

**SEVENTEENTH ORDINARY SESSION**

***In re JURADO***

**(Nos. 15 - Waiver of Immunity)**

**Judgment No. 105**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation drawn up by Mr. Cesáreo Jurado on 10 July 1966, the reply of the Organisation of 8 August 1966, the complainant's rejoinder of 22 September 1966, and the letter of 3 October 1966 by which the Organisation, subject to clarification of a question of fact, states that it does not wish to avail itself of the opportunity of presenting further observations;

Considering Articles II and VI of the Statute of the Tribunal;

Having examined the documents in the dossier, the oral proceedings requested by complainant having been disallowed;

Considering that the material facts of the case are as follows.

A. By letter of 7 June 1966 from the Department of Justice and Police of the Canton of Geneva the Director-General of the I.L.O. was requested to waive the immunity from jurisdiction of Mr. Jurado in order to enable Mrs. Jurado to bring a legal action against Mr. Jurado for non-payment of the maintenance allowance due for his child and to bring a penal action against her husband for desertion of his family. Complainant was informed of this request on 8 June 1966 and presented his observations on 13 June, after which the Department of Justice and Police was informed, by letter from the Legal Adviser of the I.L.O. dated 23 June, that the Director-General had decided to waive Mr. Jurado's immunity from jurisdiction for the purposes indicated in the Department's application. Mr. Jurado was informed of this decision on the same day.

B. Complainant's submissions in his complaint against the decision impugned are in the following terms:

"That it please the Tribunal

As to Form

1. To declare receivable the present complaint together with its annexes, against the (two) decisions of the I.L.O. dated 23 June 1966, waiving complainant's immunity from jurisdiction for the purpose of a civil action ("non-payment of maintenance allowance") and of a penal action ("desertion of family").

2. To agree that Judges Maxime Letourneur, President, André Grisel, Vice-President, and Hubert Armbruster, Deputy Judge, should not try the case, for the common reasons set forth in paragraphs 4 to 7 of the Brief Summary, and in virtue of Article X, paragraph (e) of the Statute of the Court and Article 20 of the Rules of Court.

3. To agree that Judge André Grisel, Vice-President, should not try the case for the specific reasons set forth in paragraphs 8 to 18 of the Brief Summary, and in virtue of Article I, paragraph (e) of the Statute of the Court and Article 20 of the Rules of Court.

4. To treat the present case as urgent and give it priority for inclusion in the list of cases before the Administrative Tribunal.

5. To order the convening of a hearing for the purpose of oral pleadings and for the statement of the new facts which will undoubtedly arise.

6. To order the appearance as sworn expert witnesses of Mr. Roberto Ago, Professor of Law, Member of the

Governing Body of the I.L.O., and of the Legal Adviser of the Ministry of Foreign Affairs of Spain.

7. To take the necessary measures to safeguard the complete independence of complainant and the free exercise of his rights in view of the coercion and intimidation to which he is subject from the I.L.O. Administration.

8. To order the production for the purpose of the present proceedings of the dossiers relating to the first case of Jurado versus I.L.O., disposed of by Judgment No. 70; the second case Jurado versus I.L.O., disposed of by Judgment No. 83; and of the Judgment given by the Spanish courts on 3 March 1966 declaring complainant to be a single man *ex tunc* and granting him custody of his son Andrés Jurado as a result of the annulment *ipso jure* of his marriage; and of any other document in the Tribunal's archives which may be necessary for the disposal of the present dispute.

As to Substance

1. To find that the two decisions of 23 June 1966 (documents 1 and 2) signed by the Legal Adviser of the Director-General of the I.L.O., Mr. Francis Wolf, waiving complainant's immunity from jurisdiction for the purposes of a civil legal action ("non-payment of maintenance allowance") and of a penal legal action ("desertion of family"), are null and void by reason of the following procedural flaws:

(a) The request by the Department of Justice and Police of the Republic and Canton of Geneva dated 7 June 1966 (document 5) for the waiving of complainant's immunity from jurisdiction is not receivable by the I.L.O. because the Republic of Geneva is not a person in international public law inasmuch as it has not received a delegation of powers to act on behalf of and as representative of the Swiss Confederation.

