

SEVENTEENTH ORDINARY SESSION

In re JURADO

(No. 8 - Intimidation and New Appeal to the I.C.J.)

Judgment No. 101

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation drawn up on 21 August 1965 by Mr. Cesáreo Jurado;

Considering the order of 24 September 1965 by which the President of the Tribunal ordered Mr. Jurado to produce the text of the decision of 31 May 1965 relating to the aforesaid complaint, and the document produced in accordance with the aforesaid order;

Considering the reply of the International Labour Office of 10 November 1965, complainant's statement of 15 January 1966 on substance, and the farther comments of the I.L.O. of 29 March 1966;

Considering the statement on an incidental plea deposited by complainant on 23 March 1966, and the reply of the I.L.O. to this statement on 18 April 1966;

Considering the additional documents produced by complainant on 12 April 1966 and the comments of the Organisation on these documents of 25 May 1966, together with complainant's rejoinder and statement on an incidental plea and on new facts of 1 July 1966, and the Organisation's comments of 12 July 1966;

Considering Articles II and VI of the Statute of the Tribunal;

Having examined the documents in the dossier, the oral proceedings requested by complainant having been disallowed;

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

A. By letter of 18 May 1965 complainant asked the Director-General to lay before the Governing Body of the I.L.O. complainant's request that the question of the validity of Judgment No. 83 of the Administrative Tribunal should be submitted to the International Court of Justice, and stated that in the event of refusal, he proposed to inform the members of the Governing Body individually; he asked whether this latter step was incompatible with the Staff Regulations, and if so with which provision thereof, and what sanctions would be applied to him if, failing the authorisation he had requested, he were to infringe the regulations. By letter of 31 May 1965 he was informed that the Director-General did not propose to lay Judgment No. 83 before the Governing Body with a view to the possibility of referring it to the International Court of Justice, that it was not permissible for complainant to contact members of the Governing Body individually, and that while no reply could be given to hypothetical questions, complainant should himself weigh the full gravity of the actions contemplated by him, with due regard to the warning given to him by the Administration.

3. In his complaint of 21 August 1965 complainant prayed the Tribunal to "make a provisional order that the Administration of the I.L.O. should not subject complainant to intimidation or duress so that he might freely appeal to the Administrative Tribunal against the illegal decision of 31 May 1965", which was not produced because of the alleged duress, and to set a time limit for the delivery of a statement on the substance and the addition to the dossier of the decision impugned. Following an order by the President, complainant produced the decision of 31 May 1965, and, after setting out the fundamental faults in the procedure followed in respect of Judgment No. 83, made the following submissions on 15 January 1966, the Organisation having submitted on 10 November 1965 that the original complaint was not receivable:

"That it should please the Administrative Tribunal

As to Form:

1. To declare receivable the present document, its annexes and, in general, the complaint against the I.L.O. for violation of Article 13.2 of the Staff Regulations.
2. To agree that Judges Maxime Letourneur, President, André Grisel, Vice-President, and Hubert Armbruster, Deputy Judge, should not try the case.
3. To find that the Administration of the I.L.O. has, in violation of Article 13.2 of the Staff Regulations, threatened and intimidated complainant with a view to preventing him from appealing to the Tribunal in defence of his own rights and those of his son.

As to Substance:

1. To find that the administrative decision of 31 May 1965, by refusing to correct the fundamental faults of procedure in respect of Judgment No. 83 of the Administrative Tribunal and thus imposing on complainant a judgment which is invalid in form, and by refusing to apply any legal remedy, is in violation of Article 13.2 of the Staff Regulations. To condemn the International Labour Organisation to pay 5 million Swiss francs if it refuses to apply any legal remedy to this state of affairs.
2. Having so held, to find in consequence that the Organisation has also violated Article 13.2 of the Staff Regulations by refusing to apply any legal remedy in respect of the 26 fundamental faults of procedure by which Judgment No. 70 is tainted.
3. To find that the International Labour Organisation is responsible for the abduction and captivity since 1960 of the child Andrés Jurado, legitimate son of complainant, of exclusively Spanish nationality, and for the fact that since that date he has been deprived of his religion, his country, his national language and his Spanish family, and since 9 December 1962, of all contact with his father. To find that the International Labour Organisation bears sole responsibility for this state of affairs inasmuch as it has violated the contractual guarantee of freedom of access and residence of officials and their families, involving violation of Article 1.7 of the Staff Regulations.
4. To find that, the administrative refusal to apply any legal remedy in respect of Judgment No. 83 being intended to impose Judgment No. 70 on complainant although it is invalid in form; and, in turn, the administrative refusal to apply any legal remedy in respect of the invalidity of Judgment No. 70 being intended to relieve the Organisation from the responsibilities it has contracted as a result of non-observance of the diplomatic safeguards ensured by contract to officials and their families, the International Labour Organisation's decision of 31 May 1965 constitutes a twofold violation of Article 13.2 and Article 1.7 of the Staff Regulations; and to order the Organisation to pay complainant compensation in the amount of 5 million Swiss francs on account of the injury already suffered by him by reason of the abduction and captivity of his son since 1960 and his total inability to see his son since 9 December 1962.
5. To find that the administrative refusal contained in the decision of 31 May 1965 also constitutes violation of Articles 7.5 and 7.6 of the Staff Regulations.
6. Subsidiarily, to determine of its own motion the obligations of the International Labour Organisation for the purpose of applying a legal remedy to the violations stated, in accordance with the general principle *Jura novit curia*, and if necessary applying Article VIII of the Statute of the Tribunal which provides for the payment of compensation if the execution of the obligation relied upon is not possible or advisable.
7. To order the Organisation to pay 5,000 Swiss francs on account of additional damages for the preparation and drafting of the present complaint, and 400 Swiss francs for miscellaneous expenses.
8. To place on record complainant's express reservation of his own rights, and those of his son, against the Organisation, in respect of civil proceedings."

