

FORTY-FIFTH ORDINARY SESSION

***In re* VALENCIA GOMEZ**

Judgment No. 433

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the Latin American Institute for Educational Communication (ILCE), formerly known as the Latin American Institute for Educational Cinematography, by Mr. Julia's Valencia Gomez on 21 February 1980 and the letter dated 28 March 1980 from the United Nations Educational, Scientific and Cultural Organization (UNESCO);

Considering Article II, paragraphs 5 and 7, of the Statute of the Tribunal;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. The complainant was appointed to the staff of the ILCE on 2 February 1968 and was dismissed on 3 January 1977. He alleges that on dismissal he was not paid the benefits to which he was entitled under Mexican labour law and that the Mexican authorities declared that because the ILCE was an international institution they were not competent to hear his claim.

B. The complainant states that at the material time the ILCE had links both with the Mexican Government and with UNESCO, and that UNESCO was therefore jointly liable for the acts of the ILCE. In support of that contention he points out that the ILCE was founded under an agreement of the UNESCO General Conference concluded in Montevideo in 1952; that it set up headquarters in Mexico City and was run by a board chaired by the Minister for Public Education of Mexico and comprising representatives of the Director-General of UNESCO; and that UNESCO seconded experts to the ILCE, gave it funds and sent one of its officials from time to time to take stock of its work. The complainant therefore asks the Tribunal to hear his complaint and order that he be paid the benefits prescribed under Mexican labour law.

C. In its reply UNESCO states that the ILCE does not form part of UNESCO and never has. It was founded in 1956 by the Mexican Government and is subject to Mexican law. Since 1956 UNESCO has merely lent the ILCE assistance under resolutions adopted from time to time by the UNESCO General Conference and the agreements concluded for the purpose with the Mexican Government. UNESCO cites the first article of the Preamble to the Agreement concluded on 19 June 1967, which reads: "Considering that in 1956 the Government of the United States of Mexico founded the Latin American Institute for Educational Cinematography, to which UNESCO has lent assistance in accordance with an agreement concluded for the purpose on 30 May 1956 and later extended to 31 December 1966". UNESCO believes that the complaint, inasmuch as it is brought against UNESCO, is patently irreceivable. Moreover, even if the complainant had been a member of the staff of UNESCO, the complaint would still be irreceivable because he had failed to exhaust the internal means of redress in UNESCO. Lastly, the complaint was filed over three years after the date of dismissal and would therefore in any case be time-barred.

CONSIDERATIONS:

The ILCE, which formerly employed the complainant, was founded in 1956 by the Mexican Government with support from UNESCO. It is immaterial whether it is a national or international body, or whether it has legal personality. Be that as it may, it has not recognised the jurisdiction of the Tribunal, and for that reason, and by virtue of Article II, paragraph 5, of the Statute, the Tribunal will not hear any complaint filed against it. Being brought against the ILCE, the complaint is irreceivable.

Insofar as the complaint is brought against UNESCO, it is likewise irreceivable. UNESCO has recognised the Tribunal's jurisdiction, but the ILCE may not be treated as part of UNESCO, which has done no more than lend it

financial support and co-operation in its work.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, Vice-President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 11 December 1980.

(Signed)

André Grisel
Devlin
H. Armbruster

Bernard Spy