

EIGHTY-THIRD SESSION

***In re* Leprince (No.3)**

(Application for review)

Judgment 1648

THE ADMINISTRATIVE TRIBUNAL,

Considering the application filed by Mrs. Georgette Leprince on 3 August 1996 for the review of Judgment 1556, the reply of 12 September from the United Nations Educational, Scientific and Cultural Organization (UNESCO), the complainant's rejoinder of 25 September and the Organization's surrejoinder of 31 October 1996;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions:

CONSIDERATIONS

1. This is an application for the review of Judgment 1556 of 11 July 1996. The complainant had sought the quashing of the Director-General's decision of 28 August 1995 to transfer her to the office of the Assistant Director-General for Culture (CLT). By that judgment the Tribunal dismissed her case.
2. As the Tribunal has often said, its judgments carry the authority of *res judicata* from the date of delivery. Though they are subject to review, an application for review will be entertained only in exceptional cases. Several pleas for review are admissible provided that they have a bearing on the *ratio* of the judgment. One is the discovery of a so-called "new fact", i.e. a fact that the complainant was unable to plead in the original proceedings.
3. Although it is indeed the discovery of a new fact that the complainant is now relying on, the application fails for the reasons set out below.
4. The complainant says that the day after she read the text of Judgment 1556 she saw a minute that the Director of the Bureau of Personnel had written on 31 May 1994 to the acting Deputy Director-General. In her submission it goes to show that it was the new Assistant Director-General for External Relations who had prompted the impugned transfer and he had been serving his own interests by foisting his views on the Director-General against the Director's advice. In the complainant's view the minute affords proof of the abuse of authority which she had pleaded in the complaint dismissed in Judgment 1556.
5. Is that indeed a new fact? Or was she not already aware of the substance of the minute of 31 May 1994, and did she not plead accordingly in the original proceedings? The question is immaterial since in any event the minute does not affect the issue in dispute and the discovery of it does not warrant review.
6. Firm precedent has it that the plea of abuse of authority cannot succeed unless it is shown that the impugned decision was taken from some improper motive. The minute of 31 May 1994 makes two things plain: it was the Director of Personnel who took the decision of 15 June 1994 to transfer the complainant to the office of the Assistant Director-General for Culture; and for that purpose she was exercising authority delegated to her by the Director-General to transfer General Service category staff. It was in the exercise of such delegated authority that she resolved to hold over a decision until the new Assistant Director-General for Culture had seen the complainant and agreed to her transfer.
7. According to a minute that the Director of Personnel wrote on 21 October 1996 the acting Deputy Director-General had seen the future Assistant Director-General for Culture about transferring the

complainant to his office before 20 June 1994, the date of her actual transfer. So the new Assistant Director-General presumably heard of the transfer from the acting Deputy Director-General, did not demur and thereby consented. The Director of Personnel does seem to have changed her mind and not awaited such consent before herself taking the decision. But there is nothing in the minute of 31 May 1994 or in any other item of evidence to suggest that the decision was intended to serve the personal interests of the Assistant Director-General for External Relations. Indeed the text of the minute suggests that he had failed to persuade the Director and that in any event, before doing anything, she made an objective review of the arguments of both sides.

8. The conclusion is that there is no reason to suspect the Director of Personnel of having acted from any improper motive or in disregard of the Organization's interests. There was therefore no abuse of authority. Neither is the final decision of 28 August 1995, which merely endorsed the one of 15 June 1994, flawed with abuse of authority.

9. The complainant's arguments about events subsequent to Judgment 1556 being irrelevant, her application need not be entertained. Her plea of discovery of a new fact fails because the fact has no effect on the *ratio* of Judgment 1556.

### DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment Miss Mella Carroll, Judge, Mr. Edilbert Razafindralambo, Judge, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 July 1997.

*(Signed)*

Mella Carroll  
E. Razafindralambo  
Egli  
A.B. Gardner