

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

FORTY-NINTH ORDINARY SESSION

In re de VILLEGAS (Nos. 8, 9 and 10)

(Applications for review and interpretation)

Judgment Ro. 536

THE ADMINISTRATIVE TRIBUNAL,

Considering the application (complaint No. 8) filed on 13 June 1981 by Mrs. Maria Adriana de Villegas for review of Judgments Nos. 404 and 442 and brought into conformity with the Rules of Court on 13 November, the reply filed by the International Labour Organisation (ILO) on 26 February 1982, the complainant's rejoinder of 3 July and the ILO's surrejoinder of 31 August 1982;

Considering the application (complaint No. 9) for interpretation of Judgments Nos. 404 and 442 filed by the complainant on 19 September 1981 and brought into conformity with the Rules of Court on 7 December, the ILO's reply of 31 March 1982, the complainant's rejoinder of 20 July and the ILO's surrejoinder of 8 October 1982;

Considering the application (complaint No. 10) for review of Judgments Nos. 404 and 442 filed by the complainant on 21 September 1981 and brought into conformity with the Rules of Court on 2 December, the ILO's reply of 31 March 1982, the complainant's rejoinder of 20 August and the ILO's surrejoinder of 8 October 1982;

Considering that the three applications should be joined to form the subject of a single decision;

Considering Articles II, paragraph 1, VI and VII of the Statute of the Tribunal;

Having examined the written evidence and disallowed the complainant's applications for oral proceedings;

CONSIDERATIONS:

1. These three applications relate to two previous judgments by the Tribunal: Judgment No. 404, which dismissed several claims by the complainant in relation to her employment in the International Labour Office, and Judgment No. 442, which dismissed an application for review of Judgment No. 404. She has filed further applications for review, for interpretation and for an award of damages and in general is asking the Tribunal to examine anew her disputes with the ILO over the past few years. The Tribunal will deal with all her claims in a single judgment.

The formal correctness of Judgment No. 442

2. The Tribunal will take first the pleas relating to the formal correctness of Judgment No. 442. If these pleas succeeded it would have to set aside Judgment No. 442 and consider directly the pleas in favour of review of Judgment No. 404.

Judgment No. 442 was delivered in public on 14 May 1981 and the text is signed by the three Judges who heard the case and by the Registrar.

The complainant contends that it suffers from a formal defect in that the reasons for it are not stated.

3. She believes that the Tribunal's consistent practice required that the text begin with a recapitulation of the facts and of the parties' submissions. She argues that to comply with Article VI of the Statute of the Tribunal - "The reasons for a judgment shall be stated" - the text of a judgment should be in three parts: a summary of the facts, the considerations, and the operative part, or decision. Judgment No. 442 does not summarise the facts. In her view, therefore, it cannot be regarded as stating the reasons for the decision, because the summary - the essential basis of the reasoning set out in the considerations - is lacking.

The rule in Article VI(2) of the Statute that the reasons for a judgment shall be stated derives from a general principle. What is required is that the decision, be it to dismiss or to allow the complaint, should follow a line of reasoning which bears out the Tribunal's conclusions. The judgment deals with all the pleas put forward by the parties either by dealing with them on the merits or else by declaring them irrelevant or irreceivable. The parties cannot require the Tribunal to address itself to the merits of arguments which have no bearing on its decision.

That is the obligation on a tribunal, and, for a judicial decision to be valid, that, but no further, obligation must be discharged.

But neither any general principle of law nor the Statute of the Tribunal nor its Rules of Court lay down any particular formal requirements for the framing of its judgments.

The practice has indeed been to recapitulate the parties' submissions before proceeding to the considerations, and such a recapitulation forms part of the text signed by the three Judges and the Registrar. The authorship of this or that part of the judgment is no concern of the parties, and those who sign bear full responsibility for it.

Thus the recapitulation does not constitute a distinct part of the judgment. Since there is no formal requirement the Tribunal need comply with, it may, if it wishes, sell out the parties' submissions in the considerations, and the mere absence of a recapitulation affords no grounds for setting a judgment aside.

4. In Judgment No. 442 there were particularly sound reasons for not recapitulating the facts in that the procedure followed was the summary one laid down in Article 8(5) of the Rules of Court, and the complaint was not communicated to the ILO for reply.

There being no exchange of memoranda, no purpose would have been served by summarising the facts and submissions in the complaint since in any event the Tribunal was required to review the whole case in order to answer the complainant's arguments.

Such application of the summary procedure is correct and is provided for in Article 8(3) of the Rules of Court. This is an article the Tribunal may apply if it is detrimental neither to the complainant's interests nor to the defendant's to dispense with further memoranda. The Tribunal so decides at its own discretion, being alone competent to determine the procedure, and it is not a decision the complainant may object to.

The Tribunal therefore rejects her allegation of a formal defect in Judgment No. 442.

The applications for review of Judgments Nos. 404 and 442

5. In Judgment No. 442 the Tribunal dismissed the first application for review of Judgment No. 404. It now takes up the claims in complaints Nos. 8 and 10 for further review of Judgment No. 404 and for review of Judgment No. 442.

Review is an exceptional procedure and a derogation from the principle of *res judicata*. Accordingly, the complainant may not put forward repeatedly the same pleas in favour of review. In the applications now before the Tribunal her pleas may be only such as she was unable to rely on in the first one or such as the Tribunal may have omitted to hear in Judgment No. 442.

6. One of her arguments is that the Tribunal was not correctly constituted when it delivered Judgment No. 404 and that the judgment is null and void because of various other defects attributable to the death of one of the deputy judges, the adjournment of the case and a belated replacement of one judge who was to hear the case. This is a plea she might have put forward in the written proceedings in her fourth complaint, which culminated in Judgment No. 442. It is therefore not admissible.

Her application for the correction of alleged material errors is also inadmissible. Neither the matter of the so-called "golden handshake" - which the parties have discussed in the previous cases - nor the arguments about the "libellous minute", "plots", "discrimination" and "prejudice" - for which in any event there is no shred of evidence - constitute new facts.

The complainant returns to the question of her transfer to another international organisation. The Tribunal has already held that the ILO is under no duty to find other employment for her (Judgment No. 404, 4).

An application for the production of texts of agreements concluded between the International Labour Office and other staff members is no valid reason for review, as the Tribunal held in Judgment No. 442 (2, fourth paragraph).

The interview which the Director-General granted her on 27 July 1981 merely shows, as is clear from her own account of it, his desire to bring about a reconciliation and find some area of agreement. In any event it cannot afford grounds for review.

After the interview, on 14 August 1981, the ILO filed a memorandum and in it the complainant believes that she detects belated admissions which, in her view, bear out the justice of her case. In fact the memorandum merely repeats the Organisation's arguments and nothing in it may be treated as constituting any new fact.

A final and general observation is that a mistake in appraisal of the facts is not a valid reason for review, and by that is meant the construction which the Tribunal has put on the facts (Judgment No. 442, 2, third paragraph).

7. Taking a different line of argument, the complainant further contends that Judgment No. 442 overlooked one of her claims and "failed to consider the wrong caused to her by Mr. Zoetewij's libellous minute". In her view this is a fundamental point and one which was raised in the additional claims for relief in her third complaint.

The plea fails. The Tribunal gave a brief but adequate reply in paragraph 10 of its judgment when it said that it had no reason to alter its decision "so as to award ally of the compensation she claims" and that "there is no evidence to show that the complainant suffered moral or other prejudice by reason if the inclusion of Mr. Zoetewij's minute in the Staff Union files".

The application for interpretation of Judgments Nos. 404 and 442

8. The judgments being clear and unambiguous, the application is dismissed.

The other claims

9. The complainant is not challenging any final decision within the meaning of Article VII of the Statute of the Tribunal, and her other claims for relief therefore fail.

10. The oral proceedings and the calling of witnesses applied for by the complainant could not have any effect on the outcome of the case, and the application is rejected.

DECISION:

For the above reasons,

The applications are dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, P.C., Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 18 November 1982.

(Signed)

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner

