Registry's translation, the French text alone being authoritative.

FORTY-SIXTH ORDINARY SESSION

In re VILLEGAS (No. 4)

(Application for review)

Judgment No. 442

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review filed by Mrs. Maria Adriana de Villegas on 24 May 1980 in the case of de Villegas versus the International Labour Organisation (ILO);

Considering the provisional order made on 11 December 1980 by the Vice-President and acting President and the complainant's application dated 19 March 1981 relating to that order;

Considering Article II, paragraph 1, of the Statute of the Tribunal and Article 8, paragraph 3, of the Rules of Court;

Having examined the written evidence:

CONSIDERATIONS:

The general question of review

1. The issue

Neither the Statute nor the Rules of Court provide for review of the Tribunal's judgments. Do they then by implication preclude review or do they suffer from a lacuna which the Tribunal may fill? The Tribunal has not yet answered these questions. It has heard several applications for review, but has dismissed them simply by finding that there were no grounds for review. It has not yet discussed in full the scope for review of its judgments. In this case it will deal with the subject in part by citing several pleas in favour of review which it will not allow and by reserving judgment on others.

2. Inadmissible grounds for review

The Tribunal's judgments carry the authority of res judicata from the date on which it delivers them. Though subject to review thereafter, they will be reviewed only in exceptional cases. That is the rule under all judicial systems which allow review. It must therefore be made clear at the outset that several pleas in favour of review will not be allowed.

One is an alleged mistake of law. To allow an application for review on the grounds of the Tribunal's legal reasoning would be to permit anyone who was dissatisfied with a decision to question it indefinitely in disregard of the principle of res judicata.

Likewise the Tribunal will not allow review on the grounds of an alleged mistake in appraisal of the facts, i.e. the interpretation which the Tribunal has put on the facts.

Failure to admit evidence is no valid reason for review; otherwise an unsuccessful party might challenge indefinitely the facts on which the judgment is founded.

Lastly, the Tribunal will not allow review on the grounds that it has omitted to comment on pleas submitted by the parties. Otherwise it would have to pass express judgment on all such pleas, even if they are plainly immaterial. The purpose of an application for review is not to compel the Tribunal to pass judgment on irrelevancies.

3. Admissible pleas in favour of review

Other pleas in favour of review may be allowed if they are such as to affect the Tribunal's decision. They include an omission to take account of particular facts; a material error, i.e. a mistaken finding of fact which, unlike a mistake in appraisal of the facts, involves no exercise of judgment; an omission to pass judgment on a claim; and the discovery of a so-called "new" fact, i.e. a fact which the complainant discovered too late to cite in the original proceedings.

There is no need for the Tribunal to declare in what cases such pleas will in general be allowed. In this case it will merely declare that, even if they are admissible, the complaint must be dismissed for the reasons set out below. To illustrate its views on the subject the Tribunal will, exceptionally, consider the complainant's memoranda in full detail.

4. Review proceedings

There may be either one or two stages in review proceedings. The Tribunal will first determine whether the plea is admissible. If it is not, the Tribunal will dismiss the application without looking further. If it holds any of the pleas to be admissible, it will then reconsider its judgment on the basis of the evidence adduced in the review proceedings. Those are the only circumstances in which the Tribunal will hear the complainant's submissions on the merits.

5. Review and correction

Where a plea is not such as to affect its decision, the Tribunal will decline not only to reconsider its judgment but also to correct the summary of facts and its legal reasoning. It would lay an undue burden on a tribunal to require it to correct any flaws which had no effect on its decision.

The complainant's pleas

6. Application for a provisional order

On 14 November 1980 the complainant filed an application for a provisional order correcting alleged errors in Judgment No. 404. The President of the Tribunal dismissed the application by an order dated 11 December 1980 on the grounds that its purpose is to achieve a permanent result and that it has a bearing on the decision on the merits of the case. The Tribunal will therefore consider the complainant's pleas and claims in her application together with those in her application for review, as indeed she herself asks in her further application dated 19 March 1981.

7. Disregard of facts

(a) The complainant contends that in the summary of the facts Judgment No. 404 omits to mention what was said by Mr. Valticos in the talks preceding the conclusion of the agreement of July 1977. This omission does not have the importance which the complainant ascribes to it. Under point 7 of the considerations the Tribunal states that, in view of the stance the Organisation adopted when concluding the agreement and later, the statements made earlier to the complainant did not constitute binding promises and therefore did not affect the validity of the agreement. Thus the Tribunal did take account of those statements and held that they had no effect on the decision. Accordingly even if there had been an explicit reference to Mr. Valticos' statement, the decision would have been the same. The absence of such a reference affords no grounds for review.

