

**TWENTY-FIRST ORDINARY SESSION**

***In re* MAHMALGI**

**Judgment No. 130**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Educational, Scientific and Cultural Organization (UNESCO) drawn up by Mr. Fadl Mahmalgi on 15 April 1968, and brought in conformity with the Rules of Court on 12 June 1968, the reply of the Organization dated 9 September 1968, complainant's rejoinder of 15 November 1968 and the further reply of the Organization dated 13 December 1968;

Considering Article II, paragraph 5 of the Statute of the Tribunal, Article 11.1 of the Staff Regulations, and sections 111.1 and 111.2 of the Staff Rules of UNESCO, together with the Statutes of the UNESCO Appeals Board;

The oral proceedings requested by complainant having been disallowed;

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

A. Mr. Mahmalgi, an expert in thermodynamics of Syrian nationality, was engaged by UNESCO on 1 October 1963 and assigned as expert to a United Nations Special Fund project at Rabat. His contract was subsequently extended to 31 October 1964 and again renewed until 31 October 1966, at which date it was terminated. Complainant was informed on 15 April 1966 that the Organisation did not intend to renew his contract beyond 31 October 1966 and his employment actually terminated on 6 July 1966. Between that date and the expiry of his contract he took the accumulated annual leave due to him.

B. On 5 April 1966 complainant wrote to the Director of Personnel of the Organization complaining about his chief, the Senior Technical Adviser in charge of the project, and asking to be allowed to consult his own personal file "with a view to submitting a claim to the competent judicial instances concerning our right to moral and material compensation". The Acting Chief of Field Service Personnel replied in a postscript to the aforementioned letter of 15 April 1966 that complainant might consult his file on the occasion of his forthcoming visit to Paris and reminded him that meanwhile he must conform strictly to the instructions of the Senior Adviser. On 25 November 1967 Mr. Mahmalgi wrote to the Director-General referring to his correspondence with the Director of Personnel in April 1966 and stating that he was in possession of an official Moroccan document which "proved the slander" of which he had been the victim as a result of the Senior Adviser's action, and asking him to "suggest a solution based on his most legitimate rights". The Assistant Director-General for Administration replied on 7 December 1967 that he could not add anything to what had been said by the Personnel Office. On 16 December 1967 Mr. Mahmalgi informed the Director-General that having consulted his personal file he had ascertained that certain very important documents were not contained in it, namely the documents which, in complainant's opinion, had motivated the decision not to renew his contract. In the same letter he asked the Director-General to be good enough to inform him if he contemplated reinstating him as from 31 October 1966 and to order an inquiry into the facts of the case for the purpose of "determining responsibilities in the matter of slander and forms of oppression" of which he alleged himself to be the victim. He further asked that in the event of a negative reply he should be authorised to refer the case to the Administrative Tribunal. On 26 December the Director of Personnel replied that he could only confirm the terms of the Assistant Director-General's letter dated 7 December 1967. Complainant having repeated his request of 16 December 1967 the Assistant Director-General for Administration again confirmed the decision in a letter of 16 January 1968.

C. In his complaint dated 15 April 1968, resisting the letter of 16 January 1968, Mr. Mahmalgi prays that it may please the Tribunal:

I. To award compensation for moral injury:

(a) to order UNESCO to determine the responsibilities in the case of slander and to apply the Staff Regulations accordingly;

(b) to order UNESCO to address a letter of apology to him, placing a copy in his personal file and sending copies to the Minister of Foreign Affairs of Morocco and to the Permanent Representative of the Syrian Arab Republic to UNESCO.

II. To award material compensation in the form of five years' service with UNESCO in a headquarters' post, or the equivalent in salary as from 31 October 1966.

D. In its reply the Organization points out that the only administrative decision taken in respect of complainant is the decision not to renew his contract which was communicated to him on 15 April 1966. Mr. Mahmalgi's complaint does not, however, impugn that decision. The Organization also points out that the letter of 25 November 1967 is dated more than a year after the date at which complainant's employment terminated and that the complaint is therefore time-barred. The Organisation further observes that the complainant has not complied with the UNESCO Staff Regulations and Rules concerning internal appeals procedure. It accordingly submits that the complaint is not receivable, and subsidiarily that complainant's contentions should be rejected.

#### CONSIDERATIONS:

By a decision dated 15 April 1966 the Director-General of UNESCO informed Mr. Mahmalgi that his engagement would not be renewed and would accordingly expire on 31 October 1966. It was for complainant to file an appeal with the Appeals Board of the Organization within the time-limits laid down in paragraphs 7 and 8 of the Statutes of the Appeals Board of the Organization if he considered himself justified in doing so, and eventually a complaint to the Administrative Tribunal within the time-limit of ninety days specified by Article VII, paragraph 2 of the Statute of the Tribunal.

Failing any action to resist the decision within the prescribed time-limits, the decision of 15 April 1966 has become final and can no longer be challenged; consequently, all Mr. Mahmalgi's links with the Organization have been severed since 31 October 1966.

The present complaint is irreceivable because it is time-barred in so far as it relates to the termination of complainant's employment, and because it does not resist any decision in so far as it relates to a letter of 16 January 1968.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 17 March 1969 by M. Maxime Letourneur, President, M. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

(Signed)

M. Letourneur  
André Grisel  
Devlin  
Bernard Spy