which had been brought by the Applicant against the Respondent. By a letter dated 16 August, 2013, the Applicant made an application to the Court containing two requests: for the review of the Court's judgment and also for the interpretation of the judgment. The application was purportedly brought in terms of Rules 67 and 66, respectively, of the Rules. In this Application, the Applicant is self-represented.

2. The Registrar served the application on the Respondent on 28 August, 2013, requiring him to respond within thirty (30) days of the receipt of the notification. That time was extended by fifteen (15) days, that is, up to 19 October, 2013. Still there was no response. The Court decided to proceed with the application.

3. In his application, as stated earlier, the Applicant submitted two requests; the Court has dealt with the request for interpretation first.

II. REQUEST FOR INTERPRETATION IN TERMS OF RULE 66

4. The request for interpretation contains the following eight 'points' seeking the so called interpretation:

a) Paragraph 29 of the judgment in terms of Art 15 of the African Charter on Human and Peoples' Rights (the Charter):
The Applicant complains that his exhibits "UM Potani" and "UM HC Appeal" were not referred to in the judgment.

b) Paragraph 29 of the judgment in terms of Art 7 of the Charter:
The Applicant wants the Court to interpret that paragraph and determine whether or not the Industrial Relations Court of Malawi violated Art 7 of the Charter and whether or not that Court violated some provisions of the Constitution of Malawi when it overruled the High Court of Malawi.

c) Paragraphs 34-40 of the judgment in terms of Art 56(5) of the Charter:
The Court decided that the Applicant had not exhausted local remedies while the African Commission of Human and Peoples' Rights (the Commission) in its 46th Ordinary Session found that he had done so. So, the Applicant wants the Court to interpret paragraph 38.2 of the judgment to determine whether or not he had exhausted local remedies.

d) Paragraph 41 of the judgment in terms of Art 56(7) of the Charter:
The Applicant wants the Court to determine whether or not it is still open to him to re-file this case with the Commission since the Court did not "settle" his case in terms of Art 56(7) of the Charter.

e) Paragraphs 19 and 29 of the Judgment in terms of Art 26 of the Charter:
The Applicant points out that the Court rejected his legitimate complaint of the existence of a blood relationship between Justice Tembo of the Supreme Court of Appeal of Malawi and

the student called Tembo who was one of the complainants against the Applicant. So, the Applicant wants to know whether or not the Court resorted to Rule 44 D4 of the Rules of the European Court of Human Rights in making that determination.

f) Interpretation of the date of the judgment in terms of Art 28(1) of the Protocol and Rule 59(2) of the Rules of Court:
The two cited provisions require the Court to give judgment within ninety (90) days after deliberation. The Applicant wants to know whether it was within the province of the Court to deliver the judgment on 21 June, 2013, instead of 10 June, 2013.

g) Interpretation of the date of judgment in terms of Art 15(2) of the Rules of Procedure of the IACHR:
The Applicant points out that whereas nine judges heard the case in Mauritius the judgment indicates that it is by a majority of seven to three, that is, a total of ten judges.

h) Interpretation of the judgment in terms of Art 30(3) of the Rules of Procedure of the IACHR and Rule 36 of the Rules:
In paragraph 29 of the judgment the Court made a finding that the Applicant had not refuted the Respondent's submission regarding the relationship of Justice Tembo and student Tembo contained in documents "Malawi 1" and "Malawi 2" which were sent to him on 30 November, 2012. He asks "How can one respond to a document that I don't know the content?"

5. The Applicant has correctly referred to Rule 66 of the Rules but the authority for that Rule is Article 28(4) of the Protocol which reads:

"4. The Court may interpret its own decision".

For its part, Rule 66 reads:

"1. Pursuant to Article 28(4) of the Protocol, any party may, for the purpose of executing a judgment, apply to the Court for interpretation of the judgment.

2. The Application shall state clearly the point or points in the operative provisions of the judgment on which interpretation is required".

6. Interpretation of a judgment can be sought from the Court "for the purpose of executing" the judgment. In the present case the judgment dismissed the Application on the grounds that local remedies had not been exhausted; it imposes no positive obligation capable of being executed. Therefore, there cannot be an application for interpretation of the judgment in terms of Art 28(4) of the Protocol as read together with Rule 66 of the Rules because there is no execution that is possible under the judgment of the Court.