(b) Secondly, the complainant objects that the Tribunal overlooked the evidence provided by Mr. Taqi and what she contends were odd tactics by Mr. Peel. But she does not show nor even try to show that the evidence on which she relies could have affected the decision. That the Tribunal did not mention those matters affords no grounds for review.

(c) The complainant objects that Judgment No. 404 does not refer to the medical certificates she produced or to the decline in her state of health immediately after 22 July 1977. The certificates and the change in her state of health could have influenced the decision only if they had afforded proof of her unfitness to enter into a valid agreement in July 1977. But they were not, and the Tribunal concluded from the complainant's actual behaviour that she was fully competent to commit herself. The plea therefore fails.

(d) The complainant objects that Judgment No. 404 does not state that on 14 September 1977 she denounced the agreement concluded in July 1977 and that the payment of her salary had been resumed at her request under

Article 8.6 of the Staff Regulations, which relates to sick leave. These facts had no effect whatever on the Tribunal's decision and the absence of reference to them affords no grounds for review. It is immaterial that the complainant denounced the agreement on 14 September 1977 since the Tribunal found that from 22 September she tacitly consented to it. It is also immaterial that she was paid her salary under a rule on sick leave; the rule applied whether she held a permanent or a fixed-term appointment.

(e) The complainant contends that Judgment No. 404 overlooks the discovery of secret documents in the Staff Union files. The Tribunal referred to such discovery in paragraph D of the summary of the facts and commented on the legal consequences thereof in paragraph 12 of the considerations. There is therefore no question of any omission. Besides, the complainant is inconsistent: she alleges that there is no reference to such discovery and then she objects to the way in which it is reported.

(f) The complainant objects that Judgment No. 404 says nothing of the confusion which she alleges was caused by three letters from the Director-General in 1978. That is an issue of law which cannot afford any grounds for review.

(g) The complainant objects that the Tribunal does not mention a report supplied on 11 March 1977 by the Professional Grading Appeals Committee. The report describes the complainant's duties and proposes her promotion. It is immaterial in this case since Judgment No. 404 does not comment on the complainant's professional abilities, and the plea accordingly fails.

(h) Lastly, the complainant alleges that the Tribunal took no account of the efforts she made in the Administrative Committee and the Joint Committee to obtain the text of Mr. Zoeteweij's minute. This plea also fails. In paragraph 12 of the considerations the Tribunal suggested that, having got no satisfaction from those committees, she should have appealed against their decision. Even at the time when she alleges that she took action she did not file any complaint. The fact that she took action and the purpose of her action had no bearing on the Tribunal's decision and the omission which she imputes to the Tribunal therefore affords no grounds for review.

8. Errors of fact

(a) The complainant points to a mistake in translation in paragraph B of the summary of the facts in Judgment No. 404. The mistake she alleges had no effect whatever on the judgment and affords no reason to review it. That is shown by the fact that the Tribunal itself corrected the mistake in paragraph l(a) of the considerations.

(b) The complainant argues that the phrase "she contends that she discovered" Mr. Zoeteweij's minute in paragraph D of the summary of the facts casts unwarranted doubt on a statement which the ILO itself acknowledged as correct. In fact the words "she contends" are by no means incorrect. Moreover, even if they suggest doubt about her discovery of the minute, the doubt comes from the assessment of an issue of fact and such assessment may not be properly challenged in an application for review.

(c) The complainant objects to the grouping of her claims for relief under her three complaints in paragraph E of the summary of the facts. This is a matter of no consequence and not a reason for review.

(d) The complainant takes exception to language used in paragraphs G and I of the summary, which sum up the ILO's arguments. The choice of language obviously had no effect on the Tribunal's decision, and her plea therefore fails.

(e) In paragraph L of the summary, which sets out the arguments in the surrejoinder, the Tribunal states: "after comparing the complainant's record with that of other staff members with the same grade and qualifications, the Administrative Committee unanimously decided that her appointment should be terminated". The complainant's contention that the surrejoinder contains no such assertion is immaterial. Even if there is a material error it had no effect on the Tribunal's decision, and the legal considerations do not refer to the alleged decision by the Administrative Committee. Again, there are no grounds for review.

(f) The French text of the considerations describes Mr. Zoeteweij's minute, which the complainant discovered in the Staff Union files, as a "rapport". She objects to describing it as such and not as a "note". This is a simple matter of vocabulary and quite irrelevant. Contrary to what the complainant supposes, in describing the minute as a "rapport" and not as a "note" the Tribunal did not give it undue importance. The considerations do not even refer to its contents. Even if one term was mistakenly used instead of another, that affords no grounds for review.

(g) In an appendix to her application the complainant invites the Tribunal to replace several passages in the summary of the facts with her own wording. She is thus seeking to substitute her own version of the facts for the Tribunal's. That is not the purpose of an application for review. As the Tribunal has often affirmed, such an application will fail unless it relies on flaws which may have an effect on the Tribunal's decision. Even if some of the language to which the complainant objects may be controversial, none of it had any influence on the considerations or on the decision in Judgment No. 404.