(b) The request of 7 June 1966 made by the same Department for the same purposes is not receivable by the I.L.O. inasmuch as the Republic and Canton of Geneva is not empowered under domestic Swiss legislation to request waiver of the immunity from jurisdiction of an official, this diplomatic privilege being granted under federal law whereas the Republic of Geneva is not empowered to act on behalf of and as representative of the Swiss Confederation.

(c) The request of 7 June 1966 by the same Department for the same purposes is not receivable by the I.L.O. inasmuch as the First Deputy Secretary of the Department of Justice and Police of Geneva, who signed it, could not legitimately do so since he was not duly authorised and invested with the necessary power to commit the Republic and Canton of Geneva, still less the Swiss Confederation, in its dealings with the I.L.O.

(d) The request of 7 June 1966 by the same Department for the same purposes is not receivable by the I.L.O. inasmuch as at the time it was made the civil and penal legal proceedings to which it referred had not been instituted by the so-called plaintiff, this being an essential condition for any waiver of immunity, and consequently for any request for such waiver.

(e) The request of 7 June 1966 by the same Department for the same purposes is not receivable by the I.L.O. inasmuch as a Swiss political or administrative authority, whether cantonal or federal, is not competent to ask the I.L.O. at the request of a so-called plaintiff, to waive an official's immunity from jurisdiction, and it is for the competent Swiss judicial authority alone to take such a decision, the Swiss political or administrative authority being merely responsible for transmitting the judicial decision to the I.L.O. if it considers it politically expedient to do so.

(f) The request of 7 June 1966 by the same Department for the same purposes is not receivable by the I.L.O. inasmuch as that authority is acting at the request of the so-called plaintiff; diplomatic immunities are granted under Swiss federal law which is of a public nature; if the Swiss Federal Council, on behalf of the Swiss Confederation, has granted a diplomatic privilege to a certain person, that privilege cannot be at the mercy of the personal will of any Swiss or non-Swiss citizen; and consequently, it is for the competent Swiss judge alone to order the waiver of an official's immunity, the latter being a legal status from the standpoint of civil law and a procedural exception from the standpoint of procedural law.

(g) The signatory of the two decisions of 23 June 1966, namely Mr. Francis Wolf, Legal Adviser to the Director-General of the I.L.O., has no power of signature and representation in matters which "involve relations between the Organisation and a third party" (Judgment No. 70 of the Administrative Tribunal).

(h) The power to waive an official's immunity belongs exclusively to the Director-General of the I.L.O. as chief officer of the I.L.O.; it is in the nature of a "personalissima" prerogative and is not subject to delegation, since any decision to waive an official's immunity "necessarily involves relations between the Organisation and a third party" (Judgment No. 70 of the Administrative Tribunal).

2. To find that complainant's domicile, in so far as he enjoys full immunity from jurisdiction for private and official acts and in so far as under Article 16 of the Agreement of 11 March 1946 between Switzerland and the I.L.O. concerning the privileges, immunities, exemptions and facilities granted to diplomatic agents in accordance with the law of nations and international usage, is not in Switzerland, with the sole exception of acts within the jurisdiction of the territorial laws and police regulations of Switzerland.

3. To find that, for all purposes arising out of his contractual relationship with the I.L.O., complainant has the status of a single man in accordance with Spanish law and Spanish legal decisions; that it is the duty of the I.L.O. to recognise this and to act accordingly; that it is the contractual duty of the I.L.O. to recognise the Court Order issued in application of the judgment annulling complainant's marriage given by the Spanish courts on 3 March 1966.

4. To find likewise that for all purposes arising out of its contractual relationships it is the duty of the I.L.O. to recognise complainant as the sole legal guardian of the child Andrés Jurado, who is entirely Spanish, in accordance with the Judgment of 3 March 1966 given by the Spanish courts.

5. To find that the two decisions taken by the I.L.O. on 23 June 1966 to waive complainant's immunity from jurisdiction for the purpose of civil and penal proceedings infringe Article 1.7 of the Staff Regulations, Article 40 (2) of the Constitution of the I.L.O. and the Agreement of 11 March 1946 between Switzerland and the I.L.O. concerning the diplomatic privileges and immunities of officials.

