

SEVENTEENTH ORDINARY SESSION

In re JURADO

(Nos. 12 and 13 - Sanctions)

Judgment No. 111

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation drawn up on 27 June 1966 by Mr. Cesáreo Jurado, impugning two decisions of 10 May 1966 and 30 May 1966;

Considering the notification of 11 August 1966, by which complainant was requested by decision of the President of the Tribunal to file two separate complaints, the appeal against the aforesaid decision filed on 15 August 1966, the notification of 11 October by which complainant was informed that the aforesaid appeal had been dismissed by the Tribunal and was accordingly requested to file two complaints, and the communication of 13 November 1966 by which complainant stated that he maintained his original complaint;

Considering the Statute and Rules of Court of the Administrative Tribunal and Articles 1.1, 1.2, 1.8, 12.1 and 12.4 of the Staff Regulations of the International Labour Office;

Having examined the documents in the dossier, the oral proceedings and hearing of experts requested by complainant having been disallowed;

Considering that the material facts of the case are as follows:

A. On 21 April 1966 a proposal was made to apply a sanction to complainant, specifying that by letter of 25 March 1966 he had addressed copies of a memorandum submitted to the Administrative Tribunal to a number of I.L.O. officials asking them to become parties to the eighth case filed with the Tribunal by Mr. Jurado. Many of these officials, however, did not know Mr. Jurado personally, did not work in the same service and were totally unconnected with the case in which he asked them to intervene. In any event, it was difficult to understand how Mr. Jurado could ask other officials to become parties to what he himself described as an incidental plea on procedure, since it was impossible in law for them to become parties in respect of subsidiary points without also becoming parties in respect of the principal plea, which latter plea concerned Mr. Jurado alone. Hence, on the pretext of asking third parties to intervene in a case which concerned him alone, Mr. Jurado was in fact trying to spread various accusations against the I.L.O. and the Administrative Tribunal by manoeuvres which were liable seriously to prejudice the calm atmosphere in which the I.L.O. ought to conduct its activities.

B. For the reasons set out above the Director-General, considering that Mr. Jurado's actions were not permissible, proposed to apply the sanction of a reprimand to him under Article 12.4 of the Staff Regulations, and invited him, in accordance with the said Article, to initial the proposal and return it within eight days of its receipt, adding any observations he might wish to make. Complainant submitted his observations in a memorandum of 27 April, and after examining them the Director-General applied the sanction of reprimand to him on 10 May 1966.

C. On 7 April 1966 the Assistant Chief of the Personnel Department transmitted to Mr. Jurado a copy of a letter from Mrs. Jurado's legal adviser pointing out that complainant was not paying the maintenance allowance ordered against him by the Geneva Court of Justice as a contribution to the maintenance of the child Jurado, who had been placed in his mother's custody, and after drawing Mr. Jurado's attention to the fact that I.L.O. officials were required to observe current laws and regulations, and in particular to comply with any legal decisions affecting them, invited him to give the necessary explanations concerning the facts stated by Mrs. Jurado's legal adviser. Having subsequently noted that in his note of 13 April 1966 Mr. Jurado had not furnished the explanations requested of him and that, after having been requested to do so by a note of 15 April 1966, he had still failed to comply in his reply of 19 April, the Director-General, by a note of 10 May 1966, informed Mr. Jurado of his proposal to apply the sanction of reprimand, subject to any decisions that might be taken after Mr. Jurado had

submitted the explanations which by the same note the Director-General ordered him to furnish without delay. By a note of 30 May 1966 the Director-General pointed out that Mr. Jurado's observations on the proposal to apply a sanction to him gave no explanation of his reasons for not complying with the instructions of the Assistant Chief of the Personnel Department and applied to complainant the sanction of reprimand.

D. Mr. Jurado's submissions to the Tribunal are in the following terms:

In procedendo:

1. To declare receivable the present complaint and its two annexes A and B.
2. To agree that Judges Maxime Letourneur, President, André Grisel, Vice-President, and Hubert Armbruster, Deputy Judge should not try the case, in accordance with Article X, paragraph (e) of the Statute of the Tribunal and for the reasons set out in paragraphs 3 to 6 of complainant's Brief Summary.
3. To agree that Judge André Grisel should not try the case, in virtue of Article X, paragraph (e) of the Statute of the Tribunal and for the reason set out in paragraphs 7 and 8 of the same Brief Summary.
4. To rule as a matter of urgency that by a provisional order to be made by the President, without prejudice to the ultimate rights of the parties, and in virtue of Article 19 of the Rules of Court, that the legitimate exercise of the rights accorded to complainants by Article X(c) of the Statute of the Tribunal, in conjunction with Article 7(2) of the Rules of Court and Article 13.2 of the Staff Regulations, implies that the official filing a complaint is entitled to send to other officials, on his own full civil and penal responsibility (and subject only to the disciplinary responsibility which may arise out of any penal responsibility incurred), a copy of the statements he has filed with the Tribunal (or other similar statements) in order to inform them of the principal points at issue and to invite them to intervene in the proceedings.
5. Subsidiarily and alternatively, to give a ruling by a provisional order made by the President under Article 19 and without prejudice to the ultimate rights of the parties, as to the conditions in which complainants may legitimately exercise their rights under Article X(c) of the Statute of the Tribunal, in conjunction with Article 17(2) of the Rules of Court and Article 13.2 of the Staff Regulations concerning the intervention of third parties in the proceedings.
6. Following the legal decision taken in respect of Submission No. 4 (or subsidiarily or alternatively in respect of Submission No. 5), to order, as a matter of urgency and by provisional order made by the President under Article 19 of the Tribunal's Rules of Court, that respondent must refrain from any acts of coercion and intimidation against complainant, and in particular, that respondent must immediately remove all obstacles, sanctions and threats of sanctions in respect of the legitimate exercise of the rights accorded under Article X(c) of the Statute of the Tribunal, in conjunction with Article 17(2) of the Rules of Court and Article 13.2 of the Staff Regulations, concerning the intervention in the proceedings of third parties.
7. To treat the present case as urgent and to give it priority for inclusion in the list of cases before the Tribunal.
8. To order the appearance as sworn experts of the Presidents of the Bar Associations of Geneva and Madrid for the purpose of hearing their opinion as to whether the various acts of interference by the Genevese barrister Mr. Antoine Hafner with the I.L.O. and against complainant constitute acts which are compatible or incompatible with an internationally valid conception of the professional ethics of barristers.
9. To order that oral proceedings be held for the purpose of expanding the arguments and facts which have been summarily set forth and for the submission to the Tribunal of the new facts which will undoubtedly arise.

In Judicando

A. On the decision impugned of 10 May 1966

(Document 3-A)

10. To find that the decision impugned of 10 May 1966 signed by the Director-General of the I.L.O., Mr. David A. Morse, is an inadmissible violation of the terms of Articles 1.1, 1.2, 1.8, 1.7, 12.1 and 12.4 of the Staff Regulations.

11. To find that the decision impugned of 10 May 1966 is also in violation of the general rule of law concerning the publicity of legal proceedings and also of the general rule of law "Nulla poena sine lege".

12. To give a ruling, insofar as may be necessary, on the definition of the legitimate exercise by a complainant of the right accorded to him under Article X (c) of the Statute of the Tribunal in conjunction with Article 17 (2) of the Rules of Court and Article 13.2 of the Staff Regulations.

13. If the Tribunal sees fit to give effect to Submission No. 12, to find that the decision impugned of 10 May 1966 is blameworthy by reason of the I.L.O.'s grave default on its legislative responsibilities, in violation of the principles of contractual and general good faith.

14. To find that the decision impugned of 10 May 1966 constitutes an act of discrimination and personal hostility against complainant, and is in violation of Article 13.1 of the Staff Regulations.

15. To order the rescinding of the decision impugned of 10 May 1966; and subsidiarily, in the event of the refusal of the Director-General of the I.L.O. and in virtue of Article VIII of the Statute of the Tribunal, to order that compensation in the amount of 100,000 francs be paid to complainant.

16. To order further that the sum of 10,000 francs Should be paid to complainant on account of moral and material damages, and in particular on account of serious prejudice to his health.

17. To order that the sum of 5,000 francs should be paid to complainant on account of the work involved in the preparation and drafting of the present complaint, together with the sum of 1,000 francs for miscellaneous expenses.

B. On the decision impugned of 30 May 1966

(Document 9-B)

18. To find that the decision impugned of 30 May 1966, signed by the Director-General of the I.L.O., is in violation of Articles 1.1, 1.8, 12.4 and 13.1 of the Staff Regulations.

19. To find that the decision impugned of 30 May 1966 constitutes an act of discrimination and personal hostility against complainant, and also an act of anti-Spanish and anti-Catholic discrimination, all these acts being in violation of Articles 1.2 and 1.7 of the Staff Regulations.

20. To find that the decision impugned of 30 May 1966 constitutes, alternatively, either an act of manifestly wrongful interference in the private life of complainant, inasmuch as the Jurado case has always been regarded by the I.L.O. as of a "strictly private" character; or an act of direct collusion with the persons responsible for the abduction of the child Jurado, insofar as the I.L.O. is seeking to impose on complainant, by coercion and intimidation, compliance with a Swiss Judgment to the extent that it is unfavourable to complainant, while systematically disregarding complainant's complaints concerning non-compliance with the same Judgment to the extent to which it is favourable to him.

21. To order the rescinding of the decision impugned of 30 May 1966, and subsidiarily, in the event of the I.L.O.'s refusal, to order it, under Article VIII of the Statute of the Tribunal, to pay the sum of 100,000 Swiss francs in compensation.

22. To order further that the sum of 10,000 Swiss francs should be paid to complainant on account of moral, material and professional damages, and in particular on account of serious prejudice to his health.