9. Libellous statements

The complainant invites the Tribunal to strike out from its judgment passages which she considers to be libellous, and in particular the final lines in the summary of the facts. In those lines the Tribunal merely summed up the ILO's arguments. The judgment is not libellous and the Tribunal acted within the scope of its competence. Besides, the allegedly libellous nature of a judgment affords no grounds for reviewing it.

10. Failure to hear claims for relief

The complainant objects that the Tribunal did not hear her claims for compensation for the moral prejudice she allegedly suffered. In dismissing all her claims for relief the Tribunal rejected by implication her claims for compensation for moral prejudice. It is true that it did not pass express comment on those claims or give its reasons for dismissing them. But even supposing that that affords valid grounds for review the Tribunal has no reason to alter its decision so as to award any of the compensation she claims.

First, it is clear from the considerations that in terminating the complainant's appointment the ILO acted not only lawfully but also with the proper consideration an employer owes to his staff. The ILO's attitude therefore affords no grounds for awarding her compensation for moral prejudice.

Secondly, she has no right to compensation either because Mr. Zoeteweij wrote his minute or because it was put in the Staff Union's files. As a rule an official's comments on his subordinates do not give them any right to compensation; otherwise supervisors would express only guarded opinions about their subordinates, and that would be harmful to the organisation's efficiency. The most that can be said is that when a supervisor expresses an opinion which he knows to be untrue for a purely malicious purpose he, or the organisation, will be liable. Be that as it may, nothing in the dossier suggests that that was true in this case. Moreover, there is no evidence to show that the complainant suffered moral or other prejudice by reason of the inclusion of Mr. Zoeteweij's minute in the Staff Union files.

11. Failure to consider pleas

The complainant objects that the Tribunal did not consider the following pleas she put forward: the Organisation failed to terminate her permanent appointment; it maintained the decision to dismiss her even though the Director-General had started an inquiry; and the Administrative Committee recommended reappointing her. There is no need now to pass judgment on those pleas. As is stated in paragraph 2 above, failure to comment on a plea is not a valid reason for review.

12. Failure to order a medical examination

The complainant contends that the Tribunal should have ordered an expert inquiry before rejecting the opinion of the doctors she consulted. In other words, she is objecting that a means of obtaining evidence was not used. As is stated in paragraph 2 above failure to admit evidence is not a reason for review.

13. Discovery of new facts

(a) The complainant states that after Judgment No. 404 had been delivered she became aware of an agreement concluded by the ILO with another staff member, Mr. Johnson, whose permanent appointment was replaced with a temporary one. She describes her belated discovery of this as a new fact and contends that there was unequal treatment. The question is whether this is really a new fact or whether, had she taken due care, the complainant might not have cited in her original complaint the agreement on which she now relies. But the Tribunal need not settle the question. In any event the agreement with Mr. Johnson can have no effect on the Tribunal's decision, and the discovery of its existence affords no grounds for review. A staff member may properly allege unfair treatment

where general rule, are not applied in the same way to all the staff member; to which they are applicable, but he may not do so by comparing circumstances created by particular measures, such a agreements for the reappointment of particular officials. Such agreements will differ because the circumstances of each case differ, and there is no inequality of treatment. No purpose would therefore be served by allowing the complainant's application for production of agreements concluded by the Organisation with officials other than Mr. Johnson.

(b) The complainant cites a document which she discovered in March 1980 during a visit to Colombia. It is a communication in which the Intergovernmental Committee for European Migration investigated "the personal history of Rumanian citizen Maria Adriana Dimitriu de Villegas-Lopez, naturalised ln Colombia in 1954". The communication is dated 19 August 1969. There is no evidence to suggest that it had any effect whatever on the decision taken in 1978 not to extend the complainant's appointment, and it therefore affords no reason for review.

14. Conclusion

It appears from the foregoing that only one of the complainant's pleas, namely the omission to hear her claim for compensation for moral prejudice, may be treated as admissible but that in fact it does not warrant review of Judgment No. 404. All the other pleas are inadmissible, the main reason being that the alleged flaws had no effect whatever on the Tribunal's decision. The Tribunal will therefore neither order the ILO to produce the documents which the complainant seeks nor comment on her pleas seeking a provisional order or her pleas on the merits.

The application is clearly unfounded and the Tribunal dismisses it in accordance with the summary procedure prescribed in Article 8(3) of the Rules of Court.

DECISION:

For the above reasons,

The application for review is dismissed.

In witness of this judgment by Mr. André Grisel, President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Assistant Registrar of the Tribunal.

Delivered in public sitting in Geneva on 14 May 1981.

(Signed)

André Grisel
Devlin
H. Armbruster

A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.