

*Extract from:*

# UNITED NATIONS JURIDICAL YEARBOOK

1964

Part Two. Legal activities of the United Nations and related inter-governmental organizations

Chapter V. Decisions of administrative tribunals of the United Nations and related inter-governmental organizations



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## Chapter V

### DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

#### A. Decisions of the Administrative Tribunal of the United Nations<sup>1</sup>

1. JUDGEMENT NO. 91 (8 MAY 1964)<sup>2</sup>: MISS Y. V. SECRETARY-GENERAL OF THE UNITED NATIONS

##### *Termination of a permanent appointment for reasons of health—Staff Regulation 9.1 (a)*

On 29 September 1961, the applicant requested the Administrative Tribunal to rescind the decision dated 8 November 1960 by which the Secretary-General had terminated her permanent appointment for reasons of health. By Judgement No. 83 delivered on 8 December 1961, the Tribunal, without deciding the merits of the case, remanded it under article 9.2 of the Statute for correction of the procedure used by the respondent in arriving at the decision that the applicant was incapacitated for further service for reasons of health under Staff Regulation 9.1 (a).

Pursuant to Judgement No. 83, a medical procedure was adopted in which the applicant and the respondent each appointed a doctor and these two doctors in turn appointed a third doctor to constitute a panel to consider the present case of termination for reasons of health. By a letter dated 23 December 1963, the applicant transmitted to the President of the Tribunal the written conclusions of the three doctors and requested the Tribunal to resume consideration of the case on its merits. The applicant subsequently filed pleas requesting the Tribunal, *inter alia*, (a) to rescind the decision of the Secretary-General to terminate her permanent appointment; (b) to order her reinstatement, in an appropriate post, in the United Nations Secretariat; (c) in the event that the respondent exercises the option given under

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<sup>1</sup> Under article 2 of its Statute, the Administrative Tribunal of the United Nations is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. Article 14 of the Statute states that the competence of the Tribunal may be extended to any specialized agency upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. By the end of 1964, two agreements of general scope, dealing with the non-observance of contracts of employment and of terms of appointment, had been concluded, pursuant to the above provision, with two specialized agencies: the International Civil Aviation Organization; the Inter-Governmental Maritime Consultative Organization. In addition, agreements limited to applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund had been concluded with the International Labour Organisation, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the International Civil Aviation Organization, the World Meteorological Organization and the International Atomic Energy Agency.

The Tribunal is open not only to any staff member, even after his employment has ceased, but also to any person who has succeeded to the staff member's rights on his death, or who can show that he is entitled to rights under any contract or terms of appointment.

<sup>2</sup> Mme P. Bastid, President; the Lord Crook, Vice-President; R. Venkataraman, Vice-President.

article 9.1 of the Statute of the Tribunal, to order the payment of compensation in an amount equal to two years' net base salary and the payment of the applicant's full salary from 8 November 1960 to the date of reinstatement or refusal to reinstate, less the amount paid in lieu of notice and the amount paid as termination indemnity. On the other hand, the Director of Personnel informed the applicant in writing on 19 February 1964 of the Secretary-General's intention to maintain the decision terminating her permanent appointment, specifying that his intention to maintain the termination had been formed in the light of all of the basic information contained in the medical opinions rendered subsequent to Judgement No. 83 and of the applicant's record of service, and that the ground for termination, *i. e.* incapacity for reasons of health, should be maintained as the primary ground inasmuch as the applicant's unsatisfactory performance of her work for some time prior to her termination appeared to have been attributable to health reasons.

The Tribunal, in its Judgement No. 91, formulated the point for determination as follows:

"Could the respondent have terminated legally the appointment of the applicant for reasons of health, had the respondent possessed such medical reports on the date of the issue of the notice of termination, namely 8 November 1960?"

The Tribunal then pointed out that the three doctors agreed that the applicant had "a character disorder" or "personality disorder", which had been with the applicant from childhood and would persist all through her life. The Tribunal went on to observe that, while the doctors disagreed on the question whether the applicant was incapacitated for further service, their reports contained indications that, at the relevant period, the applicant had not been in normal conditions of health for work. The Tribunal therefore concluded as follows:

"If, on a review of these medical opinions, the respondent decided to maintain the termination, the Tribunal considers that the information at his disposal was such as might cause him to reach the opinion that the services of the applicant should be terminated on grounds of health."

As to the applicant's allegation that the decision of 8 November 1960 was arbitrary and constituted a misuse of power and a violation of Staff Regulation 9.1 (*a*), the Tribunal found that there had been no prejudice or improper motivation; and it held therefore that the contested decision could not be rescinded.

Finally, with regard to the respondent's contention that the termination of the appointment of the applicant was justified on the ground of unsatisfactory services (the consideration of which as a new ground for the termination was resisted by the applicant), the Tribunal observed that in the light of the decision reached by the Tribunal that the applicant's health conditions had been such as might have led the respondent to the conclusion that her appointment could be terminated for reasons of health, the question of unsatisfactory services did not arise for determination in this case.

Accordingly the Tribunal rejected the application.

In view of the circumstances of the case, the Tribunal ordered that the name of the applicant should be omitted from the published versions of the Judgement.

## 2. JUDGEMENT NO. 92 (16 NOVEMBER 1964)<sup>1</sup>: HIGGINS V. SECRETARY-GENERAL OF THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

*Legal elements of secondment—Modification of the terms of secondment is not within the sole discretion of the organizations concerned—Despite the absence of a letter of appoint-*

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<sup>1</sup> Mme P. Bastid, President; R. Venkataraman, Vice-President; James W. Barco, Member.

