

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

FIFTY-SECOND ORDINARY SESSION

In re de VILLEGAS (No. 11)

(Application for review)

Judgment No. 604

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review filed by Mrs. Maria Adriana de Villegas on 16 February 1983 and corrected on 10 April, the reply filed by the International Labour Organisation on 8 July, the applicant's rejoinder of 19 October and the Organisation's surrejoinder of 22 December 1983;

Considering Article II, paragraph 1, of the Statute of the Tribunal;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

CONSIDERATIONS:

1. The complainant invites the Tribunal to declare that there was "total disregard of the principal claim in her previous complaints concerning professional injury" and accordingly to "correct the material error in Judgments Nos. 404, 449 and 536". She wants the Tribunal to declare the present application receivable, set aside its previous judgments, and rule on her various claims on the merits.

2. In other words this is another application for review. As the Tribunal has said before, review is an exceptional procedure and a derogation from the principle of *res judicata*. The complainant may not therefore submit more than once the same pleas for review, and the only ones she may now rely on are, first, those she was unable to put forward in her earlier applications for review, or, secondly, any the Tribunal may have omitted to rule on in Judgment No. 536.

The complainant submits that since filing her first application for review of Judgment No. 404 she has been relying on "material errors, omission; and oversights". Her pleas are therefore of the second kind.

In hearing the application the Tribunal will determine whether there are any of the errors she alleges in Judgment No. 536. The consequence of the above principles is that the Tribunal would have to reconsider Judgment No. 442 only if Judgment No. 536 had to be set aside; and only if No. 442 also had to be set aside would the Tribunal reconsider No. 404.

3. In support of her application the complainant submits excerpts from her briefs to which she says Judgment No. 536 made no answer. She draws a distinction between professional

injury and the injury allegedly caused to her by a "libellous" minute written by an ILO official. She concedes that Judgment No. 536 took up the question of the minute and indeed that the ruling was *ultra petita*. But she submits that the claims relating to professional injury were left unanswered.

As to her allegation that Judgment No. 442 overlooked one of her claims, what Judgment No. 536 said was this: "The Tribunal gave a brief but adequate reply in paragraph 10 of this judgment [No. 442] when it said that it had no reason to alter its decision 'so as to award any of the compensation she claims'". As to the ILO official's minute, the judgment went on: "There is no evidence to show that the complainant suffered moral or other prejudice by reason of the inclusion of Mr. Zoetewij's minute in the Staff Union files."

Thus Judgment No. 536 gave a comprehensive answer to the complainant's claims, covering all alleged forms of injury, and was not confined, as she suggests, to any injury Mr. Zoetewij's minute may have caused her.

In the circumstances that was an adequate answer. Since, as has been said, an application for review is an exceptional procedure and a derogation from *res judicata*, a comprehensive answer is quite proper: the Tribunal need not answer every single argument once it has taken the view that the application is irreceivable. Besides, the absence of a reply to an argument is not an admissible plea for review. Accordingly, the pleas for review of Judgment Nos. 404 and 442 must also be rejected. The Tribunal concludes that the plea for review based on the allegation that a claim was overlooked must fail.

4. The complainant seeks correction of a material error she alleges in the judgments, particularly No. 556. In fact her main objection is to what she sees as a misreading of her pleas by the Tribunal. That is not an admissible ground for review since it rests on a value judgment, and if it were admitted there would be breach of the principle of *res judicata*.

The complainant submits no evidence in support of her contention that other material errors need to be corrected. The plea fails.

Since it fails in respect of Judgment No. 536, it fails also in respect of Judgments Nos. 404 and 442.

5. The complainant submits that the Tribunal overlooked specific facts. If what she means is that the Tribunal made a misappraisal of evidence, that is not an admissible ground for review, as is stated in Judgment No. 536. But if she means that the Tribunal failed to take account of certain facts in the case, the plea is the same as the one that the Tribunal rejected in paragraphs 3 and 4 above and therefore again fails.

6. The complainant observes -- though she does not make it a formal plea -- that there was an error in the last page of the text of Judgment No. 536 as published. It is a point she is right not to dwell on since any errors there may be in reproducing the text constitute no flaw in the judgment itself.

7. Since the principal pleas are dismissed, so are the pleas on the merits. There is no need for oral hearings, which would add nothing to the written evidence. The Tribunal declares the case closed. The final character of Judgment No. 404 is confirmed by the rejection of the application.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 12 April 1984.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner