

*Registry's translation,
the French text alone
being authoritative.*

110th Session

Judgment No. 2954

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgments 2112 and 2213 filed by Mr A. N. on 4 June 2008 and corrected on 15 July, the reply of the United Nations Educational, Scientific and Cultural Organization (UNESCO) of 30 October 2008, the complainant's rejoinder of 9 January 2009 and UNESCO's surrejoinder of 30 April 2009;

Considering Article II, paragraph 5, of the Statute of the Tribunal;
Having examined the written submissions;

CONSIDERATIONS

1. The complainant has filed a second application for review of Judgment 2112, delivered on 30 January 2002, in which the Tribunal dismissed his complaint concerning the refusal to implement the decision – allegedly taken in June 1999 by the then Director-General – to grant him a two-year fixed-term appointment and not to extend his temporary appointment beyond 29 February 2000. He is likewise requesting a review of Judgment 2213, delivered on 16 July 2003, in which the Tribunal dismissed his first application for review of Judgment 2112. He asks the Tribunal to order the “execution” of the

above-mentioned decision to appoint him for a fixed term to a post which he considers he has “the right to claim until 2010”.

2. One of the pleas entered by the complainant in support of his first application for review was the occurrence of a new fact which he had been unable to cite earlier and which could have had a decisive influence on the outcome of the case; he relied more particularly on a statement, dated 4 May 2002, of the Director-General who was in office in June 1999. In consideration 4 of Judgment 2213 the Tribunal recalled that a new fact could lead to the reversal of a judgment only if it was of decisive influence, but that that was not the case of the above-mentioned statement. It also found that, since no formal decision to grant the complainant a fixed-term appointment had been taken owing to the arrival of a new Director-General, the intentions of the latter’s predecessor could not bind the Organization.

3. The new application for review presently before the Tribunal is based on a second statement, entitled “True account memorandum”, issued on 10 January 2008 by the Director-General who was in office in June 1999. In this statement he says that he had made promises to the complainant, which were fulfilled by his “decision” of 9 June 1999 to offer him a fixed-term appointment. As early as 1997 he had likewise promised the complainant that the Organization’s “missions to promote a culture of peace” – his field of activity – would continue until 2010. The new Administration had, however, “denied [him] the constitutional authority to make such promises”.

4. According to firm precedent, the Tribunal’s judgments have the authority of *res judicata* and they will be reviewed only in exceptional circumstances and on limited grounds. Review of a judgment on the grounds that a new fact has been discovered may be ordered only if the fact on which the party intends to rely is one which the party could not reasonably have been expected to discover in time to plead it in the original case (see Judgment 1504, under 9). Moreover, this new fact must be of decisive influence; in other words,

it must be objectively likely that, if the Tribunal had been aware of this fact at the outset, it would have delivered a different judgment.

5. These conditions have not been met in this case. The Tribunal notes that the complainant does not even allege that he would not have been able to produce a statement equivalent to the above-mentioned “true account memorandum” in support of his complaint of 23 March 2001. In addition, insofar as the terms of this memorandum go beyond those of the first statement of 4 May 2002, it appears to be a submission advocating a certain interpretation of facts which were known to the Tribunal and which the Tribunal appraised in a manner that was unfavourable to the complainant. The submissions based on this document, the production of which does not constitute a new fact within the meaning of the Tribunal’s case law, do not prove in any way that the Tribunal failed to take account of material facts or arrived at a mistaken finding of fact that involved no exercise of judgement (see Judgment 1255, under 2).

The application for review must therefore be dismissed and there are no grounds for granting the complainant’s requests that the Tribunal order an expert inquiry in accordance with Article 11 of the Rules of the Tribunal or a hearing with the “actual participation” of the author of the memorandum in question.

DECISION

For the above reasons,
The application is dismissed.

In witness of this judgment, adopted on 11 November 2010, Ms Mary G. Gaudron, 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 2 February 2011.

Mary G. Gaudron
Claude Rouiller
Patrick Frydman
Catherine Comtet