7. Moreover, the Application does not comply with Rule 66(2) in that it does not "state clearly the point or points in the operative provisions of the judgment on which interpretation is required". On the contrary, the Application is generally incoherent and incomprehensible. The eight 'points' posed by the Applicant can never be points for interpretation as they do not relate to the operative paragraphs of the judgment. On a number of issues the Applicant asks for the Court's opinion, such as whether he can go back to the Commission.

8. However, there are two points which, for the avoidance of confusion, need to be explained. One, the Applicant asked whether it was within the province of the Court to deliver judgment on 21 June, 2013, instead of 10 June, 2013. The Applicant does not tell us from where he came up with the date of 10 June, 2013. In any case, it is not important for the Court to determine that request, since it has already cited what Art 28(1) of the Protocol and Rule 59(2) of the Rules provide. To clear the mind of the Applicant of any confusion, the President when closing the hearing in Mauritius on 30 November, 2012, clarified it further:

"Not 90 days as of today, 90 days of completion of deliberation. When the Court is ready with its judgment for

delivery, parties will be notified by the Registrar, and, therefore, this matter is adjourned *sine die."*

It should be noted that when deliberations are concluded is an internal matter of the Court.

9. The second point is that the Applicant recollects, and rightly so, that he appeared before nine judges in Mauritius but the judgment states that seven judges voted for the decision and three judges voted against it. He points out that it is six judges, not seven, who voted for the judgment. The Court concedes that there is a typographical error and the record should have read six and three judges instead of seven and three and a corrigendum has been issued. Nevertheless, this is not a point for interpretation.

10. The request for the interpretation of the judgment satisfies the requirements of Rule 66(1) with regard to the time limit of 12 months within which to file an application for interpretation of a judgment. However, it fails to satisfy the requirements of Article 28(4) of the Protocol, and of Rule 66(2) of the Rules. In view of the foregoing, the Application for interpretation of the judgment cannot be entertained.

III. APPLICANT'S REQUEST FOR REVIEW IN TERMS OF RULE 67

11. The Court has power provided by Art 28 of the Protocol to review its decision:

> *"2. The judgment of the Court decided by the majority shall be final and not subject to appeal.*
> *3. Without prejudice to sub-Article 2 above, the Court may review its decision in the light of new evidence under conditions set out in the Rules of Procedure".*

Rule 67 (1) of the Rules reads:

> *"Pursuant to Article 28 (3) of the Protocol, a party may apply to the Court to review its judgment in the event of the discovery of evidence, which was not within the knowledge of the party at the time the judgment was delivered. Such application shall be filed within six (6) months after the party acquired knowledge of the evidence so discovered".*

12. An Applicant must therefore show in the Application "the discovery of evidence, which was not within the knowledge of the party at the time the judgment was delivered".

13. In his application, the Applicant purports to quote two portions of the Court's judgment, which he claims constitute, as he puts it, "new piece of information".

    13.1. Firstly, he claims that the first *"piece of information"* is *"presented"* in paragraph 27 of the judgment, which he inaccurately quotes as follows:

    > *"In Malawi there is a law or custom which precluded a litigant who is not a licensed practitioner or a lawyer to address the Court from the Bar and when I appealed in the High Court against the decision of the Industrial Relations Court, I reneged (sic) to ague (sic) my appeal from anywhere else but decided to filed (sic) by appeal to the Supreme Court against the decision of the Industrial Relations Court".*

    13.2. Secondly, he says that the next *"new piece of information"* is *"presented"* in paragraph 37 of the judgment, which, he again inaccurately quotes as follows:

    > *"I was the one who curtailed the itinerary of the recourse my case to the national courts in Malawi by submitting*

five copies out of seven copies of various judgments of the courts in Malawi relied upon by the African Court in its judgment dated June 21, 2013".

14. . It should be noted, from the outset, that Article 28 (3) requires that the process of review must be without prejudice to Article 28 (2); in other words, such a process may not be used to undermine the principle of finality of judgments enshrined in Article 28 (2), which states that there shall be no appeal. It is against this background that the Applicant's application for review must be considered.

14.1 The Applicant inaccurately cites the Court's judgment in respect of both paragraphs of its judgments. Paragraph 27 of the judgment reads:

"The Applicant appealed against the above judgment to the High Court as he was not satisfied with it. When the Applicant, who is neither a licensed practitioner nor a lawyer, appeared before the High Court, he wanted to address that court from the Bar where licensed practitioners would do. This was denied to him in terms of the practice before the courts in that country; he was, however, free to argue his case from where people who were not practitioners would do. He however decided not to argue from anywhere else; instead, he decided to appeal to the Supreme Court of Appeal, for the third time".

