

EIGHTY-SECOND SESSION

In re Moreno de Gómez

(Application by UNESCO for review)

Judgment 1602

The Administrative Tribunal,

Considering the application filed by the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 16 August 1996 for review of Judgment 1553;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7, paragraph 2, of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. This is an application by UNESCO for the review of Judgment 1553, which the Tribunal delivered on 11 July 1996 on the complaint of Mrs. Yocasta Moreno de Gómez. The application rests on the grounds that the Tribunal misunderstood its own case law and thus committed a serious mistake of law.
2. As the Tribunal has declared in Judgment 442 (*in re* de Villegas No. 4) and confirmed in many later judgments, an alleged mistake of law does not afford admissible grounds for the review of a judgment. For that reason alone the application cannot but fail. But so as to dispel any doubt about how to apply Staff Regulation 4.4 the Tribunal will, in a departure from usual practice, provide the further explanation set out below.
3. UNESCO cites Judgment 107 (*in re* Passacantando) in answer to the complainant's comments about Regulation 4.4 and about the construction that Judgment 133 (*in re* Hermann) put on that Regulation.
4. Judgment 107 does not contradict Judgment 133, which 1553 cited under 23. In Passacantando the material rule, which was Staff Regulation 301.044 of the Food and Agriculture Organization of the United Nations (FAO), said that, "without prejudice to the recruitment of fresh talent at all levels, the fullest regard shall be had, in filling vacancies, to the requisite qualifications and experience of persons already in the service of the Organization". The Tribunal held that the Organization's obligation to have regard to their qualifications implied that such persons were entitled to take part in any competitions that might be open to them and that every candidate must be treated on an equal footing and with full impartiality; but that persons already in the service of the Organization must be given priority if their qualifications appeared to be at least equal to those of other candidates.

The Tribunal made similar rulings in Judgment 133, which was about the application of UNESCO Staff Regulations 4.1 to 4.4 and Staff Rules 104.1 and 104.2 and about the right to priority of consideration prescribed therein. It held that UNESCO could not be expected to assign someone whose post had been abolished to a post for which he was not qualified, whatever the length of his service might be. It gave further explanation in Judgment 1553 under 23 of the right to priority of consideration. It has indeed followed that line of precedent in applying like rules in other organisations: see for example Judgment 1323 (*in re* Morris No. 2).

The conclusion is that the right to priority of consideration that belongs to someone whose post has been abolished requires that any authority concerned with making the appointment must be aware of the right and carefully compare the professional profile of the staff member with that of any outside candidate.

5. Judgment 1553 applied those precedents to the case of Mrs. Moreno de Gómez, the *ratio* being as follows.

In June 1992 the Organization set about finding a post to which she could be reassigned. On 5 August 1994 it started further attempts but on 10 November 1994 told her that they had failed. Yet in none of those attempts did it give instructions that she should be afforded priority of consideration for appointment to any vacant post.

Following Judgment 133, the Tribunal held that because of her long record of fully satisfactory service she was

entitled to priority of consideration for appointment to any post she was qualified for, even though other candidates might have an edge over her in qualifications and experience and even though her professional profile did not exactly fit the post, provided that she had the capacity to perform the duties competently. The conclusion was that UNESCO's search for a suitable post for the complainant had been unduly

restricted and it had not granted her the priority of consideration she had been entitled to under Regulation 4.4.

So Judgment 1553 is quite in line with the case law.

6. Being clearly irreceivable, UNESCO's application must be summarily dismissed under Article 7(2) of the Tribunal's Rules.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 30 January 1997.

William Douglas
E. Razafindralambo
Egli
A.B. Gardner