

EIGHTH ORDINARY SESSION

***In re* DUNCKER**

Judgment No. 49

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Food and Agriculture Organization of the United Nations drawn up by Mr. Thomas Duncker on 20 May 1960 and the reply of the Organisation of 8 July 1960;

Considering Article I of the Staff Regulations of the Organisation, especially Regulations 301.011 and 301.014, Decree No. 460 of 11 July 1959 of the President of the Italian Republic and Article VII, paragraph 2 of the Statute of the Tribunal;

Having heard Mr. Jacques Mercier, counsel for complainant, and Mr. G. Saint-Pol, agent of the Organisation, in public sitting on 14 September 1960;

Considering that the pertinent facts at issue are the following:

A. On 7 October 1957 the Pretore of Venice passed on complainant a suspended sentence of two months imprisonment for committing an act of public indecency, and on 9 October 1957 complainant sent to his chief a detailed statement of the circumstances of the arrest and his sentence and protested that he was innocent. In accordance with the provisions of the Agreement concluded on 21 October 1950 between the Italian Government and the Organisation, the Italian Ministry of Foreign Affairs notified the Organisation by a note verbale of 21 October 1957 of the sentence passed on its official. A certificate from the clerk of the competent court, indicating the nature of the offence and of the sentence passed and stating that an appeal had been lodged against the said sentence, was sent to the Organisation on 23 October 1957.

B. Between 9 and 25 October 1957 complainant's position was given consideration by his chiefs and by the Director-General on the basis both of the above-mentioned documents and of questions put to complainant, who was allowed to make oral statements. By a letter of 25 October 1957 the Director-General informed complainant of the termination of his appointment on grounds of misconduct as defined in sections 330.151, 350.152(ii) and 330.152(v) of the Administrative Manual of the Organisation, which relate respectively to conduct which is incompatible with the staff member's obligation to the Organisation, conduct detrimental to the name of the Organisation and serious violation of any applicable national law. In a letter of 30 October 1957 complainant stated that he was not in a position to contest the Director-General's decision, but he protested that he was innocent, stated that he was fully confident that he would win his appeal and expressed his intention of seeking reinstatement or re-employment in that case. This letter remained unanswered.

C. On 8 May 1958 the competent court of appeal confirmed the sentence and complainant appealed to the Supreme Court. While the matter was still pending before that Court, complainant chose to take advantage of the option open to him to benefit from the amnesty decreed by the President of the Italian Republic on 11 July 1959, and this put an end to the proceedings before the Courts.

D. On 21 July 1959 complainant, relying on the amnesty of which he had taken advantage and claiming that both his prosecution and his sentence were considered not to exist, submitted that the grounds of the termination of his appointment no longer existed and applied for reinstatement. By a letter of 24 February 1960 the Director-General communicated his final decision, taken after consulting the Appeals Committee, not to reappoint complainant, who prays the Tribunal to rescind the said decision or alternatively to grant damages.

IN LAW

1. In requesting that the decision of 24 February 1960 refusing his reinstatement be rescinded, Mr. Duncker maintains on the one hand that the decision of 25 October 1957 terminating his appointment is improper and

contrary to various provisions of the Staff Regulations and on the other hand that in any case he should have been reinstated after the issue of the decree of the President of the Italian Republic dated 11 July 1959 granting an amnesty with regard to the acts on which termination of his appointment had been based, and that if his reinstatement is refused he is entitled to compensation.

Regarding the decision of 25 October 1957

2. Under Article VII, paragraph 2 of the Statute of the Tribunal to be receivable, a complaint must have been filed within ninety days after the complainant was notified of the decision impugned or, in the case of a decision affecting a class of officials, after the decision was published.

3. The decision of 25 October 1957 was communicated to Mr. Duncker on 30 October 1957 at the latest, on which date complainant sent a last protest of his innocence to the Organisation. Mr. Duncker did not appeal against this decision within the period of 90 days laid down by the above-mentioned provision. It was therefore not open to him to challenge the legality of the aforesaid decision, which was an individual decision, in his complaint dated 20 May 1960.

None of the arguments against the legality of the decision of 25 October 1957 can therefore be examined by the Tribunal.

As regards the right to reinstatement

4. Acts of amnesty of the nature of the decree of 11 July 1959 do not confer any right to reinstatement for officials whose appointment was terminated as a result of criminal sentences covered by the amnesty;

Consequently, in refusing to comply with Mr. Duncker's request for reinstatement on the basis of the amnesty covering the sentence that had led to the termination of his appointment, the Director-General, far from acting improperly, confined himself to exercising his right to assess the suitability of complainant, as of any other applicant, for employment in the Organisation;

Therefore the submission that the decision of 24 February 1960 be quashed and that damages be awarded must fail.

DECISION

The complaint is dismissed.

In witness of this judgment, delivered in public sitting on 23 September 1960 by the Right Hon. Lord Forster of Harraby, K.B.E., Q.C.; President, Mr. Maxime Letourneur, Vice-President, and Mr. André Grisel, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

Signatures:

Forster of Harraby
M. Letourneur
André Grisel
Jacques Lemoine