*ment, the seconded official's position in the receiving organization is analogous to that of a staff member with a fixed-term appointment—Staff Rule 104.3 (b)—Procedure for a valid termination of secondment—Staff Regulation 9—Denial of due process—Compensation in lieu of specific performance.*

The applicant, a United Nations staff member seconded to IMCO for a fixed term, requested the Tribunal (a) to rescind the decision of 1 June 1963 by which the Secretary-General of IMCO had terminated the secondment before the expiry of the term, *i. e.* 30 June 1964; (b) to direct the respondent to reassign the applicant for a period of 13 months to a post equivalent to the one he had held before the contested decision; (c) should the respondent refuse such reassignment, to order the payment of compensation; and (d) to order certain additional measures of relief.

The respondent contended, *inter alia*, that, since the applicant had received no letter of appointment from IMCO, there was no fixed-term contract between IMCO and the applicant, and that, therefore, the duration of the secondment could be modified by a unilateral decision of the releasing organization (*i. e.* the United Nations) or the receiving organization (*i. e.* IMCO) or by an agreement between the two organizations, without the consent of the applicant.

In its Judgement No. 92, the Tribunal observed that the transaction of secondment involved three parties, namely, the releasing organization, the receiving organization and the staff member concerned, whose consent to the period of secondment, as well as to the terms and conditions of employment in the receiving organization was a condition precedent for such a secondment. The Tribunal found, therefore, that the consent of the staff member was necessary for varying the terms and conditions of secondment. The Tribunal pointed out, in this connexion, that the respondent's contention that the duration of secondment could be modified without the consent of the official concerned appeared to be based on a misreading of Staff Regulation 1.2 of the United Nations, which pertained only to the Secretary-General's authority to assign a staff member to any office within the United Nations without his consent and did not apply to assignment of a staff member transferred or seconded to another organization or specialized agency. The Tribunal held, therefore, that the termination of secondment did not lie within the sole discretion of the organizations concerned, and that, if the consent of the staff member was not given, appropriate procedures for a valid termination of secondment should be applied.

The Tribunal then went on to deny the respondent's claim that the absence of a letter of appointment from IMCO to the applicant implied the absence of a contract of service and precluded the application of Staff Regulations of IMCO to the applicant. Recalling its earlier Judgement No. 68 (Bulsara) in which the Tribunal held that the existence of a contract may be established on the basis of correspondence and conduct of parties, and considering that, in cases of secondment, letters of appointment are not always issued, and considering further that the applicant had been working within the administrative discipline of IMCO, the Tribunal stated: "It would be idle to deny that there was a contract of employment between the applicant and the respondent".

The Tribunal next noted that the applicant's position in IMCO had been "analogous to that of a staff member with a fixed-term appointment under Staff Rule 104.3 (b) of IMCO." The Tribunal observed, therefore, that the provisions of Staff Regulation 9 of IMCO applicable to the termination of a fixed-term appointment prior to the expiration date should have been applied in this case. Moreover, contrary to the respondent's submission, the Tribunal found that, inasmuch as the respondent had terminated the secondment before the expiry of the due date without the knowledge of the applicant and without giving him the opportunity to offer his explanations, the applicant had been denied due process of law to which he was entitled.

As a result of the foregoing findings, the Tribunal ruled that the contested decision could not be sustained. Observing that, since the period of the secondment originally envisaged had already expired on the date of the judgement, the applicant could not be restored to the service of IMCO by rescinding the contested decision, the Tribunal ordered the payment of compensation in lieu of specific performance, while rejecting the applicant's claim for damages which the Tribunal found were remote and contingent.

## **B. Decisions of the Administrative Tribunal of the International Labour Organisation<sup>1 2</sup>**

### **1. JUDGEMENT NO. 68 (11 SEPTEMBER 1964): PELLETIER V. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION**

*Access to the Tribunal by an employee of a non-governmental organization which maintains service contracts with UNESCO—Article II, paragraphs 5 and 6, of the Statute of the Tribunal*

The complainant stated that he was in the paid employment of the Co-ordination Committee for International Voluntary Work Camps in August 1959; that, having fallen ill in the conduct of his duties, he requested sick leave on 28 August 1959; and then, following a deterioration in the state of his health, he was placed on extended sick leave from 1 March 1960 to 28 August 1962 and found himself deprived of all care and allowances.

The complainant requested the Tribunal to rescind the implicit rejection, resulting from the prolonged silence of UNESCO, of an appeal submitted on 28 August 1962 the acceptance of which would have had the effect of recognition of the existence of a verbal contract for hire of services between the complainant and UNESCO for the period 16 August 1959 to 28 August 1962, and he claimed, as a result of such rescission, the payment by UNESCO of the social security contributions due from it to the Paris Primary Social Security Fund, his reintegration and classification in the international civil service in accordance with his diminished capacity for work and the assistance which was due to him in the light of services rendered, and compensation for damages suffered on various counts.

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<sup>1</sup> The Administrative Tribunal of the International Labour Organisation is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment, and of such provisions of the Staff Regulations as are applicable to the case, of officials of the International Labour Office and of officials of the international organizations that have recognized the competence of the Tribunal, namely, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union, the World Meteorological Organization, the Food and Agriculture Organization of the United Nations, the European Organization for Nuclear Research, the Interim Commission for the International Trade Organization/General Agreement on Tariffs and Trade, the International Atomic Energy Agency, the United International Bureaux for the Protection of Intellectual Property and the European Organization for the Safety of Air Navigation. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Office and disputes relating to the application of the Regulations of the former Staff Pensions Fund of the International Labour Organisation.

The Tribunal is open to any official of the International Labour Office and of the above-mentioned organizations, even if his employment has ceased, and to any person on whom the official's rights have devolved on his death, and to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely.

