

## **EIGHTH ORDINARY SESSION**

### ***In re* RAVAGE**

#### **Judgment No. 50**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Educational, Scientific and Cultural Organization drawn up by Mrs. Denise Ravage on 9 November 1957 and the Organization's reply of 7 March 1958;

Considering Article VII of the Statute of the Tribunal, the Staff Rules and Regulations of the Organization, particularly Regulation 4.5.1 and Rules 111.1 and 2, as well as paragraphs 7 and 8 of Annex E to the Staff Rules;

Considering decision No. 35 of this Tribunal, dated 23 September 1958, and the affidavit of the swearing of the oath which the Director-General of the Organization was asked to take by the Tribunal, which affidavit was drawn up on 3 October 1958 and communicated to the parties on 7 October 1958;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal subsequently to the oath of the Director-General;

Considering that the pertinent facts at issue are the following:

A. From 1 January 1952 to 31 December 1956 complainant held fixed-term appointments which were regularly renewed. Under Staff Regulation 4.5.1 an official may not hold fixed-term appointments for more than five years. Accordingly on 27 March 1956 complainant was informed that it was not proposed to offer her an indeterminate appointment and that since this eliminated the only possibility of extending her appointment her employment would end on 31 December 1956. On 7 August 1956 complainant was informed of the abolition of the post she occupied and of the establishment of a new post, her candidature for which would automatically be considered; pending a decision on her candidature her employment would nevertheless come to an end on 31 December 1956. However, on 28 December 1956 complainant was informed that although, as stated on 7 August 1956, it was not intended to renew her appointment, she was offered a temporary appointment for two months as from 1 January 1957 pending the recruitment of an incumbent for the new post. On 24 January 1957 complainant was informed that her candidature for the new post had not been successful and that her appointment would come to an end on the expiry of her temporary appointment on 28 February 1957.

B. On 14 February 1957 complainant had an interview with the Director-General, and she maintains that in the course of that interview the Director-General gave her to understand that he was withdrawing the decision of 24 January 1957 or would suspend its execution. The Director-General subsequently denied the interpretation given to what was said in the course of the interview; by a letter of 14 March 1957 complainant then claimed that the decisions leading up to the loss of her employment were irregular; she appealed to the Appeals Board and laid before the Tribunal on 9 November 1957 the decision in which the Director-General had stated that her appeal did not call for any action on his part.

C. Complainant requests the Tribunal to rescind the decisions of 27 March 1956 and 24 January 1957, confirmed on 28 February 1957 and 3 April 1957, whereas the Organization submits that the complaint is not receivable because no protest against the latest decision leading up to the termination of complainant's employment, which was notified on 24 January 1957 and received by complainant on 7 February 1957, was received until 14 March 1957, that is after the expiry of the period of fifteen working days laid down in paragraph 7 of Annex E to the Staff Rules.

D. By its interlocutory decision No. 35 the Tribunal, before proceeding to a judgment, administered to the Director-General an oath concerning the nature of his statements to complainant on 14 February 1957, so that the case might be reopened at the wish of either party. The affidavit was drawn up on 3 October 1958 and was communicated to the parties on 7 October 1958. Since no further request was filed between that date and the

opening of its Eighth Session the Tribunal caused the parties to be notified on 2 September 1960 that it had decided to include the case in the list of those to be heard in the course of its Eighth Session and to rule on the substance of the case on 14 September 1960. The Organization merely acknowledged receipt and noted the contents of the said communication, while no reply on behalf of complainant was received.

## IN LAW

It is established by the documents in the dossier that Mrs. Ravage really intended to lay before the Administrative Tribunal the decision of 12 August 1957 by which the Director-General of UNESCO had, after receiving the report of the Appeals Board, confirmed his decisions of 28 December 1956 and 24 January 1957 refusing to renew complainant's earlier contract and notifying her that her candidature for the post established instead of hers had been unsuccessful.

