

LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL

ORDINARY SESSION OF FEBRUARY 1946
HEARING OF 26 FEBRUARY 1946

In re KARAKACHEFF

Judgment No. 37

THE LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed on 5 September 1940 by Mr. Wladimir Karakacheff against the Secretariat of the League of Nations;

Considering that the complainant asks the Tribunal to find that:

In pursuance of the unamended Staff Regulations, the League of Nations should pay him, in addition to the sums already paid, the following sums:

The equivalent of the six months' notice for which provision is made in Articles 18 and 20 of the Regulations, less the sum of 2,183.30 Swiss francs paid to him in lieu of notice, i.e. 8,352.10 Swiss francs;

The increase in the capital sum of the pension on account of the termination of his appointment in the amount of 3,742.75 Swiss francs is effective as of 13 January 1941 and not 13 July 1940;

In addition, the outstanding amount of compensation equal to one year's salary, i.e. 19,650 Swiss francs (26,200 francs less 6,550 francs) should be paid to the complainant at the time of his separation from the Secretariat and not in three annual payments;

It considers that the League of Nations owes him the above-mentioned sums in Swiss francs at the same value as at the time of his separation from the Secretariat of the League of Nations.

COMPETENCE:

I. Article II, paragraph 1, of the Statute of the Administrative Tribunal expressly states that the Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials.

This wording implies the granting of full competence in respect of the performance of all contractual undertakings entered into by the League of Nations with regard to its officials; no distinction whatsoever is drawn between an act of the Assembly itself and an act of the agents upon whom it confers authority over staff.

The Statute of the Tribunal was submitted to the Assembly on 26 September 1927 and adopted as drafted without any amendment with regard either to its spirit or to its letter. Thus it was therefore the Assembly itself which, by its sovereign authority, determined the scope of the Tribunal's competence and thus gave its staff a guarantee of justice which thenceforward it could not retract.

This was in fact confirmed by the Committee of Jurists set up by the Chairman of the First Committee of the 13th Assembly in its formal opinion on the latter's right to reduce officials' salary; this opinion of 8 October 1932 recognising the competence of the Administrative Tribunal was given unanimously by the members of the Committee (Mr. Andersen, Mr. Basdevant, Mr. Huber, Sir William Malkin and Mr. Pedroso), cf. *Official Journal of the League of Nations*, Special Supplement No. 107, p. 206.

II. Moreover the Secretary-General was wrong to apply the Assembly resolution of 14 December 1939 to the complainant through the impugned decision.

The complainant's letter of appointment pre-dated 15 October 1932 and contained no clause stipulating that the Assembly could amend its terms.

The version of the Secretariat's Staff Regulations in force at the date on which the complainant was appointed formed part of his employment contract and the complainant had an acquired right by virtue of which amendments of the Staff Regulations, in particular the disputed amendments to Articles 18 and 73, could not be applied to him unless there was mutual agreement.

No such mutual agreement was reached.

The argument that the Assembly, by its resolution of 14 December 1939, intended to infringe acquired rights without expressly mentioning it cannot be accepted.

In this respect, the text adopted by the Assembly is unequivocal and does not even refer to Article 80 of the Staff Regulations establishing that acquired rights must be respected.

The defendant's arguments to the effect that any other interpretation than that which it proposes would lead to absurd results, or would deprive the provisions in question of any practical effect, must also be rejected, since the disputed amendments apply to officials appointed after 15 October 1932 and to those appointed prior to that date but whose letter of appointment contains a clause stipulating that the terms thereof may be amended by the Assembly (Article 30bis of the Secretariat's Staff Regulations).

The complaint is therefore not only formally but also effectively directed against a decision of the Secretary-General, which means that at all events it falls within the competence of the Administrative Tribunal.

ON THE MERITS:

The parties' submissions on the scope of the complaint and the reasons for the awards requested are insufficiently clear, especially those in respect of the complainant's claim with regard to the Pensions Fund.

For the above reasons,

The Tribunal

Finds that it is competent;

Orders the parties to explain the substance of the complaint in greater detail;

Defers the case to the next session of the Tribunal;

Reserves its position on costs for the time being.

In witness of which judgment, pronounced in public sitting on 26 February 1946 by Jonkheer van Rijckevorsel, President, Mr. Eide, Vice-President, and His Excellency Mr. Devèze, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, van Asch van Wijck, Registrar of the Tribunal.

(Signatures)

Albert Devèze

A. van Rijckevorsel

Vald. Eide

W.H.J. van Asch van Wijck

Certified copy,

The Registrar of the Administrative Tribunal.