

**TWELFTH ORDINARY SESSION**

***In re* PRIVITERA**

**Judgment No. 75**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organisation drawn up by Mr. Franco Privitera on 11 December 1963, the submission of the Organisation concerning its preliminary objection dated 23 January 1964, and its detailed reply on the substance of the case, filed in addition by order of the Tribunal on 28 February 1964, the rejoinder of the complainant dated 4 April 1964, and the surrejoinder of the Organisation dated 29 May 1964;

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

Considering the contract between the World Health Organisation and the complainant dated 27 December 1961;

After examining the documents in the dossier, the complainant not having persisted in his request for oral proceedings and the Tribunal not having deemed such proceedings useful;

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

- A. On 12 February 1961 the World Health Organisation appointed Mr. Privitera, Professor of Medicine, for a period of one year, from 28 February 1961 to 28 February 1962, as a medical officer (grade P.4/1) seconded, on mission, to the Government of the Congo (Leopoldville) in accordance with a contract governed by the Staff Rules of the Organisation.
- B. Towards the end of 1961, having drawn up contracts of a different type for the appointment of persons assigned to the Congo, the Organisation proposed to Mr. Privitera, by a letter of 27 November 1961, to replace his original contract by a new type of contract. Mr. Privitera agreed to this proposal and, on 27 December 1961, signed the new contract which was valid for one year.
- C. By a letter of 21 November 1962 the Chief of Personnel informed Mr. Privitera that the Organisation did not intend to offer him a third contract on the expiry of the second one, whereupon Mr. Privitera sent a letter to the Director-General, dated 6 December 1962, requesting the withdrawal of the decision taken on 21 November. By a letter of 19 December 1962, the Director-General confined himself to referring to a letter of 12 December 1962 in which the Chief of Personnel confirmed the decision not to offer a new contract.
- D. On 10 August 1963 Mr. Privitera sent a letter to the Director-General requesting "the restoration of his rights as a staff member" and adequate compensation. On 10 September 1963 the Chief of Personnel replied to him, on behalf of the Director-General, and referred to the above-mentioned letters of 21 November and 19 December 1962. By a statement dated 10 October 1963, the complainant laid the matter before the WHO Board of Inquiry and Appeal, which, after examining the matter on 19 November 1963, concluded that it was not competent to hear Mr. Privitera's appeal in view of the fact that the person concerned was not a member of the staff of the Organisation; this conclusion was communicated to Mr. Privitera by the Secretary of the Board on 26 November 1963.
- E. By the present complaint, Mr. Privitera requests the Tribunal to quash the decision of the Director-General, to recommend his reinstatement and that he be granted damages of \$1,000; subsidiarily, he requests payment of compensation.
- F. The Organisation requests that the complaint be dismissed on the grounds that the Tribunal is not competent to hear it and, subsidiarily, that the complaint be judged irreceivable.

IN LAW:

1. It is necessary to determine first of all whether the Tribunal is competent to hear the complaint. According to article II, paragraph 5, of its Statute, the Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of the organisations described in the paragraph, which include the World Health Organisation.

2. In order to determine, in the present case, the legal nature of the relations between the complainant and the Organisation, only the contract concluded between them on 27 December 1961 must be taken into account. The complainant signed this contract voluntarily and with full knowledge of its terms before the expiry of the contract governed by the Staff Rules of the Organisation which he held at that time. Moreover, by a letter of 27 November 1961, the Organisation had requested the complainant "to be good enough to study carefully the terms of the new contract". In addition, according to a letter of the Director-General dated 22 December 1961, the complainant had been aware of the change which would occur in his legal status. In these circumstances it is unquestionably the new contract of 27 December 1961 which constitutes the sole legal basis for the relations between the parties. In other words the status of the complainant must be considered as purely contractual.

It is of little account that the first article of the contract describes the complainant as a medical officer. This title relates solely to the nature of the work to be performed by the complainant, but does not affect his legal status. On the contrary, his legal status is defined by article II, paragraph 14, which stipulates that "the present contract does not confer upon the holder the title of official of the World Health Organisation".

3. Not only is the legal status of the complainant of an exclusively contractual nature, but the contract concluded by him is of a very special character. In fact, the tasks entrusted to the complainant were outside the scope of the normal functions of the Organisation and were connected with an exceptional, as well as a temporary, mission. In addition, whatever his obligations may have been towards the Organisation, the complainant was expressly stated to be responsible to the Government of the Congo (Leopoldville) (article III, paragraph 1). In view of the complainant's legal status as described above, his complaint does not fall within the definition of those which the Tribunal is competent to hear in pursuance of the above-mentioned article II, paragraph 5, of its Statute. The Tribunal is therefore not competent to hear it.

Moreover, the contract provides that any disputes between the parties shall be settled in accordance with arbitration proceedings to be instituted by the Organisation (article VI). While the Tribunal itself determines its competence on the basis of its Statute and of the Staff Rules of the Organisation it should, as a matter of equity, be pointed out that the complainant himself, having subscribed to the above provision, must have had, at the very least doubts as to the competence of the Tribunal.

#### DECISION:

The complaint is dismissed on account of the incompetence of the Tribunal.

In witness of this judgment, delivered in public sitting in Geneva on 11 September 1964 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

Signed:

M. Letourneur  
André Grisel  
H. Armbruster  
Jacques Lemoine