On the receivability of the complaint submitted by Mrs. Ravage to the Administrative Tribunal:

1. Under Article VII, paragraph 1 of the Statute of the Tribunal, a complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to her under the applicable Staff Regulations. Further, under UNESCO Staff Regulation 111.2 members of the staff may appeal to the Administrative Tribunal of the International Labour Organization in accordance with the Statute of that Tribunal against any decision taken by the Director-General after they have submitted their case to the Appeals Board in accordance with Regulation 111.1.

It is established that Mrs. Ravage had lodged appeals requesting the rescinding of the above-mentioned decisions with the Director-General on 14 March 1957 and the Appeals Board on 25 April 1957.

The Appeals Board submitted its report on 30 July 1957 and the Director-General, having seen that report, took his decision of 12 August 1957.

When she applied to the Administrative Tribunal Mrs. Ravage had therefore exhausted all the means of resisting the decision that were open to her under the Staff Regulations.

2. Moreover, any advisory administrative body that receives a request in accordance with its rules must, in all cases, express an opinion on the request, whatever the validity of the request, whenever the persons concerned are entitled to submit a matter to it; this is the case even if the said request is deemed to be not receivable. Questions of receivability often raise problems that are difficult to solve, and complainants are entitled to have them examined in the same manner as questions of substance.

The Appeals Board of UNESCO was only applying these principles when on 30 July 1957 it submitted a circumstantial report to the effect that the appeal by Mrs. Ravage had been submitted too late, that it was consequently not receivable and that it should therefore be rejected.

The Director-General's letter of 12 August 1957 can only be the decision taken after submission of the case to the Appeals Board under UNESCO Staff Regulation 111.2 and can therefore be referred to the Administrative Tribunal.

3. Finally, if an appeal is lodged with an internal administrative body, whatever the validity of the appeal (which can be assessed only by the competent authority after proper examination in accordance with its rules, and as a last resort by the Administrative Tribunal) the period of ninety days laid down for filing a complaint with the Administrative Tribunal under Article VII, paragraph 2, of the Statute of the Tribunal starts not on the day of the notification of the decision impugned in the said appeal but on the day of the notification of the decision taken on that appeal by the competent authority; in this particular case therefore, it commenced to run on 12 August 1957.

The complaint was filed with the Administrative Tribunal on 9 November 1957, that is, within the time limit of ninety days aforesaid.

It follows from the foregoing that the complaint is receivable.

On the receivability of the internal appeal by Mrs. Ravage of the UNESCO Appeals Board:

Under Article 7 of the Statute of the Appeals Board any staff member wishing to protest against an administrative decision or the validity of a disciplinary measure must do so in writing within fifteen working days of the notification of the decision or measure through appropriate channels (that is to say through the head of his department or through the chief of his service or bureau and through the Chief of the Bureau of Personnel and Management) the protest is to be addressed to the Director-General, who must give a decision on it within fifteen working days of its having been lodged. It is established that it was only on 14 March 1957 that Mrs. Ravage protested to the Director-General against the decision of 28 December 1956, notified to her on the same day, and against the decision of 24 January 1957, received only on 7 February following, according to her; and therefore that the said protest was made after the above-mentioned period of fifteen days had expired.

Moreover, according to the affidavit sworn on 5 October 1953 by the Director-General of UNESCO in accordance with the Administrative Tribunal's interlocutory decision of 23 September 1958 in the course of the interview between that high official and Mrs. Ravage on 14 February 1957 he did not state that he had decided to withdraw his previous decision of 24 January 1957 or to suspend its execution. Therefore complainant cannot validly rely on such an alleged decision in maintaining that the time limit for submitting an appeal to the Appeals Board had not expired in her case.

The said appeal by Mrs. Ravage to the Appeal Board was therefore submitted too late and was therefore not receivable. It was rightly rejected for that reason by the Director-General in the decision impugned.

## 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