As far as paragraph 37 of the Judgment is concerned, the contents thereof are not anywhere near what Applicant claims it contains; what he presents as paragraph 37 cannot be located in the judgment. Therefore, while what the Applicant inaccurately presents as paragraph 27 of the judgment at least captures the paragraph's substance, what he presents as paragraph 37 is incomprehensible and is not part of the judgment.

14.2 Furthermore, what the Applicant presents as *"new piece of information"* is in fact neither new, nor *"evidence"* at all as contemplated in Article 28 of the Protocol, or Rule 67 (1) of the Rules, as it purports to be the findings of the Court, contained in its judgment. The new evidence contemplated by the Article and the Rules is evidence, which was not previously known by the party concerned. Nothing contained in the Applicant's submissions constitutes any *"evidence"* which was not known to the party at the time the Court handed down its judgment.

15. The request for review satisfies the requirements of Rule 67(1) with regard to the time limit of six (6) months within which to file an application for review of the judgment. However, it fails to comply with the requirements of Article 28 (3) of the Protocol, as well as Rule 67 (1) and (2) of the Rules.

16. Although the Respondent has not filed a reply to the Application, this does not cure the defects in the Application, or add to it. For all the reasons given above, the Court decides as follows:

1. The Applicant has complied with Rule 66(1) with regard to the time limit of 12 months within which to file an application for interpretation of a judgment;
2. The application for interpretation of the judgment fails and is struck out;
3. The Applicant has complied with Rule 67(1) with regard to the time limit of six (6) months within which to file an application for review of a judgment from alleged date of discovery of new facts;
4. The request contained in the Application for the review of the Court's judgment of June 2013 is inadmissible and is struck out. The Court will not therefore go into the merits of the request.

Signed:

Sophia A. B. AKUFFO, President

Bernard M. NGOEPE, Vice- President

Gérard NIYUNGEKO, Judge

Fatsah OUGUERGOUZ, Judge

Augustino S. L. RAMADHANI, Judge

Elsie N. THOMPSON, Judge

Sylvain ORE, Judge

El Hadji GUISSE, Judge

Ben KIOKO, Judge; and

Robert ENO, Registrar

Done in Arusha, this Twenty-Eighth day of the month of March in the year Two Thousand and Fourteen, in English and French, the English text being authoritative.

Pursuant to Article 28(7) of the Protocol and Rule 60(5) of the Rules of Court, the individual opinions of Judges Niyungeko and Ouguergouz are annexed to this Ruling.

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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

Urban Mkandawire v. Republic of Malawi

(Application No. 003/2011)

Application for interpretation and review of the judgment of 21 June 2013

Separate Opinion of Judge Gérard Niyungeko

1. In its judgment of 28 March 2014 in the matter of *Urban Mkandawire v. The Republic of Malawi*, *Application for interpretation and review of the judgment of 21 June 2013*, the Court concluded that the request for review was inadmissible, in the absence of new evidence which was not known to the Applicant when the first judgment of the Court was rendered (Article 28(3) of the Protocol establishing the Court) (herein after the Protocol) and Rule 67 of the Rules of Court (herein after, the Rules)) (paragraphs 16 and 15).

It also concludes that the application for interpretation fails and is struck out, notably on the ground that the points raised are not related to the operative provisions of the judgment in question(Article 28(4) of the Protocol and Rule 66 of the Rules) (paragraphs 16 and 7).

2. I agree with the conclusions reached by the Court on both issues; I however differ with it on the fact that, with regard to the application for interpretation, in spite of its principled position stated above, it decided to interpret Article 28(1) of the Protocol and Rule 59(2) of the Rules, and to

consider the Applicant's grievance on the composition of the Court which rendered the judgment of 21 June 2013 mentioned above.

I. Interpretation of Article 28(1) of the Protocol and Rule 59(2) of the Rules

3. Article 28(1) of the Protocol provides that «[t]he Court shall render its judgment within ninety (90) days of having completed its deliberations»[1].

Rule 59(2) of the Rules, which is aligned to the English version of Article 28(1) of the Protocol, provides that « [t]he decision of the Court shall be rendered by the Court within ninety (90) days from the date of completion of the deliberations ».

4. In his application, the Applicant requested for the interpretation of the date of the judgment rendered on 21 June 2013 in terms of these two provisions, and asked the Court whether it was "within the province of Article 28(1) of the Protocol and Rule 59 (2) of the Rules of the Court for the Court to deliver its judgment on 21/6/2013; 11 days after the due date of 10/6/2013 had elapsed".

5. In its judgment of 28 March 2014, the Court considered this matter and responded in substance that the deadline of ninety days starts running from the end of deliberations and that the final date is an internal matter of the Court (paragraph 8).

6. In my view, the Court did not have to respond to such a question. *In fact, first of all, this question is not related to the operative provisions of the judgment to be interpreted.*

In terms of Rule 66(2) of the Rules, the application for interpretation of a judgment must « state clearly the point or points in the operative provisions of the judgment on which interpretation is required ». This means that the application for interpretation can only concern the operative provisions (which excludes notably, the part of the judgment dealing with reasons),

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[1]In its French version, this provision provides for a different rule : « La Cour rend son arrêt dans les quatre-vingt-dix (90) jours qui suivent *la clôture de l'instruction de l'affaire*" (italics added).

and that in the same manner, therefore, the Court can only interpret a point which is part of the operative provisions of the judgment in question.

The operative provisions of the judgment of 21 June 2013 provides as follows: « The Court declares this application inadmissible in terms of Article 6(2) of the Protocol, read with Article 56 (5) of the Charter » (paragraph 41).

The Applicant's request for the interpretation of Article 28(1) of the Protocol and Rule 59(2) of the Rules mentioned above is in no way related to these operative provisions which have to do with the inadmissibility of the application for failure to exhaust local remedies. It is even strictly unrelated to the reasons of the judgment. It concerns an issue which is outside the scope of the judgment.

Besides, the Court itself had just admitted this in one of the preceding paragraphs of its judgment where it declared that « [l]he eight 'points' posed by the Applicant can never be points for interpretation as they do not relate to the operative paragraphs of the judgment» (paragraph 7).

7. The Court justifies its decision to consider this point in spite of the affirmation it just made, in saying that there was a need to remove any doubt on the issue. This justification is however not convincing. The same need to remove any doubt could also be felt in relation to the six other points raised by the Applicant in his application for interpretation which the Court however decided to ignore; and the Court also failed to explain why the interpretation of Article 28(1) and Rule 59(2) had to be treated differently from the other points. The selection of points which the Court did not have to interpret, but which it nevertheless interpreted, necessarily appears to be arbitrary.

8. *Further, parts of the judgment in which the Court gives its interpretation of Article 28(1) of the Protocol and Rule 59(2) of the Rules do not even constitute obiter* dicta.

It is generally acknowledged that a judge may include *obiter dicta* in his judgment. *Obiter dictum* is a Latin expression which means 'said in

passing' and which « qualifies an argument which does not fall within the ambit of *ratio decidendi*, which is not invoked to make a decision»[2]. It is an argument which is not strictly necessary to justify the decision of the judge.

In the instant case however, these parts want to express a decisive and compulsory interpretation of the Article and Rule concerned.

9. *Furthermore, in any case, the Court does not have to, without cause, exercise incidentally its mandate of interpreting human rights legal instruments.*

The Court is charged with the interpretation of human rights legal instruments both in contentious matters (article 3 of the Protocol) and in advisory matters (Article 4 of the Protocol).

It is a mandate which it has to carry out primarily and autonomously within the framework of its dual jurisdiction and in respect of laid down procedure, not just in passing, and not at the sidelines of the interpretation of the operative provisions of a judgment.

It is also a mandate which it has to discharge in a proper manner, that is, by applying notably, the rules of interpretation of international treaties, as provided under Articles 31 to 33 of the Vienna Convention on the Law of Treaties of 23 May 1969.

In the instant case, by giving a hasty and incidental interpretation of Article 28(1) of the Protocol, the Court took the risk of giving an incomplete interpretation of this article, without paying adequate attention to the above-mentioned provisions of the Vienna Convention on the Law of Treaties.

10. *Lastly, if it was the intention of the Court to provide an advisory opinion, it is evident, under Article 4 of the Protocol, that it does not have the jurisdiction to do so when the request is made by an individual.*

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[2] *Lexique des termes juridiques 2014*, Serge GUINCHARD et al. ed. , 21e éd., 2013, p. 635. According to *Black's Law Dictionary* , obiter dictum, is « [a] judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive)" (Bryan A. GARNER, ed., 9th ed. , 2009, p. 1177).

It is important to underscore this, because the Court seems to understand the Applicant's requests as requests for the "Court's opinion" "on a number of issues" (paragraph 7).

11. For all these reasons, the Court ought to have abstained from responding to the application for interpretation of Article 28(1) of the Protocol and Rule 59(2) of the Rules, in its judgment of 28 March 2014.

II. Consideration of the Applicant's grievance on the composition of the Court which rendered the judgment of 21 June 2013 mentioned above.

12. In his application for interpretation of the Judgment of 21 June 2013, the Applicant also requested for the interpretation of « the date of the Judgment dated June 21, 2013 in terms of Article 15 (2) of the Rules of Procedure of the IAHRC » [sic], in pointing out that whereas in the public hearing he appeared before nine judges, the judgment states that it was rendered by ten judges.

13. In its 28 March 2014 judgment, the Court took time to respond in the following words: « The Court concedes that there is a typographical error and the record should have read six and three judges instead of seven and three and a corrigendum has been issued. Nevertheless, this is not a point for interpretation» (paragraph 9).

14. In my view, the Court did not have to deal with this issue in its judgment. Firstly, as admitted by the Court, it is not a matter for interpretation (this thus places it outside the jurisdiction of the Court in the interpretation of judgments). Secondly, the Court does not have to correct simple typographical errors in a judgment on the interpretation of an earlier decision. In its practice, the Court corrects such errors through an *erratum* attached to the judgment in question. This approach would have been sufficient to solve the problem. In my view, a judicial decision of the Court does not seem to be the right place to deal with such issues.

Judge Gérard Niyungeko

Robert ENO, Registrar

Urban Mkandawire *v.* The Republic of Malawi
(Application No. 001/2013)

Separate Opinion of Judge Fatsah Ouguergouz

1. Even though I subscribe to the conclusions reached by the Court concerning the inadmissibility of the applications for interpretation and review of its judgment of 21 June 2013, filed by Mr. Urban Mkandawire, I do not entirely share the reasoning adopted to arrive at these conclusions and would like to explain why.

I – Concerning the application for interpretation

2. In paragraph 6 of the present judgment, the Court notes, and rightly so, that in terms of Rule 66 (1) of the Rules, any party may request the Court to give an interpretation "for the purpose of executing a judgment", and that, in the instant case, the judgment for which interpretation is sought, has declared that the application is inadmissible for failure of exhaustion local remedies by the Applicant. The Court then points out that the judgment in question imposesno obligation capable of being executed and concludes that the application for interpretation is not possible in terms of the relevant provisions of the Protocol and the Rules. In my opinion, that is what would have been enough to say on the matter.

3. The Court however deemed it necessary to consider whether a second condition under Rule 66 of the Rules was met, that is to say that the application shall "state clearly the point or points in the operative provisions of the judgment on which interpretation is required".

4.In that regard, the Court notes thatthe application is, on the contrary, "generally incoherent and incomprehensible", and concludes that the nine "points"mentioned by the Applicant can never be points for interpretation.[1]In

[1] I would like to underline here that one of the nine «points» referred to by the Applicant in his application relates to paragraph 41 of the 21 June 2013 judgment, that is to say its operative part (see paragraph 4 (d) of the present judgment); it is however for the African Commission and not for the African Court to respond to such a question.

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my view, the Court ought to have ended its analysis on this conclusion and proceeded to consider the application for review.

5. In spite of this negative conclusion, the Court however decided that there were two "points" which needed clarification"for the avoidance of doubt". By doing that, the Court does not only implicitly accept the application for interpretation filed by the Applicant, but does so without explaining why it focuses on these two "points" in particular. Equally unclear is the assertion made in Paragraph 8of the judgment that "it is not important for the Court to determine the request, since it has already cited what Article 28 (1) of the Protocol and Rule 59 (2) of the Rules provide".

6. The Court further gave clarification on the 90 days Rule contained in Article 28 (1) of the Protocol by noting that "when deliberations are concluded is an internal matter of the Court"and admitted that there was a typographical error in the judgment of 21 June 2013 which resulted in the publication of a *corrigendum*.

