

Extract from:

UNITED NATIONS JURIDICAL YEARBOOK

2013

Part Three. Judicial decisions on questions relating the United Nations and
related intergovernmental organizations

Chapter VIII. Decisions of national tribunals



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Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

A. THE UNITED MEXICAN STATES

1. *Amparo directo DT-558/2013, [Petitioner], Cuarto Tribunal Colegiado en Materia de Trabajo del Primo Circuito*¹

EXTENT OF IMMUNITY DEPENDS ON THE NATURE OF THE ACT UNDERLYING THE CLAIM—A DISTINCTION MUST BE MADE BETWEEN ACTS *JURE IMPERII* AND ACTS *JURE GESTIONIS* IN DETERMINING WHETHER THE IMMUNITY FROM NATIONAL JURISDICTION APPLIES TO THE CLAIM—ACTS REPRESENTING A MANIFESTATION OF THE EXERCISE OF SOVEREIGN POWERS MUST ENJOY FULL IMMUNITY FROM JURISDICTION—ACTS PERFORMED BY A STATE OR AN ORGANIZATION IN THE SAME FASHION AS ANY PRIVATE PERSON ARE JUSTICIABLE BEFORE NATIONAL COURTS—THE IMMUNITIES GRANTED TO INTERNATIONAL ORGANIZATIONS ARE EXCLUSIVELY BASED ON STATES’ WILLINGNESS—INADMISSIBILITY OF SUBMISSION OF TWO COMPLAINTS BASED UPON THE SAME EMPLOYMENT RELATIONSHIP BEFORE TWO DIFFERENT SYSTEMS OF JUSTICE

The Applicant was hired by the International Labour Organization (“ILO”) in 2010 at grade A-1. She served the Organization’s office in Mexico under a series of short-term contracts, acting as coordinator of the “Stop Child Labour in Agriculture” project. Following a mid-term evaluation on the programme, in April 2012 the Applicant was informed about the Director-General’s decision not to extend her contract beyond June 2012. She challenged that decision before the ILO administrative authorities, alleging that the Director-General was required under national law to refer the decision on the renewal of her contract to the Federal Board of Conciliation and Arbitration (“FBCA”). The ILO administrative authorities reached the conclusion that the Applicant was entitled only to monetary compensation.

Against this decision, the Applicant filed a complaint with the FBCA, without referring the case to the ILO Administrative Tribunal. In declining its competence over the case, the FBCA specified that the ILO enjoyed jurisdictional immunities as an international organization in compliance with the relevant treaties and in accordance with the memorandum sent by the ILO to the Permanent Mission of Mexico to the United Nations Office and other international organizations in Geneva. The Applicant impugned the FBCA’s decision through a direct appeal to the Mexican Fourth Collegial Tribunal of the

¹ Ms. Idalia Peña Cristo, President, Ms. Guadalupe Madrigal Bueno and Mr. Victor Ernesto Maldonado Lara, Judges.

First Circuit (the “Tribunal”)² on the grounds that it violated her fundamental rights as established in the Mexican Constitution and in the Federal Labour Law.

As initial matter, the Tribunal confirmed its jurisdiction over the case. Relying on the restrictive immunity theory, it asserted that a distinction must be made between acts *jure imperii* and acts *jure gestionis* in determining whether the immunity from national jurisdiction provided by the ILO Constitution³ applies to the present claim. In particular, the Tribunal noted that the extent of the immunity in question depended on the nature of the act underlying the claim. Recalling the jurisprudence of the Mexican Supreme Court,⁴ it found that acts representing a manifestation of the exercise of sovereign powers must enjoy full immunity from jurisdiction; while those performed by the State or the Organization in the same fashion as any private person are justiciable before national courts.

In establishing whether the ILO was protected by jurisdictional immunities for the acts related to its employment relationship with the Applicant, the Tribunal observed that the immunities granted to international organizations are exclusively based on the States’ willingness as enshrined in the applicable treaty law. In this respect, referring mainly to Article 10 (“Functions of the Office”) of the ILO Constitution, the Tribunal concluded that these acts were justiciable before national courts, being only accessory and instrumental to the main objectives and functions of the Organization.

Notwithstanding the above, the Tribunal rejected the Applicant’s request to refer the case back to the FBCA. In the view of the Tribunal, the previous submittal of an application before the ILO’s internal means of redress prevented the FBCA from having jurisdiction over the second application. The Tribunal pointed out that the potential of two complaints based upon the same employment relationship coming before two different systems of justice is inadmissible, because this may result in two contradictory decisions or in a double condemnation of the defendant. It followed from the foregoing that the application was dismissed in its entirety.

² In the Mexican jurisdictional system, this means of appeal is called “*amparo directo*”. It allows applicants to impugn final judgments, arbitral awards and awards determined in labour-related matters directly before the Collegial Tribunals of the Circuit. More information is available at <https://www.scjn.gob.mx/conocelacorte/Paginas/atribucionesSCJN.aspx>.

³ The text of the ILO Constitution is available at http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO.

⁴ *Suprema Corte de Justicia de la Nación, Seminario Judicial de la Federación y su gaceta, “Inmudidad jurisdiccional internacional. No es prerrogativa ilimitada”*, tomo XVIII, noviembre de 2003, p. 149.