

## ELEVENTH ORDINARY SESSION

### ***In re* ANDRESKI**

#### **Judgment No. 63**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Educational, Scientific and Cultural Organization drawn up by Mr. Stanislas Léonard Andreski on 1 March 1962, brought into conformity with the Rules of Court on 9 April 1962, and the reply of the Organization of 18 June 1962;

Considering Regulations Nos. 1.2, 1.4, 1.5, 1.9, 10.1 and 10.2 of the UNESCO Staff Regulations and Rules Nos. 110.1 and 110.2, and 111.2 of the Staff Rules;

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

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

A. Complainant was engaged by UNESCO for one year, i.e. from 13 August 1960 to 12 August 1961, as an expert to teach sociology in the Faculty of Social Sciences of Latin America (FLACSO) in Santiago, Chile. In March 1961, in several letters addressed concurrently to UNESCO organs and to various national authorities, institutions and persons, including the British Government and the Un-American Activities Committee of the United States Senate, complainant accused one of his colleagues, Professor Lucien Brams, of making use of his official functions for purposes of Communist propaganda, and claimed that Professor Brams was occupying a post for which he was not qualified, that he owed his appointment to hidden influences and that he was trying by intimidation and tale-bearing to put his students at loggerheads with each other.

B. Having been informed of the action taken by complainant, the Director-General, in a cable dated 31 March 1961, terminated his assignment and summoned him to core and explain himself in Paris. The administration tried to facilitate the trip in many ways: it made available to complainant the sum he needed to terminate his lease, granted him an advance on his salary and reserved cabins for himself and his family on a ship, the s.s. Vespucci, which was due to leave Valparaiso on 8 May. Complainant having refused to sail on that boat, he was authorised to take another, the s.s. Aragon, which was due to leave Buenos Aires on 26 May. However, owing to the delay resulting from this change, the administration notified complainant that he would be on leave from 8 May until his arrival in Paris. Complainant claimed that owing to the lack of space he could not make the crossing on the s.s. Aragon, and once again he postponed his voyage. In a cable, dated 12 May 1961, the administration then ordered him to come to Paris by plane under penalty of disciplinary action. This had no effect. On 13 May 1961, the Secretary-General of FLACSO, stating that he was acting with the support of the Chilean authorities, also requested that Mr. Andreski's appointment should be terminated as soon as possible.

C. The Director-General of UNESCO set up a committee specially to examine Mr. Andreski's case. In a report of 17 May 1961, the committee recommended summary dismissal on the grounds that complainant had been guilty of serious misconduct, in the first place by addressing written statements containing grave allegations against one of his colleagues, and indirectly against the Organization itself, to bodies outside the Organization, including governments; and in the second place, having been ordered to return to Paris as quickly as possible, he failed to comply, despite reminders and a warning. The Director-General endorsed this view and in a cable dated 23 May 1961, informed complainant that he was summarily dismissed for serious misconduct, in accordance with Article 10.2 of the Staff Regulations, with effect from 24 May 1961. In a second report of 26 May, the same committee concluded that, subject to any further information it might receive, Mr. Andreski's allegations against his colleague, Professor Brams, were either unfounded or irrelevant.

D. The decision to end his assignment and to dismiss him summarily was referred by complainant to the Appeals Board, which concluded that the appeal should be dismissed. The Acting Director-General endorsed this

recommendation on 14 December 1961 and complainant was informed accordingly on the same day.

E. On 9 March 1962, complainant filed with the Registrar of the Administrative Tribunal a complaint praying that his summary dismissal should be quashed and that he should be paid damages amounting to \$50,000 for the libel contained by implication in the decision impugned. In support of his complaint he submits: that officials of UNESCO are not prohibited from communicating with the governments of States Members of the Organization, otherwise than for the purpose of seeking or accepting instructions from them; that most officials of UNESCO communicate with external authorities without obtaining permission from the Director-General and without getting into trouble on that account; that since the higher organs of UNESCO wanted to promote activities contrary to its constitution, he had to inform the governments whose security was threatened; that the States Members as a body are the supreme authority of UNESCO and that he had merely addressed himself to that authority; that the Organization may not enjoin on its employees an attitude amounting to treason towards their own governments; that in this case, the duty of discretion implied a hostile intention towards States Members; and that a UNESCO organ may not require obedience from its subordinated save in so far as it complies with the constitution of the Organization. Moreover, complainant alleges that the decision of the Appeals Board was unduly delayed and was delivered after a superficial and partisan hearing in which the representative of the Bureau of Personnel was not even questioned concerning the reasons for the decision impugned.

UNESCO prays that the complaint should be dismissed.

## IN LAW

1. UNESCO Staff Rule No. 110.1 provides for summary dismissal among other disciplinary measures. According to Staff Regulations Nos. 10.1 and 10.2, this does not mean termination without notice, but a termination which had not been preceded by a recommendation made by an administrative organ on which the staff is represented, i.e. one of the joint disciplinary committees referred to in Rule No. 110.2. Moreover, under Regulation No. 10.2, such action may be taken only against an official who is guilty of serious misconduct. As this is the heaviest penalty which can be inflicted, and can be applied without prior consultation with a joint body, this provision must not be given a broad interpretation. It applies to an official who, in the first place, fails in his duty and, in the second place, thereby commits serious misconduct. In this case the Director-General dismissed the complainant after consulting a committee which he had set up specially for this case, but not a joint disciplinary committee. The Director-General's decision accordingly constituted a summary dismissal. It is, therefore, necessary to consider whether the conditions on which the validity of such an action depends were complied with, i.e. whether complainant failed in his duty and was thus guilty of serious misconduct.

2. Complainant's approaches to national authorities, institutions and persons suffice on their own to justify the penalty he incurred. On the one hand, he failed to comply with several of his obligations under the Staff Regulations and Staff Rules: by accusing one of his colleagues of incapacity and subversion in statements directed to persons and agencies outside the Organization, he brought the International civil service into disrepute, contrary to Regulation No. 1.4; by communicating to third parties information on official matters which had not been publicised in any way; he acted contrary to the duty of discretion defined by Regulation No. 1.5; and on the other hand, by letting it be supposed that UNESCO had employed and was maintaining in its employment an expert devoid of the necessary qualifications and guilty of acting in a manner incompatible with his position, he harmed the interests of the Organization contrary to the solemn undertaking to which he had subscribed in accordance with Regulation No. 1.9 when he accepted appointment.

The arguments complainant adduces to justify his actions are worthless. Officials of UNESCO may, and even should, enter into communication with outside authorities, but only in order to serve the interests of the Organization and, always provided that they observe the limitations set thereto by the Staff Regulations and Staff Rules - which limitations complainant infringed in several ways. It is not even necessary to consider whether by a sort of right of necessity an official could release himself from his duties under the Regulations and Rules if the supreme organs of UNESCO themselves failed to comply with their obligations. In this case, complainant addressed complaints to national authorities, institutions and persons at the same time as he addressed them to the head of the Organization, i.e. before he was in a position to blame the latter for not dealing with his grievances.

Moreover, his many breaches of duty imply serious misconduct. Not only did he cause so much dissension among the teaching staff and students of FLACSO that the Chilean authorities intervened, but he compromised the reputation of UNESCO itself. From an objective point of view, he has incurred a heavy responsibility which is

equally heavy if viewed from a subjective point of view. As an intellectual he was bound to be aware of the consequences of his actions and, as an expert on an important mission, he should have been scrupulously careful to show himself worthy of the confidence that had been placed in him.

3. It is also obvious that by his mere refusal to come to Paris in response to the orders of the Director-General he justified the sanction imposed upon him.

On this point too his dereliction of duty is patent. He rebelled against the authority of the Director-General instead of submitting to it as was his duty under Staff Regulation No. 1.2. He might be excused if he had been forced to travel in unacceptable conditions, but this is not claimed - much less proved - in his complaint. On the contrary, it is not likely that a crossing on the s.s. Vespucci, would have seriously inconvenienced complainant or a member of his family. In any event, even if he could not find accommodation on the s.s. Vespucci, there was nothing to prevent him from travelling by plane.

Here again the misconduct is serious both objectively and subjectively. It was important for UNESCO that complainant should report promptly in person on actions which affected the good repute not only of a particular employee or certain institutions, but of the Organization itself. In addition, the many telegrams he had received, not to mention the fact that he had been placed on leave and threatened with disciplinary penalties, had shown complainant that UNESCO was concerned to obtain certain information from him without delay. It was therefore knowingly that he failed to comply with his instructions. A most serious view must be taken of his behaviour.

4. As to the submissions directed against the Appeals Board, in so far as they are receivable, they are not well founded.

Under Staff Rule 111.2, the Administrative Tribunal hears only complaints against decisions of the Director-General. The Tribunal is, therefore, competent to pass judgment on the irregularities allegedly committed by the Appeals Board only to the extent that they might, particularly by reason of their gravity, have affected the Director-General's decision. This, however, is not a case in point, since the Appeals Board conducted a hearing of both parties and since the other allegations made by complainant with regard to the Board are without substance or relevance.

In any event, complainant is in a particularly bad position to complain of the consideration given to his case because the Director-General, though under no obligation to do so under the Staff Regulations and Staff Rules, had consulted a special committee before taking final action.

## DECISION

The complaint is dismissed.

In witness of this judgment, delivered in public sitting on 26 October 1962 by the Rt. Hon. Lord Forster of Harraby, K.B.E., Q.C., President, Mr. Maxime Letourneur, Vice-President, and Mr. André Grisel, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

Signatures:

Forster of Harraby  
M. Letourneur  
André Grisel  
Jacques Lemoine