23. To order that the sum of 5,000 francs be paid to complainant on account of the work involved in the preparation and drafting of the present request, together with 1,000 francs for miscellaneous expenses.

Submissions common to the two decisions impugned

(Documents 3-A and 9-B)

24. To find that the decisions impugned of 10 May 1966 and 30 May 1966, signed by the Director-General of the

I.L.O., constitute an inadmissible breach of complainant's freedom and independence in instituting proceedings before the Administrative Tribunal and are in violation of Article 13.2 of the Staff Regulations.

25. To find that the decisions impugned of 10 May 1966 and 30 May 1966 constitute measures leading up to the arbitrary dismissal of complainant and are seriously illegal on that account.

26. To find in consequence that the decisions impugned of 10 May 1966 and 30 May 1966 directly involve the contractual responsibility of the I.L.O. in the abduction and captivity in Switzerland of the child Jurado, who is exclusively Spanish, and who has been wholly deprived since October 1960, in circumstances of pure violence, of his religion, his country, his national language, his father and all his Spanish family, particularly insofar as the two decisions impugned are designed to finalise and perpetuate the aforesaid child's captivity in Switzerland.

27. To order the International Labour Organisation to pay complainant the sum of 5 million Swiss francs on this count."

CONSIDERATIONS:

On the receivability of the complaint

1. It is a rule generally recognised by the courts that a complainant is not entitled to refer to the courts in a single complaint two or more different decisions having no connection with each other. In such a case, the court can examine the complaint only in respect of the first decision specified therein.

By a complaint filed on 27 June 1966 Mr. Jurado impugned, on the one hand, a decision of the Director-General of the I.L.O. dated 10 May 1966 applying a reprimand to him for abuse of process, and on the other hand, a decision by the same authority dated 30 May 1966 applying a reprimand to him for refusing to comply with the instructions of the Assistant Chief of the Personnel Department. These two decisions are entirely unconnected with each other. Consequently, and having regard to the fact that on being requested to comply with the procedure by submitting two separate complaints Mr. Jurado refused to do so, the present complaint is receivable only insofar as it resists the first decision specified therein, i.e. the decision dated 10 May 1966.

On the legality of the director-General's decision of 10 May 1966

On the objection to the composition of the Tribunal:

2. Neither the fact that two of the Judges who sat in the case previously brought before the Administrative Tribunal by Mr. Jurado and disposed of by Judgment No. 70 given by the Tribunal on 11 September 1964 have been called upon to hear a further case brought by the same complainant, nor the fact that one of these Judges is of Swiss nationality and sits in the Supreme Court of his country, can in itself be regarded as valid ground for objection to these Judges. Moreover, as Judge Armbruster is not called upon to sit in the present case, the objection to him is in any case irrelevant.

On the formal correctness of the decision

3. By a letter of 21 April 1966 the Director-General requested Mr. Jurado to give an explanation of some of his actions and warned him that because of these actions he proposed to apply a reprimand to complainant.

By a letter of 27 April Mr. Jurado submitted his explanations. The decision impugned, which applied the proposed sanction, is based on the same facts as were set out in the aforesaid letter of 21 April.

Mr. Jurado's contentions that the aforesaid decision was taken in violation of his right to be heard and that the reasons given for it were insufficient are therefore alike unfounded.

On the internal legality the decision impugned

4. The Director-General based his decision on the fact that, on the pretext of inviting a number of I.L.O. Officials who were not personally acquainted with him to intervene in proceedings which concerned him alone, Mr. Jurado was in fact seeking to spread abroad various accusations against the I.L.O. and the Administrative Tribunal by means of manoeuvres which were liable seriously to prejudice the calm atmosphere in which the I.L.O. should

conduct its activities, and that he thus committed an abuse of process by using his statements as tracts designed to discredit the I.L.O. and the Administrative Tribunal.

5. The actions with which complainant is thus charged, and which have been established as materially true, could neither have been directed to defending complainant's freedom and rights, however widely interpreted, nor could they make the slightest contribution to the disposal of the proceedings instituted by complainant before the Administrative Tribunal, and they were undoubtedly related to activities exercised by Mr. Jurado as an official of the Organisation; as such, they constituted serious misconduct and were consequently such as to justify the legal application of a disciplinary sanction in accordance with Article 12.1 of the Staff Regulations. The free choice of the sanction to be imposed was within the Director-General's discretion.

6. It follows, without any need to examine complainant's other contentions which are entirely unconnected with the case and therefore clearly irrelevant, that Mr. Jurado's contention that the sanctions applied to him had no legal justification is unfounded.

On the submissions concerning compensation

7. In consequence of the foregoing the submissions concerning complainant's claims to compensation must be dismissed.

DECISION:

For the above reasons,

The above complaint of Mr. Jurado is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 9 May 1967 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed)

M. Letourneur
André Grisel
Devlin
Jacques Lemoine