

NINETIETH SESSION

In re Coates (Nos. 1 and 2)
(Application by the FAO for review)

Judgment No. 2029

The Administrative Tribunal,

Considering the application filed by the Food and Agriculture Organization of the United Nations (FAO) on 6 October 1999 for review of Judgment 1871, Mr David Coates' reply of 15 February 2000, the FAO's rejoinder of 27 April and Mr Coates' surrejoinder of 5 June 2000;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

CONSIDERATIONS

1. In Judgment 1871 delivered on 8 July 1999, the Tribunal ordered the FAO to pay Mr Coates 100,000 United States dollars in compensation for the injury he suffered by its rejection of his application for a post as Fishery Resources Officer in the Fisheries Department at the Organization's headquarters. Expressing serious concern at a judgment which it finds inconsistent with the constitutional provisions of the FAO that govern the Director-General's prerogatives in the administration of the Organization, the FAO is asking the Tribunal to review its judgment. While aware that the case law is very restrictive as to the admissible grounds for review, it considers that the circumstances of the case afford reasons for hoping that the case law may be applied more flexibly here.
2. Consistent precedent holds, and the FAO does not deny, that the Tribunal's judgments carry the authority of *res judicata* from the date on which they are delivered and may be reviewed only in quite exceptional circumstances: if there is a material error, or failure to rule on a claim, or if new facts emerge subsequent to the original proceedings or if particular facts which might have influenced the decision are overlooked. But an alleged mistake in appraisal of the facts does not constitute grounds for review, nor does an allegation of a mistake in law.
3. The Organization takes the view that the Tribunal should be more flexible in applying the case law, which, it says, does not take into account recent developments in the legal systems of many countries which provide for two levels of jurisdiction or for appeal against court judgments. That argument in effect contests the Tribunal's Statute, which says that the Tribunal's judgments are "final and without appeal". Furthermore, the lengthy reference to the means of appeal available under French administrative law overlooks the fact that the Council of State (*Conseil d'Etat*) rules directly as court of first and last instance on complaints concerning the position of public officials appointed by a decree of the Council of Ministers, and its decisions are not subject to appeal in any higher court.
4. The Tribunal will nonetheless consider whether the Organization's pleas fall within the admissible grounds for review. The FAO submits that in interpreting the rules on the recruitment of professional staff the Tribunal made an error of law which voids Article VIII(3) of the FAO Constitution of all substance and disregards the Director-General's discretionary authority. Such an allegation calls into question the Tribunal's legal reasoning. To allow review of the interpretation of those rules would render meaningless the principle that the Tribunal's judgments are final and immediately acquire the authority of *res judicata*. It would also allow its judgments to be questioned systematically by complainants who are dissatisfied with the Tribunal's decision.

5. The same holds for the plea that the Tribunal made a mistake of law by failing to reconcile rules that have the same force in law, and for the argument that the Tribunal misread the attributions of the Selection Committee.

6. The plea that the Tribunal disregarded the principle of adversarial proceedings by failing to address the Organization's position in law would carry some weight if it was sound. But it is not: it is plain from the judgment as a whole that in reaching its decision the Tribunal did take account of the FAO's arguments concerning the conjunction of the material provisions of the FAO Constitution, General Rules and Manual, even though it did not accept its conclusions. The application must therefore be dismissed, there being no need to rule on Mr Coates' objection to receivability.

7. The Organization shall pay Mr Coates 2,000 Swiss francs in costs.

DECISION

For the above reasons,

1. The application is dismissed.
2. The FAO shall pay Mr Coates 2,000 Swiss francs in costs.

In witness of this judgment, adopted on 3 November 2000, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 31 January 2001.

(Signed)

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet