

FOURTEENTH ORDINARY SESSION

***In re* JURADO**

(No. 2 - Appeal to the International Court of Justice)

Judgment No. 83

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation drawn up by Mr. Cesáreo Jurado on 5 December 1964, the reply of the Organisation dated 22 December 1964, the additional statement of the complainant dated 11 February 1965, and the reply of the Organisation to that statement dated 24 February 1965.

Considering articles II, paragraph 1, VI, paragraph 1, and III of the Statute of the Tribunal, and article 13.2 of the Staff Regulations of the International Labour Office;

The oral proceedings requested by the complainant having been disallowed;

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

A. By its Judgment No. 70, delivered on 11 September 1964, the Tribunal dismissed the complaint against the International Labour Organisation filed by the complainant on 10 December 1963 in which he prayed for the quashing of decisions taken by the Director-General of the International Labour Office by which he alleged that his immunity from jurisdiction in Switzerland had been illegally waived and that he had been illegally refused diplomatic protection. On 29 October 1964 Mr. Jurado requested the Director-General of the I.L.O. to place the above-mentioned Judgment No. 70 before the Governing Body of the I.L.O. and to request the Governing Body, in accordance with article III of the Statute of the Tribunal, to submit the said judgment to the International Court of Justice for an advisory opinion as to its validity, on the grounds that, in the opinion of the complainant, it had been vitiated by 21, or, according to his latest submissions, 26 fundamental faults in the procedure that had been followed. The complainant's request was repeated on 9 November 1964. In a letter dated 13 November 1964 the Chief of Personnel of the I.L.O., acting on behalf of the Director-General, replied that none of the conditions required for invoking application of article XII of the Statute of the Administrative Tribunal had been fulfilled in this case, and that it was not possible to accede to the request of Mr. Jurado, who now prays the Tribunal to quash the aforesaid decision.

B. The complainant submits that the refusal of the Director-General to comply with his request to put before the Governing Body a proposal to apply to the International Court of Justice for an advisory opinion on the validity of Judgment No. 70 on the grounds that this judgment was vitiated by 26 fundamental faults in the procedure followed, the nature of which was only described for the first time in the additional statement of the complainant dated 11 February 1965, constituted an infringement of article XII of the Statute of the Tribunal and, consequently, of article 13.2 of the Staff Regulations of the I.L.O., which provides that "An official shall be entitled to appeal to the Administrative Tribunal of the International Labour Organisation as provided in the Statute of the Tribunal." Further to the quashing which is prayed for, the complainant also prays that the Tribunal should order the Director-General to lay before the Governing Body his request that the International Court of Justice be asked to give an advisory opinion. Subsidiarily, in the event that the legal obligation relied on should not be performed, the complainant prays for the granting of various amounts of compensation to a total of 5,450,000 Swiss francs already requested subsidiarily in his first complaint, to which are added requests for further compensation: 5,000 Swiss francs for the preparation and drafting of the first complaint, 2,000 Swiss francs for expenditure incurred in connection with that claim, and 5,000 Swiss francs both for the preparation and drafting of the present claim and for expenditure incurred in connection with it. Further submissions relate to the granting of annual leave and home leave to the complainant. Finally, as a first step, the complainant wishes to object to the three members of the Tribunal who delivered Judgment No. 70, on the grounds that they are accordingly interested in opposing any measure liable to lead to the invalidation of the afore-mentioned judgment, and especially to Judge Grisel, because, as a Swiss citizen, he would be concerned to avoid his country possibly incurring responsibility in connection with

the first complaint, and because, as a member of the Federal Tribunal, he would wish to absolve the Swiss legal authorities from the accusation of illegal procedures levelled at them by the complainant.

C. The administration concludes, principally, that because the exercise of the option of requesting an advisory opinion from the International Court of Justice on the validity of Judgment No. 70 falls within the prerogatives of the Governing Body alone, as conferred on it by article XII of the Statute of the Tribunal, the Tribunal is not competent to hear a complaint which consequently does not concern either non-observance of contracts of employment of officials of the I.L.O. or a provision of the Staff Regulations. Subsidiarily, the financial claims of the complainant and those concerning the granting of leave would not be receivable owing to the lack of any prior decision by the administration concerning them and, still more subsidiarily, they are, in any event, unfounded.

CONSIDERATIONS:

On the objection raised:

1. Neither the fact that two of the judges who were sitting in the case brought before the Administrative Tribunal by Mr. Jurado, which led to Judgment No. 70 delivered by that Tribunal on 11 September 1964, have been called upon to sit during the further action brought by the same complainant following the aforementioned judgment, nor the fact that one of these judges is of Swiss nationality or sits in the Supreme Court of his country, can be regarded by itself as a valid ground for objection to these judges.

On the competence of the Tribunal:

2. According to article VI, paragraph 1, of the Statute of the Administrative Tribunal, judgments delivered by the Tribunal "shall be final and without appeal". If, in fact, article XII of that same Statute states that:

"1. In any case in which the Governing Body of the International Labour Office or the Administrative Board of the Pensions Fund challenges a decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed, the question of the validity of the decision given by the Tribunal shall be submitted by the Governing Body, for an advisory opinion, to the International Court of Justice.

2. The opinion given by the Court shall be binding",

it follows, from the very terms of this provision, that the possibility of submitting the question of the validity of the decision given by the Tribunal to the International Court of Justice is exclusively vested in the Governing Body of the I.L.O. or the Administrative Board of the Pensions Fund, as is borne out by the Court itself (advisory opinion dated 23 October 1956, I.C.J. Reports, 1956, p. 77, and pp. 84-85).

3. Such a possibility is open in the sole interest of the Organisation (*Ibid. loc. cit.*). Moreover, the exercise of this right must inevitably lead the Governing Body to take a stand on the validity of judgments rendered by the Administrative Tribunal.

4. It follows that the Tribunal is not competent either to review the conditions under which, according to both its Standing Orders and its practice, the Governing Body of the I.L.O. may be requested by the Director-General to consider a proposal to submit or not to submit a specific case to the International Court of Justice, or the discretion exercised by the Governing Body in taking a decision on such a proposal.

5. Hence it follows that the Tribunal is not competent to decide on Mr. Jurado's plea for the quashing of the decision taken on 13 November 1964 by the Director-General of the I.L.O. whereby he refused to put before the Governing Body of the I.L.O. a proposal to submit Judgment No. 70 to the International Court of Justice.

On the other submissions included in the complaint:

6. The conclusions of a financial nature, submitted subsidiarily, are in any event not receivable since they rely on a complaint set aside by the first judgment of the Tribunal and thus fall outside the scope of the present action.

7. The submissions calling for the granting of various types of leave are likewise not receivable, since the complaints included under that heading are not the subject of the decision taken on 13 November 1964, which is

the only one at issue and which, in addition, is not founded on any argument that could be considered as having a vestige of justification.

8. Finally, the submissions concerning the granting of compensation for the preparation and drafting of the complaints and the expenditure incurred in that connection are not receivable in that they concern the dispute settled by Judgment No. 70 and, in so far as they concern the present action, they must consequently be dismissed as not well founded since, on the one hand, no compensation can be granted to a complainant for the work he carried out personally for the purpose of defending his own interests and, on the other hand, dismissal of the complaint, in the present instance, involves dismissal of any claim for reimbursement of expenses that have effectively been incurred for preparing it.

DECISION:

1. The submissions of the complaint relating to the quashing of the decision dated 13 November 1964 are dismissed on account of the incompetence of the Tribunal.
2. The remainder of the conclusions of the complaint are dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 10 April 1965 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