<sup>2</sup> M. Letourneur, President; A. Grisel, Vice-President; H. Armbruster, Deputy Judge.

In its Judgement No. 68, the Tribunal noted that paragraph 6 of article II of the Statute of the Tribunal reserves access to the Tribunal to officials of the organizations defined in paragraph 5 of the same article; to any person on whom an official's rights have devolved on his death; and to any other person who can show that he is entitled to some right of a deceased official. However, the Tribunal observed:

"The complainant does not supply any shred of proof of the existence of the contract of employment which he alleges was concluded verbally between him and UNESCO. The Co-ordination Committee for International Voluntary Work Camps—a non-governmental organization freely constituted, administered by its own organs, with its own financial resources obtained from contributions of member organizations and subventions which it administers independently—is not a service of UNESCO. Moreover, neither the fact of maintaining consultative relations with UNESCO as a Category A non-governmental organization, nor the fact of executing specified tasks and of submitting reports on their execution in return for a fee paid by UNESCO, on the basis of contracts for the execution of material work or hire of services, has the effect of conferring on the agents of the Committee the status of employees of UNESCO".

The Tribunal then concluded that the complainant was not among the persons entitled, under the above-mentioned provisions, to refer a complaint to the Tribunal, irrespective of the real nature of relationship between him and the Co-ordination Committee. Accordingly, the Tribunal dismissed the complaint as irreceivable.

## 2. JUDGEMENT NO. 69 (11 SEPTEMBER 1964): KISSAUN V. WORLD HEALTH ORGANIZATION

*Quashing of a decision not to confirm an appointment at the end of the probationary period—Official's right to be heard before a decision to his detriment is taken—Articles 430.2, 430.3, 430.4 and 440 of the Staff Rules*

The complainant had been appointed as a medical officer by WHO on 14 May 1961 for a period of 2 years, including a probationary period of 12 months, and assigned as team leader of a medical project in Liberia under the authority of the Organizations's Regional Office for Africa, in Brazzaville, and of the North Western Area Representative, stationed in Dakar. When the Regional Director of WHO terminated his appointment by a letter dated 27 April 1962 (*i. e.* during the initial probationary period), the complainant appealed to the Director-General of the Organization against this decision. The decision having been confirmed by the Director-General on 9 August 1962, the complainant prayed the Tribunal to quash the Director-General's decision and to recommend his reinstatement. He charged the Regional Director with having violated the Staff Rules, taken his decision with undue haste and based that decision on incorrect or non-proven facts. He also complained that he had not been made aware of all the documents placed before the Director-General and challenged the competency of the Regional Director to terminate the contract of an official whom he did not appoint.

In its Judgement No. 69, the Tribunal invoked the principle that, before a decision to his detriment is taken, every official should have the opportunity of acquainting himself with the elements taken as the basis for such decision and of explaining himself with regard to them. In particular, the Tribunal noted that, according to the Staff Rules of WHO, not only must the periodic evaluation reports be discussed with the official concerned, who must sign them and who may contest their correctness (articles 430. 2 and 430. 3), but these reports shall be the basis for decisions concerning the staff member's status and the confirmation of his appointment at the end of his probationary period (article 430. 4 and 440). The Tribunal held that the right of an official to be heard, thus understood, had been doubly ignored in the present case. The Tribunal stated:



"First, the Regional Director terminated the appointment of the complainant without previously submitting to him a periodic evaluation report or affording him the opportunity of justifying himself. Then, in connection with the appeal proceedings before the Director-General,... [the Regional Director of WHO, the Director of Health Services of the Brazzaville Regional Office, and the complainant's immediate supervisor] produced reports, of the existence of which the complainant only became aware during the proceedings before the Tribunal... Since these reports were placed in the dossier and could influence the Director-General's decision, they should have been brought to the knowledge of the complainant and he should have been afforded the opportunity of submitting his observations."

In stating that the infringement of the right to be heard entailed the quashing of the decision complained of, the Tribunal said:

"It is incorrect to maintain that, though the complainant was deprived of the possibility of a hearing by the Regional Director, he was nevertheless given the possibility of stating his case to the Director-General and that the failure to comply with recognised procedure in respect of the first decision was thus subsequently rectified. In reality, far from having been able normally to defend his interests before the Director-General, the complainant, as has been stated above, was not invited to comment on the documents which were submitted without his knowledge. Moreover, even if the appeals procedure was properly complied with, the previous infringement of the right to be heard was not thereby corrected, since the officer who took the first decision had based himself to a considerable extent on evaluations which the higher authority apparently accepted without checking them all personally..."

Infringement of the right to be heard having been sufficient to entail the quashing of the decision complained of, the Tribunal did not consider it necessary to examine whether the Regional Director had been competent to terminate the appointment of the complainant, whether he had acted with undue haste, or whether he had based himself on the relevant facts. The Tribunal held that it was incumbent upon the Organization to reopen the case, to enable the complainant to exercise all his rights and to consider whether he should be reinstated.

Finally, as to the indemnity which the complainant might possibly claim, the Tribunal added:

"The quashing of the decision impugned not being impossible or not seeming inappropriate, the Tribunal could not base itself on article VIII of its Statute in order to grant an indemnity to the complainant, who, moreover, has not claimed any indemnity. Certainly, there is nothing to prevent the complainant from submitting a request for an indemnity to the Organization, whether he is reinstated or not. In any case, he could, at the most, only claim to any effective purpose compensation for the prejudice effectively suffered from the time of the coming into force of the decision complained of up until the date of notification of the decision to be taken, or eventually, if this day is sooner, until the day when his appointment would normally have ended."

### 3. JUDGEMENT No. 70 (11 SEPTEMBER 1964): JURADO V. INTERNATIONAL LABOUR ORGANISATION

*Competence of the Tribunal—Article II of the Statute—Official's rights to immunity from jurisdiction in Switzerland and to "diplomatic protection" in the matter of his private affairs—Claims against alleged infringement of articles 1.2, 1.7, 7.5 and 7.6 of the Staff Regulations dismissed*

The complainant, who is of Spanish nationality, had been a permanent staff member of ILO since 30 June 1960. Following an appeal by the complainant, the Court of Justice of Geneva reversed, on 14 May 1963, a judgement previously rendered by the Court of First Instance whereby divorce against the complainant had been granted and the custody of his child had been given to the mother. Appeals by the complainant's wife were subsequently dismissed by the Federal Court on 20 September 1963, and the ruling of the Court of Justice

was upheld. In connection with these divorce proceedings, the waiving of the complainant's immunity from jurisdiction in Switzerland had been authorized on 6 October 1960 by the Director-General, with the prior knowledge of the complainant.

After various unsuccessful attempts to obtain the custody of his child, which continued to live with its mother, the complainant submitted, on 12 October 1963, two requests to the Director-General of the ILO, asking him, first, to be good enough to lay the matter before the competent Swiss authorities in order that the complainant's son might be restored to him, and secondly to grant him leave with salary in order to enable him to look for his child. Following these requests, the Legal Adviser of the International Labour Office indicated to the complainant that the Director-General did not consider himself able to offer more than his good offices, as a result of which many steps had been taken and followed up with a view to achieving a reasonable arrangement between the parties which would enable the complainant to see his child. The tenor of these discussions was confirmed in a letter from the Chief of Personnel to the complainant dated 5 November 1963.

By a letter of 4 November 1963, the complainant informed the Director-General that, in view of the failure of new approaches to the Genevese and federal authorities, he was preferring a penal charge with the Public Prosecutor of Geneva for the abduction of the child, while on 6 November 1963 the Department of Justice and Police again requested the waiving of the complainant's immunity in connection with a new divorce action instituted against him by his wife and based on new facts. On 7 November 1963, the waiving of the complainant's immunity, which he should have asked for before instituting penal proceedings, was authorized by the Director-General in connection with these proceedings, and his immunity was also waived in connection with the new divorce proceedings, as requested by the Department of Justice and Police, after the complainant had been advised that this action would be taken.

Meanwhile, by various communications, the complainant repeated his request of 12 October 1963 indicating that what he wanted was not the Director-General's good offices, but his intervention with the Swiss authorities with a view to impressing on them the principle of respect of his diplomatic immunity which, in his view, had been impeached by the application to his case of Swiss law, whereas he should only have been subject to Spanish law, under which he would have been given the custody of, and parental authority over, his child. The refusal to grant him "diplomatic protection" by such an intervention was made worse by the waiving of his immunity in connection with a divorce action that was contrary to Spanish law. On 13 November 1963, the Chief of Personnel informed the complainant that the Director-General did not consider that the purpose of the immunities granted by the Swiss Confederation to the International Labour Organisation was affected by the facts stated by the complainant.

The complainant prayed that the Tribunal should:

- (1) find that the ILO Administration offended his religious convictions and infringed article 1.2 of the Staff Regulations;
- (2) find that the waiving of the complainant's immunity the first time was illegal and infringed article 1.7 of the Staff Regulations;
- (3) find that the decision of the ILO Administration dated 7 November 1963, and confirmed on 13 November, waiving the complainant's diplomatic immunity and refusing him diplomatic protection was contrary to article 1.7 of the Staff Regulations and was tainted with illegality and arbitrary action;
- (4) find that the ILO Administration infringed articles 7.5 and 7.6 of the Staff Regulations;

(5) order the Director-General of the ILO to pay the complainant compensation in an amount to be fixed *ex æquo et bono* for damages and prejudice suffered;

(6) order the Director-General of the ILO to take the necessary measures for the diplomatic protection of the complainant so as to enable him to recover his child and obtain the custody of it;

(7) fix the sum of 10,000 Swiss francs as being payable to the complainant for every day's delay in recovering his son, starting from the date of the judgement;

(8) subsidiarily, in the event that the Director-General did not wish to reverse his decision, order him to pay the complainant compensation of 5 million Swiss francs for the loss of his child, not reimbursable in any circumstances;

(9) fix an amount of compensation *ex æquo et bono* to be paid to the complainant for his work in connection with the preparation and drafting of the present complaint;

(10) order the Director-General to pay the expenditure incurred by the complainant since 12 October 1963 in connection with the recovery of his child and the present complaint;

(11) order the Director-General to pay all the costs.

The Organisation prayed that the Tribunal was not competent to hear Mr. Jurado's complaints; subsidiarily, that the complaints were not receivable; and, very subsidiarily, that the complaints should be dismissed because they were unfounded.

Contrary to the Organisation's submission, the Tribunal held, in its Judgement No. 70, that it was competent to hear the complaints, according to article II, paragraph 1, of its Statute, in so far as the complainant submitted that the Director-General had infringed by the decisions impugned various provisions of the Staff Regulations, and in so far as he prayed for the quashing of these decisions and for the Organisation to be ordered to pay him compensation. However, the Tribunal did not find itself competent to give a ruling in respect of point (6) of the complainant's submissions concerning his "diplomatic protection."

The Tribunal then went on to find that the Director-General's decision of clearly-defined and limited scope to waive an official's immunity from jurisdiction could not be considered as offending the religious convictions of the person concerned, and that, therefore, point (1) of the complainant's submissions was unfounded. As to his point (2) the Tribunal, after referring to article 40 of the ILO Constitution and article 21, paragraph 2, of the Agreement between the Swiss Federal Council and the ILO, as well as to article 1.7 of the Staff Regulations, stated *inter alia*:

"...not only have officials no right to the maintenance thereof [*i. e.* of the privileges and immunities], but, moreover, the Director-General is obliged to waive an official's immunity if such immunity impedes the normal course of justice and if waiving it does not prejudice the interests of the Organisation.

