

## SEVENTY-SIXTH SESSION

### *In re AHMAD (No. 3)*

(Application by UNESCO for review)

#### Judgment 1309

THE ADMINISTRATIVE TRIBUNAL,

Considering the application filed by the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 2 November 1993 for review of Judgment 1298 (in re Ahmad No. 2);

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 8, paragraph 3, of the Rules of Court;

Having examined the written submissions;

#### CONSIDERATIONS:

1. By Judgment 1298 of 14 July 1993 the Tribunal allowed Mr. Rashid Ahmad's second complaint against the United Nations Educational, Scientific and Cultural Organization. The facts of the case are fully set out in that judgment. The Tribunal quashed the decision by the Director-General of UNESCO not to renew Mr. Ahmad's fixed-term appointment at grade D.1. Its reasons for doing so were:

(a) that Rule 54.1 of the Rules of Procedure of UNESCO's Executive Board required the Director-General to consult the Board's members both when he decided to renew the contract of an official at D.1 and above and when he decided not to do so;

(b) that Staff Rule 104.11 bis required that written performance reports be prepared for all staff members, including officials at D.1, and the Organization had failed to satisfy that requirement in Mr. Ahmad's case; and

(c) that the Director-General had drawn clearly wrong conclusions from the evidence and had overlooked material facts.

The Tribunal ordered the Organization to reinstate the complainant "as from 1 February 1992 in a post at grade D.1 under a fixed-term appointment that will expire two years from the date of this judgment". It also awarded him 3,000 United States dollars in costs.

2. UNESCO seeks review of that judgment on the grounds that the Tribunal "failed to take essential material facts into account". Its principal contention is that "in its interpretation [of Rule 54.1 of the Executive Board's Rules of Procedure] the Tribunal seems to have omitted to take into account an aspect of fundamental importance: the well-established and consistent practice of the Organization in that regard, which is that the Director-General does not, nor is he in any circumstances deemed to be required to, consult the members of the Executive Board regarding the non-renewal of a contract of officials at D.1 and above". The Organization puts forward the subsidiary pleas, first, that "lesser importance ... may be said to be attached to the establishment" of reports on the performance of UNESCO officials in Mr. Ahmad's grade and category; and, secondly, that the Director-General "was in a position personally to judge the manner in which" Mr. Ahmad had been performing his functions and could "elaborate on this in detail orally, if necessary".

3. The Tribunal will follow the principles it set forth in Judgments 442 (in re de Villegas No. 4), and 704 (in re Verron No. 2), among others, in entertaining applications for review. In Judgment 704 it declared, under 2:

"The Tribunal's judgments carry the authority of *res judicata*. They are, however, subject to review on application either by the complainant insofar as he is not satisfied or by the defendant organisation when its decision is set aside or it is ordered to pay damages. Whichever party is the applicant, the Tribunal will review a judgment only in exceptional cases. Such is the rule of all jurisdictions which allow review. For that reason several pleas are inadmissible as grounds for review, such as allegations of error of law or misappraisal of the evidence. Nor does the failure to hear evidence or to rule on pleas submitted by the parties afford admissible grounds for review.

Other pleas may be admissible provided they may have an effect on the Tribunal's decision. Examples are failure to take account of specific facts, material error, i.e. a mistaken finding of fact which does not involve any value judgment and is therefore distinguishable from misappraisal of evidence, failure to rule on a claim and the discovery of some "new fact", i.e. a fact which one of the parties was not able to rely on in the proceedings that culminated in the judgment."

4. The answer to UNESCO's principal plea is that, whatever its practice may have been, the Tribunal interpreted Rule 54.1 of the Rules of Procedure as it saw fit. What the Organization is seeking is review on the grounds of an alleged mistake of law, and that is not an admissible plea for review. Besides, even supposing that the plea were upheld, the Tribunal's ruling would still stand because it rested on two other independent grounds as well.

5. UNESCO's first subsidiary plea is about the relative weight to be given to reports on the performance of D.1 officials. But the plea cannot in any way mitigate or remedy its utter failure to comply with the requirement of Staff Rule 104.11 bis.

6. By its second subsidiary plea the Organization is seeking to adduce additional evidence, not of new facts, but of circumstances which the Organization could and should, if it so wished, have relied on in its pleadings on the original case. So again neither plea affords admissible grounds for review.

7. In sum, according to the principles that the Tribunal consistently abides by in ruling on such applications UNESCO's allegations do not amount to admissible pleas for review, nor can they have any effect on the Tribunal's rulings in Judgment 1298. The Tribunal therefore summarily dismisses the Organization's application as being clearly irreceivable within the meaning of Article 8(3) of the Rules of Court.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Sir William Douglas, Vice-President, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 31 January 1994.

José Maria Ruda  
William Douglas  
Mark Fernando  
A.B. Gardner