6. To find that the two decisions of the I.L.O. dated 23 June 1966 constitute an act of collusion with the persons responsible for the abduction of the child Jurado and infringe Article 13.1 of the Staff Regulations.

7. To find that the two decisions of the I.L.O. dated 23 June 1966 constitute an act of constraint, coercion and intimidation against complainant in respect of his complaint to the Administrative Tribunal, and infringe Article 13.2 of the Staff Regulations.

8. To find that the two decisions of the I.L.O. dated 23 June 1966 constitute an act of serious contempt of Spanish law, the Spanish courts, the Spanish Government and the Spanish nation; that they are moreover clearly anti-Catholic and tainted by national and religious discrimination, and in violation of Article 1.2 of the Staff Regulations and the relevant provisions of the I.L.O. Constitution.

9. To find that the decision of the I.L.O. dated 23 June 1966 waiving complainant's immunity from jurisdiction for the purpose of penal proceedings against him ("desertion of family") is a preparatory measure to his dismissal and infringes the I.L.O.'s obligations as a whole under complainant's contract and under the Staff Regulations.

10. To order the rescinding of the two decisions of the I.L.O. dated 23 June 1966; subsidiarily, in the event of the I.L.O.'s refusal, to order the International Labour Organisation to pay complainant compensation amounting to 500,000 Swiss francs.

11. To order the International Labour Organisation to pay complainant the sum of 5 million Swiss francs on account of its contractual responsibility for the abduction and captivity of the child Jurado, which the two decisions in question are designed to perpetuate.

12. To order the Organisation further to pay complainant the equivalent of the value of any goods that may be seized by the Swiss authorities, or any sum that may be seized by the Swiss authorities as a result of the two decisions of the I.L.O., and also to pay an amount to be fixed in execution of the Judgment on account of expenses connected with the proceedings and counsel's fees.

13. To reserve complainant's right to file at any time a request for compensation in respect of any prison sentence that may be imposed on him as a result of the illegal action of the Administration of the I.L.O.; or alternatively, to order the Organisation to pay 1 million Swiss francs at once.

14. On account of various injuries (damage to the interests and rights of the child Jurado, damage to complainant's

health, moral and material injury, etc.), to order the International Labour Organisation to pay complainant the sum of 100,000 francs.

15. To order the International Labour Organisation further to pay complainant the sum of 100,000 francs on account of anti-Spanish and anti-Catholic discrimination.

16. To order the International Labour Organisation to pay complainant the sum of 10,000 francs on account of the work done by him in preparing and drafting the complaint, and the sum of 1,000 francs for miscellaneous expenses.

17. To reserve all other rights on behalf of complainant and his son.

18. To authorise complainant, by means of a provisional order made by the President in virtue of Article 19 of the Rules of Court of the Administrative Tribunal, to inform the Spanish Government officially of this case by sending it copies of his memorandum and submissions.

19. To find that the Administration of the I.L.O. has acted and argued with malice, and to issue a formal reprimand."

C. The Organisation submits that the complaint should be dismissed.

#### CONSIDERATIONS:

On the objection to the composition of the Tribunal

1. Neither the fact that two of the Judges who sat in the case previously brought by Mr. Jurado before the Administrative Tribunal and disposed of by Judgment No. 70 given by the Tribunal on 11 September 1964 have been called upon to hear a farther case brought by the same complainant, nor the fact that one of these Judges is of Swiss nationality and sits in the Supreme Court of his country, can in itself be regarded as valid ground for objection to these Judges. Moreover, since Judge Armbruster is not called upon to try the present case, the objection against him is, in any event, irrelevant.

On the submissions in the complaint

2. By decision of 20 February 1964 the Director-General delegated to the Legal Adviser authority to sign "all waivers of immunity". Mr. Jurado's contention that the decisions impugned are invalid because they were signed by the Legal Adviser is therefore unfounded.

3. Furthermore, in support of his submissions, to the extent to which they may fall within the competence of the Tribunal, Mr. Jurado has simply reverted to arguments already dismissed by the Tribunal in Judgments Nos. 70 and 83, without adding any new element, or has put forward arguments which are clearly unfounded.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 9 May 1967 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed)

M. Letourneur  
André Grisel  
Devlin  
Jacques Lemoine