The Director-General's power to decide in any case submitted to him whether or not these two conditions apply, is... completely beyond the control of the Administrative Tribunal.

The above-mentioned submission cannot therefore be accepted."

As to point (3) of the complainant's submissions, the Tribunal pointed out that ILO officials' right to "diplomatic protection" is nowhere mentioned in the relevant international agreements or the Staff Regulations, and concluded as follows:

"While by virtue of a general principle concerning the rights of the international civil service (cf. International Court of Justice: *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, *I.C.J. Reports*, 1949, p. 174) it is the duty of the ILO to protect and assist its officials in the performance of their functions or in connection therewith, the case of Mr. Jurado, against whom divorce proceedings were in progress before the regular Swiss legal authorities, was not one where such protection could or should be provided.

While, in fact, the competent authorities of the Organisation took measures to advise Mr. Jurado and to facilitate his action, and intervened on his behalf, they acted purely voluntarily, without being legally obliged to do so; and the complainant has no right to complain of the effective assistance which was unsparingly given to him."

With regard to point (4), the Tribunal held that the letter of 5 November 1963, which was confined to recalling the complainant's rights in respect of leave, did not involve an infringement of the regulations concerned.

Finally, in dismissing the complaint, including all the financial claims (mentioned in points (5), (7), (8), (10) and (11) of the complainant's submissions), the Tribunal stated:

"On the one hand, it results from the foregoing that the decisions impugned are not tainted by illegality; consequently, the claims in question, in so far as they relate to these decisions, are unfounded.

On the other hand, compensation for the preparation and drafting of the complaint and the subsequent statements could not, in any case, be granted.

The other financial claims, relating to matters which are totally extraneous to the Organisation, must also be dismissed."

4. JUDGEMENT NO. 71 (11 SEPTEMBER 1964): *SILENZI DE STAGNI V. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS*

*Access to the Tribunal—Article II, paragraphs 5 and 6, of the Statute—Letters sent to a candidate for a vacant post prior to the receipt of his personal history do not constitute a firm offer*

Following a letter dated 6 August 1962, in which the complainant informed the Director-General of FAO that he wished to submit an application for a post, the Chief of the Recruitment Section requested him, by a letter of 20 September 1962, to complete a personal history form. In response to a letter of 21 September in which the Chief of the Recruitment Section advised the complainant that there was a vacant post (information on which was given in the letter), asked him whether he would be interested in it, and again requested him to send his personal history, the complainant, on 3 October, cabled to say that he accepted the post on the conditions set forth in the said letter of 21 September. On 4 October the Chief of the Recruitment Section wrote to the complainant that he was pleased that the complainant accepted and that, as soon as he had received his personal history, he would make him a firm offer. But on 25 October he advised the complainant that, owing to his inadequate knowledge of English and French, he could not offer him the post.

The complainant maintained that the above-mentioned letter of 21 September constituted an unreserved offer and that his acceptance of it gave rise to a contract which the Organization subsequently broke improperly. In view of the impossibility of imposing upon the Organization the fulfilment of the obligations resulting from the contract, the complainant prayed for the granting of compensation for damages suffered.

In praying for the complaint to be dismissed, the Organization maintained that, in the absence of an act of appointment, the complainant had not acquired the status of an official of FAO and that, consequently, the Tribunal was not competent to hear his complaint.

In its Judgement No. 71, the Tribunal found that the sole intent of the letter of 21 September was to inform a person seeking employment with FAO that a post described in the letter was vacant and to request him to forward a personal history so as to enable the competent authorities of FAO to evaluate his qualifications for the post.

As regards the significance of the letter of 4 October sent as a result of the complainant's telegram, the Tribunal held:

"...its author took note of Mr. Silenzi de Stagni's application and confined himself to reminding the applicant that, before the discussions embarked upon could reach a definite conclusion, he should send his personal history. The firm offer of a contract was therefore made subject to the receipt of this personal history, which was required in order to enable the Organization to determine finally whether to make such an offer. The actual wording of this letter clearly implied, therefore, that no contractual relationship yet existed between the Organization and Mr. Silenzi de Stagni and further that no promise of a contract had been made since the outcome of the matter was entirely dependent upon the furnishing of the personal history of the applicant."

The Tribunal then concluded that no legal relationship whatsoever had ever been established between the complainant and FAO; and that, consequently, the complainant was not among the persons entitled to refer a complaint to the Tribunal, under the provisions of article II, paragraphs 5 and 6, of its Statute. Accordingly, the complaint was dismissed as irreceivable.

5. JUDGEMENT NO. 72 (11 SEPTEMBER 1964): DE BEITIA AND CHADBURN V. WORLD HEALTH ORGANIZATION

*Reclassification of posts—Claim for the back pay for the intervening period*

The complainants moved to rescind the implicit rejection, resulting from the silence maintained by the WHO Administration, of an appeal submitted on 21 February 1963 and, consequently, to order WHO to implement in the Region of the Americas the standards for posts of translators introduced on 15 September 1958, to apply these standards to the posts held by the complainants and to assign them the grade P. 4 at the step which they would have had on the date of submission of the complaint if the standards had been implemented in 1958, and to grant them the back pay due for the intervening period.

However, by an instrument of 21 January 1964 filed with the Registrar prior to the filing of the Organization's reply, the complainants stated that they withdrew any claim whatsoever with respect to the relief prayed for in their complaints in view of their promotion meanwhile to the grade P. 4 and of the assurance that, the reconsideration of the cases of the persons concerned having been undertaken in the interests of sound administration and, in particular, in order that, prior to the hearings of these cases before the Tribunal, the internal proceedings would have been concluded, the awarding of the promotions prior to the filing of the Organization's reply implied the acceptance by the Administration of the fact that, at the date when the classification decisions concerning the posts of the persons concerned were made, the duties actually being carried out were such as to justify the assignment of these posts to the higher grade.

After noting that, by an instrument of 31 January 1964, the Organization did not contest the above-mentioned conclusions, the Tribunal notified the parties that the complainants had withdrawn suit.

6. JUDGEMENT NO. 73 (11 SEPTEMBER 1964): PALMER AND D'ALCÁNTARA V. WORLD HEALTH ORGANIZATION

*Reclassification of posts—Claim for the back pay for the intervening period*

By instruments of 12 November and 27 December 1963, filed with the Registrar prior to the filing of the Organizations's reply, the complainants stated that they withdrew any claim whatsoever with respect to the relief prayed for in their complaints, in view of their promotion meanwhile to the grade immediately above their previous level. The Tribunal, therefore, notified the parties that the complainants had withdrawn suit.

7. JUDGEMENT NO. 74 (11 SEPTEMBER 1964): ROVIRA ARMENGOL V. WORLD HEALTH ORGANIZATION

*Reclassification of post—Relief claimed by a former official*

By an instrument of 11 March 1964 filed with the Registrar, the complainant stated that he withdrew any claim whatsoever with respect to the relief prayed for in his complaint. In view of the above the Tribunal notified the parties that the complainant had withdrawn suit.

8. JUDGEMENT NO. 75 (11 SEPTEMBER 1964): PRIVITERA V. WORLD HEALTH ORGANIZATION

*Competence of the Tribunal—Article II, paragraph 5, of the Statute—Legal status of a “medical officer” holding a contract for a temporary and exceptional mission in the Congo (Leopoldville)*

WHO appointed the complainant for a period of one year (from 28 February 1961 to 28 February 1962), as a medical officer (grade P. 4/1) seconded, on mission, to the Government of the Congo (Leopoldville) in accordance with a contract governed by the Staff Rules of the Organization. This contract was subsequently replaced by a one-year contract of different type for the appointment of persons assigned to the Congo, which was signed by the complainant on 27 December 1961. By a letter of 21 November 1962, the Chief of Personnel informed the complainant that the Organization did not intend to offer him a third contract on the expiry of the second one, whereupon the complainant requested the Director-General, by a letter of 6 December 1962, to withdraw the decision taken on 21 November 1962. The decision, however, was confirmed by the Director-General's reply dated 19 December 1962. On 10 August 1963, the complainant, in writing, requested the Director-General to restore his rights as a staff member and to pay him adequate compensation; by a statement dated 10 October 1963, he laid the matter before the WHO Board of Inquiry and Appeal, which concluded on 19 November 1963 that it was not competent to hear his appeal in view of the fact that he was not a member of the staff of the Organization. The complainant thereupon requested the Tribunal to quash the decision of the Director-General, to recommend his reinstatement and that he be granted damages of \$1,000; and subsidiarily he requested payment of compensation. The Organization moved to dismiss the complaint on the ground of the incompetence of the Tribunal.

In its Judgement No. 75, the Tribunal held that, in view of the legal nature of the relations between the complainant and the Organization, the complaint did not fall within the category of those which the Tribunal was competent to hear in pursuance of article II, paragraph 5, of its Statute. In determining the legal nature of the relations between the complainant and WHO, the Tribunal observed that the complainant had signed the second contract voluntarily and with full knowledge of its terms before the expiry of the first contract governed by the Staff Rules of WHO, and that this second contract constituted the sole legal basis of the relations between the parties. The Tribunal went on to say:

“It is of little account that the first article of the contract describes the complainant as a medical officer. This title relates solely to the nature of the work to be performed by the complainant, but does not affect his legal status. On the contrary, his legal status is defined by article II, paragraph 14, which stipulates that ‘the present contract does not confer upon the holder the title of official of the World Health Organization’.

Not only is the legal status of the complainant of an exclusively contractual nature, but the contract concluded by him is of a very special character. In fact, the tasks entrusted to the complainant were outside the scope of the normal functions of the Organization and were connected with an exceptional, as well as a temporary, mission. In addition, whatever his obligations may have been towards the Organization, the complainant was expressly stated to be responsible to the Government of the Congo (Leopoldville) (Article III, paragraph 1)....

Moreover, the contract provides that any disputes between the parties shall be settled in accordance with arbitration proceedings to be instituted by the Organization (Article VI)."

9. ORDER NO. 76 (11 SEPTEMBER 1964): L'EVÊQUE V. INTERNATIONAL TELECOMMUNICATION UNION

*Decision to order measures of investigation—Article 11 of the Rules of Court of the Tribunal*

In support of his complaint against ITU, the complainant maintained that the decision of the Secretary-General, dated 7 August 1962, terminating his appointment was motivated exclusively by reasons extraneous to the interests of the service, and in particular, to his professional qualifications. On the other hand, ITU affirmed that this measure was taken in application of article 9.1, paragraph (a) (3), of the Staff Regulations exclusively on account of the professional incompetence of the complainant. The parties having been thus opposed with regard to the facts, the Tribunal considered it necessary, in order to be able to give a ruling on the complaint with full knowledge of the case, to resort to various measures of investigation authorized under article 11 of its Rules of Court.

10. JUDGEMENT NO. 77 (1 DECEMBER 1964): REBECK V. WORLD HEALTH ORGANIZATION

*Arbitration of a dispute between WHO and a physician recruited for service in the Congo (Leopoldville)—Interpretation of contracts of international organizations—Alleged violations and non-renewal of a one-year contract—Compensation for extra-contractual duties*

The complainant offered his services to the Organization in reply to an advertisement it had placed in the press with a view to recruiting medical staff for the Congo (Leopoldville). On acknowledging his application, the Organization informed the complainant of the contemplated terms of employment; in particular, by letter of 29 January 1962, it informed him that he would not be authorized to practice as a private physician and that, along with surgical work, he would be entrusted with related tasks if necessary. By a contract signed on 2 and 7 March 1962, the Organization engaged the complainant as a surgeon for one year, and towards the end of the period the Organization notified him, by a letter of 15 March 1963, that it was not in a position to renew his contract.

Since the complainant advanced various claims against the Organization, the parties agreed to submit these claims to the arbitration of the Tribunal, which accepted this commission. In support of his claims, the complainant alleged, on the one hand, that he had sustained damages owing to various violations committed by WHO during the fulfilment of his contract and, on the other, that he had sustained serious injury owing to the Organization's refusal to offer him a new contract. The Organization prayed that the complaint be dismissed, on the grounds that none of its contractual obligations had been violated and that the complainant was not entitled to damages because his contract had not been renewed.

In its Judgement No. 77, the Tribunal first observed that, in order to carry out the commission to arbitrate the present dispute, it must "base its decision on the clauses of the contract which constituted [the complainant's] sole tie with WHO [and] adopt generally accepted rules of interpretation on the subject of contracts," and that, moreover, it "must consider the particular duties incumbent on an international organization, especially those which bind it to refrain from taking any decision of an arbitrary nature."

The Tribunal then found that the claim based on the alleged violations of the contract due to the Organization's entrusting him with obstetric service was groundless. The Tribunal pointed out, *inter alia*:

"By a letter of 29 January 1962, *i. e.* before the contract had been signed, the Organization reserved the right to entrust him with related tasks, among which it would not be out of the question to include obstetrics and certain duties relating to general medical care. Moreover, in his monthly report of 1 July 1962 the complainant himself stated that he had accepted, in agreement with a colleague, to perform the duties of both surgeon and gynaecologist. Consequently, even though the complainant was not able to devote himself exclusively to the speciality for which he had been recruited, this fact cannot be regarded as contrary to the clauses of the contract... Lastly, even if it were contrary to the clauses of the contract, the additional duties required of the complainant did not manifestly cause him any damage."

As to the complainant's allegation that he was prevented from resting on holidays and obliged day and night to be on permanent duty, which he stated was not provided for in the contract, the Tribunal held:

"In each of his monthly reports Mr. Rebeck claims to have been on duty every day, and the Organization, although it denies the extra-contractual nature of such work, does not dispute the truth of these statements. Even considering the complainant's special situation, it must be acknowledged that he was subject to ward duties which were out of the ordinary and went beyond his contractual obligations. Under these circumstances, and not having obtained leave by way of compensation, the complainant is entitled to an indemnification, which the Tribunal fixes *ex æquo et bono* at \$500."

In concluding that the complainant's other submissions alleging violations of the contract could not be entertained, the Tribunal stated *inter alia*:

"Although he complains of having been described as 'all-round physician' by the Organization's mission in the Congo, he does not base any claim for damages on that fact... Furthermore, when he complains that he was unable to practise medicine as a private physician, the complainant is criticizing to no purpose a stipulation of which he was notified by letter of 29 January 1962,... and which is not invalidated by any provision of the contract. Moreover, he is not justified in ascribing a slanderous character to the charges made by one of his superiors in discharging his duties and which, whether founded or not, cast no aspersions either on his honour or his reputation. Lastly, needless to say the Organization did not violate any obligation by offering to provide the complainant with a certificate stating that the professional services performed by him were entirely satisfactory."

The Tribunal then went on to examine the claims arising from the non-renewal of the contract, which did not provide, either expressly or implicitly, for its renewal. In the light of the advertisement for the recruitment of physicians in the Congo and the correspondence exchanged between WHO and the complainant, as well as on the basis of the oral proceedings, the Tribunal observed that the complainant neither "could reasonably consider that he was entitled to demand that the Organization renew his contract", nor could he "allege any express or tacit promise by the Organization to conclude a new contract." Furthermore, the Tribunal did not find that the Organization had made arbitrary use of the broad powers of appraisal at its disposal when it decided to refuse to offer the complainant a new contract.

Accordingly, the Tribunal ordered the payment of an indemnification for extra-contractual duties and dismissed all other claims of the complainant.

11. JUDGEMENT No. 78 (1 DECEMBER 1964): PILLEBOUE V. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

*Competence of the Tribunal—Article II of the Statute—Alleged irregularity of the elections held by the Staff Association—Director-General's refusal to invalidate the elections*

By a communication dated 29 March 1963, the complainant requested the Director-General of UNESCO to declare void the election (held on 28 March 1963) of a staff member to the vice-chairmanship of the Executive Committee of the Staff Association and, consequently, the election of the said committee as a whole, on the ground that at the time of



presenting himself as a candidate and his candidature being brought to the notice of the electors, the staff member did not possess the status of member of the Association, because he had paid his contribution only at the moment of the ballot, whereas under the Staff Regulations and Rules membership was subject to payment of contributions.

By a note dated 10 April 1963, the Organization informed the complainant that the Director-General was not competent to deal with his request. By a resolution of 9 April 1963, the Council of the Association decided that the elections called into question were to be considered fully valid in view of the fact that any member of the Association retains full membership rights so long as he does not expressly refuse to renew his contributions. The complainant then lodged an appeal against the Director-General's decision of 10 April 1963 with the UNESCO Appeals Board, which on 15 July 1963 expressed the view that his complaint should be dismissed. On 6 August 1963 the Director-General accepted this view and informed the complainant accordingly.

