

SIXTY-FOURTH SESSION

***In re* NESIC (No. 7)**

(Application for review)

Judgment 913

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review filed by Mr. Cedomir Nestic on 3 March 1987, supplemented on 17 and 30 April, and corrected on 22 June 1987;

Considering Article II, paragraphs 1 and 6, of the Statute of the Tribunal and Article 8, paragraph 3, of the Rules of Court;

Having examined the written evidence;

CONSIDERATIONS:

The purpose of the suit

1. In his claims the complainant seeks redress for the dismissal of his earlier complaints in the form of communication of papers to the General Conference of the International Labour Organisation. In fact his complaint amounts to an application for review which he variously describes as an "extraordinary application relating to Judgment 796, including Judgment 772" or "an application objecting to Judgment 811". Indeed he uses the term "review" several times in his further briefs of 17 and 30 April 1987.

Receivability

2. Neither the Statute nor the Rules of Court provide for review of the Tribunal's judgments, which carry the authority of *res judicata* from the date of publication, and the rule in all judicial instances which do review is that only in exceptional cases will they do so.

One plea that does not constitute admissible grounds for review is a mistake of law. To allow an application for review on the grounds of the Tribunal's reasoning would be to permit anyone who was dissatisfied with a decision to challenge it indefinitely in defiance of the *res judicata* rule.

Likewise failure to comment on pleas submitted by the parties is not an admissible reason for review. Otherwise the Tribunal would have to pass express judgment on all pleas, even plainly immaterial ones, and it is not the purpose of an application for review to compel the Tribunal to rule on irrelevancies.

3. The complainant's foremost objection is to the Tribunal's ruling that his first complaint was irreceivable under Article II(6)(a) of its Statute. In particular he takes exception to the following passages in Judgment 661, under 2, which the later judgments have cited:

"The intent of Article II(6) is plain from the wording. The right of appeal to the Tribunal does not belong to everyone but only to those who have sufficiently close links with the organisation. ... Not every former official may lodge a complaint, but only one who is alleging some right arising under the terms of his appointment."

The Tribunal's conclusion was that because the condition was not fulfilled the complaint was irreceivable. The complainant sees that as a misreading of II(6) and a breach of his right to appeal. In other words what he is alleging is a mistake of law, which does not constitute admissible grounds for review, and so the plea fails.

4. Besides the Tribunal did not misread the article but applied it correctly. Article II(6) has to be construed in context and more particularly together with II(1), which declares the Tribunal "competent to hear complaints

alleging non-observance, in substance or in form, of the terms of appointment of officials of the International Labour Office, and of such provisions of the Staff Regulations as are applicable to the case". As the Tribunal held in Judgment 661, under 2 in fine, the right of appeal afforded in II(6) is indisputably subject to II(1).

5. The complainant's reference to Judgment 580 (in re Tévoédjrè) does not help his case: in that judgment the Tribunal, ruling on a matter of competence, held that for appeal to lie there must be a prior decision by some authority, whoever it might be. That is not the issue in the complainant's case and his plea on that score is therefore irrelevant.

6. The complainant objects to the Tribunal's ruling in Judgment 811 that its Registrar had acted properly in sending papers back to him. That was a mere act of judicial administration which was irrelevant to his claims and which cannot afford a reason for review.

The plea is immaterial and irreceivable.

7. He further objects to the Tribunal's having taken up his case without bringing in the defendant organisation. The Tribunal alone will determine who is to file submissions on an application for review. The plea fails.

8. Lastly, the complainant challenges passages in Judgment 709, cited in Judgment 811, about the communication of complaints to the General Conference.

As the Tribunal stated, there is no text which confers on it the intermediary function the complainant has asked it to perform. Besides, even if there were such a text the Tribunal's position would presumably rest on misinterpretation of it and would be a mistake of law, which, as was said, affords no grounds for review.

9. The complainant puts forward no admissible grounds for review of Judgments 772, 796 and 811. In fact all he is doing is making yet another attempt to challenge the Tribunal's rulings and he therefore fails under the *res judicata* rule. His insistence on pursuing his claim to redress on the strength of pleas the Tribunal has already rejected time and again is misconceived.

The application for oral proceedings

10. Since the material issues relate solely to review, a ruling may be made on the written evidence and oral proceedings would serve no purpose whatever.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 30 June 1988.

(Signed)

Jacques Ducoux
Mella Carroll
E. Razafindralambo
A.B. Gardner