

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**K.**

**v.**

**ITU**

(Application for review)

**132nd Session**

**Judgment No. 4440**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4370 filed by Mr E. K. on 18 March 2021;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

#### CONSIDERATIONS

1. The complainant is a former staff member of the International Telecommunication Union (ITU). He has filed an application with the Tribunal for review of Judgment 4370, delivered in public on 18 February 2021, in which the Tribunal dismissed his complaint against the ITU's decision to retire him with effect from 31 July 2017.

2. The Tribunal has stated as follows, for example, in Judgments 3815, consideration 4, and 3899, consideration 3:

“[P]ursuant to Article VI of its Statute, the Tribunal's judgments are ‘final and without appeal’ and have *res judicata* authority. They may therefore be reviewed only in exceptional circumstances and on strictly limited grounds. As stated, for example, in Judgments 1178, 1507, 2059, 2158 and 2736, the only admissible grounds for review are failure to take account of material facts, a material error involving no exercise of judgement, an omission to rule on a claim, or the discovery of new facts which the complainant was unable to rely on in the original proceedings. Moreover, these pleas must be likely to have a bearing on the outcome of the case. Pleas of a mistake of

law, failure to admit evidence, misinterpretation of the facts or omission to rule on a plea, on the other hand, afford no grounds for review (see, for example, Judgments 3001, [consideration] 2, 3452, [consideration] 2, and 3473, [consideration] 3).”

(See also Judgment 4327, consideration 3.)

3. In support of his application, the complainant submits that Judgment 4370 contains material errors and that the Tribunal failed to take account of material facts and to rule on three of his claims. He further alleges that there are new facts.

4. As regards, first of all, material errors, the complainant submits that these consist of alleged “errors in reading and/or reproducing” the decision of 20 November 2017 – which was the impugned decision in his first complaint – and Staff Regulation 9.9. The Tribunal finds, however, that despite the misleading way in which they are presented, these pleas cannot be construed as relating to material errors, but solely as an attempt to challenge the view taken by the Tribunal in Judgment 4370. The legal assessments made by the Tribunal in a judgment cannot be challenged in an application for review (see Judgment 3984, consideration 5).

5. The complainant next submits that the Tribunal failed to take material facts into account when it adopted Judgment 4370. In this regard, he alleges that the Tribunal “misrepresented” particular facts but, by this argument, he is in fact simply alleging that the Tribunal incorrectly appraised the facts in question. Such a plea does not constitute an admissible ground for review (see Judgment 3983, consideration 6).

6. The complainant adds that the Tribunal overlooked “certain important facts”, namely the sending of a letter of 18 July 2017 from the United Nations Joint Staff Pension Fund and the fact that he separated from service on 31 July 2017 on account of his mandatory retirement, and not because of the non-extension of his contract. As regards, firstly, the letter of 18 July 2017, apart from the fact that the complainant distorts its content, he is in fact merely requesting a reassessment of evidence which has already been submitted to the Tribunal for consideration and weighed in connection with his first complaint (see Judgment 3478, consideration 4). The Tribunal had ample opportunity to appraise this evidence and it was for the Tribunal to decide whether or not its content was crucial (see Judgment 2021,

consideration 6). As regards, secondly, the complainant's statement that he separated from service on 31 July 2017 on account of his mandatory retirement and not the non-extension of his contract, the complainant merely revisits and reargues facts already considered by the Tribunal in the original proceedings (see Judgment 4127, consideration 7).

Lastly, the complainant criticises the fact that Judgment 4370 does not include a summary of the parties' arguments. However, it is self-evident that before adopting the Judgment, the Tribunal considered all the parties' submissions, even if they were not reproduced therein.

7. The complainant further submits that the Tribunal omitted to rule on three of his claims, but he is in fact referring to the three main pleas that he raised in his first complaint and which the Tribunal has therefore already examined. The complainant essentially confines himself to revisiting arguments advanced unsuccessfully in his first complaint and expressing disagreement with the Tribunal's appraisal of the evidence and interpretation of the law. Thus, in this regard, his application for review is in fact an attempt to reopen issues already settled in the original judgment (see Judgments 3897, consideration 4, and 4122, consideration 7). It is true that in Judgment 4370, the Tribunal did not respond to all the complainant's arguments, which were put in an extremely incoherent manner, but omission to rule on an argument does not afford grounds for review, because the Tribunal would otherwise be required to state its position expressly on all pleas, even if they were plainly of no relevance to the case (see Judgment 3478, consideration 5, and the case law cited therein). Although the complainant advances new arguments to the effect that he should not have been retired on 31 July 2017, the matters raised are *res judicata* and he puts forward no legitimate ground to reopen the findings made by the Tribunal in the original judgment (see Judgment 3479, consideration 6).

8. Lastly, the complainant relies on alleged new facts. Though the discovery of a new fact may indeed afford grounds for review, the fact must date from before the judgment and be such as would have affected the ruling had the Tribunal known of it in time (see Judgment 1545, consideration 5). The Tribunal fails to see how the first argument put in this regard, relating to its "consideration" of the decision dismissing the complainant's internal appeal, could constitute a new fact within the meaning of the case law referred to above. The

complainant further alleges that it is apparent from the surrejoinder filed by the ITU in connection with his second complaint that, since 1 January 2017, he had held a continuing appointment due to end on 31 December 9999 (*sic*). Similarly, the Tribunal does not see, in any event, how this circumstance would have led it to reach a different decision on the claims submitted to it in the original proceedings (see Judgment 3561, consideration 5). The complainant's last argument is that, in the aforementioned surrejoinder, the ITU itself confirmed that he should not have separated from service on 31 July 2017. In reality, the complainant is attempting to call into question the Tribunal's interpretation in Judgment 4370 of ITU Staff Regulation 9.9, which does not constitute an admissible ground for review (see Judgment 2029, consideration 4).

9. It follows from all the foregoing that the complainant's application for review is clearly devoid of merit and must be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal.

#### DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 14 June 2021, Mr Patrick Frydman, President of the Tribunal, Ms Dolores M. Hansen, Vice-President of the Tribunal, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2021 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN    DOLORES M. HANSEN    GIUSEPPE BARBAGALLO

DRAŽEN PETROVIĆ