7. I am of the view that the developments in Paragraphs 8 and 9 of this judgment are tantamount to "justifications" which should not have been given, especially with regard to the application of the 90 days rule, the meaning of which remains up to now ambiguous.[2] The Court should have therefore avoided such developments.

8. To summarize, the Court, in the instant case, could simply have rejected the application without going into all the different considerations contained in paragraphs 7, 8 and 9 of the judgment. In the examination of similar applications, which are manifestly unfounded, the Court could in the future draw inspiration from Rule 80 (3) of the Rules of the European Court of Human Rights which provides that "the original Chamber may decide of its own motion to refuse the request on the ground that there is no reason to warrant considering it".

II –Concerning the application for review

9. I do not share the interpretation of paragraphs 2 and 3 of Article 28 of the Protocol made by the Court in paragraph 14 of the present judgment. The expression "without prejudice" used in paragraph 3 of this Article should, in my

[2] It should indeed be noted that there is a discrepancy between the English and French versions of this provision: the English version refers to the completion of the «deliberations» of the Court while the French version refers to the completion of the «instruction» of the case, that is to say all the procedural steps (filing of written and oral arguments by the parties) before the matter can actually be decided by the Court.

opinion, simply be conceived as providing for an exception to the principle of the "final" character of the judgments of the Court enshrined in the preceding paragraph.

10. I am also of the view that the Court should have clearly spelt out the three conditions for admissibility of an application for review as provided for by the Protocol and the Rules, that is to say that the application 1) must contain new evidence,2) which the Court "or" the Applicant had no knowledge of when the judgment was being rendered, and 3) to be submitted within six months of the date the said party discovered the new evidence.

11. In so doing, the Court could have taken advantage of this occasion to make a useful clarification on some of the weaknesses contained in the Protocol and the Rules on this issue.

12. The discrepancy between the English and French versions of paragraph 3 of Article 28 of the Protocol could indeed explain why one of the three conditions which it poses is not identical to that of paragraph 1 of Rule 67 of the Rules.

13. The French version of paragraph 3 of Article 28 of the Protocol makes it possible for the Court to review its judgment in the light of new evidence "which was not within its knowledge at the time of its decision"; for its part, the English version of this paragraph does not contain such a condition.

14. As for paragraph 1 of Rule 67 of the Rules, both the English and French versions provide that it is the "party" which files the application for review, that is not supposed to have had knowledge of the new evidence at the time the judgment was rendered.

15. In this regard, it is important to point out that the instruments governing the functioning of other international Courts and dealing with the issue of revision or review, require that both the Court and the party requesting the review must have been unaware of the new fact; this is for example provided for by Article 25 of the Protocol establishing the Court of Justice of the Economic Community of West African States,[3] Article 48 (1) of the Protocol establishing the African Court of Justice and Human Rights,[4] Article 61 (1) of the Statute of the

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[3] «An application for revision for a decision may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the decision was given, unknown to the Court and also to the party claiming revision, provided always that such ignorance was not due to negligence».

[4] «An application for revision of a judgment may be made to the Court only when it is based upon discovery of a new fact of such nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, provided that such ignorance was not due to negligence».

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International Court of Justice[5] and Article 80 (1) of the Rules of the European Court of Human Rights.[6]

16.What is even more fundamental is the fact that these three instruments refer to the existence of a new "fact" and not to a new "evidence", which is quite different; they also provide for two other important conditions, that the party applying for revision did not negligently ignore the new factand that this new fact should be of such a nature as to be a "decisive factor" on the verdict of the matter decided by the disputed judgment.

17. In my view, these questions relating to the meaning to be given to Article 28 (3) of the Protocol and Rule 67 (1) of the Rule sought to have been given at least as much attention by the Court as the question relating to the meaning to be given to Article 28 (1) of the Protocol and Rule 59 (2) of the Rules, relating to the 90 days deadline in which the Court must render its judgments.

18. Lastly, I would like to underline that in the operative part of the judgment, the Court decided to reject the application for interpretation whereas in its reasoning it made a decision on two of the nine "points" contained in the request of the Applicant.

Fatsah Ouguergouz
Judge

Robert Eno,
Registrar

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[5] «An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence».

[6] «A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court, within a period of six months after that party acquired knowledge of the fact, to revise that judgment». The American Convention of Human Rights, the Statute as well as the Rules of the Inter-American Court of Human Rights, do not contain provisions dealing with revision of judgments; these three instruments make reference only to the issue of interpretation of judgments.