In form, the complaint before the Tribunal referred to the aforementioned decisions of the Director-General dated 10 April and 6 August 1963, and the memorandum specified that "the complaint is directed against the Director-General" whereas the conclusions submitted that the Tribunal should rule that disputed elections were invalid and that new elections should be held according to a regular procedure. The Organization submitted that the Tribunal lacked jurisdiction to entertain the complaint.

In its Judgement No. 78, the Tribunal dismissed the submission that the elections of 28 March 1963 should be rendered void, for the reason that "no provision of its Statute, and in particular article II, empowers the Administrative Tribunal to adjudicate on such a submission." The submission that the Director-General's decisions of 10 April and 6 August should be rescinded was also dismissed. The Tribunal stated:

"The Staff Association of UNESCO is a body governed by its own organs under the terms laid down in its constitution.

With respect to the Association, its members or its acts, the Director-General of UNESCO may exercise only those powers granted to him by the Organization's regulations.

None of these regulations empowers the Director-General to invalidate elections held by the Association to form its Executive Committee on the ground that such elections were irregular; in particular, neither the sentence in the Preamble of the Staff Regulations according to which the Director-General shall enforce the Regulations and Rules nor rule 108.1 of the latter, according to which the constitution of the Association shall be submitted to the Director-General for approval, can be regarded in any light as granting such a power to the Director-General.

Hence, by refusing to invalidate the elections held on 28 March 1963, the Director-General, far from violating the Staff Regulations and Rules, applied them correctly.

In the light of the foregoing—there being no need to order production of the document requested by Mr. Pilleboue, as this would have no bearing on the case—the aforementioned submission must fail."

## 12. JUDGEMENT No. 79 (1 DECEMBER 1964): GIANNINI V. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

*Summary dismissal for serious misconduct alleged to be ascribable to the complainant's mental condition—Article 10, paragraph 2, of the Staff Regulations*

By a letter of 4 November 1961, the complainant was informed of the Director-General's decision that he was summarily dismissed for serious misconduct on the grounds that he had received from a colleague the sums of 1 million liras and \$644 for the purpose of transferring them abroad and had failed to do so; that he had received from another colleague 100,000 liras for the purpose of converting them into dollars and had neither effected that

conversion nor reimbursed the sum; that he had misappropriated petrol coupons; that he had induced a colleague to lend him a considerable sum without disclosing his true financial situation; and that, by his own admission, he had managed his personal affairs in a manner unworthy of an international civil servant.

Following unofficial action taken at the Organization in March 1962 by the counsel for the complainant, who argued that, when he had been notified of his summary dismissal, the complainant, then being treated for mental disorders, had not been either physically or mentally fit to grasp its significance, the Organization, by letter dated 25 April 1962, requested the complainant to supply directly such medical certificates as would facilitate an examination of the situation. After being sent a reminder, the complainant produced on 24 July 1962 various medical certificates concerning his hospitalization which, in the opinion of the medical adviser of the Organization, failed to establish that the complainant had, during the period of hospitalization, been unfit to look after his interests. The complainant was notified accordingly by letter of 27 December 1962 that with respect to the information supplied concerning his state of health, new representations relating to his dismissal could not be entertained. On 31 July 1963 the complainant wrote again to the Director-General, protesting against the measures taken against him and appended additional medical certificates. The Director-General's reply, dated 25 October 1963, confined itself to confirming the terms of the letter of 27 December 1962 and to drawing the complainant's attention to provision 303.131 of the Staff Rules which allows a maximum period of a fortnight in which appeals against administrative decisions must be made.

The complainant alleged that his dismissal was illegal on the ground that, since he could not be blamed for any misconduct in the performance of his duties, it was based on actions in his private life, moreover without regard to the fact that these actions were to be ascribed to his mental condition; he also argued that summary dismissal was unjustified since he had neither caused injury to the Organization nor had abused his position as an official and that in any case summary dismissal could not be notified during sick leave. In form, the complaint referred to the decision of 25 October 1963, which confirmed the decision of 27 December 1962, refusing to re-open examination of his case in the absence of evidence of a mental condition preventing the complainant from making his appeal within the prescribed time limit, whereas the conclusions submitted not only that the complaint should be declared receivable in view of the complainant's state of health during the period of time allowed for appeal but also that the dismissal should be quashed and the complainant reinstated, or else that he should be discharged and receive severance pay and, as from the end of the period of illness, both back salary and compensation for injury sustained. The Organization submitted that the complaint was not receivable on the grounds that, in so far as it referred to the decision of 27 December 1962, it was not filed within the stipulated period of time and that, in so far as it referred to the communication of 25 October 1963, assuming that this was of the nature of a decision, internal appeals were not first exhausted.

In its Judgement No. 79 whereby the complaint was dismissed, the Tribunal found that under article 10, paragraph 2, of the Staff Regulations (relative to 'disciplinary measures') the acts criticized in the Director-General's letter of 4 November 1961, the factual accuracy of which had not been called into question and which had not been proved ascribable to the complainant's state of health, showed that the complainant had been guilty of serious misconduct. The Tribunal went on to say:

"...even if they had concerned only his private life—which is not the case—these acts were of a nature to compromise the Organization's reputation and thus legally to warrant summary dismissal of the complainant under the terms laid down in the above-mentioned article. The fact that Mr. Giannini was ill at the time and that special sick leave for officials is normally provided for by the Regulations constitutes no obstacle to the enforcement of the said provision by the Director-General."