The Organisation submitted on 29 March 1966 that, on the one hand, the Tribunal was required to give a ruling only on the submission of 21 August 1965, which were not receivable, and that on the other hand, the submissions

on substance of 15 January 1966 were not receivable, and subsidiarily, that they did not fall within the jurisdiction of the Tribunal.

C. Following publication in a law review of an article by an I.L.O. official which referred in particular to Judgment No. 70 of the Administrative Tribunal, complainant made the following submissions "on an incidental plea":

1. To declare receivable the present statement on an incidental plea and its annex.
2. To accept and place on record the respectful protest of complainant against the fact that the I.L.O. Administration and its agent, Mr. Blaise Knapp, Doctor of Law, have published the case of Jurado versus I.L.O. while it is still sub judice, thus furnishing proof of the complete certainty and pre-knowledge they appear to have of the manner in which the Tribunal will dispose of the case.
3. To accept and place on record the respectful protest of complainant against the fact that the I.L.O. Administration and its agent, Dr. Knapp, have committed an abuse in publishing more details on complainant's private life than appear in the judgments hitherto given and published by the Administrative Tribunal.
4. To accept and place on record the respectful protest of complainant against the fact that in their contribution to the *Revue Générale de Droit International Public* (1965, July-September, No. 3), the I.L.O. Administration and its agent, Dr. Knapp, have systematically misrepresented or concealed the legal position upheld by complainant, thus inflicting discredit and serious professional injury upon him.
5. To accept and place on record the respectful protest of complainant against the fact that during the examination of the first, second and eighth cases of Jurado versus I.L.O., the I.L.O. Administration deliberately withheld from the I.L.O. Administrative Tribunal a series of important legal decisions (Swiss Federal Tribunal, Order of 5 November 1958, in re Guiguer v. State of Geneva, *La Semaine judiciaire*, page 1; Report of Attorney-General Lagrange to the Court of Justice of the European Communities, *Recueil de la Jurisprudence*, vol. VI/2, 1960, page 1138; and Order of the Court of Justice of the European Communities in re Humblet, *ibid.*, pages 1147 et seq.) which were essential for a sound judgment, and that this was done for the purpose of misleading the Administrative Tribunal.
6. To take account of these facts in assessing the malicious conduct of the Administration and the amount of damages.
7. To reserve complainant's full rights in respect of the questions of substance arising out of the publication by the I.L.O. Administration and its agent, Dr. Knapp, of the cases of Jurado versus I.L.O., both as regards civil proceedings and as regards administrative, contract, and every other kind of law."

The Organisation submits that these submissions are not receivable.

CONSIDERATIONS:

On the objection to the composition of the Tribunal:

1. Neither the fact that two of the Judges who sat in the case previously brought by Mr. Jurado before the Administrative Tribunal and disposed of by Judgment No. 70 given by the Tribunal on 11 September 1964 have been called upon to hear a case brought by the same complainant, nor the fact that one of these Judges is of Swiss nationality and sits in the Supreme Court of his own country, can in itself be regarded as valid ground for objection to these Judges. Moreover, as Judge Armbruster is not called upon to sit in the present case, the objection to him is in any event irrelevant.

On the submissions in the complaint

2. All the submissions in the present complaint are unconnected with complainant's professional interests and consist of wild assertions, and for this reason alone must be dismissed.

On the submissions contained in the statement on an incidental plea

3. In the present case the fact that the Organisation authorised publication in a law review by one of its officials of

a commentary of purely scientific interest on a public judgment relating to Mr. Jurado is not open to criticism in any respect.

4. Furthermore, the I.L.O. did not in any way mislead the Tribunal by not referring in its comments to certain legal decisions reproduced in casebooks, since it is for the Judge to search for these of his own motion.

DECISION:

For the above reasons,

The above complaint of Mr. Jurado is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 9 May 1967 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