

The Administrative Tribunal,

Considering the application for review of Judgment 2066 filed by Mr M.-L. T. on 26 July 2006 and corrected on 31 August 2006, the reply of the United Nations Educational, Scientific and Cultural Organization (UNESCO) of 15 February 2007, the complainant's rejoinder of 19 April and the Organization's surrejoinder of 25 July 2007;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS

1. In September 1989 the complainant was transferred at his own request from UNESCO's headquarters in Paris to the Organization's Office in Caracas (Venezuela). At the same time he was promoted from grade G-4, step 9, to grade P-1, step 3.

After resuming his duties at the Organization's headquarters in September 1997, the complainant vainly requested the Director-General to pay him, with retroactive effect for the period he had spent in Venezuela, the equivalent either of the salary which he would have earned had he stayed in Paris throughout that period, or of the salary paid to colleagues in like case. He considered in particular that he should have been promoted to grade P-2, step 6, when he was transferred. At the end of the internal appeal procedure, the Director-General upheld the rejection of his claim.

That was the decision impugned in the complainant's first complaint forming the subject of Judgment 2066, delivered on 12 July 2001, of which the complainant now seeks a review.

2. The Tribunal's judgments have the authority of *res judicata*. They will be reviewed only in exceptional circumstances and on limited grounds. These grounds include the discovery of a new fact. A new fact is a fact on which the party claiming it was unable to rely through no fault of its own; it must be a material fact likely to have a bearing on the outcome of the case (see Judgments 748, under 3, 1294, under 2, 1504, under 8 and 2270, under 2).

3. In consideration 7 of Judgment 2066 the Tribunal found, on the merits, that it was unable to ascertain whether the complainant's new status on being transferred to Caracas had entailed an increase or a reduction in his salary; however, it considered that this was not decisive, for the complainant had accepted that status, which had brought him important benefits. In consideration 8 the Tribunal held that, since the complainant had failed to prove that the new method of calculation which had been used to compute his salary in Venezuela was unlawful, he could not claim unequal treatment on the grounds that, under the old method, some officials obtained better pay than he.

In support of his application for review, the complainant produces a memorandum of 24 April 1998 from the Director of the Office of International Standards and Legal Affairs which, in his opinion, constitutes "an extremely important new fact". In this memorandum the Director expressed the view that the complainant's salary had been wrongly calculated on his transfer and that he should have been promoted to grade P-2, step 3. Although the conclusions of this memorandum had been discussed by the parties before the Tribunal in the proceedings which had led to the delivery of Judgment 2066, the document itself had not been produced.

The complainant, who was the first to refer to this document and its contents during the said proceedings, does not show that he took all the requisite steps to obtain its disclosure.

A perusal of this document reveals that, as far as the disclosure of a new fact is concerned, its contents are as described by the parties when they discussed them in their written submissions exchanged at the time. From this it

must be concluded that when the Tribunal delivered its judgment it had correct and sufficiently precise knowledge of this document and that its physical production does not bring to light any new fact, appraisal of which would have led it to rule differently.

4. The application for review is therefore manifestly ill-founded and there is no need to address the issue – raised by the Organization in its surrejoinder – of whether the application was filed within a reasonable time as defined by the case law (see Judgment 1952, consideration 3 *in fine*).

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 15 November 2007, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2008.

Seydou Ba

Claude Rouiller

Patrick Frydman

Catherine Comtet