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

NINETY-FIFTH SESSION

(Application for review) **Judgment No. 2213**

The Administrative Tribunal,

Considering the application for review of Judgment 2112 filed by Mr A. N. on 14 June 2002 and supplemented on 1 July, the reply of 13 September by the United Nations Educational, Scientific and Cultural Organization (UNESCO), the complainant's letter of 30 September indicating that he did not wish to enter a rejoinder but containing comments on UNESCO's reply, and the Organization's observations thereon dated 4 November 2002;

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

Having examined the written submissions;

CONSIDERATIONS

1. The complainant joined UNESCO in 1997 and obtained a temporary appointment in 1998 at the Office of Public Information (OPI) as an information officer. His appointment was extended several times until 31 December 1999. By a memorandum of 9 June 1999 the Director of the Executive Office of the Director-General informed the Director of the Bureau of Personnel and the Director of the OPI that the Director-General had decided to create a P.4 post in the OPI and to appoint the complainant to it for two years. Copies of this memorandum were sent to various departments. Although the complainant received a copy of the document, he was never officially notified of it.

A new Director-General took office on 15 November 1999. The General Conference, meeting from 26 October to 17 November 1999, invited the new Director-General to undertake a number of stringent cost-saving measures. In response, the Director-General considered, *inter alia*, that the post occupied by the complainant was not indispensable, therefore his appointment was not renewed. Considering that he should be "reinstated", the complainant filed an internal appeal, which was rejected. He then brought his case to the Tribunal, arguing in particular that the memorandum of 9 June 1999 did constitute a "decision" to appoint him or at least a promise to that effect. In Judgment 2112, delivered on 30 January 2002, the Tribunal rejected the complaint, on the grounds that the memorandum was only an internal administrative document, which, since it had not been notified to the complainant, could not be considered either as a decision to appoint him or as a promise to do so, especially since the formalities preceding such an appointment had not yet been completed, including in particular the approval of the budget by the General Conference and a formal decision by the new Director-General.

2. On 14 June 2002 the complainant filed an application for review of that judgment. He seeks the annulment of the Director-General's decision of 31 January 2001, as he did in the complaint leading to Judgment 2112, and an award, firstly, of his salaries and allowances from February 2000 until the present judgment is delivered, calculated on the basis of a P.4 grade, secondly, of the fixed-term appointment mentioned in the memorandum of 9 June 1999 or an equivalent appointment, and, thirdly, of 200,000 United States dollars in damages for material, professional and moral injury.

His application for review is founded on the following pleas:

- the occurrence of a new fact which could not be cited in the original proceedings and which could have a

decisive influence on the outcome of the case;

- the failure to take account of essential documents affecting the outcome of the case;

- omission to take account of the fact that his post had been approved by the General Conference;

- omission to take account of the fact that his post was part of an essential programme of UNESCO, which was to continue at least until 2010;

- the failure to rule on a claim;

- the confusion arising with regard to the names of the judges who judged the case and signed the judgment.

The Organization contends that the application for review is irreceivable and subsidiarily that it should be rejected.

3. The complainant applies for hearings and the opportunity to submit further evidence.

The Tribunal considers that there is no need to grant this request.

The complainant cannot extend during hearings the scope of his application for review. In addition, the parties have already presented their case in detail in written proceedings. Further oral submissions appear therefore unnecessary.

The evidence the complainant wishes to bring forward are equally unnecessary since they concern facts which do not affect the outcome of the case, for the reasons given below.

4. The complainant's first plea is based on a so-called "new fact" in the form of two statements received after the judgment was delivered, one from the former Director-General and the other from the President of UNESCO's Staff Union.

There is no need to ascertain in what circumstances new evidence - in this case affidavits written after the judgment - may be considered as a new fact justifying the review of a judgment. A new fact can lead to the reversal of a judgment only if it is of decisive importance, which is not the case here, since the affidavits merely offer a legal interpretation which differs from that of the Tribunal. In the impugned judgment the Tribunal considered that, regardless of the Director-General's or the complainant's wish to maintain the employment relationship, this depended on the official receiving notification of a formal decision to renew his contract, following the completion of an internal procedure. However, the complainant was never notified of a final decision to appoint him, since the procedure was stopped by the new Director-General on taking office, in response to the policy advocated by UNESCO's General Conference.

There is nothing in the affidavits that proves otherwise. In particular, they do not contribute any decisive new facts. In this respect, the former Director-General's intention did not amount to a decision. Only what he actually said to the complainant matters. But his affidavit provides no evidence of any specific statement which might be understood as the notification of a decision or a real promise by which the Organization would be bound. The Director-General, though authorised to make appointments, still had to abide by the rules of the appointment procedure. Similarly, the affidavit of the President of the Staff Union merely concerns the different steps necessary to implement the intention to renew the complainant's contract, but does not establish that the appointment procedure had been completed.

5. The complainant's second plea is that the Tribunal failed to take account of various documents which could prove that a decision to appoint him had really been taken or, at least, that a promise to that effect had been given.

Regardless of whether or not this plea is admissible, it appears to be unfounded, since the documents and arguments concerned in no way affect the Tribunal's reasoning.

Insofar as they relate to an extension of the contract until 31 December 1999, this fact is not denied by the Organization.

Otherwise, they do not prove that either a decision by which the Organization would have been bound or a promise to renew the contract beyond that date was ever made. Even though certain documents referred to suggest that the

former Director-General wished to renew the complainant's contract, that wish could only be implemented subject to certain formalities, which the Director-General did not intend to disregard and which had not been completed by the time the new Director-General decided to break off the appointment procedure. Moreover, even assuming that the former Director-General did give the complainant verbal assurances regarding the duration of his appointment, which has not been established, such assurances could not constitute a promise binding the Organization. In fact, the proper procedure had not been followed and the Director-General could certainly not make a firm commitment without complying with the procedure, which the complainant could not fail but realise.

6. The complainant's third plea is that in the proceedings pertaining to his first complaint UNESCO tried to deceive the Tribunal by hiding the fact that the post intended for him had been mentioned in the draft programme and budget for the 2000-2001 biennium (document 30/C5) and, secondly, that in this respect the document was approved as it stood by the General Conference, thus confirming or implying his appointment to the post at issue.

(a) Regarding the first point, the question arises as to whether such an argument affords grounds for review. It is not necessary to answer that question, considering that the fact does not appear to be decisive, since the adoption of a budget could in any case not be interpreted as a decision to make an appointment.

(b) For the same reason, it is not decisive to know whether document 30/C5 specifically mentioned the name of the complainant and whether the decision by the General Conference implied that the complainant's "personalised" post was funded.

7. The same comment applies to the complainant's fourth plea that the Tribunal took no account that the post intended for him was part of an essential UNESCO programme, which was due to continue at least until 2010.

In addition, the Tribunal cannot decide in lieu of the Director-General what the Organization needs to implement its programme.

8. Fifthly, the complainant contends that the Tribunal failed to rule on requests for the disclosure of documents by the Organization he had made in his rejoinder and in his further brief.

A plea that the Tribunal failed to rule on claims is related to a complainant's submissions on the merits; by contrast, decisions by the Tribunal on requests for the disclosure of documents concern the administration and appraisal of evidence and cannot, in principle, give rise to review.

In this case, however, the Tribunal dismissed the complaint in Judgment 2112, which implies the dismissal of all the claims submitted. The plea is therefore without merit.

The rejection, even implicit, of requests for the disclosure of documents arises from the Tribunal's legal reasoning, which cannot be impugned as such, considering that an error of law does not afford grounds for review.

9. As his sixth plea, the complainant refers to the following fact. The copy of the judgment received by the complainant when the judgment was delivered indicated that the Tribunal consisted of Judges Michel Gentot (President), Seydou Ba and Hildegard Rondón de Sansó. The same names appeared in the text of the judgment initially published on the Tribunal's website. However, the copy the complainant was subsequently sent and the amended text published on the internet gave the composition of the Tribunal as Judges Michel Gentot (President), Seydou Ba and Jean-François Egli.

The latter composition, which is correct, also appears on the official copy kept in the Tribunal's archives, as well as in the written collection of the Tribunal's judgments.

There is no need to consider further to what extent a serious procedural flaw - for instance, in the composition of the Tribunal - may afford grounds for review. But there is no flaw in the case of an oversight by the Registry regarding the names of the judges, which was doubtless unfortunate but subsequently rectified.

In the circumstances, this fact does not afford grounds for review.

10. Since all the pleas are without merit or inadmissible in that they afford no grounds for review, the application shall be dismissed in its entirety. It is worth noting that the complainant's financial claims are greater than those he put forward in the proceedings of Judgment 2112 and that, to that extent, they are equally irreceivable on the

grounds that internal remedies have not been exhausted.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 16 May 2003, Mr Jean-François Egli, Presiding Judge for this case, Mr Seydou Ba, Judge, and Mrs Hildegard Rondón de Sansó, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 16 July 2003.

(Signed)

Jean-François Egli

Seydou Ba

Hildegard Rondón de Sansó

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 23 July 2003.