

EIGHTY-SIXTH SESSION

In re Efféian (No.2)

(Application for execution)

Judgment 1803

The Administrative Tribunal,

Considering the application filed by Mrs. Ginette Efféian on 29 September 1997 for review of Judgment 1653;

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

Having examined the written submissions;

CONSIDERATIONS

1. In Judgment 1653 the Tribunal dismissed as irreceivable Mrs. Efféian's complaint against a decision by the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO) refusing to restore her special post allowance. She is now applying for the review of that judgment. She is again putting forward the claims that the Tribunal dismissed and makes a further claim to an award of damages for having had, as she sees it, to file this application for review.
2. She objects to the judgment on the grounds that it overlooked certain facts, contained material errors and failed to rule on her main contention that withholding her special post allowance was unlawful. She further objects to what she sees as an "anomaly" in the publication as part of the judgment of the dissenting opinion of one member of the Tribunal, who took the view that her complaint should have been dismissed, not as irreceivable, but as devoid of merit.
3. On the last point she seems to be objecting, without actually saying so, to a flaw in the presentation of the judgment. But there is no rule of procedure which precludes a member of an international tribunal from publishing a distinct opinion on a case before it. There is no flaw on that score.
4. As for the complainant's other pleas, the Tribunal need only observe, as it did in Judgment 442 (*in re de Villegas* No. 4) and has often done so since, that its judgments carry the authority of *res judicata* and will be reviewed only in exceptional cases. It is true that neglect of a material fact or some material error may afford grounds for review when such neglect or error is such as to affect the Tribunal's decision. But in this case there is no such flaw. The errors which the complainant alleges, and which are misconceived anyway, go to the merits, whereas the Tribunal dismissed her claims as irreceivable and therefore did not go into the substance of her case. Nor did the Tribunal fail to rule on her main claim, about the "unlawful withholding of the special post allowance", since it dismissed that claim too as irreceivable and had no reason to entertain the merits.
5. Since the application is clearly irreceivable - including the further claim to compensation - the Tribunal dismisses it summarily and in its entirety in accordance with Article 7 of the Rules.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 6 November 1998, Mr. Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

(Signed)

Michel Gentot

Mella Carroll

James K. Hugessen

A.B. Gardner

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